

BIMKOM بِمَكُوم بِمَكُوم

Planners for Planning Rights محططون من اجل حقوق التخطيط



The Prohibited Zone

Israeli planning policy in the Palestinian villages in Area C

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Cover photograph: a residential buliding demolished by the Civil Administration in the village of Al Funduq; photograph: **Alon Cohen-Lifshitz**, photograph processing: **Gama Design**

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מחברים למען זכויות תכנון (ע"ר) מחפזות מן אגל חֲקוֹק הַתְּחָלִיט
Planners for Planning Rights

Bimkom – Planners for Planning Rights is an Israeli NGO that was established in 1999 by planners and architects with the vision of strengthening the connection between the planning systems and human rights. Bimkom is using professional tools in order to promote equality and social justice in planning, development and allocation of land resources. Bimkom assists communities disadvantaged by economic, social or civil circumstances to exercise their planning rights

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Preface

Since its founding, Bimkom has often assisted Palestinian villages in Area C that are not recognized by the Israeli authorities and which are without any up to date planning. These villages suffer from longstanding and extensive demolition of buildings and infrastructure.

The focused assistance that Bimkom attempted to give to each particular village soon led us to conclude that house demolitions are a symptom of a deeper problem: the fact that Israel ignores the needs of the Palestinian population in Area C and has imposed a policy designed to restrict the development of the Palestinian communities in the area. To examine this policy in depth, a broader framework was needed that looks beyond the concrete problems faced by each individual Palestinian resident whose home is the subject of a demolition order. The current report is intended to provide this broader perspective.

The *Prohibited Zone* describes the reality of the area in terms of planning and construction and reveals the planning tools Israel uses to minimize the growth of the Palestinian population in Area C, which accounts for some 60 percent of the total area of the West Bank.

The size of the report reflects the aim to reveal the planning practices Israel has used in the West Bank over several decades. The complexity of the subject demanded analysis of the smallest details. We hope that the information and figures revealed in this report, in part for the first time, will lead to a change in Israeli policy in the area. Such change should enable the Palestinians living in Area C to enjoy their basic rights in the fields of planning and building.

Introduction

For many years, planning and building have been among the most serious sources of daily friction between the Israeli authorities and the Palestinian population in the West Bank. The interim agreement with the PLO (1995), under which all the planning powers in Areas A and B (together accounting for approximately 40 percent of the area of the West Bank) were transferred to the Palestinian Authority, was supposed to moderate this protracted conflict. However, approximately 60 percent of the West Bank remains in Area C, under exclusive Israeli planning control. In this area the policies of the Israeli authorities designed to restrict and prevent Palestinian construction have only got worse.

Some 150,000 Palestinians currently live in Area C. This figure includes 47,000 Palestinians who live in 149 communities whose entire built-up area is located within Area C, while the remainder live in villages where some of the homes are in Areas A and B and others in Area C. Accordingly, Israeli planning policy continues to exert considerable influence over a significant Palestinian population.

From the beginning of 2000 through September 2007, the Israeli Civil Administration issued demolition orders for 4,820 buildings established by Palestinians in Area C – an average of 714 demolition orders each year. Although the owners of the buildings initiated various proceedings in an effort to prevent demolition, including dozens of petitions submitted to the High Court of Justice (HCJ), a total of 1,626 buildings were demolished in Area C over this same period – an average of 240 buildings a year.¹

These statistics mask the painful stories of families left without a roof over their heads, and of people who have lost most of their possessions. The planning institutions in the Civil Administration do not hesitate to exercise their enforcement powers even in the most extreme cases of humanitarian hardship. In June 2007, for example, the Inspection Subcommittee of the Civil Administration issued a demolition order for a tent established by the Red Cross for an elderly couple in the village of Qawawis in the southern Hebron mountains, after their permanent home was demolished by the Israeli authorities. In its decision to demolish the tent, which has an area of six square meters, the committee noted that “insofar as the case involves construction without a permit as required by law, the identity of the body financing the construction [the Red Cross] is irrelevant.” As of the time of writing, the tent has not yet been demolished. However, in accordance with their usual practice, the enforcement authorities in the Civil Administration may demolish the tent at any time without further warning.²

The restrictive planning and enforcement policy of the Israeli authorities, which in many areas prevents any new Palestinian construction, has additional and serious ramifications beyond the actual demolition of buildings. One of the consequences of this policy is the high level of residential congestion, for example when a family expands but is not permitted to enlarge its home. In many other cases young couples are forced to leave their village and move to other Palestinian communities in Areas A and B.

¹ Civil Administration Spokesperson, response to a request in accordance with the Freedom of Information Law submitted by Nir Shalev, 19 November 2007. The figure relates solely to administrative enforcement operations on account of violations of planning and building laws and does not include buildings demolished for security reasons.

² Minutes of the Inspection Subcommittee meeting number 14/07 of 28.6.2007, file 129-131/07.

Planning Failure

The phenomenon of widespread demolition of buildings in Area C is symptomatic of a fundamental problem in the relations between the civilian population and the authorities. In principle, this phenomenon may reflect a government failure that is manifested in outdated planning, which fails to meet the needs of the population, and forces them to build without permits. It may also be the result of the actions of real estate developers looking for quick profit by building without conforming to the approved plans.

In Area C, however, most Palestinian construction is privately initiated and meant for the immediate needs of those undertaking the construction and their family, mainly in the context of family expansion. Accordingly, the search for a quick profit is a marginal factor, if at all, among Palestinians involved in construction in Area C.

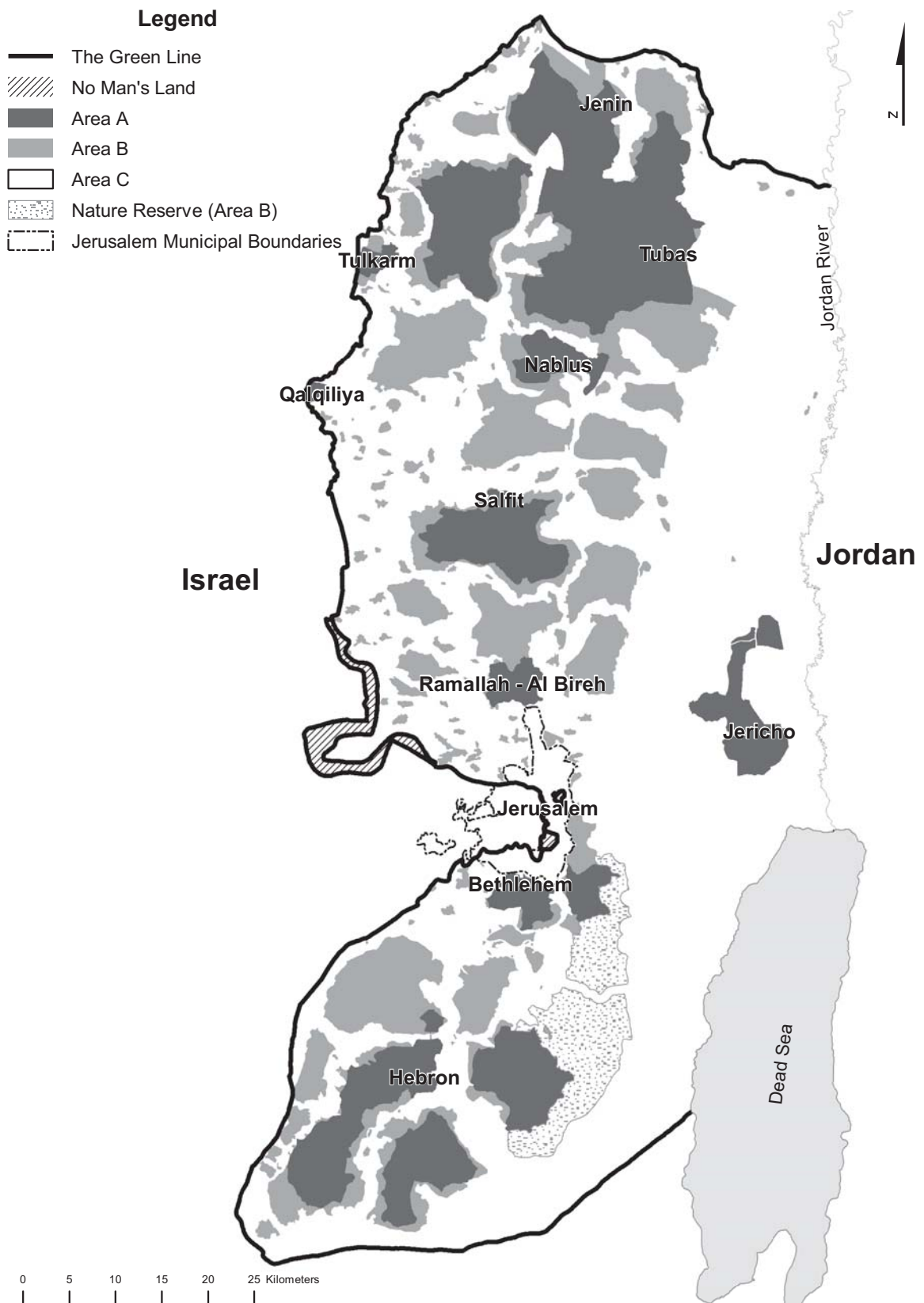
The planning and building situation in Area C, including house demolitions, must be reviewed in the broader context of the protracted geopolitical conflict between Israel and the Palestinians. While the central role of planning and building in this context is not always apparent to the general public in Israel and around the world, the relevant Israeli authorities and the Palestinians themselves are well aware of this reality. After 41 years of Israeli occupation, both sides have learned well that establishing facts on the ground through construction is the best way to secure effective control in the field. To put the point in bold and rather simplistic terms, wherever there is Israeli construction, the Palestinian public is excluded from land resources, with all the consequent spatial and political ramifications. Conversely, wherever there is Palestinian construction, Israeli settlements will not be established and Palestinians will retain control of the land. Accordingly, issues of planning and building constitute just one aspect – though an important one – in the ongoing and multifaceted struggle between Palestinians and Israelis over land. This report, however, focuses exclusively on planning and building issues.

The two sides in this conflict do not have equal power. The Israeli Civil Administration enjoys substantial statutory and legal powers, and the average Palestinian citizen has no practical possibility of successfully challenging its decisions. Even according to the official position of the Israeli government, Area C is under temporary belligerent occupation and is not part of the sovereign State of Israel.³ This status implies that the powers of the Israeli authorities in the area to impose restrictions on Palestinian development and building are extremely restricted compared to those of a sovereign government. Nevertheless, the Civil Administration severely restricts Palestinian development in Area C, arguing that the future of this area remains to be determined in negotiations for a permanent agreement. At the same time, Israel continues to permit extensive construction in the settlements scattered throughout Area C, as if this construction does not establish facts on the ground and does not have grave ramifications for any future agreement.

In any system of government, whether in an area under belligerent occupation or within a sovereign state, the authorities have a considerable impact on the motivation of the civilian population to participate in planning and building proceedings and to submit applications for building permits. Peoples' willingness to build legally depends a great deal on their past experience and on the public's perception of its chances of securing building permits. The higher the proportion of permit applications that are rejected, the lower the motivation of the public to submit such applications,

³ For example, see section 12 of the Complementary Argument on Behalf of the State in HCY 1526/07 **Ahmad `Issa `Abdullah Yassin et al. v Head of the Civil Administration et al.**, 5 July 2007, in which the state argues, inter alia, that "throughout the years of the military administration in the area, the authorities of the area have been required to strike a delicate balance between the basic assumption regarding the temporary nature of the regime of belligerent occupation in the area and the status of Israeli civilian settlements in the area."

The administrative division of the West Bank



since the mere process of submitting an application entails considerable expense and is pointless if it is apparent from the outset that the chances of securing approval are slim.

This observation is not only of theoretical relevance. During the first decade of Israeli control in the West Bank, the authorities applied a radically different planning policy from that currently enforced by the Civil Administration. Until the late 1970s, there were still no Israeli settlements in most of the West Bank and Palestinian construction was not perceived by the Israeli authorities as a threat. While insisting on general planning principles (such as maintaining a given distance from roads), during this period the Israeli authorities granted thousands of building permits to Palestinians in the villages of the West Bank. More importantly, the majority of applications were approved. This encouraged the Palestinian public to submit applications for permits in advance, before constructing the building – in other words: to build legally.⁴

This changed during the 1980s as the settlements expanded and spread to the central mountain range where most of the Palestinian population lives. During this period, key figures in the Israeli administration gradually adopted a position that opposed the spread of Palestinian construction. They saw Palestinian building as a significant obstacle to the settlements enterprise and to other Israeli interests (for example, control over areas perceived as being of particular security importance, such as the Jordan Valley), since it led to Palestinian control over land resources earmarked by the government for the settlements and other Israeli uses. Since this period, the consistent trend has been to restrict the area intended for the Palestinian population, while substantially increasing the area allocated to the settlements and other Israeli interests. This approach was reflected in a reduction in the proportion of Palestinian building applications that are approved, and soon thereafter – an ongoing decline in the number of applications submitted.

This phenomenon has reached a new peak in recent years, following the interim agreement and the administrative division of the West Bank into Areas A, B, and C. The Israeli authorities act on the basis of the assumption that planning solutions for the Palestinian population should be provided primarily in Areas A and B, which are under full Palestinian control, whereas Area C (which, as noted, accounts for 60 percent of the West Bank) is intended almost exclusively for Israeli use. This position has led to a drastic reduction in the number of building permits granted to Palestinians, which now number just a few each year, and to a sharp fall in the number of applications for permits submitted by Palestinians (see Table 1). Moreover, since the Palestinian public is well aware that the chance of securing building permits from the Israeli authorities is negligible, applications are almost always submitted after the building has been erected and after the Israeli planning institutions have begun to take enforcement measures.

It should be emphasized that the figures for 1972 through 1989 relate to the entire rural area of the West Bank (but not to the Palestinian cities), whereas the figures from 2000 onward relate solely to Area C.

According to the Civil Administration figures, between January 2000 and September 2007, a total of 1,624 applications were submitted by Palestinians to the planning institutions that operate under its auspices; this is equivalent to 241 applications a year. Of these 1,624 applications, just 91 were approved – an average of 13 a year. The proportion of applications approved over this seven-year period is 5.6 percent.⁵

⁴ Meeting with Architect Shlomo Hayat, former director of the Planning Bureau in Beit El, 15 August 2007.

⁵ Ibid.

Table 1: Israeli Planning Policy in the West Bank - Permits for Palestinian Construction in the Rural Sector⁶

Year	Number of applications for building permits	Number of applications approved	Percent of applications approved
1972 ⁷	2,199	2,123	97%
1973 ⁸	1,466	1,409	96%
1988	1,682	532	32%
1989 ⁹	1,586	402	25%
2000	182	5	2.7%
2005	189	13	6.9% ¹⁰

We should stress that the figures in the table, and particularly those relating to the last decade, do not reflect the full scope of Palestinian construction in Area C. There are some 150 villages in the West Bank in which the special outline plans prepared by the Civil Administration relate mainly to Area B, but also include land (usually on a limited scale) in Area C. Generally, the Civil Administration does not undertake enforcement activities in the areas covered by these plans, where it estimates that hundreds of housing units are built each year without permits and without any planning control.¹¹ Nevertheless, the figures in the table clearly reflect a dramatic change in Israeli planning policy over the years.

The Report and its Goals

The goal of this report is to identify the underlying planning causes for the large amount of house demolitions in Area C, emphasizing the restrictions imposed by Israel on Palestinian construction in Area C in general, and in small villages caught in the middle of the land conflict, in particular. We should also stress from the beginning which aspects are **not** examined in the report. This report does not discuss planning and building in territories under full Palestinian planning control (Areas A and B). However, it does address Palestinian villages that have most of their area within Area A or B, but part of their built-up area and/or a substantial part of their agricultural land is included in Area C. The administrative division of the West Bank into Areas A, B, and C, which was undertaken

⁶ The figures for 1972 and 1973 include residential construction only; additional permits were granted for public buildings. Our efforts to secure additional data relating to the first decade of the occupation in the West Bank proved unsuccessful, since after 1975 the official reports on this subject were classified as confidential.

⁷ Unit for Coordination of Operations in the Territories, Ministry of Defense, *The Administered Territories 1972/1973: Statistics on Civilian Activities in Judea and Samaria, the Gaza Strip, and Northern Sinai*, p. 217. The number of applications for building permits and of approved permits in 1972 was particularly high since the planning committees within the Israeli military administration were only established in 1971, enabling the granting of permits.

⁸ Unit for Coordination of Operations in the Territories, Ministry of Defense, *The Administered Territories 1973/1974: Statistics on Civilian Activities in Judea and Samaria, the Gaza Strip, and Northern Sinai*, 1976, p. 164.

⁹ The source for the figures for 1988 and 1989 is: Anthony Coon, *Town Planning under Military Occupation: An Examination of the Law and Practice of Town Planning in the Occupied West Bank*, England: Al Haq and Dartmouth Publishing Company, 1992, p. 133.

¹⁰ The figures for 2000 and 2005 are taken from a reply dated 19 November 2007 from the Spokesperson for the Civil Administration to an application in accordance with the Freedom of Information Law submitted by Nir Shalev.

¹¹ Reply by the Civil Administration to a request in accordance with the Freedom of Information Law submitted by Mr. Nir Shalev, 19 November 2007; reply by the Civil Administration to a request in accordance with the Freedom of Information Law submitted by Mr. Nir Shalev, 6 April 2008.

contrary to any planning or geographic logic, means that in many places most of the land reserves for Palestinian construction are located in areas subject to full Israeli control.

In the course of the data and information gathering for this report, we visited forty Palestinian communities in the area. In the case of villages we were unable to visit, we examined the spread of construction through aerial photographs. We received information about the planning situation in the villages from the Civil Administration. In addition to updated statistics, in the course of the research for this report we also studied the processes of development of the Palestinian villages in the West Bank and their planning history.

The report does not address planning in areas of the West Bank annexed to Jerusalem after 1967. Although house demolitions also occur in East Jerusalem on a considerable scale, some fundamental differences exist between the situation in Area C and that in East Jerusalem. One of these is that Israel has unilaterally applied Israeli planning and building law in East Jerusalem, whereas in Area C the Jordanian planning law that was in force prior to the occupation of the West Bank remains in force today (though it has been amended by Israeli military orders). The problems encountered in planning and building in East Jerusalem were discussed in detail in the report *Planning Trap*, published in 2004.¹²

A basic question to consider in relation to planning and building in Area C is the definition of Palestinian communities. The position of the Civil Administration is that many of the small villages in Area C that developed during or after the British Mandate period are not full-fledged communities, but clusters of illegal buildings. The Civil Administration, therefore, sees no need or justification to recognize them in planning or municipal terms, despite the fact that many of these communities include dozens or even hundreds of people.

Without going into this question in detail, it is enough to note that the Israeli authorities themselves established official definitions of the status of Palestinian communities in the area. In 1967, shortly after the occupation of the West Bank, Israel implemented a population census there, prepared and carried out by the Central Bureau of Statistics. In the census, the word “community” is defined as follows: “a community will be considered any permanently settled point lying outside the area of another community and in which at least 50 people were counted.”¹³ Most of the Palestinian villages mentioned in this report meet this numerical requirement – permanent residence by at least 50 people.

The report begins with four short chapters intended to provide general background information about the planning situation in the Palestinian communities in Area C.

Chapter One describes the most prominent spatial feature of the area – the fragmentation of the West Bank. It reviews the historical processes and the different factors that have transformed the West Bank from a single geo-planning entity into a collection of Palestinian cantons largely disconnected from links between different communities. The chapter distinguishes between two main types of fragmentation causes: physical means, such as the Separation Barrier and the areas of Israeli settlements, and administrative and legal measures, such as military orders restricting the freedom of movement of the Palestinian population.

Chapter Two focuses on one of the most important causes of fragmentation: Israeli land policy. Since 1967, the Israeli authorities have taken various steps to transfer land that was previously

¹² Nati Merom, *Planning Trap: Planning Policy, Land Settlement, Building Permits and House Demolitions in East Jerusalem*, Jerusalem: Ir Shalem and Bimkom, December 2004.

¹³ Commander of IDF Forces, *Population Census-1967*, Jerusalem, Central Bureau of Statistics Publishers, IDF Forces Command, 1968, p. 29.

considered Palestinian private property into state ownership. These steps have included the expropriation of private Palestinian land and the declaration of tens of thousands of hectares of land in the West Bank as state land. Beside these processes, which have changed the map of ownership in the area, the Israeli authorities have adopted a policy whereby state land is zoned almost exclusively for Israeli use – for Israeli military installations and infrastructure, and for settlements. The close association that has emerged between the ownership of land, on the one hand, and the ethno-national identity of those permitted to use the land, on the other, has become one of the fundamental planning problems in the area.

Chapter Three describes the legal system under which planning and building take place in Area C. Israel has refrained from voiding the Jordanian planning law of 1966, which had been applied to the West Bank just a few months before it was occupied by Israel. However, the law has been comprehensively revised through military orders that have completely changed the structure, composition, and powers of the planning institutions. These orders have created a centralized system under full Israeli control, eliminating the Local Planning Committees in the Palestinian villages, the District Planning Committees, and representation of the Palestinian population in the planning institutions, as established in the Jordanian planning law. The military orders have also permitted the creation of a separate planning system for the Israeli settlements, which have been allowed to establish Local Planning Committees.

Chapter Four discusses the structure of the Palestinian villages and their development over the years. This includes the establishment of secondary villages and the gradual transition from agglomerated construction to construction dispersed over more extensive areas. Any proper planning must address these characteristics of Palestinian rural construction.

The four introductory chapters are followed by two chapters that are the heart of the report. These chapters examine in depth the two main types of outline plans applicable to the Palestinian communities living in Area C.

Chapter Five discusses the regional outline plans prepared during the British Mandate, which continue to be valid in most of Area C. During both the Mandate period, and the first decade of Israeli rule in the area, these plans served as a key basis for issuing building permits. Since the early 1980s, however, as the settlements enterprise expanded, Israeli planning institutions began to use these plans mainly for enforcement against Palestinian construction and to prevent building. According to the current policy of the Civil Administration, it is almost impossible to obtain building permits on the basis of the Mandatory regional outline plans. As shown in this chapter, this need not be the case: if applied properly and in a flexible way, the regional outline plans could even now provide planning solutions for small and medium-sized villages.

Chapter Six examines the second type of outline plans that apply to some Palestinian villages in Area C. These are the special outline plans prepared and approved by the Israeli Civil Administration. The prominent features of these plans are their restricted area; the lack of detailed provisions; their complete disregard for land ownership patterns; and, in most cases, the non-inclusion of state land within the plans' area. These plans do not meet accepted planning standards and cannot provide adequate solutions for the current and future needs of the Palestinian population. The plans establish very high densities (number of housing units per hectare), which can rarely be realized. On the basis of these unrealistic densities, the Civil Administration claims that the plans meet the needs of the villages for tens and sometimes hundreds of years, thus justifying the demolition of homes outside the plans' area.

At the end of Chapters Five and Six, case studies of specific villages illustrate the practical outcomes of the current planning situation. In Chapter Five, the case studies describe several villages in Area

C in which the only valid plans are the Mandatory regional outline plans. These villages face a high incidence of demolition orders and house demolitions, on the grounds that the construction is contrary to the provisions of the regional outline plans. Chapter Six ends with several cases of villages for which the Civil Administration has prepared special outline plans.

The final chapter summarizes the report's findings and its ensuing conclusions . The report includes several appendices. Appendix 1 provides basic planning data for all 149 Palestinian communities whose entire built-up areas are in Area C:¹⁴ Name, location, type of valid plans, etc. Although this is a planning report, it is intended not only for planners, but also for the eneral public. Hence, Appendix 2 presents a glossary of relevant terms in the field of planning.

We hope that this report, which is based on an extensive research, will offer a significant contribution to the understanding of the complex situation regarding planning and building in Area C. This understanding will hopefully lead to positive change in the planning policy applied in Area C, including substantial reduction in house demolitions. Such change, in turn, will also reduce the level of daily friction between the Palestinian civilian population and the Israeli authorities.

¹⁴ As mentioned above, Area C also includes built-up areas of hundreds more villages that are located mainly in Areas A and/or B.

Processes of Fragmentation in the West Bank

A prominent phenomenon in the West Bank is the division and separation of the area into separate geographical cells that maintain relatively loose connections with each other (see map on p. 65). This phenomenon is by no means recent: the fragmentation of the West Bank began shortly after 1967, and is closely connected to the changing map of land ownership in the West Bank and to the settlements enterprise. Since the outbreak of the second intifada in 2000, however, the process of dismemberment has reached a new peak.

There are two main sets into which the various factors that have created a shattered spatial reality in the West Bank may be divided. **Physical means** include the settlements themselves, which were located so as to secure spatial separation and control; permanent and temporary roadblocks; special security areas and fences established around the settlements; by-passes and other roads intended for Israelis only; and, of course, the Separation Barrier.¹⁵

Despite their obvious and dominant presence on the ground, such physical means are largely dependent on **administrative means**. In many cases, the physical means themselves have little significance without the accompanying administrative means. For example, even a continuous physical element such as the Separation Barrier includes various openings (agricultural and other gates, crossings by main and secondary roads, etc.). These openings ostensibly permit free passage between both sides of the barrier. In practice, however, the passage of Palestinians is extremely restricted (and, in many cases, impossible), due to various administrative means prohibiting their passage to the “Israeli” side of the barrier.¹⁶

The combined effect of the physical and administrative means is a severe restriction of everyday movement and functioning of the Palestinians living in the area. The damage affects every aspect of life, including planning and building. This chapter offers a brief description of the historical processes that led to the fragmentation of the West Bank; reviews the main physical and administrative means that have created this situation; and notes its ramifications in terms of planning and building.

The Interim Agreement

In September 1995, Israel and the PLO signed a temporary agreement for the administrative division of the West Bank. The agreement, known as Oslo B, was the subject of fierce public and parliamentary debate in Israel, and was approved in the Knesset (the Israeli parliament) by a wafer-thin majority.¹⁷ Among Israelis the agreement was perceived as a radical move that would allow the Palestinians to realize their national aspirations and establish an independent state in the West Bank. Paradoxically, the interim agreement – which, despite its temporary status, has remained in force to this day – contributed more than any roadblock or fence to the fragmentation of the West Bank and its transformation into a land of cantons.

¹⁵ OCHA (Office for the Coordination of Humanitarian Affairs), *Preliminary Analysis of the Humanitarian Implications of the April 2006 Barrier Projections – Update*, United Nations, 2006. The report may be viewed at: www.reliefweb.int/hic-opt.

¹⁶ Declaration regarding the Closure of Area No. 03/02/S (The Seam Zone), 2 October 2003. For further details on this subject, see: Bimkom, *Between Fences: The Enclaves Created by the Separation Barrier*, October 2006, pp. 13–16.

¹⁷ 13th Knesset, Minutes of Plenum Session No. 376, 5 October 1995: <http://www.knesset.gov.il/Tql/mark01h0027737.html#TQL>.

According to the agreement, the West Bank was divided into three administrative areas. **Area A**, including the Palestinian cities, was transferred to full Palestinian administration; **Area B**, which included most of the built-up areas of the Palestinian villages, was subject to full Palestinian civilian control, but remained under Israeli military control; in **Area C**, which included the settlements, the main roads, and extensive rural areas, certain civilian powers were transferred to the Palestinian Authority, but security and land-related issues (such as planning and building, nature reserves, etc.) remained under full Israeli control.¹⁸

The division of the Territories established in 1995 was amended in later agreements (the Wye agreement, 1998; the Sharm memorandum, 1999), shaping the current administrative map of the West Bank. Officially, Area A now covers approximately 18 percent of the land of the West Bank. Area B covers approximately 22 percent of the land, and Area C approximately 60 percent.¹⁹ However, this figure does not reflect the complete scope of Israeli control on the ground. In the Wye agreement, three percent of the total area of the West Bank, which became classed as Area B in the agreement, were defined as “green areas and/or nature reserves” in which no “new construction” would be permitted. The practical result of this definition is that the Palestinian Authority does not have planning powers in these areas and is not permitted to issue building permits there – just as in Area C. Accordingly, from a planning perspective, only 19 percent of the land of the West Bank is Area B, while Area C includes 63 percent of the land.²⁰ Thus Israel continues to exercise full control – security, civilian, and planning – over most of the West Bank.²¹

Area C includes mainly agricultural lands of Palestinian villages whose built-up areas are in Areas A and B. However, although the majority of the Palestinian population lives in Areas A and B, some 150,000 Palestinian residents were left in Area C. Of these, 47,000 live in 149 mainly small villages where the entire built-up area is located within Area C. In addition, over 100,000 Palestinians live in Area C in villages that have part of their built-up area within Area B or A, but their homes were built in those parts of the built-up area of the village included in Area C (see Appendix 1).

In spite of its importance, the quantitative aspect reflects only part of the situation. Area C, under Israeli control, is relatively continuous. It includes almost the entire eastern section of the West Bank, from the eastern slopes of the mountain ridge to the Jordan river, as well as extensive areas in the western and central parts. Areas A and B create large and continuous blocks only in the north of the West Bank, especially in the Jenin sub-district – an area where the number of settlements was already small in 1995 when the interim agreement was signed.²² Throughout much of the center, west, and south of the West Bank, Areas A and B are islands surrounded on all sides by Area C (see map on p. 9).

¹⁸ Haggai Huberman, “The Oslo Agreement Maps Are the Maps of Jewish Settlement – The Settlements Dictated the Withdrawal Lines,” in: Avraham Shvut (ed.), *Ascending the Mountain: Renewed Jewish Settlement in Judea and Samaria*, Jerusalem: Bet El Library and the Judea and Samaria Academic College, 2002, p. 137.

¹⁹ See the full version of the Wye agreement dated 23 October 1998 (in English) on the website of the Israeli Foreign Ministry: <http://www.mfa.gov.il/NR/exeres/EE54A289-8F0A-93C9-71BD631109AB.htm>. See also: Haggai Huberman, *ibid.* (Note 18), p. 137.

²⁰ Thanks to Yehezkel Lein from the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) for clarifying this point.

²¹ The official administrative division does not always reflect the reality on the ground. Since the beginning of the second intifada, for example, the IDF regularly operates inside Area A, in violation of the security powers granted to the Palestinian Authority in these areas. Conversely, the Civil Administration regards certain areas in the north of the West Bank, adjacent to settlements evacuated in the Disengagement, as areas under the responsibility of the Palestinian Authority, despite the fact that these areas are officially part of Area C.

²² The characteristic continuity of Palestinian administrative control in the north of the West Bank was heightened further after the evacuation of the settlements Ganim, Kadim, Sa Nur, and Homesh as part of the Disengagement (2005).

The spatial distribution of Areas A, B, and C does not reflect any geographic or planning logic. The guiding principle behind the division is demographic: the wish to transfer the majority of the Palestinian population to the control of the Palestinian Authority, while leaving under Israeli control extensive areas as sparsely populated by Palestinians as possible. When the Oslo B agreement was signed, senior Israeli government figures considered the principle of demographic separation one of the most positive aspects of the agreement. During the debate in the Knesset in which the interim agreement was eventually approved, then Minister of Housing Binyamin Ben-Eliezer offered his perspective on the advantages of the agreement: “2.7 percent of the total area [the reference is to Area A, which under the Oslo B agreement included just three percent of the land of the West Bank; as noted, the dimensions of Area A were expanded in later agreements to 18 percent of the total area of the West Bank] were transferred to the complete control of the Palestinians, together with the overwhelming and vast majority of the Palestinian population.”²³ The demographic rationale behind the administrative division meant that just 150,000 Palestinians remained in Area C, despite the fact that this area includes the majority of the land of the West Bank. Conversely, all the settlements, the roads leading to the settlements, and all the Israeli army bases remained under complete Israeli control and were defined as Area C.²⁴

Physical Means

In many respects, the administrative division established in the interim agreement constituted *de facto* recognition of the results of various physical processes that began in the West Bank in 1967. Almost all these processes, which divided the area into separate geographical cells, relate to the settlements enterprise.

The 121 official **settlements** and 100 **outposts** scattered around Area C have long been the dominant factor in shaping and dividing this area; they are also the most dynamic element in planning terms. While not a single new Palestinian city has been established since 1967, the Israeli authorities have acted vigorously and efficiently to create a planning infrastructure facilitating the establishment of dozens of Israeli settlements, including four cities (Ma’ale Adummim, Ariel, Beitar Illit, and Modi’in Illit). Ironically, the intensive planning activities in the settlements came during a period marked by under-development and the lack of proper planning for Palestinian communities in general, and for Palestinian villages in particular (see Chapters Five and Six).²⁵

Even without additional physical means, the settlements inevitably lead to spatial fragmentation. In addition to the civilian components of the settlements (built-up areas, planning schemes, areas of jurisdiction, access roads, etc.), they also entail ancillary military elements (army and guard installations, firing zones, etc.); all these divide the area. In this context, it should be recalled that as early as 1996, shortly after the signing of the interim agreement, a military order was issued declaring the areas of the settlements to be a closed military zone for Palestinians. The order requires any Palestinian who wishes to enter a settlement to receive an individual permit from the military commander.²⁶ This administrative measure transformed the area of the settlements into a zone from which Palestinians are barred even for agriculture, let alone for construction or other activities. Indeed, in most cases, Palestinians may not even stay in these areas.

²³ See protocols of the Knesset debate (note 17 above).

²⁴ Uri Savir, *The Process: Behind the Scenes of a Historic Decision*, Tel Aviv: Sifrey Hemed – Yediot Aharonot, 1998, pp. 200-205, 206, 268, 273.

²⁵ Anthony Coon, op. cit. (note 9), pp. 59, 65, 200.

²⁶ Order Concerning Security Directives (Judea and Samaria) (No. 378), 1970, Declaration Concerning Closure of an Area (Israeli Settlements). The declaration was first made in 1996 and was renewed in 2002.

Area C includes a total of 340,000 hectares. Although the built-up area of the settlements totals just 5,200 hectares, equivalent to 1.5 percent of Area C, their areas of jurisdiction include over 50,000 hectares.²⁷ The Israeli regional councils established in the West Bank (Samaria, Mateh Binyamin, Gush Etzion, Hebron Mountain, Jordan Valley, and Megillot) control tens of thousands of hectares more. The geographical distribution of the settlements and regional councils, many of which are located in areas that also include numerous Palestinian villages, creates a physical divide between different Palestinian communities, seriously impairing their spatial mutual relations.

Since the interim agreement, numerous **by-pass roads** intended for Israelis only have been built in the West Bank. These roads are designed to provide settlers and other Israelis with quick and safe access to and from the Green Line, and to facilitate travel between different settlements inside the West Bank. In many ways these roads constitute the clearest manifestation of the fragmentation of the West Bank. One of the best examples of this are the by-pass roads built along Road 60, the main north-south road in the West Bank along the route of the historical mountain ridge road. Road 60 once connected all the main Palestinian cities from Hebron in the south to Jenin in the north; it offers an accurate reflection of the spatial relations that existed between the different Palestinian communities in the West Bank in general, and their interdependence with Jerusalem in particular.

This continuity has been broken in various ways. Road 60 is now divided into a number of sections separated by checkpoints. Palestinians may not even use certain sections of the road (in Jerusalem) without special permits. Instead of the disconnected Road 60, by-pass roads have been built for the settlers, linked to major roads and enabling rapid travel between the settlements and to and from Israel. These by-passes also dissect the physical space, creating various geographical cells in which Palestinian entry is restricted or completely prohibited. This is the case, for example, with the by-pass road built to the east of the built-up area of the village of Ein Yabrud. Since the construction of the road, which leads to the settlement of Ofra, and particularly since the second intifada, the road has come to serve as an unofficial boundary for the residents of Ein Yabrud. Their access to their agricultural land to the east of the road is extremely restricted.²⁸

In addition to the by-pass roads, there are also numerous roads in the West Bank, including primary roads, on which Palestinian traffic is partially or completely restricted. The best-known example of this is Road 443 in the section between Modi'in and Ofer army base. Since the outbreak of the second intifada in October 2000, the roads leading to Road 443 from the Palestinian villages in the area have been closed with concrete blocks. Thus the road has come to function as a physical barrier between the Palestinian areas on either side. Passage is possible only via secondary roads and through tunnels constructed under Road 443.²⁹

Additional physical means that contribute to spatial division include various security measures intended to protect the settlements. The most prominent of these measures are hundreds of **barriers** of various types, including concrete blocks, earth mounds, and checkpoints staffed by soldiers. For example, a Palestinian who wishes to travel from Nablus to Salfit – a distance of just 15 kilometers as the crow flies – is forced to undergo a thorough security inspection at three permanently staffed checkpoints, a process that takes many hours. These checkpoints are located on Road 60, approximately 25 kilometers to the east of the Green Line. Their main function is to protect the

²⁷ Peace Now, *Construction and Development of Settlements beyond the Official Limits of Jurisdiction*, 2007, p. 7. The source of the data is the Civil Administration.

²⁸ Tour of Ein Yabrud, 5 July 2007. See also the objections submitted by Bimkom to a further by-pass planned by Israel in the area: <http://www.bimkom.org/communityView.asp?projectTypeId=1&projectId=46>.

²⁹ The Association for Civil Rights in Israel and residents of several villages along Road 443 recently submitted a petition to the HCJ against the closure of the road to Palestinian traffic: HCJ 2150/07 **Ali Hussein Mahmud Abu Safaya et al. v Minister of Defense et al.** As of the time of writing, a decision has not yet been granted in the petition.

various settlements located on either side of the road in this area (Elon Moreh, Har Bracha, Itamar, Kfar Tapuah, etc.) The precise location of the checkpoints is also adapted to the location of the settlements. Thus, for example, Huwwara checkpoint, one of the largest checkpoints in the West Bank, is sited next to the access road from Road 60 to the settlement of Elon Moreh (see map on p. 66).

Most of the large settlements are protected by the **Separation Barrier**, with a convoluted route that penetrates deep into the West Bank in order to leave on its “Israeli” side the settlements themselves and areas designated for their future expansion.³⁰ The barrier has had far-reaching ramifications on the spatial links in the area. The present route of the Separation Barrier leaves approximately 10 percent of the total area of the West Bank on its “Israeli” side. This area, known by the Israeli security establishment as the “Seam Zone,” has been declared a closed military zone for Palestinians.³¹ Thousands of Palestinians who live in the Seam Zone are largely disconnected from the remainder of the West Bank, including the major Palestinian cities that serve as centers for the provision of vital services in the fields of education, health, and administration. The complex and convoluted route of the barrier has created 11 internal enclaves, most of which are surrounded by the barrier on three sides, with just a narrow opening connecting them to the remainder of the West Bank. The residents of the internal enclaves, who number over 200,000, are largely separated from the Palestinian cities that supply them with vital services.³²

The negative impact of the Separation Barrier is not confined solely to the residents of the enclaves. The Seam Zone includes thousands of hectares of fertile agricultural land belonging to farmers living on the “Palestinian” side of the barrier. Israel restricts the passage of Palestinians to their agricultural land trapped on the “Israeli” side of the barrier by means of a series of physical and administrative measures. Passage to agricultural land is possible only via gates opened for restricted periods of time. Permission to pass through the gates is granted only to Palestinians who have received a special permit for this purpose. As a condition for issuing the permit, the Civil Administration requires applicants to prove their ownership of the land – a far from simple task in the West Bank, where most land is not registered with the Lands Registrar.³³ The Separation Barrier also has significant political ramifications. In the Ariel region, for example, the route of the barrier extends 22 kilometers east of the Green Line, leaving the settlement itself, as well as its access road (Road 5 – the “Cross-Samaria road”) inside a “finger” connected to Israel by means of the barrier. Similarly, the route of the barrier to the east of the settlement of Ma’ale Adummim was planned 13 kilometers east of the Green Line. The Separation Barrier in Ariel and Ma’ale Adummim cuts the West Bank into three separate cantons (the first to the north of Ariel, the second between Ariel and Ma’ale Adummim, and the third to the south of Ma’ale Adummim), obstructing the territorial continuity without which there can be no viable Palestinian state.

Many settlements that could not be included on the “Israeli” side of the Separation Barrier are protected by **special security areas**. Unlike the continuous barrier, these areas are local security means that include an electronic fence, barbed wire fence, and a road with a total width of 50 meters. The special security areas also dismember the area and divide it into separate geographical cells.

³⁰ B’Tselem and Bimkom, *Under the Guise of Security: Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank*, December 2005.

³¹ Declaration regarding the Closure of Area No. 03/02/S (The Seam Area), 2 October 2003. To date, this declaration has only been applied to the sections of the Barrier from Elkana to the Jordan river, but it would undoubtedly be extended in the future to the remaining sections.

³² *Between Fences* (Note 16) – see the entire report, and particularly pp. 17-22.

³³ *Ibid.*, p. 36.

The 100 outposts³⁴ established in the West Bank since the interim agreement further exacerbate the fragmentation of the area. These outposts, most of which are located deep inside the West Bank, control much larger areas than their built-up sections. The access roads to the outposts cross extensive areas of the West Bank, constituting a further component in spatial disconnection and in reducing the continuous area available to the Palestinian population.

In addition to the settlements and their ancillary civilian and defense infrastructures, the West Bank also includes dozens of Israeli army bases and tens of thousands of hectares defined as training areas or firing zones. These areas are also generally closed to the Palestinians. In the southern Hebron mountains, for example, the Israeli army declared some 3,000 hectares of land as a firing zone as early as the 1970s. This notice has been renewed repeatedly ever since. The area of the proclaimed firing zone includes 12 Palestinian villages. In addition to the regular enforcement operations undertaken by the Civil Administration against Palestinian building in general, particularly strict measures are applied in the firing zones, including the physical deportation of residents for being “illegally present in a closed military zone.”³⁵ Firing zones and extensive areas declared as state land are fenced off and the Civil Administrative does not permit Palestinians access to this land even for the purposes of grazing their flocks. The allocation of state land on the basis of ethnic and national criteria – i.e. its almost exclusive reservation for use by Israelis – is a further significant factor in the fragmentation of the West Bank and in limiting the living area available to the Palestinian population (see Chapter Two).

Ramifications in the Field of Planning and Building

Until 1967, the West Bank, including East Jerusalem, constituted a continuous geopolitical entity. As mentioned above, the clearest manifestation of this was the road network, which permitted free and direct access between the north and south of the West Bank. In administrative terms, planning institutions operated in the area on three levels – local, district, and national – all of which combined to form a single planning system (see Chapter Three). The processes of fragmentation that began in the West Bank in 1967, and accelerated dramatically following the interim agreement, effectively eliminated the unity and continuity that had characterized the area in the past.

Walaja: One village – three administrative and planning authorities

The village of Walaja, home to approximately 2,000 residents,³⁶ is located to the south of Jerusalem. According to the Mandatory division of land in Palestine, the village land of Walaja extended on both sides of the green line. The area of the village land to the east of the Green Line is about 506 hectares. Following the occupation of the West Bank in 1967 and the expansion of the limits of jurisdiction of Jerusalem, approximately 271 hectares of the village land of Walaja were included in the expanded city of Jerusalem. Despite this, the Israeli authorities only realized in the 1980s that approximately half

³⁴ See: <http://peacenow.org.il/site/he/peace.asp?pi=58>.

³⁵ B'Tselem, *Means of Expulsion: Violence, Harassment and Lawlessness Toward Palestinians in the Southern Hebron Mountains*, Jerusalem, July 2005, pp. 6, 8-10.

³⁶ According to information from residents of the village. According to the Palestinian Central Bureau of Statistics, 1,746 people were resident in Walaja in mid-2007.

the built-up area of the village, which had previously been considered part of the Bethlehem district, is actually within the jurisdiction area of Jerusalem.³⁷

In 1995, the Civil Administration approved Special Outline Plan 1628 for Walaja. The plan defined two development areas totaling 23 hectares. Shortly thereafter the interim agreement was signed; two compounds in the village were defined as Area B, while the remaining land outside the Jerusalem city limits was defined as Area C. The compounds established as Area B were not completely identical to the borders of the special outline plan. In the Wye agreement (1998), which included the expansion of Areas A and B throughout the West Bank, the process in Walaja was the reverse: the status of part of the area defined in the interim agreement as Area B (under Palestinian civilian control) was changed to Area C, where Israel has full control. The land that was redefined as Area C instead of Area B is located adjacent to the border of the jurisdiction area of the expanded Jerusalem.³⁸

As a result of these processes of administrative subdivision, the residents of Walaja have found themselves subject to three different planning authorities: the area of the village included in the Jerusalem city limits (271 hectares) falls under the Israeli Planning and Building Law, and planning powers there are vested in the Jerusalem Local and District Planning Committees. The area of the village included in Area C (223.5 hectares) is subject to the Jordanian planning law, as amended by military orders, and the Civil Administration exercises planning powers therein. Lastly, in parts of the village included in Area B (11.5 hectares), the Palestinian Authority holds planning powers (see map on p. 66).

An Israeli architectural office is currently preparing an outline plan for the village. In spite of the administrative division of the village, the plan relates to Walaja as a single unit. The deposit and approval of this plan are expected to be particularly complex; the planners will have to cut the plan into three separate parts, each of which will be reviewed by a different planning authority.

For the purposes of physical planning, Areas A and B are identical; in both areas, planning and building powers rest with the Palestinian Authority, as distinct from Area C, where the Civil Administration holds these powers. Against the background of the protracted political conflict in the region, the division of powers between these two bodies prevents comprehensive and regional planning for the Palestinian communities that relates not only to villages and towns on an individual level, but also to the mutual connections between different communities. The Civil Administration has approved regional plans for roads, gas stations, and cellular antennas, but these serve mainly the Israeli settlements and cannot meet the regional planning needs of the Palestinian communities.

Regional planning seeks to meet the broad needs created by the development of villages and towns within a given area and by the interdependence between these communities. This level of planning is not limited to regional considerations such as the road system, technical installations (transmission relays etc.), and gas stations. Communities of different sizes maintain complex mutual relations.

³⁷ This realization came as the result of a petition submitted against the demolition of a house by the Civil Administration. The attorney representing the owner of the building argued that the Civil Administration had no authority to demolish the home, since it was within the area annexed to Israel. The State examined the claim and discovered that in 1967, when the expanded borders of Jerusalem were marked on the map, the line indeed cut the village into two. As a result, the western section of the village was included in the jurisdiction area of Jerusalem.

³⁸ Conversation with the head of Walaja council, 9 March 2008.

Small villages are dependent on larger villages or towns for the provision of vital services such as education and health. Services with a higher entry threshold³⁹ (such as hospitals) are available only in cities, which in turn depend on villages for the supply of fresh agricultural produce. The residents of villages also constitute a consumer base enabling the presence of service providers in cities and towns.⁴⁰ This complex network of mutual relations applies within a given area and needs an appropriate planning infrastructure to enable its existence and effective performance. The dismemberment of the area into separate geographical cells with weak mutual links prevents the proper functioning of these vital relations.

The education system, for example, comprises several levels – pre-school, elementary school, high school, and university education. Most Palestinian villages can provide pre-school education, and many can also provide elementary education. However, many villages do not have a high school. These villages rely on larger communities (towns and cities) where there are high schools that also serve the population of the surrounding villages. Universities are naturally found only in major urban centers. The proper planning of the education system requires a familiarity with the complex mutual spatial relations between different communities, and the development of a physical-planning infrastructure capable of meeting these needs. Such an infrastructure includes not only a barrier-free road system, but also the necessary number of classrooms in an appropriate number of schools to provide education for all the communities within a given radius. The vital need for such regional planning is seriously impaired in the West Bank due to its division into separate geographical cells, some of which are under Israeli administrative control and others under Palestinian control.

Planning on the local level also severely suffers from the administrative and physical fragmentation of the West Bank. Notwithstanding the attempt to include as much land and as few Palestinians as possible in Area C, this area is home to some 150,000 Palestinians (see Appendix 1). The Civil Administration is responsible for meeting the planning needs of this population, but in practice the possibilities for development and construction available to Palestinians in Area C are subordinated to Israeli interests in general, and to its settlement-related aspirations in particular (see Chapters Five and Six).

Although most of the Palestinian communities are now included in Areas A and B, many of them have land in Area C. As explained above, the administrative division into Areas A, B, and C was not based on any geographical or planning principles. The result is that many villages, and even cities, where the entire built-up area is in Area A or B, have agricultural land in Area C. In many other cases, part of the built-up area of the village is defined as Area B while another part remains in Area C.

In terms of the functioning of village life, the administrative division of land into Areas A, B, and C is completely arbitrary. However, once Palestinian construction extends beyond Areas A and B, it is vulnerable to enforcement operations undertaken by the Civil Administration, including the issuing of demolition orders and actual demolitions. The administrative division of the land of a village between Areas B and C means that the village itself, as well as the area surrounding its built-up section, becomes a divided space, part of which is managed by Israel and part by the Palestinian Authority.

³⁹ The term “entry threshold” refers to the socioeconomic correlation between the size of the population in a given community and the level of services it can provide for its residents. For example, a community must have a population of at least several dozen families in order to justify opening a clinic in economic and social terms. Investment in health services with a higher entry threshold, such as specialist clinics, will be possible only in larger communities with thousands of inhabitants. The establishment of a hospital will be possible only in a city that maintains affinities with a large number of smaller communities and has a high level of transport access.

⁴⁰ *Between Fences*, op. cit. (note 16), pp. 17-18.

Conclusion

Since 1967, the West Bank has undergone a protracted process of fragmentation, both physically and in terms of its administration. In many respects the peak of this process came with the interim agreement of 1995, which divided the planning and building powers in the area between the Civil Administration and the Palestinian Authority. The division was based on demographic criteria, without regard for geographical and planning standards. Following the interim agreement, numerous by-pass roads were built to serve the Israeli settlements, accelerating the establishment of two separate road systems, one for Israelis and the other for Palestinians.

Following the outbreak of the second intifada in 2000, these elements have been compounded by hundreds of permanent and temporary road blocks exacerbating still further the dismemberment of the area into separate geographical cells that maintain weak and restricted links. The Separation Barrier and the accompanying administrative regime may be seen as the ultimate manifestation of the fragmentation of the West Bank. The dramatic dimensions of the barrier and its continuous nature tear approximately one-tenth of the area of the West Bank, and effectively divide the area into three separate cantons: in the north (as far as the Ariel panhandle), center (as far as the Ma'ale Adummim enclave), and south.

The spatial division caused by the fragmentation of the West Bank leads to the violation of basic human rights of the Palestinians, including freedom of movement, the right to education, health, and employment, and others. It also has a strong effect on planning. By its nature, regional planning can only be effective in a region with a continuous and complete territory. In a reality in which the built-up areas of many Palestinian communities are no more than islands of Area B within vast expanses defined as Area C, the planning infrastructure – without which it is impossible to enable the various communities' complex interdependencies – requires the approval of the Civil Administration. Since the considerations guiding the actions of the planning institutions in the Civil Administration are primarily to secure the future of the settlements enterprise, the daily needs of Palestinian villages do not receive due attention. The result is under-planning or inappropriate planning on both the regional and the local levels.

Israeli Land Policy: Territorial Expropriation

The question of land ownership is of critical importance for planning and building in Area C. The policy of the Israeli Civil Administration is that Palestinian building and development must take place, if at all, on privately-owned Palestinian land. Even on such land, various restrictions apply. The Civil Administration reserves public (state) land almost exclusively for the settlements and for Israeli military installations and infrastructures. The result is a strong association between the ownership of land and the ethno-national identity of those permitted to use the land.

This chapter briefly reviews the processes that created the current situation in Area C in terms of land ownership and examines the ramifications of this situation for the Palestinian villages in this area.

Settlements as a Military Necessity

The first steps Israel took to assume control of Palestinian land in the West Bank was to issue military expropriation orders. Between 1967 and 1979, military orders were used to expropriate land not only for the establishment of military bases, but also for the settlements. During this period Israel claimed that the civilian settlements established on land expropriated through military orders (Kiryat Arba, Matityahu, Beit El, Jordan Valley settlements, and others) were intended to serve a security function, therefore the expropriation was legal. The High Court of Justice (HCJ) approved this position in three cases.⁴¹

The extensive use of military expropriation orders ended in 1979 following the HCJ ruling in the Elon Moreh case. In contrast to the previous cases, this time the court accepted the argument by the petitioners – residents of the village of Rujeib – that the expropriation of their land for the purpose of establishing Elon Moreh was illegal, since it was intended for a settlement and not for a security purpose. The court's decision in this petition was due to the unusual circumstances of the case, which included disagreement between senior figures in the defense establishment regarding the military significance of a settlement in this location, as well as comments by the settlers themselves stating that their motivation was ideological rather than security.⁴²

The judges ruled that **in the specific instance of Elon Moreh** the land expropriation was illegal since it was undertaken for civilian needs. The HCJ did **not** disqualify in principle the expropriation of private Palestinian land for the establishment of settlements, but ruled that this would only be possible when the settlement was indeed intended primarily to fill a military and security function.⁴³

⁴¹ HCJ 258/79 **Falah Hussein Ibrahim `Amirah and 9 Others v Minister of Defense** (expropriation of land for the settlement of Matityahu). See also HCJ 302/72 **Sheikh Suleiman Hussein `Udah Abu Hilu et al. v Government of Israel** (expropriation of land for Yamit); HCJ 60678 **Suleiman Tawfiq Ayub and 11 Others v Minister of Defense et al.** (expropriation of land for Beit El).

⁴² From the comments by Justice Bechor in the ruling in HCJ 390/79 **Izat Mohammed Mustafa Sweikat and 16 Others v Government of Israel et al.**

⁴³ Ibid.

Closed Areas

In addition to expropriating private land, the Israeli authorities also made extensive use of a much quicker and simpler proceeding: declaring land a closed military zone. Areas totaling thousands of hectares, particularly in the Jordan Valley but also in the southern Hebron mountains⁴⁴ and elsewhere in the West Bank, were declared a closed zone by the military commander. In many cases, though not always, the land was used for military exercises.

Areas are declared closed on the basis of a military order stating that “a military commander is entitled to declare any area or place closed” and to prohibit the entry of persons or their presence therein,⁴⁵ with the exception of a “permanent resident” who lived in the area prior to its declaration as a closed zone. A person who breaks the order and enters a closed zone without special permission from the military commander is liable to a penalty of up to five years’ imprisonment or a heavy fine.⁴⁶

For Palestinians who did not previously live in the area, the declaration that an area is a closed military zone means that they cannot move there. In a closed military zone there is effectively no possibility for construction and development. In parts of the West Bank where closed military zones are widespread, these impose considerable restrictions on Palestinian construction. For example, in the village of Jiftlik in the Jordan Valley (see p. 151), the boundaries of the area within which the Civil Administration permits construction and development were determined largely by reference to the adjacent closed military zone.

The expropriation of land for military needs is not the only way for the government to take possession of private land. According to the applicable law in the West Bank, the government is entitled to confiscate private land for public needs (roads, public gardens, etc.).⁴⁷ Accordingly, Palestinian land cannot be confiscated for the establishment of settlements. Nevertheless, in at least one case – that of Ma’ale Adummim – 1,000 hectares of Palestinian land were confiscated for the settlement.⁴⁸ Extensive additional Palestinian land has been confiscated for the construction of roads to the settlements, on the grounds that these also serve Palestinians, and for the construction of by-pass roads established after the signing of the interim agreement (1995).

The New State Land

The ruling in the Elon Moreh case had a dramatic impact on Israeli settlement policy. Fearing more setbacks in the courts, the use of military expropriation orders for the purpose of settlement was halted.⁴⁹ However, Israel continued to use these orders for purposes defined as security-related;⁵⁰

⁴⁴ *Means of Expulsion*, op. cit., note 35. This report by B’Tselem relates to a closed area of some 3,000 hectares in the southern Hebron mountains. Although large parts of the area are not actually used for military exercises, the Civil Administration is attempting to expel the Palestinian cave-dwellers who have lived in the area for many years.

⁴⁵ Section 90 of the Order Concerning Security Directives (Judea and Samaria) (No. 378), 1970.

⁴⁶ *Ibid.*, section 92.

⁴⁷ The Land Law – Acquisition for Public Needs, Law No. 2 of 1953.

⁴⁸ R. Ben Bassat and A. Silverstone, *Overall Regional Planning in Mateh Binyamin*, Mateh Binyamin Regional Council, Judea and Samaria, World Zionist Organization – Settlement Division, Jerusalem Region / Central Region, 1983, p. 33.

⁴⁹ Shlomo Gazit, *Fools in a Trap: 30 Years of Israeli Policy in the Territories*, Tel Aviv: Zmora Bitan, 1999, p. 24.

⁵⁰ For the purpose of establishing the Separation Barrier alone, thousands of hectares of private Palestinian land were expropriated by military orders.

it also continued to build settlements on lands expropriated through military orders issued in the past, prior to the ruling in the Elon Moreh case. At the same time, Israel developed other procedures to ensure land reserves for the settlements. The most important of these is the declaration of state land.

The term “state land” was first defined in the Order Concerning Government Property, issued in 1967 (hereinafter: “Order 59.”)⁵¹ In its original version, this order defined state land as land which, on the “determining date” (7 June 1967), belonged to an enemy country (Jordan) or was registered in its name.⁵²

This static perception⁵³ of the term “state land,” which froze the ownership situation applying in the area prior to the occupation of the West Bank in 1967, did not create any problem as long as it was still possible to expropriate land for the settlements by means of military orders. After the ruling in the Elon Moreh case and the discontinuation of use of expropriation orders for settlement purposes, this static definition no longer met Israel’s needs. The land belonging to the Kingdom of Jordan prior to the occupation of the West Bank totaled approximately 70,000 hectares⁵⁴ (of the total land area of the West Bank, approximately 564,000 hectares).⁵⁵ Most of the existing state land was in the Jordan Valley and the Judean Desert, while the government was interested in establishing settlements mainly along the mountain ridge, where there was almost no state land.⁵⁶ So as to establish settlements on the scope and with the geographical distribution decided by the government, a mechanism was required in order to “create” new state land.

The administrative tool adopted was the declaration of land not previously classified as government property as state land. For this purpose, the definitions included in Order 59 were amended to determine that land, where the ownership of the government of Jordan was established after 1967, was also government property.⁵⁷ The declarations themselves were made on the basis of the Israeli interpretation of the Ottoman Land Code (hereinafter – “the Land Code”) of 1858, which had been incorporated into Jordanian legislation before 1967.

The Land Code

The principal goals of the Land Code were the gradual privatization of land and enhanced collection of property and agricultural taxes.⁵⁸ The Code defines several categories of land distinguished on the basis of their spatial distribution, their designated uses, and their ownership. Only two of these categories of land are significant in the context of Israel’s land policy.

⁵¹ Order Concerning Government Property (Judea and Samaria) (No. 59), 1967.

⁵² Section 1 of Order 59, in its original version. The section also defined as government property property which, on the determining date, belonged to “a corporation in which an enemy country held any right.”

⁵³ Eyal Zamir, *State Land in Judea and Samaria: A Legal Review*, Jerusalem: Jerusalem Institute for Israel Studies, 1985, p. 28.

⁵⁴ In fact, less than 60,000 hectares were registered with the Lands Registrar in the name of the Jordanian crown. However, an examination of other documents (particularly property tax extracts) showed that an additional 10,000 hectares were, prima facie, government property. See *The Administered Territories 1973/1974*, op. cit., note 8; Aryeh Shalev, *The Autonomy – Problems and Possible Solutions*, Center for Strategic Studies, Tel Aviv University, August 1979, p. 117.

⁵⁵ <https://www.cia.gov/library/publications/the-world-factbook/geos/we.html>. This figure does not include the areas annexed to Jerusalem after 1967, nor an area of approximately 22,000 hectares in the Dead Sea. The figure includes the No Man’s Land that served as a demilitarized zone between Israel and the Kingdom of Jordan prior to 1967.

⁵⁶ Danny Rubinstein, “Findings of Land Survey in West Bank: Most State Land in the West Bank is in the Judean Desert,” *Davar*, 2 May 1980.

⁵⁷ Section 1 of Order 59 in its current version.

⁵⁸ Avinoam Meir, “An Alternative Examination of the Roots of the Land Conflict in the Negev between the Government and the Bedouin: Geo-Legal Aspects,” *Land* No. 63, August 2007, pp. 14-51.

Absentee Land

A separate and unique category of land managed by the government is absentee properties including primarily land belonging to Palestinians who fled the West Bank during the 1967 War. The total area of such land is estimated at 43,000 hectares.⁵⁹ A special order⁶⁰ grants the Israeli Custodian of Government and Abandoned Property the authority to manage, lease, rent, and, in certain cases, even to sell absentee property. No reliable information is available regarding the scope of absentee property that is currently included within the borders of the settlements. The State Comptroller has described at least one case in which the Custodian allocated absentee land for construction in a settlement, although it was claimed that the allocation was due to an error.⁶¹

Mewat land (“dead land”) is uninhabited and uncultivated land owned by the state. This land is located at least 2.5 kilometers from the outermost village houses that existed in 1858 when the Land Code came into force.⁶²

Miri land, which is designated for agricultural use, extends between Mewat land and the outermost houses of the village in existence in 1858. Miri land forms a kind of ring enclosing the old core of the village with a radius of 2.5 kilometers on all sides. It should be emphasized that uncultivated land within this circle also constitutes Miri, rather than Mewat, land. In most parts of the West Bank, with the exception of the Judean Desert, the distances between the historical cores of Palestinian villages do not exceed five kilometers. The result is that the Miri land of one village borders on that of another. Hence in the mountain ridge area, where Israel sought to establish most of the settlements, there is no Mewat land.⁶³ Most of the declarations of state land made by Israel in the West Bank related to Miri rather than Mewat land.

Regarding Miri land, the Land Code specifies that the ownership of the land itself is vested in the state, while the usage right belongs to the individual.⁶⁴ The usage right may be obtained in return for payment, through direct allocation (by lease agreement or *kushan*) from the state. An alternative way to secure rights in Miri land is by means of continuous cultivation and possession over a period of ten years, without prior allocation by the state. Continuous cultivation and possession grant the holder of the land the right to register it in his name with the Lands Registrar, provided that the State did not actively oppose the cultivation of the land.⁶⁵ Conversely, in certain conditions, the interruption of cultivation of the land for three or more years allows the State to resume possession of the land and sell it by auction to a buyer who will cultivate it.⁶⁶

The original distinction between land ownership and the usage right of land was almost completely eliminated in a Turkish law from 1913 that amended the Land Code. The amendment established

⁵⁹ *The Administered Territories 1973/1974*, op. cit., note 8, p. 76.

⁶⁰ Order Concerning Abandoned Properties (Private Property) (Judea and Samaria) (No. 58), 1967.

⁶¹ State Comptroller, *State Comptroller's Annual Report 56A*, 2005, pp. 220-221.

⁶² Articles 6 and 103 of the Land Code. See also Plia Albek and Ron Fleischer, *Land Laws in Israel*, Jerusalem: published by the authors, 2005, pp. 53-54.

⁶³ Conversation with Professor David Grossman, formerly of the Department of Geography at Bar Ilan University, 20 September 2007. According to Professor Grossman, this was also the position of Plia Albek who, in her capacity as director of the Civilian Department in the State Prosecutor's Office, played a central role in the process of declaring state land in the West Bank.

⁶⁴ Article 3 of the Land Code.

⁶⁵ Article 78 of the Land Code.

⁶⁶ Article 68 of the Land Code.

that a person in whose name Miri land is registered with the Lands Registrar may act as he wishes regarding the land, including to stop its cultivation. The State was effectively left without any rights to the land.⁶⁷ In the context of Israeli land policy, therefore, the question of the registration of land with the Lands Registrar is critical. In accordance with the provisions of the 1913 law, the Israeli authorities themselves have taken the position that Miri land registered with the Lands Registrar as the private property of Palestinians cannot be declared state land, even if it is not being cultivated.

By 1967, approximately 30 percent of the area of the West Bank was registered with the Lands Registrar as part of land settlements⁶⁸ initiated by the government (firstly by the Mandatory authorities and subsequently by the Jordanian crown).⁶⁹ Most of this land was in the vicinity of Nablus, Jenin, Ramallah, and the Jordan Valley.⁷⁰ Shortly after it occupied the West Bank, Israel issued a military order freezing the government-initiated land settlements.⁷¹ The result is that 70 percent of the land in the West Bank is not registered with the Lands Registrar. This situation would later enable Israel to claim that much of this unregistered land constitutes “government property.”

The Declarations Policy

According to Israel’s interpretation of the Land Code, Miri land that is not cultivated continuously and is not registered with the Lands Registrar in the name of Palestinians constitutes government property, even if it was cultivated in the past.⁷² Between 1979 and 1992, Israel declared 90,800 hectares of land in the West Bank as state land on the basis of this interpretation,⁷³ in addition to the 70,000 hectares (mainly Mawat land) classified as state land during the 19 years of Jordanian rule in the area. Palestinians whose land was declared government property were entitled to submit objections heard before a military appeals committee, but in almost all cases the appeals were rejected. Over a period of just 13 years⁷⁴ Israel increased the total scope of state land in area to approximately 160,000 hectares, making up almost 30 percent of the land area of the West Bank (excluding East Jerusalem; see map on p. 67). Moreover, most of the declarations related to land along the central mountain ridge, in areas designated by the government for settlements. Accordingly, the spatial distribution of the new state land differed considerably from that of land classified as government property under Jordanian rule, which, as noted, was located mainly in the desert and the Jordan Valley.

⁶⁷ Moshe Dukhan, *Land Laws in the State of Israel*, second edition, expanded and corrected. Jerusalem: published by the author, 1953, p. 83. See also: Plia Albek and Ran Fleischer, op. cit., note 62, pp. 47–48.

⁶⁸ The term “land settlement” refers to a procedure undertaken in an extensive area (usually an entire community) in which the rights to the land in the area are examined and it is determined to whom they belong. The final product of the land settlement is precise registration with the Lands Registrar, accompanied by surveying maps, of all the land included in the area covered by the settlement. The term “settlement” in this context has, of course, nothing to do with “settlement” in the sense of the Israeli communities built in the West Bank.

⁶⁹ Talia Sasson, *(Interim) Opinion on Unauthorized Outposts*, Jerusalem, 1 February 2005, p. 61.

⁷⁰ Plia Albek, “The Use of Land in Judea and Samaria for the Purpose of Jewish Settlement: Legal Aspects and the Test of Reality,” in: Avraham Shvut (ed.), *Ascending the Mountain: Renewed Jewish Settlement in Judea and Samaria*, Jerusalem: Beit El Library and the Judea and Samaria Academic College, 2002, pp. 223–224.

⁷¹ Order Concerning Land and Water Settlement (Judea and Samaria) (No. 291), 1968.

⁷² Plia Albek, *Land in Judea and Samaria*, Israel Bar – Tel Aviv-Jaffa District Committee, 1985, p. 7; Eyal Zamir, op. cit., note 53, p. 22. The amendment to Order 59 was intended to enable Israel to take possession of Miri land cultivated in the past, but not cultivated since 1967 or close thereto. See *ibid.*, p. 20.

⁷³ State Comptroller, op. cit., note 61, p. 206.

⁷⁴ The declaration of state land was halted in 1992 when the second government of Yitzhak Rabin came to power. After the change of government in 1996 work began again to locate areas intended for declaration (*ibid.*, p. 206), but to the best of our knowledge the scope of declarations of state land since 1996 has been relatively limited.

Private Palestinian Land in Settlements

In spite of all the steps taken by Israel to provide large reserves of declared state land for the settlements, many settlements have privately-owned Palestinian land within their jurisdiction area. This private Palestinian property includes land on which settlers' homes are currently sited, as well as enclaves of Palestinian land surrounded on all sides by declared state land. Although there has been no change in the ownership status of these enclaves, their Palestinian owners have virtually no chance of reaching the land or effectuating their ownership.

The Peace Now movement recently published a report stating that some 30 percent of the area of the settlements is private Palestinian land.⁷⁵ Although the Civil Administration disputes these findings, it confirms that substantial areas of privately-owned Palestinian land exist in various settlements.⁷⁶

Land Purchases on the Private Market

Following the ruling in the Elon Moreh case, Israeli government policy regarding the purchase of land by Israelis also changed. While in the past individual Israelis had not been permitted to purchase land in the West Bank, following the ruling it was decided "to encourage Israeli developers to purchase land adjacent to an existing or planned settlement."⁷⁷ And yet, only a small fraction of the land on which the settlements have been established was purchased by Israelis.⁷⁸ One reason for this is the widespread phenomenon of forgeries associated with land purchases in the West Bank.

The fact that most of the land in the West Bank is not registered with the Lands Registrar created fertile ground for forgery. In many cases, the Palestinian seller was not the owner of the rights to the land; in others, the area sold was considerably larger than the plot actually owned by the seller; and in some cases the sellers' signatures were forged.⁷⁹ Plia Albek, director of the Civilian Department in the State Prosecutor's Office, has estimated that "ninety-nine out of every hundred offers by Arabs from Judea and Samaria to sell land to Jews from Israel are fraudulent and, unfortunately, the result is that nine out of every ten purchases by Israeli Jews were fictitious purchases."⁸⁰

Jews' Land

Before 1948, Jews purchased land in various parts of the West Bank. Under Jordanian rule, this land was managed by the Jordanian Custodian. This land was known as "Jews' land," as distinct from land purchased by Israelis after 1967. Although the Jews' land is registered with the Lands Registrar, Israel regards it as government property, since it was held and managed by an enemy country (Jordan). The total area of Jews' land in the West Bank is approximately 3,200 hectares.⁸¹

⁷⁵ Dror Etkes and Hagit Ofra, *Breaking the Law in the West Bank – One Violation Leads to Another*, Peace Now, October 2006. The original report claimed that 40 percent of the area of the settlements is private Palestinian land. However, after additional information originating from the Civil Administration was obtained, Peace Now published an amended report stating that the correct figure is approximately 30 percent. The amended report is available on the movement's website: www.peacenow.org.il.

⁷⁶ Nadav Shragai, "Report: 40% of Area of Settlements – Private Palestinian Land," *Ha'aretz*, 22 November 2006.

⁷⁷ Shlomo Gazit, op. cit., note 49, p. 244.

⁷⁸ Plia Albek, op. cit., note 70, pp. 230-231.

⁷⁹ Shlomo Gazit, op. cit., note 49, p. 245; Plia Albek, op. cit., note 72, pp. 12-16.

⁸⁰ Plia Albek, op. cit., note 72, p. 12.

⁸¹ Judea and Samaria Area Command, *Report on the Eighth Year of Administration*, 1975, p. 122.

Between 1979 and 1983, a large number of transactions were implemented by Israelis in the West Bank. During this period, the Israeli companies did not usually register the land they purchased with the Lands Registrar and the Israeli authorities did not insist that they do so. From the authorities' perspective, the **claim of ownership** was sufficient for the developer to commence construction of the settlement. This situation changed in the early 1980s after the exposure of numerous cases of fraud in which real estate companies sold plots that they did not own to Israeli citizens. Accordingly, the Ministry of Justice decided in 1983 that the establishment of settlements on purchased land would be permitted only after the land had been registered with the Lands Registrar in the name of the Israeli developer.⁸²

The registration of land with the Lands Registrar in Area C is now possible only by way of what is known as "first registration." This is a complex and protracted procedure undertaken as a private initiative and financed privately on the basis of a Jordanian law⁸³ and several Israeli military orders.⁸⁴ The procedure requires the applicant to publish a notice in order to enable residents of the village, where the land concerned is located, to oppose the application for registration.

Circular Deals

The requirement to register purchases with the Lands Registrar as a condition for the construction of settlements created considerable difficulties for the Israeli companies involved in acquiring land in the West Bank. First registration is a lengthy and expensive process lasting many years.⁸⁵ Moreover, the procedure also includes the examination of alleged forgeries; if proved, these may deny the purchasing company the right to register the land in its name.

Presumably in order to avoid these difficulties, a procedure was soon developed to circumvent registration. Known as the "circular deal," this involves the declaration of a given area of land as government property, while concealing the fact that an Israeli developer claims that he has purchased the land. After the declaration procedures are completed, the Custodian of Government Property allocates the land to the developer who claims to have purchased the land on the private market, in return for reduced lease fees. Thus the developer avoids the considerable expenses incurred by first registration. Since the claim that the land has been purchased is not revealed in public, residents of the relevant village could not expose possible forgeries and fraud that may have occurred during the purchase deal.

The official justification for the circular deals was the desire to protect the lives of Palestinian sellers who run the risk of murder for selling land to Jews.⁸⁶ However, there can be no doubt that these deals were also extremely advantageous for those claiming to have acquired the land.

⁸² Moshe Glick, "The Purchase of Land and Its Contribution to Jewish Settlement in the Judea and Samaria Area," in: Abraham Shvut, *Ascending the Mountain: Renewed Jewish Settlement in Judea and Samaria*, Jerusalem: Beit El Library and the Judea and Samaria Academic College, 2002, pp. 233-240, and particularly p. 235.

⁸³ Registration of Previously Unregistered Real Estate Assets Law, Law No. 6 of 1964.

⁸⁴ Order Concerning the Amendment of the Registration of Previously Unregistered Real Estate Assets Law (Judea and Samaria) (No. 448), 1971; Regulations for the Registration of Land (Applications for the Registration of Previously Unregistered Real Estate) (Judea and Samaria), 1984; Regulations for the Registration of Land (Procedures in the Committees for the Registration of Previously Unregistered Land) (Judea and Samaria), 1984.

⁸⁵ CA (Tel Aviv) 1099/90 **Shlomov Nissan et al. v Shimon Nasaji et al.**

⁸⁶ For example, see the responses of the companies Green Park and the Fund for the Redemption of Land Ltd. to the petition in **HCJ 8414/05 Ahmad Issa Abdullah Yassin v Government of Israel et al.**

The circular deals were implemented with the cooperation of senior government officials.⁸⁷ In 1984, the procedure was formalized in a retroactive amendment to Order 59 extending the definition of state land to include “property whose owner has requested that the Custodian manage it and which the Custodian has accepted for his management.”

The total scope of circular deals is not known, although the extent of lands involved is probably relatively limited.⁸⁸ In 1998, the Civil Administration decided to discontinue the implementation of circular deals;⁸⁹ however, the construction of settlements continues on land secured through such deals in the past.

Planning Ramifications

The diverse means used by Israel to seize control of Palestinian land in the West Bank – expropriation for military needs, declaring closed military zones, declarations of state land, and purchases on the private market – have led to a situation where much of the land in Area C is not currently held by Palestinians. In itself, this fact need not necessarily create planning problems. Though related, land ownership and planning are distinct domains. Inside Israel, for example, local outline plans often apply to an entire city, where the ownership of land is divided among hundreds or thousands of public and private bodies. The building rights granted in these plans are often based on planning considerations applied equitably, without deliberately favoring any particular landowner.

In Area C, however, the Civil Administration has created a close association between the ownership of land and the ethno-national identity of those permitted to use it. The ruling in the Elon Moreh case established that private Palestinian land is designated for Palestinian use, and that the Israeli authorities are only entitled to take possession of such land to meet genuine security needs. Although the ruling did not state this, Israel interpreted the ruling as implying that land that is **not** private Palestinian land is designated exclusively for the use of Israelis.

This position, which was held by senior officials in the Ministry of Justice,⁹⁰ was manifested in practical terms in the domain of planning. As early as 1987 the Higher Planning Council (HPC) in the Civil Administration decided that the outline plans under preparation at the time for Palestinian villages would not include state land or land appropriated for military purposes.⁹¹ Thus Palestinians were denied development opportunities on state land, which was allocated almost exclusively for the use of the settlers and the army.

⁸⁷ For example, on 16 November 1990, Plia Albek sent an opinion to the Coordinator of Actions in Judea and Samaria instructing the Custodian of Government Property to declare dozens of hectares of land in the village of Bil'in as government property. The instruction was “in light of the application by the Fund of the Land of Israel College Company Ltd.” to the effect that “this area was probably purchased” by the company. Following Albek’s instructions, 78 hectares of the land of Bil'in later designated for the Matityahu East neighborhood of the settlement of Modi'in Illit was declared government property. Albek sent a copy of her opinion to the attorney-general, the minister of justice, and other senior government officials.

⁸⁸ The only circular deals of which we are aware occurred in the settlements of Modi'in Illit and Tsufin. An indication of the relatively limited importance of these deals appears in the Sasson Report, which states that “in **certain** cases in which the [Israeli] purchasers did not manage to register the land in their name, they transferred it to the management of the Custodian of Government and Abandoned Property, who allocated the land to the purchasers themselves” (Talia Sasson, op. cit., note 69, p. 14; emphasis added).

⁸⁹ Akiva Eldar, “How Israel Lauanders Shady Land Deals of Settlers in the Territories,” *Ha'aretz*, 27 November 2005.

⁹⁰ Plia Albek herself wrote that “the use of government property, and particularly state land, should not be for the needs of the local public, but on the contrary, for the needs of the state holding the area... State land was intended for transfer to Jewish settlements since as long ago as the Mandate.” Plia Albek, “What Is State Land? State Land in Judea, Samaria, and the Gaza Strip,” *Halishka* (journal of the Israel Bar, Jerusalem District Committee), issue no. 46, January 1999, pp. 9-11.

⁹¹ Minutes of a discussion in the Higher Planning Council dated 13 December 1987.

State Land – In Return for Emptying the Area of Palestinians

To the best of our knowledge, there have been few exceptions to the policy that state land is allocated solely to Israelis. A key example of this is the case of the Jahalin tribe – Bedouins who were transferred in the 1950s from the area of Tel Arad in the Negev to the Wadi Qelt area in the West Bank. On the basis of lease agreements with the landowners, the Jahalin developed a permanent community on land belonging to the villages of Abu Dis, Sawahra, and Al Eizariya, while continuing their traditional pastoral lifestyle.

In 1979, the settlement of Ma'ale Adummim was declared a local council and began to expand, eroding the living space of the Jahalin. In 1993, as it worked to promote a new outline plan for the settlement, the Civil Administration attempted to remove the Jahalin from their homes. In 1999, following HCJ petitions, an arrangement was reached whereby some 200 Bedouins were transferred to an alternative site in the Abu Dis area, where state land was leased to them and they received some 300 hectares of land for grazing. The objective of the arrangement was to enable the expansion of Ma'ale Adummim in accordance with the outline plan.⁹²

Recently, a new Israeli interest again obliged the authorities to allocate additional state land to the Jahalin. The proposed route of the Separation Barrier will leave Ma'ale Adummim, the small adjacent settlements, and extensive surrounding areas on the "Israeli" side of the barrier. As the route of the barrier was finalized, the Civil Administration approved detailed plans for the Jahalin, all situated on state land on the "Palestinian" side of the planned barrier. The principal goal of these plans was to transfer the Jahalin living close to the settlement to the "Palestinian" side of the barrier in order to ensure that the Ma'ale Adummim enclave created by the barrier will be free of Palestinian residents.

Given the geographical distribution of the state land declared by Israel, the decision of the HPC had far-reaching consequences. While Jordanian state land was mainly in the sparsely-populated desert areas, the Israeli authorities declared state land in the heart of areas that have been inhabited by Palestinians for generations. Thus the question of ownership became one of the main factors contributing to the fragmentation of the West Bank as described in Chapter One. Possibilities for the use of land were determined on the basis of ethno-national ownership, dividing the area into separate geographical cells. In the planning context, this process resulted in the restriction of Palestinian development and construction to a relatively limited area around the built-up core of the village. Moreover, under the new reality, various inter-spatial links (such as roads, infrastructure facilities, and public buildings intended to serve clusters of several Arab villages) were also damaged. In an area where ownership was divided between the Palestinians, on the one hand, and the State and settlers, on the other, it was not possible to provide planning solutions for these interdependencies.

⁹² For further details on this subject, see B'Tselem, *On The Way To Annexation: Human Rights Violations Resulting from the Establishment and Expansion of the Ma'ale Adummim Settlement*, Jerusalem, June 1999.

Conclusion

Over the period of its control in the West Bank, successive Israeli governments (almost regardless of their political orientation⁹³) have used various methods in order to secure land reserves for the settlements. Until 1979, the primary method was the expropriation of private Palestinian land by means of military orders. After the ruling in the Elon Moreh case, the use of expropriation orders for this purpose was halted, and the authorities began to declare extensive areas in the West Bank as state land. At the same time, the government encouraged the purchase of land by Israelis in the private market.

These means, and particularly the declarations of state land, proved more effective than the military expropriation orders. State land, land expropriated by military orders, and land purchased by Israelis cover dozens of percent of the total area of the West Bank. The decision to reserve these areas almost exclusively for the needs of Israelis means that the Palestinian public is excluded from large sections of the West Bank.

This decision, together with the fact that most of the state land declared by Israel is situated along the central mountain ridge, in areas densely populated by Palestinians, led to the spatial fragmentation on the basis of an ethno-national criterion. This reduced to a minimum the possibilities for development and construction available to Palestinians, while at the same time tens of thousands of hectares of land were allocated for the Israeli settlements. The ownership structure created by this process severely restricted the development of Palestinian communities in the West Bank, and later formed the basis for the administrative division in the interim agreement (1995), in accordance with which most of the declared state land was included in Area C.

⁹³ In this context, the main difference between Labour governments and Likud governments related to the location of sites for the establishment of settlements. While Labour governments generally avoided establishing settlements on the mountain ridge, Likud governments supported Jewish settlement throughout the West Bank, and particularly on the mountain ridge. Moreover, most of the land expropriated by Labour governments by means of military orders was in the Jordan Valley, while most of the land declared government property by Likud governments was along the mountain ridge.

Planning and Building Laws in Area C

Planning and building in Area C are subject to a Jordanian law enacted in 1966 (hereinafter – “the Jordanian Law,”) a few months before the occupation of the West Bank by Israel.⁹⁴ International law requires Israel, as the occupying power, to respect the laws applying in the area before its occupation, unless there is an absolute military or humanitarian need for these to be changed.⁹⁵

Notwithstanding this provision, as early as 1971 Israel made a comprehensive amendment of the Jordanian Law by a military order. Most of the changes introduced by Israel involve the structure of the planning system and ostensibly do not affect the spirit or essence of the law. However, the structure of the planning system is not just a formal matter. The composition of planning institutions established in the law reflects a particular system of balances; any change to their composition may destabilize and disrupt this system. For example, the Jordanian Law provides for a representative of the public health system to sit on all the planning committees in the West Bank. Israel abolished this requirement, and the planning institutions now operating in Area C do not include any representative of the health system. The result is that the considerations taken into account in making planning decisions are different from those that the planning institutions, in their original composition, would review.⁹⁶ Thus the structural changes Israel made in the planning system in Area C have far-reaching ramifications in terms of the functioning of this system and its final decisions.

The Planning System in the Jordanian Law: Structure and Powers

Like the Israeli Planning Law, the Jordanian Law also creates a three-level hierarchical structure of planning institutions on the local, district, and national level, under the ultimate responsibility of the appointed minister – the Interior Minister.

The most important planning institution in the Jordanian Law is the **Higher Planning Council** (HPC), which operates on the national level. Since the West Bank formed part of the Kingdom of Jordan at the time the law was enacted, the HPC was responsible for planning throughout the kingdom, and not only in the West Bank. The composition of the HPC as defined in the Jordanian Law reflects a diverse range of interests and perspectives.⁹⁷ Its principal functions are to present recommendations to the Interior Minister regarding the boundaries of planning areas;⁹⁸ to approve regional and outline plans; and to approve regulations and various actions relating to building inspection. The HPC also hears appeals against the decisions of the District Committees.⁹⁹

District Planning Committees are planning institutions that mediate between the national level (the HPC) and the local level (Local Committees). The Jordanian Law establishes that in every administrative district, a District Planning Committee of six members is to be established,

⁹⁴ Towns, Villages, and Buildings Planning Law (Temporary Law), Law No. 79 of 1966.

⁹⁵ Regulation 43 of the Regulations concerning the Laws and Customs of War on Land annexed to 1907 Hague Convention.

⁹⁶ CA 1216/98 **Abutbul v Appeal Committee**.

⁹⁷ According to Article 5 of the Jordanian Law, the nine members of the HPC include the Interior Minister, a representative of the local authorities (the mayor of the capital), the director-general of the Ministry of Public Works, a representative of the Jordanian Building Council, the director of the Housing Authority, the director of the professional Planning Bureau in the Interior Ministry, a representative of the Justice Ministry (the prosecutor general), a representative of the Association of Engineers, and a representative of the health system.

⁹⁸ The term “planning area” refers to an area declared as a distinct planning unit. For example, many cities in the West Bank (as in Israel) have been declared separate planning areas, each of which has its own planning institution.

⁹⁹ Jordanian Law, Article 6.

representing a range of interests in the fields of planning, building, law, and health. A representative of the Local Committees active within the district also sits on the District Committee.¹⁰⁰ The functions of the District Committee include approving detailed plans; hearing objections to regional and outline plans and submitting opinions on these to the HPC; as well as various functions relating to building inspection. The District Committee also hears appeals against the decisions of the Local Committees in the district,¹⁰¹ and holds all the powers granted to the Local Committee.¹⁰²

The Local Planning Committees include several types. In a planning area where there is a city or town council, the Interior Minister may appoint the council to serve as a Local Planning Committee.¹⁰³ A village council may also be appointed to serve as a Local Committee in a planning area or part of it.¹⁰⁴ The minister can appoint a Local Committee of six members instead of the city or village council; this committee will include representatives of both central and local government.¹⁰⁵ The functions of the Local Committee include the preparation of outline and detailed plans; hearing objections to detailed and outline plans and submitting opinions on these to the District Committee; approval of parcellation schemes; issuing building permits; and building inspection.¹⁰⁶

In addition to these committees, the Interior Minister also plays an important role. The minister's powers include the declaration of planning areas, subject to the recommendation of the HPC.¹⁰⁷ Another important body is the Planning Bureau, a professional body that operates within the Interior Ministry. The director of the Planning Bureau is a planning expert responsible for formulating proposals for the declaration of planning areas; the proposals are then forwarded to the HPC. The Bureau is also responsible for the preparation of regional and outline plans (although, as noted, a Local Committee may also prepare an outline plan), and it is required to provide technical assistance to the other planning institutions. Among its other functions, the Planning Bureau is charged with undertaking a planning survey¹⁰⁸ as a precondition for the depositing of any plan (regional, outline, or detailed).¹⁰⁹ The planning survey reviews various aspects of the proposed plan (topography, land ownership, existing buildings in the location, etc.) The purpose of the planning survey is to provide the planning institutions with the necessary empirical base to reach decisions on plans submitted for their approval.

The Hierarchy of Plans

The Jordanian Law creates a hierarchy of plans mirroring the hierarchical structure of the planning institutions. In contrast to the situation in Israel, however, the Jordanian Law does **not** include national outline plans. The highest level of plan defined under the Jordanian Law is the **regional plan**, which in many respects is analogous to the district outline plan in Israel. The regional plan

¹⁰⁰ Ibid., Article 8.

¹⁰¹ Ibid., Article 8(3).

¹⁰² Ibid., Article 8(4).

¹⁰³ Ibid., Articles 9(1)(A), 9(1)(B).

¹⁰⁴ Ibid., Article 9(1)(C).

¹⁰⁵ Ibid., Article 9(1)(D).

¹⁰⁶ Ibid., Article 9(2).

¹⁰⁷ Ibid., Article 4(E).

¹⁰⁸ Ibid., Article 7.

¹⁰⁹ Ibid., Article 14. The Civil Administration claims that a planning survey is required only in the preparation of a regional or outline plan, and that there is no obligation to prepare a survey before depositing a detailed plan. Although this approach is inconsonant with the text of the law, the HCJ recently determined that "a planning survey would not seem to be obligatory" in the case of a detailed plan. HCJ 1526/07 *Ahmad 'Issa 'Abdullah Yassin and 16 Others v Head of the Civil Administration et al.*, ruling dated 5 September 2007.

addresses the boundaries of cities and villages, the establishment of new communities, various building instructions, roads and infrastructures.¹¹⁰

The **outline plan** applies to the entire area of a community (city, town, or village) and is intended to regulate the different land uses (residential, commercial, industrial, and so forth) on the community-wide level. Outline plans include relatively detailed reference to such aspects as roads, infrastructure, residential areas, industry, public buildings, and open areas. Nevertheless, the typical level of detail in these plans is usually inadequate for issuing a building permit on individual plots.¹¹¹ According to the Jordanian Law, the planning institutions must examine the need to update outline plans at least once every 10 years.¹¹²

The **detailed plan** establishes the permitted uses and building restrictions on the level of the individual plot. Accordingly, building permits can be issued on the basis of detailed plans.¹¹³ The Jordanian Law distinguishes between two types of detailed plans, according to the size of the community for which they are intended. In cities and large towns, the law requires the preparation of a separate outline plan; detailed plans for the different neighborhoods are then to be prepared according to the orders of the outline plan. Thus, in this case the detailed plan serves as a tool enabling the practical implementation of the orders in the outline plan.¹¹⁴ In villages and small towns, the law states that a single plan is sufficient – a detailed outline plan,¹¹⁵ which forms the basis for issuing building permits.

The law explicitly mandates the authorities to undertake planning. The Local Committee or Planning Bureau must prepare outline plans, and the Local Committee must prepare detailed plans.¹¹⁶ Private bodies are only allowed to undertake detailed planning, for land they own or in which they hold an interest.¹¹⁷

The law establishes a deposit period of two months for all plans (regional, outline, or detailed) and allows anyone who has an interest in the plan to submit an objection during this period.¹¹⁸ The HPC has the authority to approve regional and outline plans,¹¹⁹ while the relevant District Committee has the authority to approve detailed plans.¹²⁰ In addition to these plans, the Jordanian Law also establishes a procedure for the preparation and approval of **subdivision plans** (parcellation schemes) under the authority of the Local Committee. Subdivision plans do not need a deposit process and it is impossible to submit objections to these plans.¹²¹ Subdivision plans are extremely important since many of the existing parcels in the West Bank are very large, sometimes covering dozens of hectares. Their subdivision into small lots (for example, lots of 1,000 square meters each) may enable large scale construction on the basis of approved plans, without the need for an additional planning procedure (see Chapter Five).

¹¹⁰ The Jordanian Law, Article 15.

¹¹¹ Ibid., Article 19.

¹¹² Ibid., Article 25(1).

¹¹³ Ibid., 23(5).

¹¹⁴ Ibid., Article 23(1).

¹¹⁵ Ibid., Article 23(2).

¹¹⁶ Ibid., Articles 9(E)(2)(A), 19, 23.

¹¹⁷ Ibid., Article 23(3).

¹¹⁸ Ibid., Articles 17, 20, 24.

¹¹⁹ Ibid., Articles 18, 21.

¹²⁰ Ibid., Article 24.

¹²¹ Ibid., Articles 28, 29.

Building Permits and Inspection Activities

The Jordanian Law requires construction works to be undertaken within a declared planning area only after receipt of a permit issued on the basis of an approved plan which includes sufficient detailed instructions. The law defines the term “construction” extremely broadly, to include the establishment, repair, or demolition of buildings; excavation works; the installation of air-conditioning and heating systems; and even the addition of a bath or sink to an existing building.¹²² Building permits are issued by the relevant Local Committee. An appeal against the decision of the Local Committee to refuse to issue a building permit may be submitted to the District Committee. In the regional planning areas,¹²³ the authority to issue a permit rests with the District Committee and appeals against its decisions may be submitted to the HPC.¹²⁴

The basic conception in the Jordanian Law is that construction works must be executed in accordance with approved plans. The possibilities for granting relaxations are far more restricted than in Israeli law. The Local Committee is permitted to approve a relaxation of up to five percent, or 10 percent with the approval of the District Committee. By way of comparison, the Israeli law and regulations enable a Local Committee to grant relaxations that would approve an addition of up to 20 percent in the number of housing units, and the addition of building areas in a scope of up to 16 percent of the area of the lot.¹²⁵ Since the scope of relaxations is limited, the Jordanian law does not mandate publication of requests for relaxations from a plan and does not permit the submission of objections against such relaxations.¹²⁶

Similarly, the Jordanian Law provides limited possibilities for non-conforming use – for example, the use for residential purposes of a building which is zoned for commercial use in a plan. In Israel, the Local Committee may approve a non-conforming use for a building constructed after the new plan came into effect. In the Jordanian Law, the only possibility for non-conforming use is in the case of an existing building with a designated use that was changed under a new plan. For example, when a building was used in the past for residential purposes and a new plan changed the zoning to commercial use, it is possible, under certain conditions, to continue to use the building for residential purposes.¹²⁷ Any application for non-conforming use must be deposited “as if it were a detailed plan,” and any interested party may submit an objection.¹²⁸

The Jordanian Law establishes an orderly procedure for responding to building without a permit, or to construction undertaken contrary to a permit. The law instructs the planning institutions to issue an order to stop work in such a case.¹²⁹ However, carrying out illegal construction *per se* is not considered a criminal offence under the Jordanian Law. The criminal aspect comes into play only if the offender violates an order to stop work or a demolition order issued by the planning institutions.¹³⁰ It is worth noting that these provisions in the Jordanian Law were recently amended by means of a military order making building without a permit a criminal offense punishable by a fine or two years’ imprisonment.¹³¹

¹²² Ibid., Article 34(4).

¹²³ Ibid., Article 8(4).

¹²⁴ Ibid., Article 36.

¹²⁵ Planning and Building Regulations (Substantial Deviation from a Plan), 2002. The addition of building areas by way of a relaxation is permitted solely with regard to plans deposited prior to August 1989.

¹²⁶ The Jordanian Law, Article 37.

¹²⁷ Ibid., Article 32(1).

¹²⁸ Ibid., Articles 32(1), 32(3).

¹²⁹ Ibid., Article 38(1).

¹³⁰ HCJ 4204/91 **Yaacov Macmillan et al. v Local Planning and Building Committee**.

¹³¹ Order Concerning Towns, Villages, and Buildings Planning Law (Amendment No. 19) (Judea and Samaria) (No. 1585), 2007. The order was signed on 25 January 2007.

Legislative Changes Introduced by Israel

In 1971, the Israeli military commander published the Order Concerning Towns, Villages, and Buildings Planning Law (hereinafter: “**Order 418**”).¹³² This order made radical changes to the planning system in the West Bank. The official reason for the issuing of the order was the need to amend the composition of the planning institutions established under the Jordanian Law, since these include representatives of the Jordanian government who naturally cannot be appointed to planning committees operating under Israeli military occupation. The order was not confined to this aspect, however, but introduced additional structural changes to the Jordanian Law, *de facto* creating separate planning systems for Palestinians and settlers. In many ways, the order – which was issued at a time when the number of settlements in the West Bank was very small – prepared the legal infrastructure for the separation between the planning system intended for Palestinians and the planning system intended to serve the needs of the settlers. Thus the order would later permit the extensive development of the settlements, alongside the imposition of severe building restrictions in Palestinian communities.

The most significant change introduced in the order is the abolition of the District Committees and the transfer of all their powers to the HPC.¹³³ Since the District Committees play a key role in the Jordanian Law, serving a mediating function between planning on the local level and planning on the regional level, their abolition in Order 418 constitutes a substantial revision of the law.

In an attempt to create at least the pretence of some alternative for the abolished District Committees, the order permits the HPC to appoint subcommittees, provided that at least half their members are members of the HPC.¹³⁴ In theory, these subcommittees are granted the powers of the District Committees.¹³⁵ In practice, this technical solution fails to meet the basic norms of due process. The subcommittees are not distinct planning institutions, but form part of the HPC. Subcommittees are not intended to serve as a substitute for the institutions of a different planning echelon, but rather to fill – by way of delegation – specific functions that the planning institution of which they form part cannot easily meet in its plenum format. For example, the Israeli Planning Law provides that each District Committee is to establish an Objections Subcommittee. This subcommittee is to fill the functions of the District Committee regarding the hearing of objections to plans.¹³⁶ In Israel, an Objections Subcommittee does not constitute a separate planning institution from the District Committee, but rather its delegate for the performance of specific functions.

Accordingly, the subcommittees established in accordance with Order 418 do not conform to the hierarchical planning system required by the Jordanian Law. The elimination of the District Committees concentrated all powers in a single body (the HPC, including its subcommittees), contrary to the basic approach of this law, which (like the Israeli Planning and Building Law) attaches considerable importance to the intermediate level represented by the District Committee. The practical ramification of the centralized model that emerges is maximum control by the Israeli government through the Civil Administration over all aspects of planning and development in the Palestinian communities, including outline plans, detailed plans, and building permits.

¹³² Order Concerning Towns, Villages, and Buildings Planning Law (Judea and Samaria) (No. 418), 1971. The order has been amended numerous times since its issue; the comments below relate to its current version.

¹³³ Order 418, Article 2(2).

¹³⁴ Ibid., Article 7A.

¹³⁵ Aharon Mishnayot, “Planning and Building in Judea and Samaria – A Legal Review,” in: Aharon Mishnayot (ed.), *Planning, Building, and Land Laws in the Judea and Samaria Area: Law, Military Legislation, and Case Law*, Bureau of the Legal Advisor for the Judea and Samaria Area, The Civil Administration for the Judea and Samaria Area, 1996, p. 23.

¹³⁶ Planning and Building Law, 1965, Articles 11A and 11E.

A further substantial structural change introduced by Order 418 is the elimination of the possibility to appoint a village council as a Local Planning Committee. In place of the village councils, the order establishes “Village Planning Committees” that function within the framework of the Civil Administration; like the HPC, these committees are appointed by the military commander.¹³⁷ In other words, as far as the rural planning area in the West Bank is concerned, Order 418 abolished **both** the Local Committee **and** the District Committee, concentrating all powers in the hands of the HPC.

The result of these changes is that all planning decisions relating to the Palestinian rural area in Area C are now made by a single body (the HPC), without the local level (the village councils) or the district level having any powers in the matter. This centralized structure ensures that the planning of the rural area is undertaken on the basis of a monolithic approach determined by central government – the Israeli military regime. It should be reminded that after the abolition of the Local Committees in the Palestinian villages, the planning duties assigned to these bodies by the Jordanian Law (the preparation of outline and detailed plans) were transferred to the HPC and to the Planning Bureau, which is also now staffed exclusively by Israelis.

While Order 418 denied the residents of the Palestinian villages representation in the institutions that determine the planning of their communities, it created a separate planning framework for the settlements. The order establishes that the commander of the area is permitted to appoint a Special Local Planning Committee, provided that the planning area in which it operates “does not include the area of a city or village council.”¹³⁸ In practice, this ostensibly neutral wording can refer almost exclusively to one situation: a planning area that does not include a Palestinian city or village council – i.e., the planning area of a settlement. The order further establishes that the commander of the area may assign the powers of a District Committee to the Special Local Planning Committee.

Accordingly, Order 418 made dramatic structural changes to the Jordanian Law. Though the substantive provisions of the law remained virtually unchanged, the order created the foundation for a separate and distinct planning system for the settlements. The special committees in the settlements can issue building permits and, in some cases, even approve detailed plans. At the same time, the order abolished the planning institutions that served and represented the Palestinian population in the rural area, withdrawing their authority to issue building permits and concentrating all their powers in the hands of the HPC.¹³⁹

The Split Personality of the Inspection Subcommittee

The High Court of Justice (HCJ) has been asked several times to consider arguments against the problematic structure of the planning system established in Order 418. The court recently rejected a petition submitted by residents of the Palestinian village of Barta’a ash-Sharqiya against the HPC and its subcommittees.

The petitioners built 14 residential buildings without a permit. After the Inspection Subcommittee of the HPC issued orders to stop the work, the petitioners submitted applications for permits to the committee. The applications were rejected and the petitioners appealed this decision of the Inspection

¹³⁷ Order 418, Articles 2(4) and 4(A).

¹³⁸ Ibid., Article 2A.

¹³⁹ Article 5 of Order 418 maintained the Local Planning Committees in town planning areas. After the interim agreement and the transfer of all the cities in the West Bank to full Palestinian rule (Area A), this article became irrelevant, since there are no Palestinian cities or towns in Area C, where Israel holds planning control.

Subcommittee. According to standard Civil Administration practice, the appeals were heard by the Local Planning Subcommittee, which rejected the appeals and ordered the buildings to be demolished (see also p. 145 in Chapter Six).

In court, the petitioners argued that “the appeal held in their case was flawed by a structural conflict of interest, since both the members of the body hearing the appeal and the members of the body making the original decision are members of the Higher Planning Council.”¹⁴⁰

In a ruling written by Justice Berliner, the HCJ rejected the argument. The court noted that, in accordance with Jordanian Law, the body empowered to hear an appeal submitted against the decision of a Local Committee to reject an application for a permit is the District Committee. The ruling established that in accordance with Order 418, the Inspection Subcommittee was granted **both** powers of a Local Committee **and** powers of the District Committee. As far as applications for building permits are concerned, the Inspection Subcommittee functions as a Local Committee, and an appeal against its decision to reject an application for a permit may be submitted to the Local Planning Subcommittee, which enjoys the powers of a District Committee. The court did not find it improper that the same body – the Inspection Subcommittee – functions in certain matters as a Local Committee and in others as a District Committee, in spite of the fact that the Jordanian Law clearly distinguishes between the powers and areas of responsibility of these two committees.

The HCJ also rejected the petitioners’ argument that there is a fundamental flaw insofar as members belonging to the same body (the HPC) serve on both committees (the Inspection Subcommittee and the Local Planning Subcommittee). According to the court, in order to meet basic rules of due process, it is sufficient that “the composition of the subcommittee discussing the appeal not include a person who formed part of the panel of the subcommittee that made the original decision.”¹⁴¹

No Local Committees – No Representative for Palestinians

The principle of due representation of the local population in planning decisions affecting its life has been adopted in recent years as an important foundation of the planning system in Israel.¹⁴² Although enacted over 40 years ago, the Jordanian Law allowed residents of the area a measure of representation in the planning institutions, providing for a village council to be appointed as a Local Planning Committee. Even if the minister decided to appoint a Local Committee other than a village council for a rural planning area, the law demanded that the residents of the area have representation, requiring at least two of the members of the committee (the head of the local council and a member of the council) to be representatives of the residents of the villages. Regarding the District Committee, the law similarly provides that of the six members, one shall be a “representative of the Local Planning Committee” within the district.

Order 418 completely eliminated the representation of the Palestinian rural population in the planning institutions that make decisions with far-reaching effects on its future and its quality of life. It should be emphasized that this situation was created at the time the order was published

¹⁴⁰ Section 1 in the ruling in HCJ 10408/06 *Mustafa Qabha et al. v The Higher Planning Council in the Judea and Samaria Area*, 25 September 2007.

¹⁴¹ *Ibid.*, section 8 of the ruling.

¹⁴² CA 2663/99 *Mor Shamgar v Ramat Hasharon Local Council et al.*

in 1971, many years before the interim agreement and the administrative division of the West Bank into Areas A, B, and C. Removing the possibility for the village council to serve as a Local Committee and abolishing the District Committees concentrated all the planning powers in the rural area in the hands of the HPC. As currently composed, the HPC includes various officials from the Civil Administration and does not include any Palestinians.¹⁴³ The Local Planning Subcommittee also does not presently include any Palestinians,¹⁴⁴ and the Inspection Subcommittee, which issues hundreds of demolition orders against Palestinian buildings each year, is staffed exclusively by Israeli employees of the Civil Administration. It is worth noting that before the signing of the interim agreement (1995), the planning institutions in the Civil Administration also employed Palestinian workers, though mainly in junior functions. Even during this period, however, important decisions were made by the Israeli staff of the Civil Administration.¹⁴⁵

Following the signing of the interim agreement, senior Israeli officials apparently adopted the position that Area C is intended only for Israeli needs, and particularly for the development of settlements, while planning solutions for the Palestinian population should be located almost exclusively in Areas A and B. This approach is manifested not only in the emergence of a planning system staffed exclusively by Israelis, and in increased enforcement against Palestinian construction in the area, but also in the adoption of outline plans approved within Israel, through their approval under the procedures established in the Jordanian Law and their application to Area C. For example, the HPC recently approved a regional outline plan for cellular antennas. With minor changes, this plan replicates the provisions of the Israeli national outline plan for miniature broadcasting installations as approved by the Israeli government in 2002. The professed goal of the regional plan is to implement the provisions of the Israeli national outline plan in Area C.¹⁴⁶

The Civil Administration argues that there is no legal obligation to involve local residents in planning proceedings by appointing representatives on their behalf to the HPC or its subcommittees. It claims that “the publication of the plan for public review, and hearing the objections submitted by residents, are tantamount to public participation in the planning procedure.”¹⁴⁷ This statement ignores the substantive differences between two distinct types of public participation: representation in planning institutions themselves, where public representatives serve as agents responsible for protecting public interests; and public participation in the narrow sense of the possibility to submit objections to deposited plans. The mere ability to submit objections cannot ensure that these objections will actually influence planning decisions. Like Israeli law, the Jordanian Law grants the planning institutions almost total discretion in everything related to objections, which may be

¹⁴³ The HPC as appointed on 31 May 2006 comprises nine members: The director of the Planning Bureau; the legal advisor for the Judea and Samaria area; a representative of the Ministry of Defense; the head of the Infrastructure Division in the Civil Administration; the head of the Environmental Desk in the Civil Administration; the head of the Surveying Desk in the Civil Administration; the inspector of transport in the Civil Administration; the custodian of government and abandoned property; and the head of the Nature Reserves desk in the Civil Administration. The HCJ recently rejected a petition attacking the current composition of the HPC on the grounds that it is inconsonant with the provisions of the Jordanian Law. HCJ 1526/07 **Ahmad `Isa `Abdullah Yassin and 16 others v Head of the Civil Administration in the Judea and Samaria Area et al.**, ruling dated 5 September 2007.

¹⁴⁴ For example, the Local Planning Subcommittee met on 25 April 2007 to discuss objections submitted to a plan prepared by the Planning Bureau for the village of Zif in the southern Hebron mountains. All five members of the subcommittee were Israeli employees of the Civil Administration. The other subcommittees of the HPC do not currently include any Palestinian members.

¹⁴⁵ Anthony Coon, op. cit., note 9, p. 61.

¹⁴⁶ Regional Outline Plan 56. The plan was deposited in November 2007; Bimkom submitted an objection to the plan. On 27 February 2008, after hearing the objection and making certain changes to the orders of the plan, the HPC decided to approve the plan.

¹⁴⁷ HCJ 1598/93 **Mahmud `Alian `Abdulkarim et al. v Minister of Defense et al.** Notification on behalf of the attorney-general, 17 June 1993, section 22.

admitted in full or in part, or completely rejected.¹⁴⁸ By contrast, the representation of the local public through representatives in the planning institutions – as established in the Jordanian Law, as we have seen – could ensure that the interests of the Palestinian public are addressed when making planning decisions. The exclusion of the Palestinian population from the planning institutions through Order 418 thus seriously injures this public's planning interests.

Moreover, the right to submit an objection to a plan – a possibility that was in no sense eliminated by Order 418 – cannot be taken for granted in the case of Palestinians. It is, of course, impossible to submit an effective objection to a plan without first inspecting it. Deposited plans for settlements may be inspected at the Planning Bureau in the Civil Administration in Beit El, or at the office of the Special Local Committee in the relevant settlement. The Planning Bureau is located in the military base in Beit El, to which entry is restricted. Palestinians have almost no possibility of reaching this location in order to inspect the deposited plans. The Special Local Committees are situated within the settlements, which have been defined since 1996 as military closed zones for Palestinians (see p. 17). A Palestinian wishing to enter a settlement in order to inspect a deposited plan must request a special permit for this purpose, involving a protracted bureaucratic procedure.

Village Residents Learn of a Plan Thanks to a Stock Exchange Prospectus

In mid-2006, the HPC deposited a detailed plan for a residential compound in the Ne'ot Hapisga neighborhood of the settlement of Modi'in Illit. The HPC published notice of the deposit of the new plan (number 210/4/2/1) in the press, but the residents of the adjacent village of Bil'in, part of whose land was covered by the proposed plan, did not see the notice and were unaware that a plan had been deposited to which they were entitled to submit objections.

The residents learned of the deposit of the plan by coincidence. On 22 August 2006, the Ne'ot Hapisga company that is building the neighborhood published a prospectus ahead of a stock exchange issue. One of the sections of the prospectus mentioned the deposit of plan 210/4/2/1. Israeli activists in close contact with residents of Bil'in studied the prospectus and secured a copy of the deposited plan. By this point, however, the permitted period of time for the submission of objections (60 days from the date of publication in the press) had expired. Only after an attorney intervened did the HPC agree to grant the residents of Bil'in an extension for the submission of an objection.

In February 2007, the Objections Subcommittee of the HPC heard four objections to the plan: two on behalf of residents of Bil'in, one submitted by Bimkom, and one on behalf of the Peace Now movement. Most of the arguments in the objections were rejected, and in February 2008 a notice confirming the approval of the plan was published.

Moreover, the maps of the plans for settlements and their orders are written in Hebrew and are difficult to understand for anyone without a fluent command of the language. Accordingly, most Palestinians cannot inspect deposited plans for settlements and cannot submit effective objections against them.

The Civil Administration routinely publishes notice of the deposit of plans for Palestinian villages in two of the major newspapers distributed in the area. However, the supply of these newspapers

¹⁴⁸ The Jordanian Law, Articles 18(1), 20(3), 24(3).

to many villages in Area C is erratic. The planning institutions in Beit El do not usually inform village officials of the deposit of plans concerning their villages or adjacent settlements. As a result, villagers are often unaware that a plan has been deposited that may affect them; after the end of the deposit period, the plan is approved without submission of a single objection.

As if all this were not enough, the Civil Administration's procedures place additional obstacles in the path of Palestinians seeking to submit objections. The Jordanian Law establishes that objections should, "as much as possible," include maps and documents for clarification.¹⁴⁹ This qualified provision was translated by the Civil Administration into a strict requirement stating that an objection relating to land not registered with the Lands Registrar (accounting for some 70 percent of the area of the West Bank, as explained above) will be heard only if accompanied by an updated surveyor's map and documents proving that the person objecting to the plan has a connection to the land. The Civil Administration also requires the objector to submit an affidavit signed before an attorney,¹⁵⁰ although the Jordanian Law (unlike Israeli law) does not require an affidavit.

These requirements impose a substantial financial burden on anyone wishing to submit an objection and create significant logistic difficulties. An opponent to a plan, who may be a poor farmer, will have to hire the services of a qualified surveyor to prepare the survey of the plot; to furnish documents proving ownership (property tax extracts and inheritance orders); and to sign an affidavit before an attorney – all this within the deposit period of two months. These requirements create financial outlays amounting to hundreds or thousands of shekels; many Palestinian residents of Area C cannot afford such costs.

For all these reasons, the right of objection granted to Palestinians can only be effectuated in a minority of cases. Accordingly, the reality in Area C is that the Palestinian population lacks representation at all levels of the planning system. Not only are there no Palestinian representatives on the planning institutions, but even the ability of Palestinian residents to submit objections to deposited plans is very limited. This reality is contrary to the spirit and goals of the Jordanian Law.

Conclusion

The changes made by Israel to the Jordanian Law by means of military orders effectively voided the content of the law. In place of a three-tier hierarchical structure (Local Committees, District Committees, and the HPC), Israel has created a centralized planning system which (as far as Palestinians are concerned) includes just a single planning institution (the HPC). When combined with the fact that the HPC has a monolithic composition and includes exclusively Israeli employees of the Civil Administration, this situation has led to the exclusion of the Palestinian public from the planning institutions. The result is that the interests of this public in the sphere of planning and building are almost completely ignored.

At the same time, Order 418 created a separate planning system for the settlers, including their own Local Committees. Moreover, the settlers are also represented in some of the subcommittees of the

¹⁴⁹ Ibid., Article 21(1).

¹⁵⁰ For example, on 25 October 2006 the Settlement Subcommittee published a notice in *Ha'aretz* regarding the deposit of "Detailed Plan No. 214/8" for a cemetery in the settlement of Har Adar. The notice stated, among other details, that "in areas where lands are not registered with the Lands Registrar, property tax registration extracts will not be taken into consideration unless a topographical map prepared by a qualified surveyor is attached describing the property, its location and size, etc.; and neither shall an objection be taken into consideration that is unsubstantiated or fails to prove the opponent's affinity to the deposited plan. In addition, an affidavit verified by an attorney is to be attached verifying the facts on which the objection is based."

HPC, and particularly in the Settlement Subcommittee, which discusses plans for settlements.¹⁵¹ Thus, while the Palestinian population has been deprived of any representation in the planning system, and its ability to submit objections to deposited plans has been severely restricted, the settlers' interests enjoy generous representation. Unsurprisingly, the output of the planning system in Area C is modern and detailed planning for the settlements, and by contrast partial, restrictive, and sometimes archaic planning for the Palestinian communities.

¹⁵¹ The Settlement Subcommittee has 12 members (as opposed to nine in the HPC itself). In addition to seven members from the HPC, the committee also includes five representatives of the settlements. Minutes of meeting no. 8/05 of the Settlement Subcommittee, 28 September 2005.

Perpetual Motion – Developmental Processes in the Palestinian Village

The present dispersal of the Palestinian villages in the West Bank and the character of building in the villages are the result of demographic, geopolitical, economic, and social processes that began shortly before the establishment of the British Mandate in Palestine (1920). The planning authorities had only a marginal influence over these processes, in spite of their repeated attempts to use planning tools to dictate patterns of development in the Palestinian village. Indeed, one of the main obstacles to appropriate planning of villages in the area is the authorities' attempt to impose directions of development on the residents that are contrary to their aspirations and preferences. An understanding of the processes of spontaneous development in Palestinian villages is vital not only to appreciate the planning needs of their residents, but also to formulate an appropriate planning approach that can be implemented in practice.

The Agglomerated Village

In contrast to the Israeli settlements, which were established by government decision or under official auspices, most of the Palestinian communities grew spontaneously, and the developments and changes they have undergone over the years have been based on local connections to land, water sources, and roads. Numerous factors have influenced the development of Palestinian settlement in the area;¹⁵² we shall focus on three factors that have played a key role in shaping the character of the Palestinian village: security, water supplies, and sources of income and livelihood.

Security: until the late 19th century, the permanent Palestinian villages in the West Bank suffered frequent attacks by nomadic tribes and were subject to the general lack of security that prevailed in the region at the time due to the declining power of the disintegrating Ottoman Empire.¹⁵³ During this period, security considerations played a central role in determining the location of Palestinian villages and the character of building there.

In most cases, villages were situated in locations ensuring a good view of farming land and of the approach roads to the village;¹⁵⁴ the location was often on a hilltop.¹⁵⁵ The built-up area had an agglomerated character, marked by extremely dense construction in a limited area (see photograph on p. 51) often surrounded by walls.¹⁵⁶ "The village was constructed as a kind of fortified farmstead"¹⁵⁷ in response to the external security threat. Internally, the compound was divided into blocks of buildings, each of which belonged to a particular extended family or a distinct religious group (in villages where the residents were of more than one religion). This structure was the result

¹⁵² David Grossman, "The Development of the 'Secondary Communities' in the Periphery of Samaria – Processes and Causes," in: Avshalom Shmueli, David Grossman, Rechavam Zeevi (eds.), *Judea and Samaria: Chapters of a Settlement Geography*, Jerusalem: Cana'an publishing house, 1977, p. 396.

¹⁵³ Moshe Ravid, Hovav Talpaz, Danny Friedman, Yifrah Zilberman, and Avraham Shvut, *The Judea and Samaria Area Through 2005*, Beit El: The Civil Administration, December 1990, p. 71; David Grossman, op. cit., note 152, pp. 405-406.

¹⁵⁴ Moshe Braver, "Seepage and Dispersion of Villages in Judea and Samaria," in Avshalom Shmueli, David Grossman, Rechavam Ze'evi (eds.), *Judea and Samaria: Chapters of a Settlement Geography*, Jerusalem: Cana'an publishing house, 1977, p. 369.

¹⁵⁵ Elisha Efrat, *Judea and Samaria – Guidelines for Physical Planning in the Area*, Jerusalem: Interior Ministry – Planning Division, 1970, p. 68.

¹⁵⁶ Moshe Braver, op. cit., note 154, p. 372; David Grossman, *The Arab Village and Its Subsidiaries: Processes in the Arab Settlement in Palestine during the Ottoman Period*, Jerusalem: Yad Yitzhak Ben Zvi, 1994, pp. 41-42.

¹⁵⁷ David Grossman, Ibid., p. 41.

of internal clashes and conflicts between different groups within the village; the physical separation was intended to mitigate these problems. In the village of Budrus, for example, the number of blocks of buildings in the agglomerated core of the village is exactly identical to the number of extended families in the village.¹⁵⁸

Water supply: another critical consideration was proximity to a water source. Before the advent of motorized pumps, communities were completely dependent on an adjacent source of water (a spring or cisterns). Accordingly, the location of villages reflected the presence of water sources, as well as areas of impervious rock formations (chalk and marlstone) enabling the excavation of cisterns.¹⁵⁹

Economic base and sources of livelihood: as agricultural communities, the Palestinian villages were dependent on farmland and pasture. Most villages were established close to such sources of livelihood. The dependence on agriculture was also reflected in the tendency to avoid building on land suitable for agricultural use. A clear preference for constructing buildings on rocky and exposed land was evident.¹⁶⁰

In some cases the various considerations dictating the location of the village were mutually compatible, but in others contradictions emerged. Construction on rocky land provided a simultaneous response to at least two important interests – the protection of sources of livelihood (agricultural land) and the presence of a water supply (the possibility to excavate impervious cisterns). In some cases, however, the need for proximity to a water source contradicted security considerations, as when a spring was situated in a topographically inferior location. In such cases the village was located some distance from the water source, reflecting the priority of security over proximity to water.¹⁶¹

Thus from the earliest times the main considerations dictating the location of Palestinian villages reflected a system of balances. The relative weight of each consideration varied from place to place and as circumstances changed over time. In spite of its evident shortcomings – poor living conditions and low quality of life – the agglomerated village model provided the best available solution for as long as the security situation made it necessary. The declining importance of the security consideration was reflected in increasing attention to other factors, resulting in significant changes in the character and spatial dispersion of the village.

Winds of Change

Over the last 100 years, demographic, geopolitical, economic, and social changes have destabilized the balance between the considerations that previously determined the location of Palestinian villages and their fortified and agglomerated character.

Already in the 1870s, the rural population of the West Bank began to increase rapidly. Demographic growth was due to various factors, including the rising standard of public health, improved roads, the process of urbanization (though gradual), and economic growth.¹⁶² The demographic growth trend increased dramatically under the British Mandate. Over the 28 years of the mandate (1920-1948), the rural population in the West Bank increased by approximately 70 percent.¹⁶³ Population

¹⁵⁸ Moshe Braver, op. cit., note 154, p. 371.

¹⁵⁹ Ibid., pp. 368-369.

¹⁶⁰ Ibid., p. 369.

¹⁶¹ Ibid., ibid.

¹⁶² David Grossman, op. cit., note 156, pp. 16-19.

¹⁶³ Moshe Braver, op. cit., note 154, pp. 373-374.

growth led to demand for land and required additional construction outside the agglomerated core. At the same time, the process of founding new villages accelerated (see below). As a result, since the beginning of the British Mandate and up to the time of the Israeli occupation the number of villages with a small population (100-300 residents) had increased considerably.¹⁶⁴

The strong central government of the mandate period created a sense of security and largely eliminated the need for protection against invading tribes, which had formerly been a central consideration for preferring the agglomerated model. The new road network constructed by the mandate authorities also improved the security situation, since it provided access to villages that were previously isolated and enabled the police to respond rapidly in case of need.¹⁶⁵

Technological developments meant that factors that were once of cardinal importance now came to be seen as marginal. The introduction of motorized pumps and water pipes considerably reduced the need for physical proximity to a water source, enabling the construction of village homes at a substantial distance from such sources.¹⁶⁶ Improved access to the cities created new possibilities for employment in areas other than agriculture, reducing the importance of arable land. Whereas in the past village houses were built only on rocky land that could not be used for farming, in recent decades the residents of many Palestinian villages have been willing to build in the heart of agricultural areas and on fertile land.¹⁶⁷ It is worth noting that since the outbreak of the first intifada (1987), and given the political situation and economic hardship facing the region, the importance of agriculture has increased, and many villagers again rely mainly on farming for their livelihood.

As we have seen, a series of far-reaching changes took place over a relatively short period of just a few decades. These changes transformed the basic demographic, security, economic, and technological conditions prevailing in the Palestinian villages in the West Bank. The result of each change in particular, and all of them together, was that the model of the agglomerated village that had been advantageous in the past now became a disadvantage and even a burden. A new trend emerged that sought to improve living conditions and quality of life by moving beyond the agglomerated core of the village and undertaking more extensive building over large areas adjacent to or surrounding the core.

It should be emphasized that this is a gradual process, and one that is still underway. Although the expansion of villages outside the core began during the British Mandate period, and although the mandate planning authorities reinforced this trend by means of proactive steps against agglomerated construction (see Chapter Five), density levels in the Palestinian villages remained very high during this period (300-400 residents per hectare). Within a few decades, the gradual abandonment of the agglomerated core and the spatial dispersion of building reduced density levels in the built-up areas dramatically, down to 80-120 residents per hectare.¹⁶⁸

The improved security situation also eliminated the need to locate the built-up parts of villages in areas with topographic dominance, such as mountains and hilltops. In many areas, building began to spread down the slope from the agglomerated core toward fertile land in the valley. The village of Ras Karkar provides a dramatic example of this process. In 1956, all the houses in the village were situated on the top of a hill. By 1974, just 18 years later, half the residents of the village lived in houses dispersed over the slopes of the hill.¹⁶⁹ It should be noted, however, that the trend for villages

¹⁶⁴ Elisha Efrat, op. cit., note 155, p. 80.

¹⁶⁵ Moshe Braver, op. cit., note 154, p. 373.

¹⁶⁶ Ibid., p. 373; David Grossman, op. cit., note 152, p. 404.

¹⁶⁷ Moshe Braver, Ibid., p. 376.

¹⁶⁸ Moshe Braver, "The Internal Alignment of the Traditional Arab Village," in: David Grossman and A. Meir (eds.), *Arab Settlement in Israel – Geographical Processes*, Jerusalem: Magnes Publishers, 1994, p. 106.

¹⁶⁹ Moshe Braver, op. cit., note 154, p. 376.

to expand down the slopes is not universal, and in some locations the opposite trend can be seen: new construction on rocky hills and peaks.¹⁷⁰

Another prominent process is linear (“ribbon”) construction along the sides of roads, and particularly along primary roads connecting different villages. The planning authorities during the mandate period considered ribbon construction a hazard and attempted to prevent it (for example, by creating particularly wide building lines for primary roads), although without much success. Construction beside roads offers easier access to urban centers and other villages and is a common phenomenon that can still be seen in Palestinian villages in the West Bank. Indeed, the model of a street-village, that spreads on both sides of a road connecting it to a regional traffic artery, is commonplace (see aerial photograph on p. 51).¹⁷¹

In addition to the expansion of the village as a whole, in many cases movement can also be seen in the center of the village. Services such as commerce, trade, transportation, health, etc. often migrate from the historical core to the boundary between the core and the new street-village.¹⁷²

Secondary Communities

The transformations seen in the area over the past century have led not only to changes in existing villages, but also to the establishment of numerous new communities. In fact, this phenomenon was also seen in previous generations. As early as the 18th century, for example, secondary villages were founded on the western edges of Samaria by residents of well-established villages. However, the phenomenon of secondary villages grew considerably in the late 19th and 20th centuries, against the background of a substantial improvement in the security situation and general economic growth in the region.¹⁷³

Many of the villages in Area C are secondary communities that grew gradually and eventually separated from the parent village. Secondary villages were founded some distance away from the parent village; the built-up area of the two communities is not continuous. This contrasts with the situation in villages that experienced processes of expansion and dispersal, while maintaining continuity between the old village core and new built-up sections.

The factors responsible for the development of secondary villages are complex, including both general and local aspects, and it is not easy to determine the specific blend of factors that led to the emergence of a secondary village in any given instance. It is possible, however, to define some of the general factors that played an important role in the emergence of secondary villages.

Many secondary communities originally came into being as seasonal villages. As the distance grew between the village homes and the cultivated fields (or some of them), there was increased need to develop a “branch” of the village closer to these fields. In many cases, therefore, economic pressure to farm distant areas led to the decision to establish a secondary village. Over time these secondary communities stabilized in economic terms and became permanent villages.¹⁷⁴ An example of this is the village of Furush Beit Dajan in the Jordan Valley. The village was established in the 19th century as a seasonal annex to the village of Beit Dajan, some six kilometers away. By the mandate period,

¹⁷⁰ David Grossman, *op. cit.*, note 152, p. 407.

¹⁷¹ Moshe Braver, *op. cit.*, note 154, pp. 377-379; Moshe Ravid, *op. cit.*, note 153, p. 74.

¹⁷² Moshe Braver, *ibid.*, p. 381.

¹⁷³ David Grossman, *op. cit.*, note 152, pp. 397, 401.

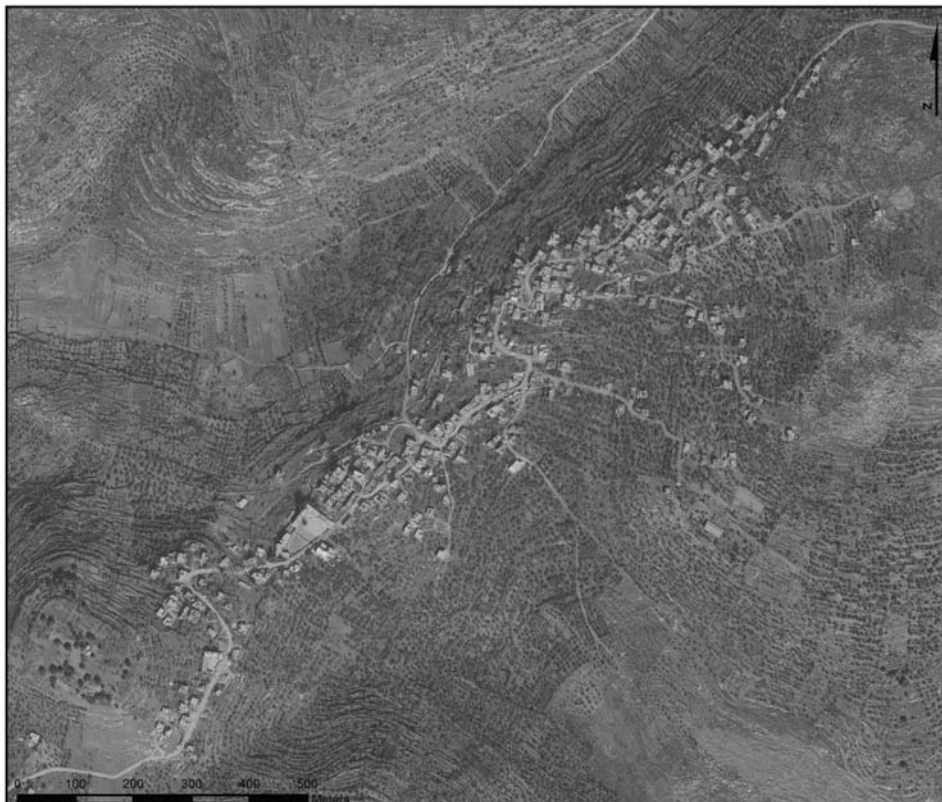
¹⁷⁴ David Grossman, *op. cit.*, note 156, pp. 43-44.

Agglomerated construction in the village core of Ni'lin



Photograph: Nir Shalev

Yasuf – A Palestinian community built according to the village-street model



Furush Beit Dajan had already become a permanent village, and it now has a population of 1,200 residents who make a living from intensive cultivation of irrigated fields.

In more than a few cases, the immediate factor behind the establishment of a secondary village was disputes between families and extended families in the parent village. The group that founded the secondary village often seems to have suffered from an inferior status in terms of the competition for resources in the parent village.¹⁷⁵ These villagers had to make a fresh start in a new location some distance away from the parent village. This phenomenon intensified as the population grew and competition for land resources in the villages became more intense.

In many cases, the consolidation of secondary villages into permanent communities involved the combination of distinct clusters of buildings into a single community. As a result, and in contrast to the long-standing villages, many secondary villages do not have a clearly-defined core.¹⁷⁶

Overall, the same factors that led to the abandonment of the agglomerated village model – improved security, population growth, and the construction of roads – also seem to have contributed to the development of the secondary villages. All these factors, particularly demographic growth, led to rising demand for land, and in many cases this encouraged the establishment of new villages. An improved sense of security enabled villagers to leave the agglomerated core and set up homes in distant areas.¹⁷⁷ The process of emergence and consolidation of secondary villages continues to this day. In the southern Hebron mountains, for example, seasonal villages based on the use of natural caves for residential purposes (such as the village of Qawawis) are gradually becoming permanent communities, despite the vigorous efforts of the Civil Administration to prevent this.

Conclusion

Over the past 100 years, the Palestinian villages in the West Bank have undergone a veritable revolution. From its beginnings as an agglomerated and insular village occupying a limited area, the typical Palestinian village has become a community dispersed over extensive areas and characterized by dispersed construction. In many cases, villages have developed on the street-village model; elsewhere villages are made up of several non-contiguous neighborhoods, one of which serves as the village center.

Many well-established villages continue to develop though linear construction along the roads leaving the village and connecting it to other communities. In addition to the transformation of existing communities, numerous new villages have also been established, mainly on farming land at some distance from the built-up area of the parent village.

In the past, the Palestinian village used only a small area of land for construction. To meet its current and future needs, however, much more extensive areas must be allocated for building. As a general rule, the mandate authorities viewed the expansion of the Palestinian villages positively, and encouraged residents to leave the agglomerated core and build in extended areas. The regional outline plans prepared during this period provide clear evidence of this (as discussed in the next chapter). By contrast, the present planning policy of the Civil Administration seeks to restrict the spatial expansion of the Palestinian villages and to confine their built-up area to a minimum (see

¹⁷⁵ David Grossman, op. cit., note 152, pp. 407-408.

¹⁷⁶ Moshe Ravid, op. cit., note 153, pp. 72-73.

¹⁷⁷ David Grossman, op. cit., note 152, pp. 397, 407.

Chapter Six). This policy would have been appropriate for construction patterns in the Palestinian villages through the end of the 19th century, when the agglomerated village was the dominant model. Today, in the early 21st century, this policy is diametrically opposed to the natural patterns of development in the Palestinian villages. This is one of the main factors explaining the widespread phenomenon of construction without building permits in the Palestinian villages in Area C, and for the large number of house demolitions by the Civil Administration.

Relics of a Forgotten Era – The Mandatory Regional Outline Plans

Introduction

Two types of outline plans currently apply to Palestinian villages in Area C. The Civil Administration has prepared special outline plans for some villages; these are discussed in Chapter Six. In virtually all parts of the rural Palestinian sector outside the boundaries of the special outline plans, the regional outline planning schemes (hereinafter “regional outline plans”) approved during the British mandate period continue to apply. This chapter focuses on these plans.

During the 1940s, the British mandatory authorities prepared regional outline plans for each of the six administrative districts into which Palestine was divided at the time.¹⁷⁸ Since each plan addressed an entire district, it encompassed immense areas covering hundreds or even thousands of square kilometers. Three of the plans – Plan RJ/5 for the Jerusalem region, Plan S/15 for the Samaria region, and Plan R/6 for the Lydda region – still apply today, in truncated form, to most of the area of the West Bank (see map on p.72).¹⁷⁹ These plans apply throughout the area, with the exception of sites covered by special outline plans (in the case of Palestinian communities) or detailed plans (in the case of the Israeli settlements).

The implementation of the regional outline plans, which represented an innovation on a global scale at the time,¹⁸⁰ encountered difficulties already during the mandate period, and their provisions were only partially implemented.¹⁸¹ Nevertheless, during the mandate these plans were a key tool for development in rural areas; on the basis of these plans, building permits were issued in hundreds of villages for which no detailed plans had been prepared (see appendix at the end of this chapter, p. 99).

After the establishment of the State of Israel in 1948, the regional outline plans became largely irrelevant within the borders of the state, as they were amended and replaced by local, district, and national outline plans.¹⁸² Although the regional outline plans applying in the West Bank have never been abolished, they played only a marginal role during the period of Jordanian rule (1948-1967). To the best of our knowledge, most of the construction in the rural sector during this period was executed without permits and under lax control.¹⁸³

During the first decade of the Israeli occupation, when thousands of building permits were issued to Palestinians in the rural areas of the West Bank (see Table 1, p. 11), little **direct** use was made of the regional outline plans.¹⁸⁴ According to Shlomo Hayat, who served as the director of the Planning Bureau during the period 1972-1980, building permits were issued for villages in the West

¹⁷⁸ Avraham Lapidoth, *The Regional Outline Planning Schemes in the Mandate Period: A Window on Statutory Physical Planning Actions in Palestine*, BA seminar paper, Jerusalem: Department of Geography, Hebrew University, January 1977, pp. 2, 64. The districts were: Galilee, Haifa, Samaria, Jerusalem, Lydda, Gaza.

¹⁷⁹ R/1, the Gaza district regional outline plan, applied to a minute area in the south-west part of the West Bank, and shall not be discussed here.

¹⁸⁰ Avraham Lapidoth, op. cit., note 178, p. 47.

¹⁸¹ Ibid., pp. 44-46.

¹⁸² However, Regional Outline Planning Scheme R/6 still applies to certain areas in the Central District within the State of Israel.

¹⁸³ Despite extensive efforts, we were unable to locate any building permits issued during the period of Jordanian rule with regard to the rural areas of the West Bank.

¹⁸⁴ Anthony Coon, op. cit., note 9, p. 70.

Bank during this period on the basis of internal guidelines rather than outline plans. These guidelines were, however, based on the building orders included in the regional outline plans. Accordingly, these plans served – if indirectly – as a key tool in issuing building permits even under Israeli rule. According to Hayat, during most of the period in which he served as director of the Planning Bureau, Israel's settlement interests in the area were relatively limited. Accordingly, the Israeli planning institutions allowed extensive building in the Arab villages, provided this did not obstruct existing or planned roads.¹⁸⁵

This situation began to change in 1977 following the rise to power of the Likud-led government with its ambitious settlement plans. The Israeli authorities began to realize that more Palestinian construction in the rural area was competing for land reserves the government intended to use for the settlements, and thus constituted a serious obstacle to the settlements enterprise and to effective Israeli control of the area.¹⁸⁶ By the end of Hayat's period in the Planning Bureau, the Israeli planning institutions were already using the regional outline plans in order to prevent Palestinian construction.

The Formative Case: The Teachers' Association Petition

In 1978, a group of Palestinians from Qalandiya who were members of the local teachers' association received permits to build 24 residential buildings. The permits were issued by the Israeli Higher Planning Council (HPC) in accordance with the guidelines applying at the time. The members of the association had originally hoped to found a new neighborhood, but after it was made clear that the HPC would not approve a detailed plan for the neighborhood, they submitted applications for individual building permits. In 1979, after building work had already begun, the HPC decided to void the 24 permits retroactively on the grounds that they contravened the orders of Plan RJ/5. This was the first time that the Israeli authorities in the West Bank used a regional outline plan to limit construction. The teachers' association petitioned the High Court of Justice (HCJ) against the decision, but the court rejected the petition. The nullification of the permits and the rejection of the petition constituted a formative case leading to the extensive use of the regional outline plans to limit and prevent Palestinian construction.¹⁸⁷ Since the decision by the HPC to nullify the 24 building permits granted to the teachers, the Civil Administration has issued thousands of demolition orders against Palestinian buildings on the grounds that these contravene one or another of the orders of the regional outline plans.

This tendency even increased in the 1980s, when the restrictive use of the regional outline plans appeared to be central to the activities of the Israeli planning institutions in the area. Thus the regional outline plans gained an enormous importance in shaping the territory where the Palestinians live – an importance they lacked even under the mandate government, which prepared these plans.

In this chapter we shall analyze the regional outline plans in detail and examine how the Civil Administration is implementing them. In the first part we will describe the plans, the background for their preparation and their goals. In the second part we shall critically review the Israeli planning institutions' implementation of these plans. We will also point out legal and planning problems associated with the current use of the regional outline plans, which were made in another era and under a demographic and spatial reality completely different than the one applying to the West Bank today.

¹⁸⁵ Meeting with Architect Shlomo Hayat, Jerusalem, 15 August 2007.

¹⁸⁶ Ibid.

¹⁸⁷ HCJ 145/80 *Al-Ta'unayah Jam'ayat Askan Al-Mu'alamun et al. v Minister of Defense et al.*, ruling dated 22 December 1980.

Part One: The Regional Outline Plans and Their Orders

Historical Background and Goals

The spatial reality of Palestine in the 1930s formed the background for the preparation of the regional outline plans. The Jewish community was growing rapidly during this period and Jewish construction had begun to expand beyond the declared city and town planning areas. For the most part, this construction was undertaken without permits and without inspection by the authorities. Other spatial phenomena common at the time included ribbon construction alongside roads, particularly along primary roads between different communities; agglomerated and extremely dense construction in the Palestinian villages; and rampant and uncontrolled parcellation (land subdivision), particularly in Jewish communities established in rural areas.¹⁸⁸

The regional outline plans do not specify their intended goals, but these may be deduced from the historical background to the preparation of the plans, as well as from their orders and written comments made by the British planners who prepared the plans. All these sources suggest that the plans had two primary goals, as well as a number of secondary objectives. The first meta-goal was to apply planning and building laws to all of Palestine; the second was to create a tool for granting building permits in extensive territories outside the city and town planning areas without requiring additional plans besides the regional outline plans themselves.

The application of planning and building laws to all parts of Palestine was the first meta-goal of the regional outline plans.¹⁸⁹ The plans created a binding legal framework determining permitted and prohibited actions in wide regions outside the city and town planning areas. Without such a framework it would not have been possible to enforce planning and building laws outside the cities and towns.

Since each of the regional outline plans covered extensive land areas, one could assume that their function was only to provide general guidelines for the preparation of detailed plans, which will designate land uses and forms of construction at a higher resolution than was possible in the regional outline plans. Indeed, in several cases the regional outline plans specifically mention the need for detailed planning based on their principles.¹⁹⁰

Alongside the emphasis on the need for detailed planning, however – which, as noted, was perceived as a way to implement the regional outline plans' orders, and not as a procedure for their amendment – all the regional outline plans also include partial detailed orders that enabled building permits to be issued on the level of an individual plot. For example, Plan RJ/5 includes detailed building orders specifying minimum lot size, maximum built area on a lot, building lines, and even partial architectural provisions (such as the concealment of water tanks on roofs). If the sole purpose of the plans had been to lay down some guiding principles for detailed planning, there would have been no point including such detailed provisions.

One of the notable features of the regional outline plans is the frequency with which they were updated. The British mandate authorities aimed to update the plans once every five years.¹⁹¹

¹⁸⁸ Avraham Lapidoth, op. cit., note 178, pp. 16, 48.

¹⁸⁹ Ibid., p. 16.

¹⁹⁰ For example, section 21 of the orders of Plan RJ/5 establishes that construction in rural development areas will be undertaken in accordance with a detailed plan or a subdivision scheme. Section 2 of the orders of Plan S/15 (Amendment) as approved in 1948 (further references to Plan S/15 relate to the version approved in 1948, unless otherwise mentioned) instructs that the precise boundaries of the various zones marked on the plan shall be determined in detailed plans.

¹⁹¹ Avraham Lapidoth, op. cit., note 178, p. 17.

This aim was at least partially realized: the first version of Plan S/15 was approved in 1942, and a second version was approved in 1948. Plan R/6 was also approved in 1942; an updated version was prepared and deposited in 1946, but due to the end of the British mandate the authorities were unable to approve the updated plan.¹⁹² A comparison between the earlier plans (the approved plans RJ/5 and R/6 and the original version of S/15) and the later plans (R/6, deposited in 1946, and the second version of S/15) shows that over time the plans tended to evolve toward the detailed end of the spectrum. This trend is reflected both in quantitative terms (a higher number of detailed orders than in the earlier plans) and in qualitative terms. Thus the later plans address aspects that were not included in the earlier plans, for example specifying detailed provisions on the minimum area and height of habitable rooms, the minimum area of windows in habitable rooms, and the required distance between buildings and electricity lines.

Thus, the regional outline plans exhibit a constant tension between two trends: on the one hand, the desire to create a general planning framework, at a low level of resolution, suitable for district planning; on the other hand, the aspiration to include detailed orders at a higher level of resolution to enable the issue of building permits on the basis of the regional outline plans alone.

Accordingly, **the second meta-goal of the plans is to enable the issue of building permits.** It should be reminded that the conceptual framework for preparing the regional outline plans was town planning, which by its nature is intended to guide development in an area designated for massive construction.¹⁹³ The concept of district planning as recognized today in Israel did not exist at the time the regional outline plans were prepared.

The inclusion of detailed orders in a generally more abstract plan provides planning flexibility that responds to the varying needs of rural communities of different sizes. The preparation of a detailed plan demands substantial resources and is not essential for every community. The regional outline plans meet the needs of small and medium-sized villages with tens or hundreds of residents and enable the issue of building permits. At the same time, the plans also provide general guidelines for preparing detailed plans for those communities that require these due to their size, number of residents, or spatial problems. During the British mandate, detailed plans were prepared for just three of the hundreds of Palestinian villages marked in the regional outline plans. In all the cases of which we are aware, the detailed plans were prepared **after** the approval of the regional outline plans and in accordance with their principles.¹⁹⁴ **Construction and development in hundreds of villages for which no detailed plans were prepared were undertaken during the mandate period on the basis of the regional outline plans alone.**

¹⁹² A notice on the approval of Plan S/15 in its initial version was published on 9 April 1942, while a notice concerning the approval of its second updated version was published on 29 January 1948. Notice on the approval of the first and valid version of Plan R/6 was published on 26 February 1942; a notice concerning the deposit of the second updated version of the plan was published on 17 October 1946.

¹⁹³ Avraham Lapidoth, op. cit., note 178, p. 5.

¹⁹⁴ Ibid., p. 57. According to Lapidoth, the villages for which detailed plans were prepared are Sabastiya, Tubas, Anabta, Qalqiliya, Lajun, and Jalma (in the Samaria District, subject to Plan S/15), and Abu Dis, Halhul, Bir Zeit, and Beituniya (in the Jerusalem District, subject to Plan R/15). Detailed plans were also prepared for a number of villages that are now within the borders of Israel or were destroyed in 1948. Our attempts to locate the plans mentioned by Lapidoth proved unsuccessful. The Town Planning Ordinance (1936), the planning law applying in Palestine, required publication of a notice in the official gazette of the mandate government regarding the deposit of detailed plans. In the course of our research we examined all the volumes of the official gazette published between 1942 (when the first regional outline plans were approved) and 1948 (the end of the British mandate), but were unable to locate notices concerning the deposit or approval of plans for the villages mentioned by Lapidoth. However, our examination revealed notices regarding the deposit and approval of detailed plans for three other Palestinian villages: Salfit and Rafidiya in the Samaria District and Shu'afat in the Jerusalem District. Accordingly, our examination shows that detailed plans were approved for just three villages in the West Bank. Even if detailed plans were approved for the additional villages mentioned by Lapidoth, the total number of West Bank Palestinian villages in which detailed planning was applied during the mandate period was just 13.

In addition to the two primary goals, the regional outline plans also aimed at several secondary objectives:

1. **To prevent linear (ribbon) construction along primary roads in rural communities.**¹⁹⁵ The British planners had a negative view of linear construction along major roads, both in terms of quality of life (nuisance caused by vehicles) and in terms of the spatial development of the villages. They feared that linear construction could blur the boundaries between different villages connected by the roads. In order to prevent this, the regional outline plans established a building line of 60 meters between buildings and primary roads.¹⁹⁶
2. **To reduce housing density in the Palestinian villages.**¹⁹⁷ The agglomerated model that was common in Arab villages during the mandate period was characterized by high densities and limited spatial expansion of the built-up area. The British planners viewed this model as an environmental hazard and the regional outline plans were intended to stop agglomerated construction.¹⁹⁸ Accordingly, the plans include various provisions (a minimum lot size of 1,000 square meters; a prohibition of more than one residential building in each lot; building lines of at least five meters, etc.) diluting construction and encouraging spatial expansion.¹⁹⁹ However, the plans themselves create mechanisms that allow these rules to be circumvented and permit dense construction in rural development areas (see p.76). These mechanisms probably reflected a compromise between the planning aspirations of the authors of the plans and the reality on the ground in terms of customary construction patterns in the Palestinian villages. As we shall see below, **the trend to dilute and disperse construction over larger areas is completely contrary to the planning policy of the Civil Administration, which uses the regional outline plans in order to restrict the expansion of Palestinian construction as much as possible. Accordingly, the Civil Administration's use of the regional outline plans is inherently paradoxical.**
3. **To prevent uncontrolled land subdivision (parcellation).**²⁰⁰ The British planners viewed the uncontrolled subdivision of land that was current during the mandate period – particularly in the Jewish sector – as a waste of land resources.²⁰¹ Moreover, uncontrolled parcellation was considered contrary to planning logic and liable to impede the vital need for the proper allocation of land for roads, public buildings, and other general community needs.²⁰² The basic approach of the mandate authorities was that subdivision of land should be subject to planning review to prevent the creation of negative facts on the ground that would obstruct future planning. In an attempt to prevent uncontrolled parcellation, all the regional outline

¹⁹⁵ Henry Kendall, the Town Planning Adviser in the British mandate government and one of the planners who prepared the regional outline plans, specifically mentioned that the prevention of ribbon construction was one of the goals of these plans. See: Henry Kendall, *Village Development in Palestine during the British Mandate* (in collaboration with K.H. Baruth), London: The Crown Agents for the Colonies, 1949, p. 9; see also Avraham Lapidoth, op. cit., note 178, p. 16.

¹⁹⁶ Letter No. 89/6, dated 2 March 1942, from the Chief Secretary of the Samaria District Building and Town Planning Commission. The letter, which relates to the original Plan S/15 (as approved in 1942, and whose provisions are identical to those of Plan RJ/5), notes that one of the goals of the plan is to prevent ribbon construction along primary roads, and that the means of securing this goal is a large building line along these roads. See also Avraham Lapidoth, op. cit., note 178, pp. 59-62.

¹⁹⁷ Ibid., p. 38.

¹⁹⁸ Henry Kendall, op. cit., note 195, p. 25.

¹⁹⁹ Anthony Coon, op. cit., note 9, p. 77.

²⁰⁰ Letter from the Chief Secretary of the Samaria District Building and Town Planning Commission (note 196 above). See also Avraham Lapidoth, op. cit., note 178, p. 16.

²⁰¹ Henry Kendall, op. cit., note 195, p. 32.

²⁰² The letter from the Chief Secretary of the Samaria District Building and Town Planning Commission (note 196 above) mentions that the uncontrolled parcellation common in the district “very often contravened the most elementary principles of planning with regard to road alignments, contours and minimum sizes of plots.”

plans specify that the division of land – even if it is for registration purposes only, and not for development or construction– must be approved by the planning institutions.²⁰³

Land Zones and Permitted Uses

The maps of the three regional outline planning schemes were drawn up to a scale of 1:100,000, and each shows five zones: roads, beach, nature and forest reserves, agricultural area, and development zones (see the section of the S/15 plan on p. 72). The map of Plan RJ/5 also shows the desert area (the Judean Desert) for which the plan does not include any building orders at all, not even building prohibitions. These three plans do not include zones for industry, commerce, and public buildings, but permit these uses in some of the designated zones.

Table 2: Land Zones and Permitted Uses in Regional Outline Plan S/15²⁰⁴

Zone	Uses for which the Local Committee is authorized to issue building permits	Uses for which the approval of the District Committee is required
Rural development area	Dwelling houses, garages for private cars, recreation grounds, private clubs, public buildings, hotels, shops (with the consent of the Health Authority), farm buildings, buildings and installations required for supply of water and electricity	Other types of buildings not specified in the second column
Agricultural zone	Farming buildings, gardening, nurseries and greenhouses, recreation buildings, stables and cattle sheds, poultry house sheds, dwelling houses, shelters for watchmen, buildings and installations required for the supply of water and electricity	Industrial buildings, buildings forming part of a controlled development scheme, other buildings not specified in the second column
Beach		Bathing establishments and buildings for recreation, other buildings approved in detailed schemes
Nature and forest reserves		Domestic buildings required by the owner for his own use, buildings incidental to agricultural, horticultural or sylvan use, buildings incidental to recreation uses – all these also require the approval of the Conservator of Forests

The regional outline plans do not prohibit construction and development in any of the zones. The distinctions between the zones relate to permitted uses; restrictions on construction; and the identity of the planning institution authorized to issue building permits (Table 2). In zones in which the general rule is that a building permit may be obtained (development zone and agricultural zone),

²⁰³ According to Lapidoth, another important secondary goal of the regional outline plans was to preserve agricultural land (Lapidoth, op. cit., note 178, p. 46). In our opinion, however, an examination of the orders included in the plans raises doubts whether this was indeed a significant objective. As we shall see below, the regional outline plans permit construction for various needs and on a considerable scale on land zoned for agriculture. The principal means of controlling the extent of construction on land zoned for agriculture is through planning control of land subdivision, rather than by any sweeping prohibition of construction in agricultural areas. Even without subdivision, the plans permit considerable construction in extensive areas zoned for agriculture, and their orders do not guarantee the optimum preservation of agricultural land.

²⁰⁴ A similar distinction between uses that may be approved by the Local Committee and exceptional uses that may be approved only by the District Committee is also included in Plans RJ/5 and R/6, in which the Local Committee is also authorized to issue building permits for most of the permitted uses in development areas and in the agricultural zone.

the Local Committee has the authority to issue permits for most uses, and only exceptional uses require the approval of the District Committee. By contrast, in zones such as nature and forest reserves, in which the general rule is that construction is prohibited,²⁰⁵ only the District Committee is empowered to issue building permits. Accordingly, Palestinian villages in locations marked as nature reserves in the regional outline plans are subject to particularly strict building restrictions (see the case study of Umm ar-Rihan, p. 92).

Construction in the Agricultural Zone

The regional outline plans define most of their area as an agricultural zone. The contemporary planning approach in Israel assumes that construction is prohibited in an agricultural zone, except in unusual circumstances.²⁰⁶ According to this approach, the zoning of areas for agriculture is a key tool for conserving land resources and creating the infrastructure for self-sufficiency in food production without dependence on external sources. The mandate authorities took a completely different approach. The planners of the mandate government viewed the agricultural zone as intended not only for food production, but also for the residential needs of the farmer and his family and, in certain conditions, for other uses (such as a residential neighborhood or industry) involving intensive development.

Indeed, Israeli courts have ruled that the Israeli district outline plans prohibiting residential construction on land zoned for agriculture have caused a depreciation in the value of the land by comparison to the mandate regional outline plans, which permitted residential construction even on land zoned for agriculture.²⁰⁷ Moreover, in the regional outline plans the Local Committee is empowered to issue building permits for most of the uses permitted in the agricultural zone (see Table 2). This suggests that the authors of the plans saw such construction as commonplace (as distinct from industrial and other uses conditioned on the approval of the District Committee).²⁰⁸

These observations are not intended to imply that the regional outline plans permit unrestricted construction in the agricultural zone. On the contrary: the building possibilities permitted by the plans in the agricultural zone are restricted relative to those in development areas. The restriction of construction in the agricultural zone is achieved by means of various building orders (Table 3) and through strict control of the division of land.

All the regional outline plans require the division of land to be in accordance with parcellation schemes (for the purpose of registration) or detailed plans approved by the District Committee. Plans RJ/5 and R/6 further determine that in an original plot that has not been divided into sub-plots, the construction of only one principal building will be permitted (with the addition of an outbuilding).²⁰⁹ The result of this provision is a prohibition against construction in an original plot that has been subdivided without authorization.

²⁰⁵ Regarding Plan S/15, Kendall notes that, in general, the intention was to prevent development of construction in the nature reserves. Kendall, *op. cit.* (note 195), p. 9.

²⁰⁶ Section 7 of the First Addendum to the Planning and Building Law, 1965 (the law applying in Israel) forbids the planning institutions to issue building permits for “non-agricultural” purposes in areas marked as agricultural land in the district outline plans. The law permits construction in these areas solely subject to local outline plans or detailed plans that have completed a special and strict procedure of authorization in the National Planning and Building Council or before the Committee for the Conservation of Agricultural Land and Open Spaces.

²⁰⁷ For example, in *Sundry Civil App. (TA) 102920/00 Sela Ilan v Kiryat Ono Local Planning and Building Committee*, the magistrate’s court ruled that the value of the agricultural lot owned by the appellants depreciated due to the approval of District Outline Plan 197, which replaced Regional Outline Plan R/6. The court noted: “DOP 197 labeled the remainder of the area for agricultural zoning – without building rights, in contrast to the mandate Plan R/6. Even if a declaration of agricultural land applies, there is a substantive difference in terms of the value of the lots between declared agricultural land including building rights for residential purposes and agricultural land not including building rights and intended solely for farming. These changes impaired the value of the land and injured the appellants’ property rights.”

²⁰⁸ This is also consistent with the ruling of the Supreme Court in CA 9355/02 *State of Israel v George Yusuf Rashed*.

²⁰⁹ Section 17 of the orders of Plans RJ/5 and R/6.

Table 3: Building Orders in the Agricultural Zone, According to the Regional Outline Plans

Plan	Minimum lot area	Minimum front width	Maximum coverage of the principal building ²¹⁰	Maximum no. of buildings per lot ²¹¹	Height of principal building	Maximum floor area (principal building) ²¹²	Building lines
RJ/5 and R/6	1,000 sq.m	40 m in RJ/5, 25 m in R/6 (for residential and industrial buildings only)	150 sq.m. ²¹³	One principal building + one outbuilding	Two floors	300 sq.m	5 m (rear, front, and side)
S/15	1,000 sq.m	25 m (for residential or industrial purposes)	15% of the area of the lot or 180 sq.m., whichever is the smaller (residential buildings) ²¹⁴	One principal building + one outbuilding	Two floors	360 sq.m	10 m (rear, front, and side)

These orders severely restrict building possibilities in the agricultural zone. As detailed in Table 3, the minimum area of a lot in the agricultural zone in all three plans is 1,000 square meters. All the plans permit the erection of one residential building in a lot. In many parts of the West Bank, the area of each original plot is several hectares or even dozens of hectares. The prohibition against dividing land otherwise than through a parcellation scheme or a detailed plan enables the planning institutions to exercise tight control over the scope of development in the agricultural zone, without prohibiting construction there.

Thus, in the case of a typical original plot with an area of four hectares, the regional plans themselves permit the construction of a single two-storey residential building that may provide housing for four families at most.²¹⁵ Within the framework of a subdivision scheme or a detailed plan, and without deviating from any of the orders of the regional outline plans, the plot may be divided into 40 lots of 1,000 square meters each. Assuming that only 20 of the lots are used for residential purposes, while the remainder are allocated for roads and public

²¹⁰ According to the interpretation of the Civil Administration, this refers to the floor area. In our opinion this interpretation is mistaken (see below).

²¹¹ The plans prohibit the erection of more than one principal building in an original lot. Subject to the division of the land, with the authorization of the planning authorities, several buildings may be constructed on an original lot. All the plans state that the area of an outbuilding shall be determined by the Local Committee and is in addition to the coverage of the principal building.

²¹² The figure for maximum floor area does not appear in the orders of the plans themselves; we calculated this figure on the basis of the other building orders in the plans. We calculate the maximum floor area by multiplying the coverage by the permitted number of floors. The figure in this table – and in Table 4 below – is a minimum one, relating solely to the maximum permitted floor area above ground. The mandatory planning regulations permitted additional construction on the slopes that are characteristic of the topography of the West Bank. These building areas, insofar as they are below the level of the adjacent road and do not deviate from the coverage determined in the plan, are additional to the floor areas permitted in the above-ground levels. See Part One, Sections 7-10, 18 in the Bye-laws Made by the Central Town Planning Commission. These regulations were published in the *Official Gazette*, 1 November 1925, pp. 520-555.

²¹³ For industrial buildings, and subject to the approval of the District Committee, Plans RJ/5 and R/6 permit a coverage of up to 40 percent.

²¹⁴ The District Committee is entitled to approve a larger coverage and larger number of floors for industrial buildings.

²¹⁵ Assuming that the permitted floor area is 300-360 square meters in the lot. Since the regional outline plans do not impose restrictions on the number of housing units, four housing units (with an area of 75-90 square meters each) may be built on each lot.

needs, such a division will increase the building rights in the original lot twenty-fold, allowing the construction of 20 residential buildings providing housing for as many as 80 families (see diagram on p. 64). Thus the application of a parcellation scheme to a large original plot zoned for agriculture in the regional outline plans may provide housing solutions for a medium-sized village with several hundred residents, without the need for any detailed planning and without deviating from the building orders of the regional outline plans.

Building Plan Approved – Provided Agricultural Zoning is Maintained

In 1945, the Jewish National Fund submitted detailed plan R/162 to the Lydda District Building and Town Planning Commission of the mandate authorities. The plan provided for the establishment of a residential neighborhood on village lands of Hiriya purchased by the Fund. The primary goal of the plan, which relates to an area that now forms part of the city of Ramat Gan, was to rezone the land, which was defined as an agricultural zone in Plan R/6, and convert it into a development area.²¹⁶ The detailed plan also included provisions covering land subdivision, road alignments, etc.

The District Commission deliberated the deposit of the plan in February 1945 and decided to request a legal opinion on the matter. The main issue of concern to the commission members was whether a detailed plan such as R/162, which was intended to enable the construction of a residential neighborhood, was contrary to the agricultural zoning in Regional Outline Plan R/6, so that it would require rezoning of the land as a development area.²¹⁷

In March 1945, after receiving an opinion from its legal draftsman, the Lydda District Commission decided to deposit Plan R/162, **provided that its principal goal – the rezoning of agricultural land as a development area – was abolished.** The decision quoted the comments of the legal draftsman, who noted that “since domestic, public and various other types of buildings are permissible in the agricultural areas under section 20 of the regional outline scheme [R/6], the proposed scheme [R/162] should retain its agricultural zone.”²¹⁸ Thus the authoritative interpretation of the mandatory District Commission was that the establishment of a residential neighborhood in the agricultural zone is not contrary to the designation of the land as agricultural in plan R/6 and does not constitute a deviation from its orders.

Plan R/162, a notice concerning its approval was published in 1946,²¹⁹ illustrates how a detailed plan providing for land subdivision permits a significant increase in the building rights in areas the regional outline plans designate as an agricultural zone. Plan R/162 covers two original plots, one of 12.2 hectares, and the second with an area of about 1.7 hectares. The total area of the plan is therefore 13.9 hectares. Plan R/6 by itself would permit the construction of just two residential buildings on this land. Plan R/162 divided the two original plots into 98 lots for residential construction (each with an area of approximately 1,000 square meters), three lots for public buildings, public open spaces, and roads. The detailed plan permitted the establishment of a semi-detached building on 86 of the building lots – one housing unit on each half lot.

²¹⁶ Section VI(4) of the minutes of Meeting No. 93 of the Lydda District Building and Town Planning Commission, 16 February 1945.

²¹⁷ Ibid.

²¹⁸ Section IX(91) of the minutes of the 94th meeting of the Lydda District Building and Town Planning Commission, 1 March 1945.

²¹⁹ A notice on the deposit of the plan was published in the supplement to the Official Gazette on 7 June 1945. A notice concerning its final approval was published on 23 May 1946.

In total, Plan R/162 enabled the construction of 184 housing units in 98 residential buildings, whereas Plan R/6 by itself would have permitted the construction of just two residential buildings on the same area, and eight housing units at most.

In the same meeting where it approved Plan R/162 for deposit, the mandatory District Commission also approved the deposit of Plan R/150, which was intended to enable the development of a residential neighborhood at another site that Regional Outline Plan R/6 zoned for agriculture. Plan R/150 covers a plot of 2.9 hectares acquired by the Rassco company on the village lands of Jilil al Qibliya (now Ramat Hasharon). In this case, too, the District Commission agreed to deposit the plan only on condition that the agricultural zoning of the land be maintained, arguing that there was no need to convert the site into a development area in order to enable the construction proposed in Plan R/150. The plan, a notice concerning its approval was published in 1946, divided the original plot into 21 lots for residential construction, as well as allocating land for roads and for an open public space.²²⁰ Thus Plan R/150 enabled the establishment of 21 residential buildings, while R/6 itself, without the subdivision of the land, would have permitted the erection of just one residential building.

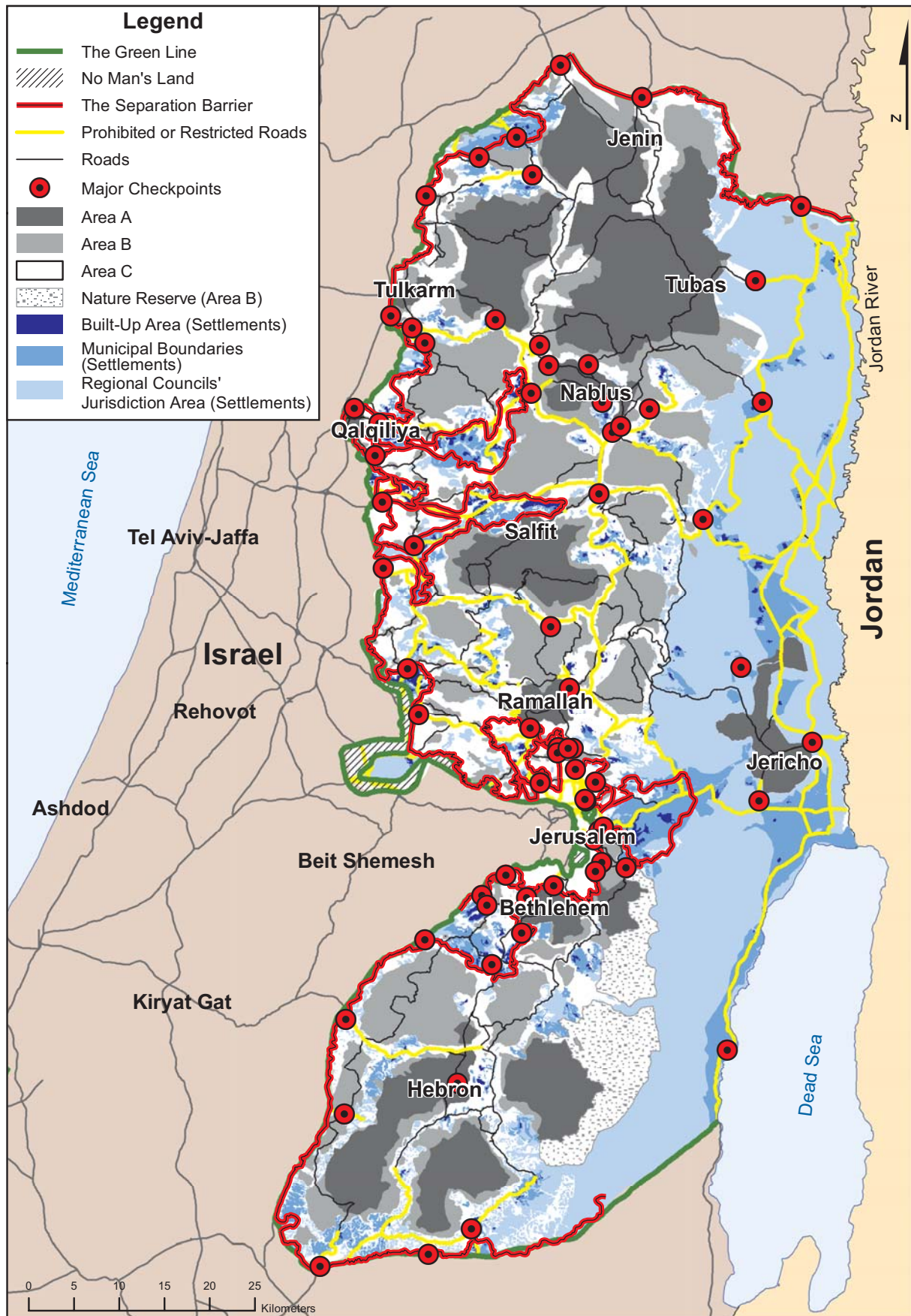
Land subdivision and building rights in the Regional Outline Plans



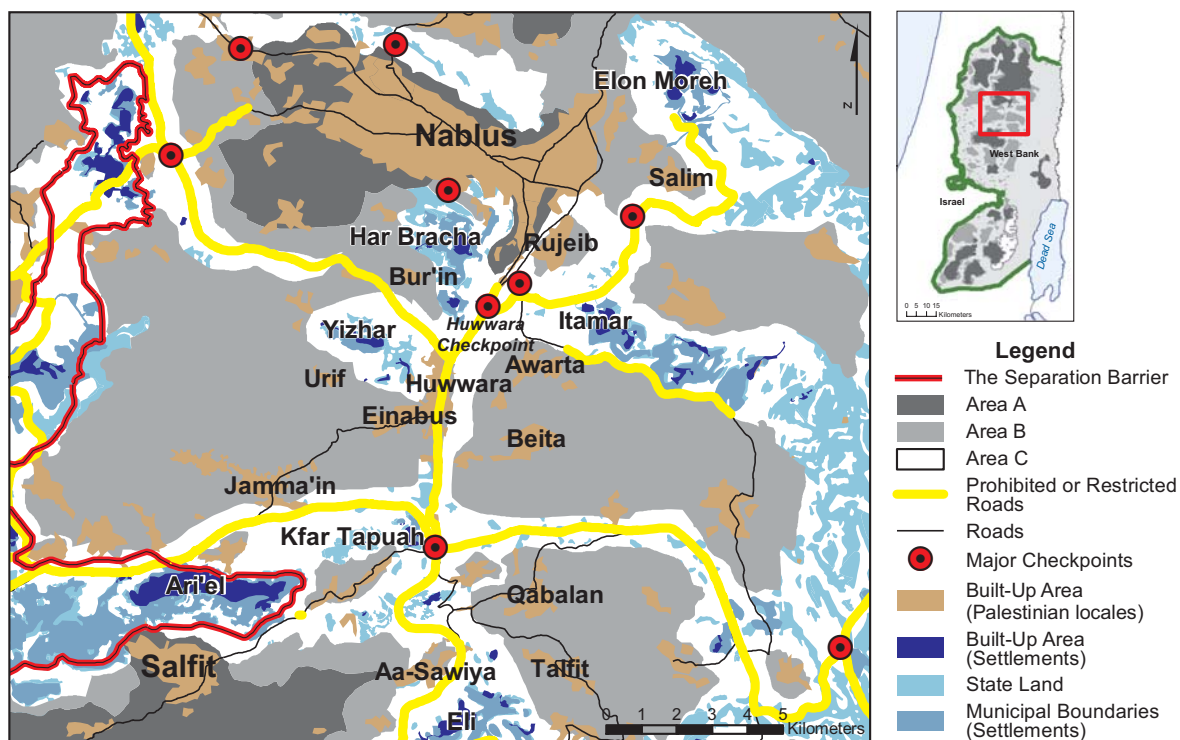
The diagram shows a four-hectare plot. According to the Regional Outline Plans themselves, one residential building may be erected in the plot (right). Under a parcellation scheme that would allocate land for public needs, it is possible to erect 20 residential buildings on the area of the same plot, following its subdivision into 20 building lots of 1,000 square meters each – without deviating from any of the building orders of the Regional Outline Plans

²²⁰ Copies of Plans R/162 and R/150 are held by Bimkom.

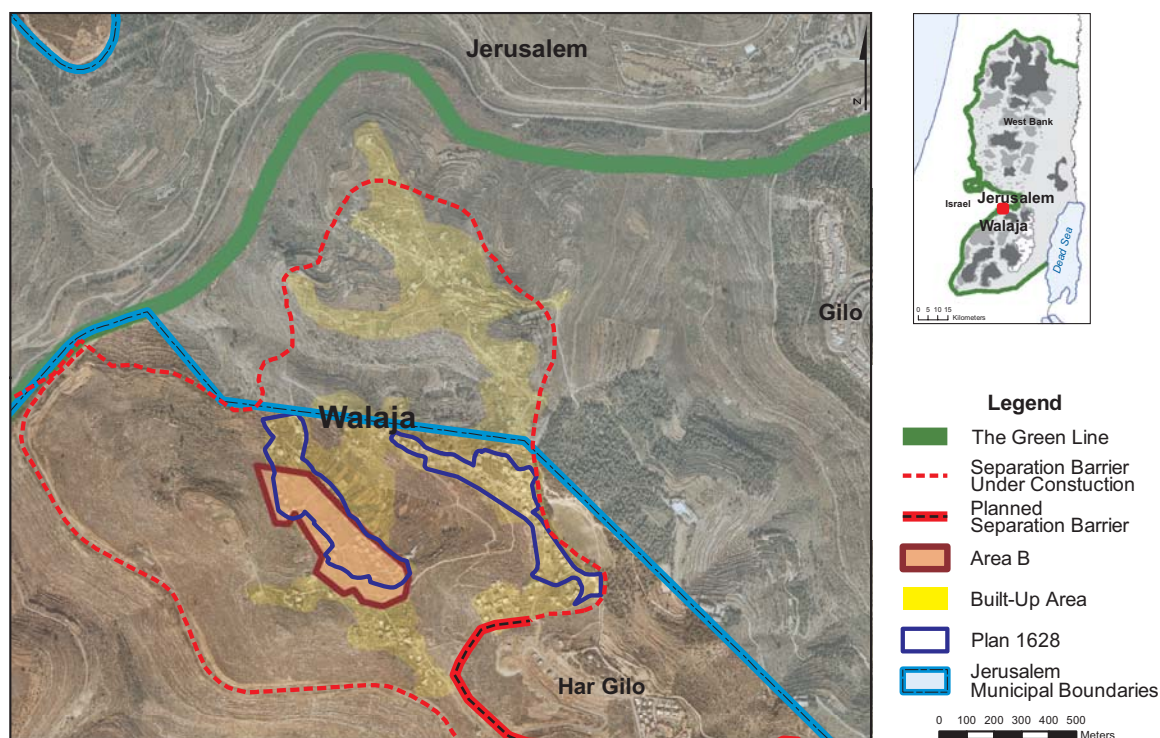
The fragmentation of the West Bank



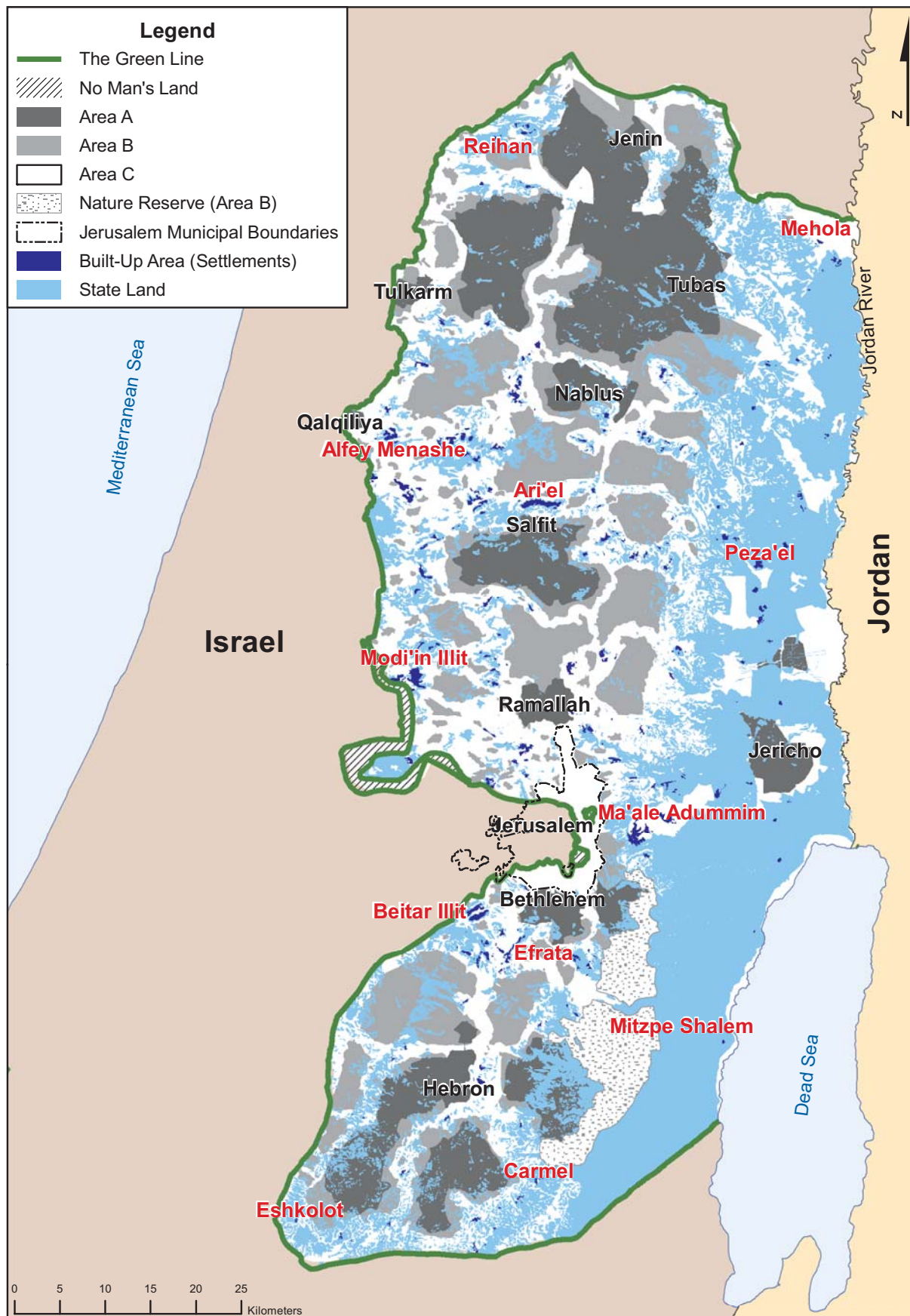
Factors of fragmentation between Nablus and Salfit



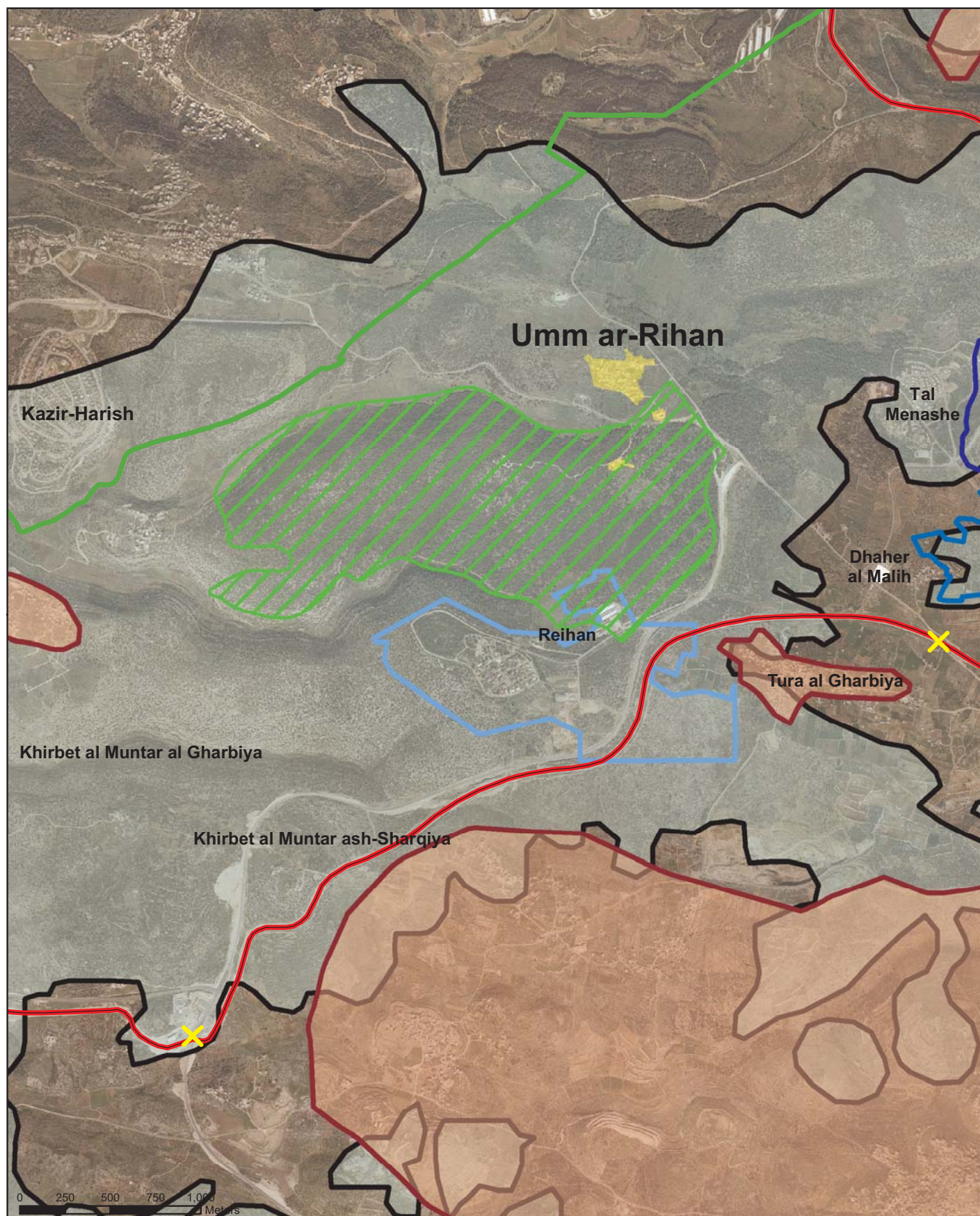
The planning and administrative division of the village of Walaja

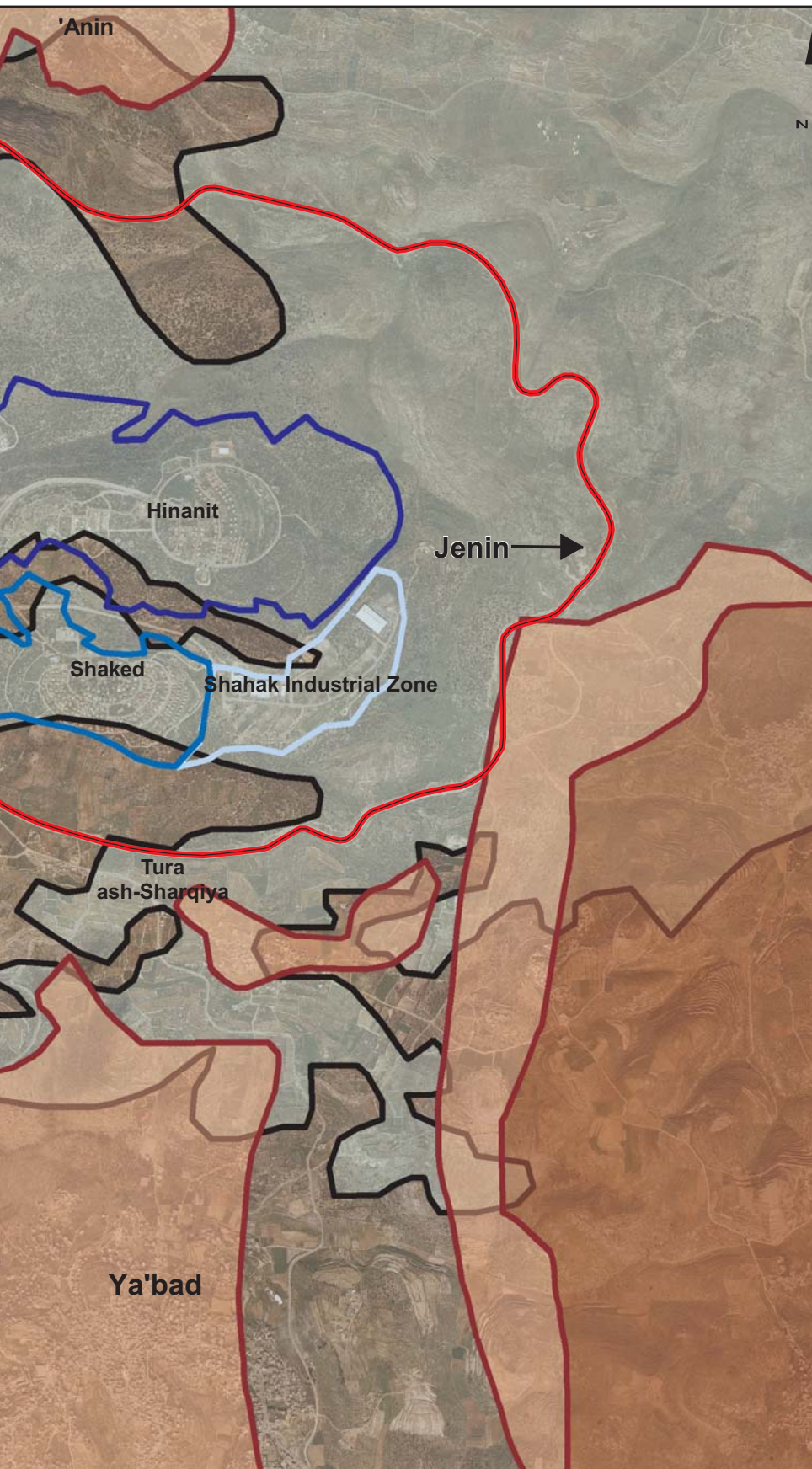


State land in the West Bank



Umm ar-Rihan, the forest reserve and the nearby Israeli settlements

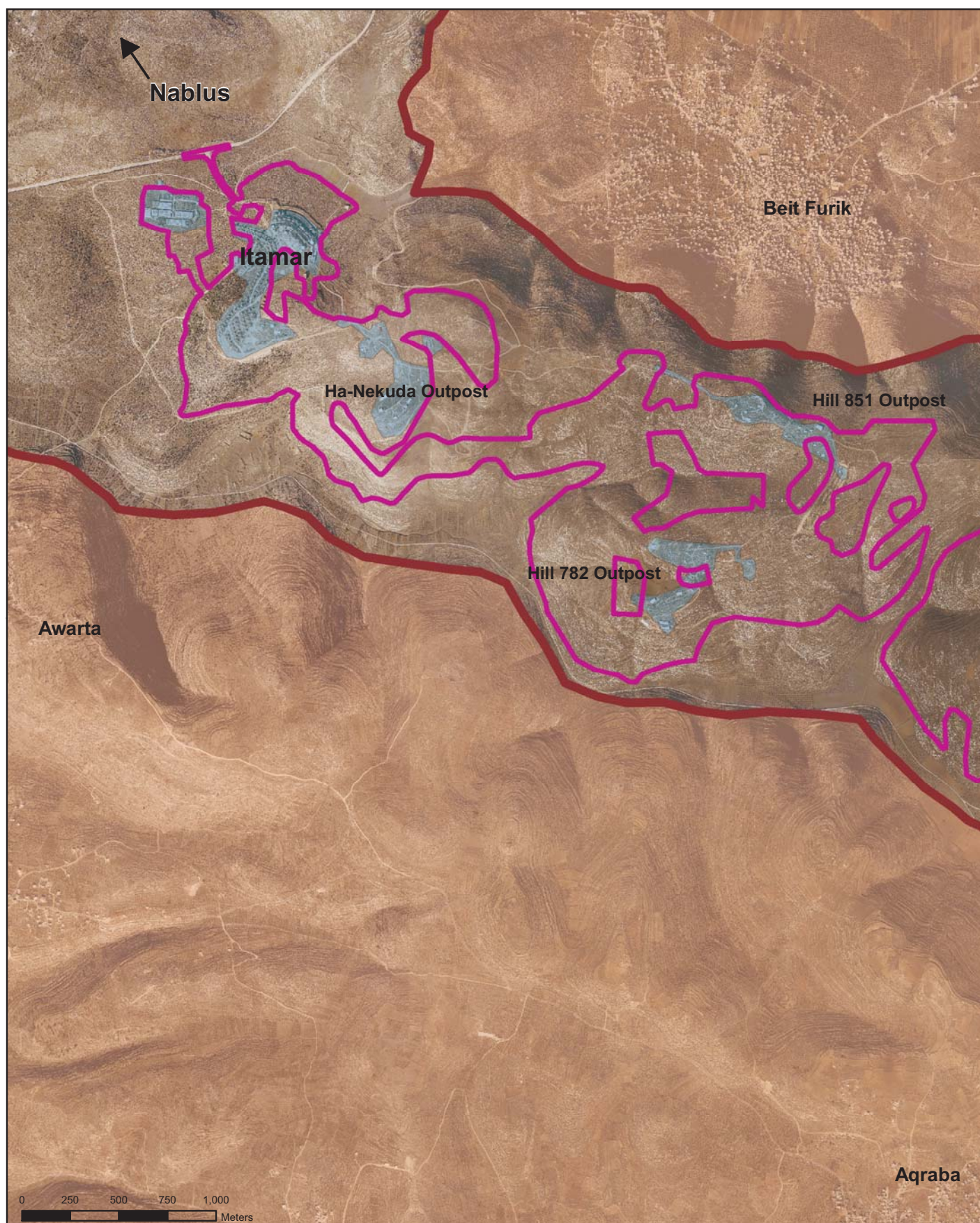


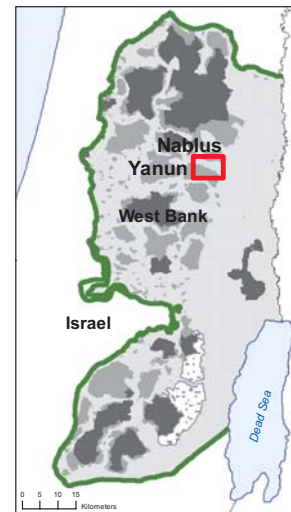
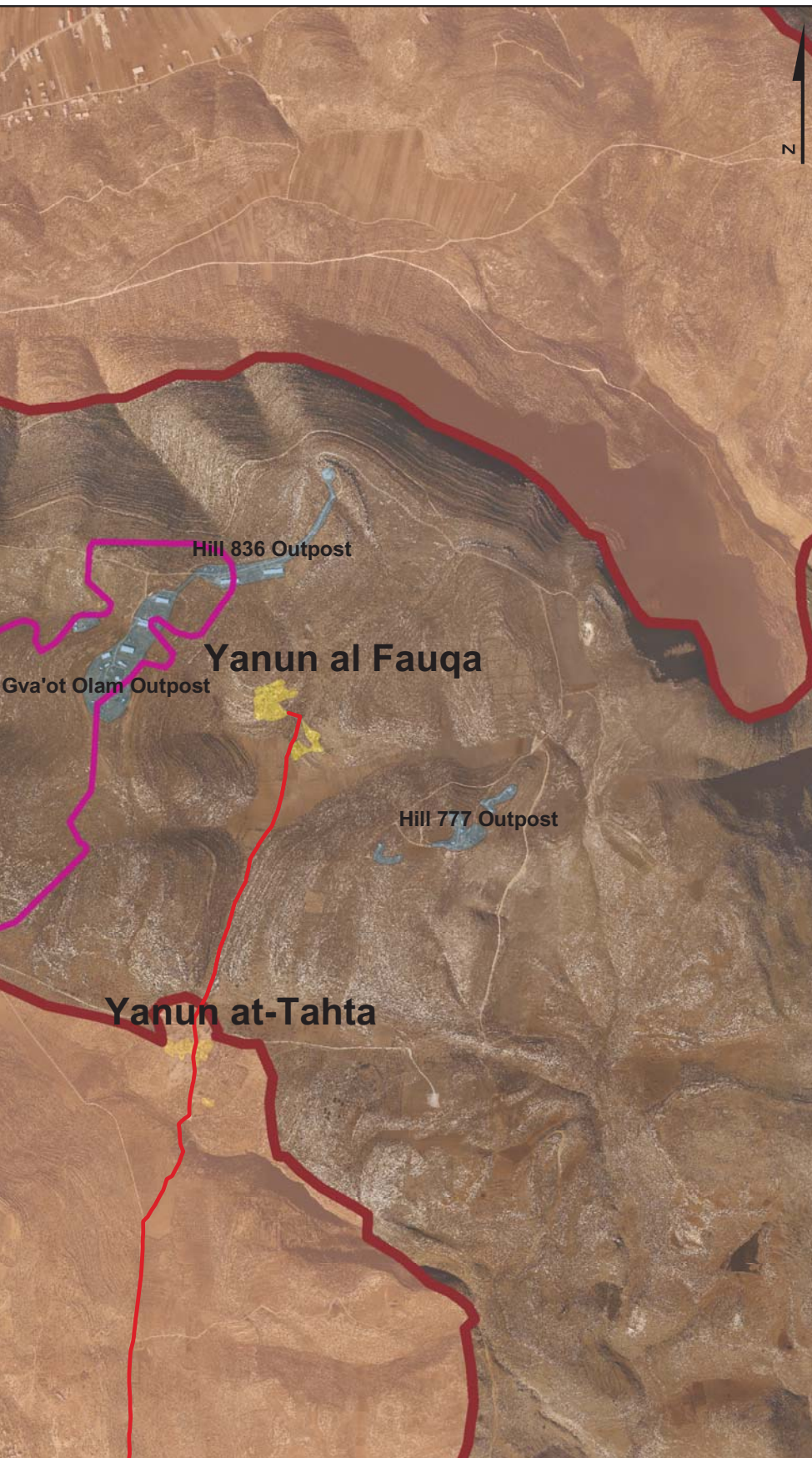






Legend

- The Green Line
 - The Separation Barrier
 - Area A
 - Area B
 - X Gate (Barrier)
 - Reihan Forest Nature Reserve
 - Nature Reserve in Plan S/15
- Plans (Settlements)*
- Plan 101
 - Plan 102/2
 - Plan 103/1
 - Plan 199/1

Yanun, the surrounding outposts and the access road from Aqraba





- Legend**
-  Area B
 -  Unapproved Plan (Itamar)
 -  Built-up area (Settlements and Outposts)
 -  Aqraba-Yanun Road

In reality, the maximum building opportunities according to the regional outline plans are often purely theoretical.²²¹ As explained above, the ability to use up all these building rights depends on the planning institutions' approval of land subdivision, without which only one residential building can be erected on each original plot. The regional outline plans in themselves thus enable only limited construction in the agricultural zone. But subject to the planning authorities' approving subdivision of the land (whether on the basis of a parcellation scheme or a detailed plan), the outline plans enable the development of a residential area that may meet the needs of a medium-sized village.

The orders in the regional outline plans concerning the division of land aimed to impose Western planning criteria on the socioeconomic fabric of the Palestinian village. The requirement to secure planning approval for each subdivision of land is contrary to the tradition and culture of rural Palestinian society, in which land is passed down from one generation to the next and, in many cases, inheritance involves the division of the plot between the heirs, without orderly registration and without the approval of the planning institutions.

In any case, the decision whether or not to permit **extensive** construction in the agricultural zone is **not** determined by the regional outline plans. The decision to approve the subdivision of land, which will enable construction of an entire neighborhood in the agricultural zone, is left to the discretion of the planning institutions. **In contrast to the extent of permitted construction, however, the plans do not grant the planning institutions discretion regarding the possibility to build in the agricultural zone. The erection of a single residential building on an original and un-subdivided plot is a vested right that cannot be denied by the planning institutions.**

In the past, this was the official position of the Israeli authorities in the West Bank. In response to the petition by the members of the teachers' association (see p. 56), the State submitted an affidavit signed by Shlomo Hayat, former director of the Planning Bureau, who stated that:

Since the re-establishment in 1971 of the Planning Bureau in the Judea and Samaria Area administered by the IDF, we saw no reason to make extreme changes to the working patterns that – to the best of our knowledge – had developed during the period of Jordanian rule: when a person sought to build a single building on his plot, and when no special planning impediments were found thereto, we did not take a strict approach and demand that he submit a full and detailed plan for the single house. Instead we made do with a detailed application for a building permit, on the basis of which we granted permits in accordance with the existing plans [the regional outline plans], without going to the lengths of clarifying whether the building was being constructed in the local village planning area according to the mandatory plan, or outside, in the regional planning area **(or even in an area zoned for agriculture in accordance with the regional plan – since this was the case with most areas outside the towns and villages)**. This was not the case when permits were requested for the establishment of entire neighborhoods... Here we always required... the submission, first and foremost, of a proper plan including proposed solutions for various planning problems: re-parcellation, the alignment of access and internal roads, infrastructure, allocation for public needs, the establishment of public buildings etc.²²²

²²¹ Section 13 of the ruling in CA 9355/02 *State of Israel v George Yusef Rashed*, which discusses possibilities for construction in the regional outline plan for the Galilee District.

²²² Affidavit of response dated 18 April 1980 in HCJ 145/80 *Al-Ta'unayah Jam'ayat Askan Al-Mu'alamun et al. v Minister of Defense et al.* Emphasis added. As noted above, to the best of our knowledge the Israeli authorities did not make any direct use of the regional outline plans for issuing building permits during the first decade of Israeli rule. However, the building orders in the plans were integrated in the internal guidelines subject to which the Israeli planning institutions provided such permits.

Construction in Development Areas

The regional outline plans marked development areas for hundreds of villages in existence at the time. The designation of development areas was by means of a diagrammatical circle with a fixed diameter of one kilometer and an area of approximately 78.5 hectares.

Since the approval of the plans in the 1940s, dozens of new villages were founded in the West Bank, some of which are home to hundreds and even thousands of residents. Since these villages did not exist at the time the plans were prepared, their authors did not designate development areas for them. Most of these new villages are situated on land zoned for agriculture in the regional outline plans, and their residents are now forced to confine themselves to the limited building rights permitted in the agricultural zone.²²³ According to Henry Kendall, who headed the mandatory planning system, each of the village development areas marked on the maps of the plans was intended for a maximum target population of 2,000. Kendall noted that in villages where the population exceeded this target, the establishment of new neighborhoods or villages would be required, and these would be constructed in additional development areas to be defined in lands designated as agricultural zone in the regional outline plans.²²⁴

In some cases the regional outline plans did not define development areas for villages already in existence during the mandate period. The plans did not mark diagrammatical circles for villages that were small at the time, but which subsequently expanded (for example, Umm ar-Rihan – see p. 92). Surprisingly, the plans also failed to mark development areas for a number of villages that were already medium-sized or large during the mandate period. Thus, Plan S/15 does not mark development areas for the villages of Beit Iba (470 residents in 1931) and Barta'a (692), although a diagrammatical circle was marked for much smaller villages – such as Juneid (69).²²⁵

The fact that the regional outline plans did not mark development areas for all of the villages that were in existence at the time of their preparation supports the conclusion that these plans were also intended to permit extensive construction outside the diagrammatical circles, viz. in the agricultural zone. It would be absurd to assume that the plans intended to erase from the map villages that were in existence at the time and for which no development areas were marked. The basic approach guiding the authors of the regional outline plans seems to have been that the planning solutions for some existing communities would be found within the framework of the construction permitted in the agricultural zone, and that there was no need to define development areas for these communities.

In any case, the designation of a development area for a given village in the regional outline plan does not necessarily grant immunity from the enforcement operations of the Civil Administration. The village of Yanun, for example, has a diagrammatical circle in Plan S/15, but this has not prevented the Civil Administration from issuing demolition orders and imposing strict restrictions on new construction and development there (see the case study of Yanun, p. 96).

Building Orders in Development Areas

The regional outline plans include partial provisions regarding construction allowed in the development areas. The orders are very similar to those applying in the agricultural zone. In the

²²³ HCJ 4154/91 **Azmi Dudin v Commander of IDF Forces in the West Bank Area**. The petition concerned the village of Abda, to the southwest of Hebron, for which no development area was marked by Plan RJ/5 since the village was not in existence at the time the plan was prepared. The village of Abda is now situated in Area A, where the Palestinian Authority is responsible for planning.

²²⁴ Henry Kendall, op. cit., note 195, pp. 19-20, as well as the plan between pp. 18 and 19. The comments were made in the context of Plan S/15, but they are also relevant to the other regional outline plans.

²²⁵ The population figures are taken from the census carried out by the mandate government in 1931. See E. Mills, *Census of Palestine, 1931*, Jerusalem, 1932.

development zone, all three plans permit the establishment of a single, two-storey principal building on each lot with a maximum coverage of 150 square meters (in Plans R/6 and RJ/5) to 180 square meters (in Plan S/15). The plans also permit the erection of an outbuilding with an area of 25-30 square meters.²²⁶ The minimum lot area is the same as in an agricultural zone (1,000 square meters), although within the built-up area of the village Plan S/15 also permits the erection of buildings on lots with a size of 500 square meters. Plans RJ/5 and R/6, the orders of which have survived only in part, do not specify building lines for the development areas. It is possible that provisions on this were included in the sections of the plans' orders that were lost over the years; it is also possible that the plans assumed that the building lines in development areas would be determined in detailed plans or subdivision schemes. In any case, Plan S/15 prescribes a building line for development areas (five meters); in the built-up area of the village, the plan permits a significant reduction in building lines (as far as a zero front building line).

Table 4: Building Orders in the By-laws for the Lydda, Samaria, Galilee, and Haifa Districts²²⁷

District	Minimum lot area	Minimum front width	Max. coverage of the principal building ²²⁸	Max. no. of floors ²²⁹	Max. floor area (principal building) ²³⁰	Building lines		
						Front	Rear	Side
Lydda	None	None	75% of the lot area or 150 sq.m., whichever is the lower	10 m (three floors)	450 sq.m	1 m	3 m	1.5 m
Samaria	None	None	50% of the lot area or 150 sq.m., whichever is the lower	9 m (two floors)	300 sq.m	4 m from mid-road	3 m	3 m
Galilee & Haifa	None	None	75% of the lot area or 150 sq.m., whichever is the lower	10 m (three floors)	450 sq.m.	1 m	3 m	2 m ²³¹

²²⁶ 25 square meters in Plans R/5 and RJ/6 and 30 square meters in Plan S/15.

²²⁷ Villages and Settlements (Regional Area) (Samaria) Building By-Laws, 1941, *The Palestine Gazette No. 1121 – Supplement No. 2*, 7 August 1941, pp. 1319-1320; Lydda District – Villages and Settlements (Regional Area) Building By-Laws, 1941, *The Palestine Gazette No. 1133 – Supplement No. 2*, 2 October 1941, pp. 1548-1550; Galilee District Villages and Settlements (Regional Area) Building By-Laws, 1942, *The Palestine Gazette No. 1165 – Supplement No. 2*, 29 January 1942, pp. 228-229; Villages and Settlements (Haifa Regional Area) Building By-Laws, 1942, *The Palestine Gazette No. 1177 – Supplement No. 2*, 19 March 1942, pp. 504-505.

²²⁸ In addition to the principal building, the by-laws also permit the erection of an outbuilding with an area of 25 square meters in all the districts.

²²⁹ The by-laws do not specify the number of floors, but only the height of the building in meters. However, the by-laws define a minimum internal height for habitable rooms (2.8 m in the by-laws for the Haifa District and 3 meters in the remaining districts). The permitted number of floors in the table was calculated by dividing the maximum height by three, allowing for the thickness of the ceiling.

²³⁰ The figure for maximum floor area does not appear in the regulations themselves. We calculated this figure by multiplying the coverage by the permitted number of floors.

²³¹ In the by-law for the Haifa District, the building lines are: 4 m from the center of the adjacent road; rear – 3 m; side – 1.5 m.

All the regional outline plans encourage detailed planning for the development areas. Indeed Plans RJ/5 and R/6 require, by way of a general guideline, construction in these areas to be in accordance with detailed plans. Even in the absence of such plans, however, Plans RJ/5 and R/6 permit construction in the development areas in accordance with the valid regulations (by-laws). The mandate authorities appear to have enacted such regulations for each of the six administrative districts in Palestine, although during the research for this report we were only able to locate the by-laws for the Lydda, Samaria, Galilee, and Haifa districts. Since detailed plans were only approved for a small number of villages in the West Bank during the mandate period, it would seem that construction in the development zone of most Palestinian villages in the area took place in accordance with these planning regulations.

The principal orders included in the planning by-laws, which were published in the official gazette of the mandate government, are detailed in Table 4. To the best of our knowledge, the mandatory planning regulations for the Samaria and Lydda districts are still valid in the West Bank, since they were not annulled during the period of Jordanian rule or under Israeli rule.²³² Nevertheless, the Civil Administration does not apply these regulations and may even be unaware of their existence.

As mentioned above, one of the goals of the regional outline plans was to reduce the level of housing densities in the Palestinian villages. According to Lapidoth, “the implications of these orders for the villages themselves were negative, since the structure of the built-up area – based on the agglomerated model – is the product of the social and extended family tradition. The limited expansion of the built-up area reflects a desire to preserve agricultural land, as well as the division of land into numerous sub-lots, since land is handed down through inheritance. Thus it turns out that the planning orders regarding construction in these villages are infeasible.”²³³

The tension between the planning aspiration to shape the Palestinian villages according to the European model, which rejected agglomerated building, and the traditional patterns of construction among the villagers, led to the creation of a mechanism for evading the rules and enabling continued dense construction in the development areas. The planning regulations applied in the rural development areas through the regional outline plans themselves became a major evasion tool. As Table 4 shows, these regulations permitted a far higher density of construction than was possible under the regional outline plans themselves. By applying the regulations to the rural development areas, the plans sidestepped their own restrictions, since the mandatory planners themselves recognized that it was impossible to effect the prohibition of dense construction in the development areas of Palestinian villages.

A Building on a Lot of Just 60 Square Meters

An application for a building permit submitted in 1945 by a resident of the village of Anabta in the Samaria District provides a dramatic illustration of how the mandate authorities effectuated the planning regulations.²³⁴ The application concerns a lot with an area of just 60 square meters (the original Plan S/15, which applied in the area at the time, specified a minimum lot area of 1,000 square meters in the development zone). The applicant asked for a permit to establish a shop with an area

²³² Article 68(1) of the Jordanian Planning Law, which applied in the area, states that all regulations prepared and approved in accordance with the previous planning laws shall be considered valid.

²³³ Avraham Lapidoth, op. cit., note 178, p. 38.

²³⁴ According to Lapidoth, a detailed plan had been prepared for the village of Anabta (see note 194 above). As noted, we were unable to locate such a plan, and the correspondence concerning the shop in Anabta supports the assumption that, at the time, the only plan applying to the land of the village was Plan S/15; the Town Planning Superintendent does not mention any detailed plan in his letter.

of about 30 square meters on the lot. After the Local Committee rejected the application, an appeal was submitted to the District Committee. In January 1946 the Town Planning Superintendent in the Office of the Town Planning Adviser in Jerusalem wrote that, in accordance with the planning by-laws applying in the Samaria District, “a house of an area of 30 square meters could be built on a 60 square meters plot” (i.e. coverage of 50 percent, as indeed determined in the by-laws). Accordingly, the Town Planning Superintendent added, if the Local Committee wishes to prevent the construction of the shop, it must prepare a detailed plan to this effect. The Town Planning Superintendent noted that in the absence of a detailed plan, and since the sole plan applying to the land is Plan S/15, “I am of the opinion that we have no legal standing to refuse the petitioner’s application as long as he conforms to the building by-laws in force.”²³⁵

The regional outline plans show constant tension between the aspiration to embrace large areas and establish planning principles on the district level, and the desire to enable building permits to be issued on the basis of the plans alone. The inclusion of detailed instructions in the plans’ orders suggests that their authors saw them not only as a guiding document for detailed local planning, but also as a practical tool for issuing building permits. The fact that the mandatory authorities did not prepare detailed plans for most of the villages in the West Bank further supports the conclusion that the regional outline plans were intended, among other functions, to serve as a tool for issuing building permits without the need for additional plans.

This conclusion applies not only to the rural development areas but also to the extensive areas designated as agricultural zone in the plans. The plans enable extensive construction for diverse needs in these areas. Naturally, they also include restrictions and conditions concerning construction in the agricultural zone. Building control in the agricultural zone was achieved mainly through the condition that any land subdivision requires the approval of the planning institutions.

The authority of the planning institutions to prevent or approve parcellation fits well with the basic approach of the mandatory planners, who recognized that the growing rural population would require new neighborhoods and even new villages in the agricultural zone. While private construction on a limited scale in the agricultural zone is a vested right in the regional outline plans, the development of new neighborhoods or villages is possible only subject to the planning institutions’ approval of land subdivision, requiring additional planning consideration.

Part Two: The Implementation of the Plans by the Civil Administration

Although the regional outline plans enable building for diverse uses in the extensive areas to which they apply, the Civil Administration does not usually issue building permits on the basis of the plans. Rather, it uses them almost exclusively for the purpose of issuing demolition orders against buildings constructed by Palestinians without a permit.

²³⁵ Letter No. SP/3, dated 26 January 1946, from the Town Planning Superintendent in the Office of the Town Planning Adviser, Jerusalem.

The enforcement procedures launched by the planning institutions in the Civil Administration follow a regular pattern. After the Civil Administration inspectors identify a new building or extension built by Palestinians without a permit, they serve the owner of the building with an order to stop work. The owner may then apply to the Inspection Subcommittee for a building permit. If no application is submitted, the subcommittee issues a final demolition order that cannot be appealed. If the owner applies for a permit, the Inspection Subcommittee deliberates on it and, in almost all cases, rejects the application on the grounds that it contravenes one of the orders of the relevant regional outline plan. After the hearing the subcommittee issues a demolition order, which the owner may appeal to the Local Planning Subcommittee. In every case of which we are aware, the appeal is rejected and a final demolition order is issued against the building. An appeal against the final demolition order may be submitted to the HCJ.

An examination of a random sample of dozens of demolition orders issued in recent years shows that the most frequent grounds given for rejecting the applications for building permits include the construction of more than one building on an original plot; the division of land without an approved subdivision scheme; building area in excess of that permitted in the regional outline plans; deviation from prescribed building lines; and property issues (failure to prove ownership of the land). In most cases an application is rejected for several reasons together (for example – deviation from building lines and division of land without a parcellation scheme), rather than for a single reason (see an example on p. 81).

The grounds stated for the rejection of the applications for building permits reflect the combination of two trends in the Civil Administration's implementation of the regional outline plans. The first is a harsh and mistaken interpretation of these plans; the second is a persistent refusal to grant relaxations and a general refusal to exercise the flexibility orders included in the plans themselves.

Harsh and Mistaken Interpretation

Building Area in Excess of the Permitted Maximum

Applications for building permits submitted by Palestinians are often rejected on the grounds that the building has an area that exceeds that permitted in accordance with the regional outline plans. In 2005, for example, the Civil Administration issued a demolition order against a residential building in the village of Qarawat Bani Hassan to the southeast of Qalqiliya. One of the grounds stated for the rejection of the application was that the area of the building (300 square meters on two floors – approximately 150 square meters on each floor) is greater than the permitted building area in accordance with Plan S/15.²³⁶

In another case, the Inspection Subcommittee issued a demolition order against a residential building in the village of Beit Iksa on the grounds that that area of the building (311 square meters) was greater than permitted in accordance with Plan RJ/5. During the hearing, the owner's attorney claimed that "in accordance with my interpretation of Plan RJ/5, 150 meters may be built on each floor, and two floors may be built." Accordingly, the attorney added, the building for which a permit was requested had an excess building area of just 11 square meters, which could be approved by relaxation. The committee rejected this argument, laconically stating that "[the attorney's] argument were (sic) based entirely on his interpretation of outline plan RJ/5 which is completely contrary to the wording of the orders of the said plan."²³⁷

²³⁶ Minutes No. 1/05 of the Local Planning Subcommittee dated 6 January 2005 (file T 117/04)

²³⁷ Minutes No. 51/04 of the Inspection Subcommittee dated 16 December 2004 (file R 207/04)..

Plan S/15 permits a maximum building area of 180 square meters for a residential building, while Plans RJ/5 and R/6 permit a maximum area of 150 square meters. According to the Civil Administration's interpretation, the term "building area" in the regional outline plans refers to the maximum permitted floor area. This aspect raises one of the most important questions relating to the interpretation of the plans: does the term indeed refer to the floor area, as the Civil Administration argues, or does it refer to the coverage? According to the former interpretation, the maximum building area in the plans refers to the total floor area of all the floors in the building. Accordingly, in the case of a two-storey building with floors of equal size, the maximum floor area on each storey will be just 75-90 square meters. According to the latter interpretation, the maximum permitted floor area is twice the "building area" established in the plans, i.e. 150-180 square meters on each floor, or a total of 300-360 square meters for a two-storey building.²³⁸

Plan S/15 defines the term "maximum building area" as "maximum percentage of plot which may be built upon."²³⁹ The literal wording of this definition supports the second interpretation – that the reference is to the coverage – rather than that of the Civil Administration, that the reference is to the floor area.

The orders of Plans RJ/5 and R/6 do not specifically define the term "building area." Both plans refer to the zoning table, which presumably included precise building provisions analogous to those in Plan S/15. However, our research showed that this table has since been lost. In the absence of the full orders of Plans RJ/5 and R/6, other documents from the mandate period should be examined to determine the correct interpretation of the term "building area" as used in the plans. These documents include other outline plans from the same period; detailed plans prepared for Palestinian villages pursuant to the regional outline plans and their orders; and building permits issued by the mandate authorities.

Outline plans: during the mandate period, outline plans were prepared for all the cities in existence in the West Bank at the time. All these plans – including the outline plan for Beit Jala deposited in 1946²⁴⁰ and approved in 1948,²⁴¹ the outline plan for Tulkarm,²⁴² and the outline plan for Bethlehem²⁴³ – define the term "permissible building area" as "the maximum percentage of plot which may be built upon," just as in Plan S/15. The outline town plans did not apply in the regional planning areas, but they support the second interpretation, suggesting that in the regional plans, too, the term "building area" refers to the coverage and not the floor area.

Detailed plans: as noted above, detailed plans were prepared for three villages in the West Bank during the mandate period. It is worth repeating that, according to the approach that guided the mandate planners, the purpose of a detailed plan is to implement in practice the orders of the outline plan, to translate the latter into practical terms, and not to deviate from them significantly. Accordingly, the detailed plans approved by the mandate authorities for the three Palestinian villages are the application of the orders in the regional outline plans, which applied in these villages .

In 1946, a detailed plan was approved for the village of Shu'afat **in accordance with Regional Outline Plan RJ/5**. The detailed plan defines the term "permissible building area" as "the maximum

²³⁸ Anthony Coon, op. cit., note 9, p. 78.

²³⁹ Zoning table in Plan S/15.

²⁴⁰ *The Palestine Gazette No. 1435 – Supplement No. 2*, 30 August 1945, pp. 939-952.

²⁴¹ *The Palestine Gazette No. 1645 – Supplement No. 2*, 5 February 1948, pp. 138-139.

²⁴² Tulkarm Outline Town Planning Scheme, 1945. *The Palestine Gazette No. 1430 – Supplement No. 2*, 9 August 1945, pp. 868-880.

²⁴³ Bethlehem Outline Town Planning Scheme, 1944. *The Palestine Gazette No. 1439 – Supplement No. 2*, 13 September 1945, pp. 1005-1018.

percentage of plot which may be built upon.”²⁴⁴ The same definition also appears in the mandatory detailed plans for the villages of Rafidiya²⁴⁵ and Salfit,²⁴⁶ which were prepared and approved in accordance with the original Plan S/15 (which has orders identical to those in Plan RJ/5 and almost identical to those in Plan R/6).²⁴⁷ Since all these detailed plans were prepared in accordance with and subject to the regional outline plans, the unavoidable conclusion is that the term “building area” in Plans RJ/5 and R/6 refers to the coverage and not to the floor area.

Building permits: a further way to examine the precise meaning of the term “building area” is through a review of building permits issued during the mandate period. Regrettably, the dozens of building permits we located that were issued on the basis of Plan RJ/5 (see the appendix at the end of this chapter, p. 99) lack sufficient detail to determine whether the buildings have one or two floors, and accordingly cannot provide a clear answer on the authoritative interpretation of the term “building area” as used in the regional outline plans. By contrast, building files from the mandate period that have been preserved in the Jerusalem municipal archives provide a rare glimpse into the interpretation of the term “building area” as applied by the mandatory planning institutions themselves.

In 1944, the mandate authorities approved an outline plan for the city of Jerusalem (“the Kendall Plan.”) Once again, this plan defines the term “permissible building area” as “the maximum percentage of plot which may be built upon.”²⁴⁸ The Kendall Plan includes eight zones (in addition to roads), six of which are residential. The different residential zones vary in terms of the permissible building area and other building provisions. In all residential zones the plan permits buildings with 2.5 stories (a full ground floor, one full floor above the ground floor, and a half floor below ground level or on the roof of the building).²⁴⁹

In 1946, the Jerusalem Local Committee of the mandatory authorities issued a permit for a residential building in the Abu Tor neighborhood. The Local Committee approved the erection of a building with two full floors, and a half floor on the roof, on the lot that has an area of 914 square meters and is zoned as an residential E in the Kendal Plan (maximum building area – 25 percent). The floor area on the ground floor as approved in the building permit is 228.36 square meters, and the area of the first floor is also 228.36 square meters – i.e. 25 percent of the lot area on **each** floor. The committee also approved the construction of a half floor on the roof with a floor area of 117.59 square meters (12.5 percent of the area of the lot), as well as a basement with an area of 99 square meters that was not included in the calculation of building areas. The total approved floor area of the building was therefore 574.31 square meters (excluding the basement) – 62.5 percent of the area of the lot.²⁵⁰

According to the Civil Administration’s interpretation of the term “building area” in the regional outline plans (and, as will be recalled, the definition of the term in the Kendall Plan is identical to

²⁴⁴ Shu’fat Village Detailed Planning Scheme No. RJ/21. *The Palestine Gazette No. 1479 – Supplement No. 2*, 28 February 1946, pp. 376-383. Notice concerning the final approval of the plan was published on 8 August 1946.

²⁴⁵ Detailed Town Planning Scheme No. SR/37 – Rafidiya Village. *The Palestine Gazette No. 1481 – Supplement No. 2*, 14 March 1946, pp. 443-450. Notice concerning the final approval of the plan was published on 5 December 1946.

²⁴⁶ Detailed Town Planning Scheme No. SR/36, Salfit Village. *The Palestine Gazette No. 1425 – Supplement No. 2*, 19 July 1945, pp. 781-788. Notice concerning the final approval of the plan was published on 4 April 1946.

²⁴⁷ The only difference between the orders of the original Plan S/15 and those of the valid version of Plan R/6 is that the plan for the Samaria District requires a minimum front width of 40 meters in the agricultural zone, whereas Plan RJ/6 requires a minimum front width of just 25 meters.

²⁴⁸ Zoning Table in the Kendall Plan.

²⁴⁹ The full orders of the Jerusalem outline plan from 1944 are included in Henry Kendall’s book about planning in the city during the mandate: Henry Kendall, *Jerusalem: The City Plan – Preservation and Development during the British Mandate 1918-1948*, London: His Majesty’s Stationery Office, 1948, pp. 107-121.

²⁵⁰ Building File No. 350 in the Jerusalem Municipal Archives. The permit relates to parcel 37 in block 18.

that in the regional outline plans), the total maximum permissible floor area in this case would be just 228 square meters (25 percent of the lot area). Yet as we have seen, the mandatory Jerusalem Local Planning Committee approved a floor area 2.5 times this size without granting any relaxation. The reason is simple: the authoritative interpretation of the mandatory planning authorities argued that the term “building area” refers to the coverage, rather than the floor area. Since the Kendall Plan enables the construction of residential buildings of 2.5 stories, the maximum permissible floor area is two and half times the building area as defined in the plan.

A review of other permits issued pursuant to the Kendall Plan leads to the same conclusion. In 1947, the mandatory Jerusalem Local Committee issued a building permit for a residential building in the Talbiye neighborhood. The committee approved a building with 2.5 stories and a total floor area of 565 square meters (approximately 69 percent of the lot area) on a lot with an area of 815 square meters zoned as a residential D (maximum building area – 25 percent);²⁵¹ in addition, the committee approved a basement floor with an area of 142.23 square meters that was not included in the calculation of the permissible building areas.²⁵²

In another case, the Local Committee refused to issue a permit for a one floor extension to an existing building in the Rehavia neighborhood on the grounds that the application included building areas in excess of the permissible limit in accordance with the Kendall Plan. The committee noted that the existing building included 2.5 stories; accordingly, the requested additional floor was beyond the maximum. The committee added that in accordance with the plan orders, “the aggregate [permissible] floor area” is “2½ times the built-up area.”²⁵³ This decision by the Local Committee, which was later approved by the District Committee, demonstrates the meaning of the term “building area” during the mandate period in the simplest and most accurate manner: the term refers to the coverage, and not to the floor area, which is the product of multiplying the building area (as coverage) by the permissible number of floors.

Accordingly, the permissible **floor area** in Plans RJ/5 and R/6 is 300 square meters (150 square meters coverage multiplied by two floors), and in Plan S/15 – 360 square meters (180 square meters coverage multiplied by two floors).²⁵⁴ **The harsh and mistaken interpretation adopted by the Civil Administration reduces the permissible floor area in accordance with the regional outline plans by up to one half, thus denying many Palestinians in Area C vested building rights .**

Failure to Prove Ownership

Many applications for building permits submitted by Palestinians are rejected on the grounds that the applicant has failed to prove his ownership of the land. We should recall that approximately 70 percent of the land in the West Bank is not registered with the Lands Registrar. In 1967, Israel suspended the land settlements with which the government had initiated the registration of land (see

²⁵¹ In this case a relaxation was approved since, in accordance with the Kendall Plan itself, the maximum permissible floor area for the building was only 510 square meters.

²⁵² Building File No. 482 in the Jerusalem Municipal Archives. The permit relates to parcel 19 in block 26. In another case, the mandatory planning committee approved the erection of a factory in a lot zoned for industry in the Kendall Plan (maximum permissible building area – 75 percent, three floors) in 1946. The permit documents note that since the lot has an area of 1,699 square meters, the permissible building area is approximately 1,274 square meters (75 percent of the lot area). The permit authorized the establishment of an industrial building of three floors with a total floor area of 3,108 square meters, as well as a basement with an area of 132 square meters. In this case the permissible building rights (75 percent of the cover area multiplied by three floors) were not used in full. However, the interpretation of the mandatory planning institutions again proves that the term “building area” refers to the coverage, and not the total floor area. Building File No. 315 in the Jerusalem Municipal Archives, parcels 160-164 in block 30160.

²⁵³ Building File No. 3925 in the Jerusalem Municipal Archives, parcels 31-32 in block 25.

²⁵⁴ As noted, the figure for the maximum floor area as presented in this section is based on a minimal interpretation, since the mandatory planning regulations permitted additional construction in areas with sloping topography. See note 211 above.

Chapter Two). Accordingly, most of the land in the West Bank is registered only in property tax ledgers, where it appears under the name of the original landowner during the period of Jordanian rule. When the landowner died, his heirs become the joint owners of the plot since, as a general rule, the Civil Administration refuses to authorize the division of land, including division among heirs.²⁵⁵ In most cases, the heirs do not even request amendment of the property tax records, but confine themselves to the physical division of the land among themselves.

If one of the heirs submits an application for a building permit, the application is rejected on the grounds that the applicant is only one of the owners of the plot.²⁵⁶ For example, an application submitted by a resident of Bil'in for a permit for an agricultural outbuilding was rejected, partly on the grounds that the plot was owned jointly by 23 heirs, only nine of whom signed the application. Although the remaining heirs do not live in the West Bank and have not visited the area for some 15 years, the Inspection Subcommittee ruled that the applicant had proved only "partial ownership" of the land and, accordingly, was not entitled to a building permit.²⁵⁷

Before issuing a building permit, the planning institutions must confirm that the applicant has rights to the land.²⁵⁸ However, the demands imposed on Palestinians by the Civil Administration go beyond those required in law and in the regional outline plans themselves. The plans define the term "owner" broadly, including not only the registered owner of the land, but also a person who received rent for the land, or would have been entitled to receive rent had the land been let.²⁵⁹ The Jordanian Planning Law, on the basis of which the Civil Administration's planning institutions were appointed, also includes a broad definition of the term "owner":

"The owner" – concerning any building or land – the registered owner, the known owner, any **partner in ownership**, the officer of a trust, the lessee according to a lease contract that is registered in the Office of the Lands Registrar; and, if the owner is absent or he or his address cannot be located – the owner shall be considered the person who receives the lease fees, income, or rent from the building or land, or who would receive the lease fees or income were they let... Furthermore, a person in possession of a building permit or any other permit issued in accordance with this law regarding the building or the land shall be considered the owner.²⁶⁰

The decision to reject an application for a building permit on the grounds that it was not signed by some of the heirs is therefore inconsistent with the provisions of the law and of the plans themselves. It should be emphasized that the building permits issued by the Civil Administration in the past stated that the permit does not testify to ownership and does not constitute proof of ownership. Accordingly, if the applicant has proved rights in the land, even if these are partial, there is no legal obstacle to issuing a building permit.

²⁵⁵ Anthony Coon, *op. cit.*, note 9, p. 117.

²⁵⁶ For example: The decision by the Inspection Subcommittee on 15 July 2004 to reject an application for a permit in Qarawat Bani Hassan to the southeast of Qalqiliya, which was based in part on the grounds that the applicant had proved only partial ownership of the land (File T 81/04); the decision by the Inspection Subcommittee dated 5 January 2006 to reject an application for a permit in As-Sawiya to the south of Nablus; the decision by the Inspection Subcommittee dated 11 May 2006 to reject an application for a permit in Khirbet ad-Deir to the south of Bethlehem (File B 32/06).

²⁵⁷ Minutes of the Inspection Subcommittee No. 8/06 dated 16 February 2006 (File R 169/05).

²⁵⁸ HCJ 5194/03 **Kobi Grossman et al. v Minister of Defense et al.**

²⁵⁹ Section 2 of the orders of Plans RJ/5 and R/6; the term "Owner" in the definitions section in Plan S/15.

²⁶⁰ Article 2(26) of the Jordanian Planning Law. Emphasis added.

Refusal to Approve Relaxations

Granting relaxations on a plan is common in Israel, where the planning committees routinely grant relaxations relating to building lines, the number of floors, etc. The older the plan, the greater the need for relaxation of its orders, since over time accepted standards in the construction market have changed and new demands have arisen that did not exist at the time the plans were approved.²⁶¹ This is particularly true in the case of the regional outline plans, which were approved over 60 years ago.

Nevertheless, the Civil Administration's planning institutions have systematically rejected applications including relaxations of the orders specified in the mandatory plans. In 2007, for example, the Local Planning Subcommittee rejected an application from a resident of Susiya for a permit for an agricultural building on the grounds that the front width of the lot on which the building was established is 37.8 meters, whereas in accordance with Plan RJ/5, which applies in the area, the minimum front width required is 40 meters.²⁶² It is unreasonable to reject an application for a permit and issue a demolition order on the basis of such a minor deviation. The Local Planning Committee has the status of a District Committee and in accordance with the Jordanian Planning Law that applies in the area, it is entitled to approve a relaxation of 10 percent. In the above case, the relaxation requested was just 5.5 percent, yet the committee refused to approve it and so the building's fate was sealed.²⁶³

Similarly, in 2005 the Inspection Subcommittee rejected an application for a building permit in the village of As-Sawiya, in part on the grounds that the building line of the existing house is 7.5 meters, instead of 10 meters as required in Plan S/15.²⁶⁴ This is not an unusual example; the Civil Administration routinely rejects requests for building permits due to deviations in the building lines.²⁶⁵ In the agricultural zone, plan S/15 indeed establishes a building line of 10 meters, but the plan adds that "where the Local Commission is of the opinion that the size and shape of any plot are such as to justify a relaxation of the setbacks [building lines] of a house on such plot, the Local Commission may grant such relaxation."²⁶⁶ Moreover, the plan establishes that "the District Commission shall have power to grant a relaxation of any restriction imposed by this scheme," provided that the effects of the relaxation on the owners of neighboring properties are taken into consideration.²⁶⁷ In light of these provisions, which constitute an integral part of plan S/15, it is evident that the planning institutions in the Civil Administration have the legal discretion to issue building permits in the area covered by Plan S/15 even if the building lines are less than 10 meters.

²⁶¹ The law in Israel prohibits the planning committee from approving additional principal building areas beyond the maximum established in the outline plans and detailed plans. However, as an exception the law adds that in the case of plans deposited before August 1989, the planning committee may permit, through a relaxation procedure, the addition of up to 16 percent (of the lot area) in the building areas. Article 151(B) of the Planning and Building Law, 1965; section 9 of the Planning and Building Regulations (Considerable Deviation from a Plan), 2002/

²⁶² Minutes of the Local Planning Committee No. 1/07 dated 9 January 2007, Application No. H/01 (Susiya).

²⁶³ It is actually doubtful whether any relaxation was required in this case. Section 27 of the orders of Plan RJ/5 requires a minimum front width of 40 meters only in a lot on which a residential or industrial building is established. In the case of an agricultural building, the plan does not establish a minimum front width.

²⁶⁴ Decision of the Inspection subcommittee dated 22 December 2005 in File S 52/05.

²⁶⁵ For example, see the decision of the Inspection Subcommittee dated 18 December 2003 in File T 31/03 (Mas-ha); the decision of the Inspection Subcommittee dated 18 October 2004 in File 157/04 (Qarawat Bani Hassan); and the decision of the Inspection Subcommittee dated 2 February 2006 in File S 114/05 (Qaryut).

²⁶⁶ Section 24 of the orders of the plan. Similarly, section 8 of the orders of Plans RJ/5 and R/6 enable the Local Committee to grant a relaxation in the front building line in the agricultural zone.

²⁶⁷ Section 33 of the plan.

The refusal to permit smaller building lines is therefore not attributable to the plan itself, but rather to an attempt to justify the rejection of the permit application and the demolition of the buildings.²⁶⁸

The refusal in principle to approve relaxations of the orders of the mandatory plans, and the failure to apply the flexibility provisions included in the plans, are arbitrary and unacceptable.

While the Civil Administration planning institutions are certainly not obliged to grant relaxations in every case, they must exercise due discretion and approve relaxations in cases when they are warranted in planning terms. Extensive use of the regulatory tool of relaxations could prevent many cases of house demolitions.

Refusal to Permit Land Subdivision

In many cases, the Civil Administration rejects applications for building permits on the grounds that the plot on which the building was established was divided into several lots without an approved parcellation scheme. In many other cases, the application for a building permit is rejected on the grounds that a building already exists on the plot, in addition to the building for which approval is requested.²⁶⁹

All the regional outline plans prohibit the division of land unless this is done in accordance with an approved parcellation scheme or detailed plan, and prohibit the erection of more than one principal building in an original plot. These two issues are interrelated, since as noted above many of the original plots in the West Bank cover several hectares or even several dozen hectares. When several buildings are constructed on an original plot, its division into several lots (in accordance with the orders concerning minimum lot size in the regional outline plans) may enable the legalization of these buildings. In these cases, the request for a building permit is rejected on the grounds that several buildings exist on the plot; the true reason for the rejection, however, is the refusal in principle to permit any land subdivision.

To the best of our knowledge, Palestinians in Area C rarely submit subdivision applications for the purposes of registration. When a landowner whose name appears in the property tax ledgers dies, his heirs often divide the plot by physical means (such as the construction of stone walls) but do not register the subdivision with the Lands Registrar or in the property tax documents.

The reasons for this are complex, but certainly include the high cost of registering land with the Lands Registrar. Moreover, many families in the area have relatives who the Israeli authorities define as “absentees,” since they were not present in the West Bank at the time of its occupation in 1967. A military order requires the property of absentees to be managed by the Custodian of Government and Absentee Property in the Civil Administration.²⁷⁰ As a result, if one of the heirs of land is an absentee, an application to divide the land for the purposes of registration may mean that the absentee’s relative portion of the land will be transferred to the management of

²⁶⁸ The plans include additional flexibility orders: In the development area, section 27 of the orders of Plans RJ/5 and R/6 allows the District Committee to permit construction in a lot that is smaller than the minimum (1,000 square meters) required in the plan. Section 31 permits the District Committee to approve the construction of public and industrial buildings that are higher than permitted in the plan. Plan S/15 states that only a single residential building can be built on a lot, but allows the District Committee to permit the erection of several buildings if these are for agricultural or “similar” needs (section 14). With the authorization of the District Committee the plan empowers the Local Committee to permit construction on a plot smaller than the minimum size (section 17).

²⁶⁹ For example, see the decision of the Inspection Subcommittee dated 15 July 2004 to reject an application for a building permit in Jayyus (File T 68/04); the decision of the Local Planning Subcommittee dated 13 January 2005 to reject an application for a building permit in Deir Ballut (File T 167/04); and the decision of the Inspection Committee dated 19 May 2005 to reject an application for a building permit on Bethlehem lands (File B 79/04).

²⁷⁰ Order Concerning Abandoned Properties (Private Property) (Judea and Samaria) (No. 58), 1967.

the Custodian. The order permits the Custodian to let and even to sell abandoned properties. It seems that their concern that part of the land will be transferred to the Israeli Civil Administration constitutes an important consideration in Palestinian residents' decision not to submit subdivision applications to the planning institutions. In most of the cases of which we are aware, the subdivision applications were submitted as a last resort, as part of detailed local plans intended to secure approval for buildings that were the subject of demolition orders. In all these cases, the planning institutions of the Civil Administration rejected the detailed local plans, which were essentially parcellation schemes.²⁷¹

As discussed above, the fact that the regional outline plans require the approval of the planning institutions for land subdivision is intended to control construction, particularly in the agricultural zone, and to prevent a situation where an entire residential neighborhood might be built without proper allocations for public buildings, open areas, and roads. These provisions in the regional outline plans should be implemented flexibly and with attention to the particular circumstances of each application. The current situation, in which subdivision applications are only approved in rare cases, if at all,²⁷² is unacceptable.

The Plot Was Not Divided, Construction Was Prohibited

In February 2006, residents of Bil'in erected an agricultural outbuilding with an area of 16 square meters on an agricultural plot belonging to Suleiman Yassin, a resident of the village. The next day Mr. Yassin was served with an order to stop work. After submitting an application for a building permit to the Civil Administration, the Inspection Subcommittee rejected the application and issued a demolition order against the building.

Unlike many other cases, there was no additional building on Mr. Yassin's plot, which had never been divided into secondary lots, and the building area and building lines of the building did not deviate from the permitted limits in accordance with Regional Outline Plan R/6, which applies in the area. Nevertheless, the Inspection Subcommittee ruled that the building was illegal since the plot on which it was built was not included in a parcellation scheme.²⁷³ The Local Planning Subcommittee approved this approach by the Inspection Subcommittee, rejecting an appeal submitted against the decision not to grant a permit for the building.²⁷⁴

The current position of the planning institutions in the Civil Administration is, therefore, that that construction in accordance with the regional outline plans is possible only in a plot included in

²⁷¹ For example, see the detailed plan submitted in an attempt to legalize a building established without a permit in the village of Mas-ha, minutes of the Local Planning Subcommittee No. 9/03 dated 8 June 2003, File 1263/10/03 (the plan was rejected); the detailed plan submitted in order to legalize a building erected without a permit in the village of Qarawat Bani Hassan, minutes of the Local Planning Subcommittee No. 1/05 dated 6 January 2005, File 1280/26/04 (the plan was rejected); and the detailed plan submitted in an attempt to legalize a building in the village of Jayyus, minutes of the Local Planning Subcommittee No. 7/05 dated 27 March 2005, File 1216/21/04 (the plan was rejected).

²⁷² Coon notes that the Civil Administration rejects almost all the applications for subdivision in the agricultural zone; Anthony Coon, *op. cit.*, note 9, p. 117. During the research for this report, we encountered very few applications for the subdivision of land. However, in all the cases of which we are aware, the Civil Administration rejected detailed local plans that were essentially parcellation schemes aimed to legalize existing buildings. The only case of an application for a subdivision scheme for which we have secured documents is from the village of Tura al Gharbiya in the Jenin sub district. Two buildings were erected on the original plot, and in order to legalize these buildings (in accordance with the provisions of Plan S/15) the landowners asked for the plot to be divided into two lots. The Local Planning Subcommittee rejected the application. Minutes of Meeting No. 10/05 of the Local Planning Subcommittee, 16 May 2005.

²⁷³ Decision of the Inspection Subcommittee dated 16 February 2006 in File R 14/06.

²⁷⁴ Decision of the Local Planning Subcommittee dated 11 February 2007 in File 1527/5/06.

a parcellation scheme or a detailed plan, even if the subdivision of the plot into lots was neither requested nor implemented. Since most of the land in the West Bank is not registered with the Lands Registrar, the result is a general prohibition against construction in these areas, unless a parcellation scheme or a detailed plan has been approved.

This position is contrary not only to the orders of the regional outline plans themselves, but also to the practice that was current during the mandate period. Bimkom is in possession of copies of dozens of building permits issued during the mandate period on the basis of the regional outline plans in villages for which no detailed plans or parcellation schemes had been approved (see appendix at the end of this chapter, p.99). Contrary to the claim of the Civil Administration, the authoritative position of the mandatory planning institutions was that a parcellation scheme or a detailed plan is not required in order to grant a building permit for a single residential building, let alone an agricultural outbuilding.

Mr. Yassin's building was demolished, apparently by security guards of the nearby Separation Barrier. His application for a building permit is pending in a petition he has submitted to the HCJ against the planning institutions of the Civil Administration.²⁷⁵

The Jordanian Planning Law permits the division of land other than in accordance with a parcellation scheme or detailed plan, provided that the area of each final lot is not less than one hectare.²⁷⁶ Since the provisions of the law overrule the orders of the regional outline plans, no permission is required from the planning institutions in Area C to subdivide an original plot into lots with an area of at least one hectare each. Accordingly, division into such sub-plots cannot constitute grounds for refusal to grant a building permit.

Difficulties in Current Use of the Plans

Regardless of how they are implemented, the use of the regional outline plans prepared over 60 years ago raises numerous difficulties. Physical planning requires frequent updates, flexibility, and adaptation to changing realities. The suspension of the planning situation in most of the land included in Area C according to its state during the 1940s is contrary to basic professional principles in the field of planning and building.

As already noted, the basic assumption of the British mandate planners was that the regional outline plans would be updated every five years.²⁷⁷ The required update included changes not only to the maps of the plans (for example, designating development areas for villages that were not marked on the previous version), but also amendments to their orders.²⁷⁸

As we have seen, the mandatory authorities indeed prepared updates for some of the regional plans. The first Plan S/15 was deposited in 1941 and approved in 1942. The second version of the plan was

²⁷⁵ HCJ 2657/07 *Ottman Mansur `Ali Mansur et al. v the Local Planning Subcommittee et al.*

²⁷⁶ Article 28(1) of the Jordanian Planning Law. The article establishes that "no person is permitted to divide any land... situated in a planning area into lots each of which has an area of less than one hectare otherwise than in accordance with a parcellation scheme authorized by the Local Committee and any division of land situated in a planning area and any registration undertaken contrary to the provisions of this article shall be considered void, whether or not an authorized plan exists, provided the land concerned is within a planning area."

²⁷⁷ Avraham Lapidot, *ibid.*, note 178, p. 17.

²⁷⁸ *Ibid.*, p. 30.

deposited in 1946 and approved in 1948. The differences between the two versions are numerous and substantial. In the agricultural zone, for example, the original plan empowered the Local Committee to issue permits for residential construction solely in the case of the farmer's private home, while the District Committee enjoyed exclusive authority regarding the approval of buildings intended for other residents. By contrast, the second Plan S/15 empowers the Local Committee to issue in the agricultural zone building permits for "dwelling houses" in general, and not only for the farmer's personal home. The maximum coverage permitted in the second plan is 180 square meters in a lot, compared to just 150 square meters in the first plan. As a result of these changes, the second Plan S/15 permits the erection of buildings that could not have been approved under the original plan. As mentioned above, the mandatory authorities also deposited an updated version of Plan R/6, but due to the termination of the mandate they were unable to approve it.

The need to update plans is supported in law. In spite of the extensive areas included in the plans, the Israeli Supreme Court has ruled that the regional outline plans are in essence local outline plans.²⁷⁹ The mandatory Town Planning Ordinance (1936), on the basis of which the plans were prepared, recognizes only two types of plans – outline schemes and detailed schemes.²⁸⁰ The conceptual framework of district outline plans did not exist at the time, and accordingly the regional outline plans cannot be considered to be district outline plans as the term is understood today in Israel. The partial detailed provisions included in the regional plans are also characteristic of local outline plans rather than district plans. Accordingly, the State's position as recently presented to the HCJ is that the regional plans are "local outline plans."²⁸¹

According to the Jordanian Planning Law, the planning institutions must "review every approved outline plan in order to introduce the required changes or additions, if any, at least once in every 10 years."²⁸² Accordingly, updating the regional outline plans at least once every 10 years is not merely desirable in planning terms, but is required by law. In these circumstances, it is doubtful whether the use of the outdated regional outline plans for enforcement purposes can be considered legal.

A further problem relates to the fact that the documents of some of the regional outline plans have not survived intact. The provisions of Plans RJ/5 and R/6 mention two tables that are an integral part of their orders – a table of industrial buildings (Schedule B)²⁸³ and a table of building orders (Schedule A)²⁸⁴ – but both tables seem to have been lost. The copies of the orders of these plans forwarded to us at our request by the Civil Administration do not include these tables. Neither were we able to locate a full copy of Plans RJ/5 and R/6, including these tables, in the archives we searched.

Outline plans are a legislative act analogous to a law or regulations.²⁸⁵ Just as it is impossible to use regulations or laws part of whose provisions have been lost, so there is a basic problem in

²⁷⁹ HCJ 38/76 **Tamra Local Council v the Appeals Subcommittee**.

²⁸⁰ Town Planning Ordinance, 1936.

²⁸¹ Completion of Arguments on Behalf of the State Prosecutor's Office in HCJ 1526/07 **Head of the Village Council of Bil'in et al. v Head of the Civil Administration et al.** dated 5 July 2007 (section 8 of Appendix 12).

²⁸² Article 25(1) of the Jordanian Planning Law. This is a specific provision applying solely to local outline plans.

²⁸³ The table is mentioned in section 2 of the orders of the plans.

²⁸⁴ The table is mentioned in section 28 of the orders of the plans.

²⁸⁵ This has been established by the Supreme Court in a number of rulings. For example, see CA 8797/99 **Hanan Anderman et al. v the District Appeal Committee et al.**

using plans that have incomplete documentation.²⁸⁶ The requirement here is not merely formal, but substantive. In all probability, the table of building orders in Plans RJ/5 and R/6 established precisely (as does the analogous table in Plan S/15, which has survived) the permitted scope and character of building in each of the zones. The difficulty in interpreting the term “building area,” which we discussed at length above, is largely due to the fact that the documents of Plans RJ/5 and R/6 have not survived intact. Although various building provisions appear in the plans, the fact that the provisions refer to a table shows that this included additional orders. In the absence of the lost table of building orders, it is impossible to establish with certainty what is permitted and prohibited in accordance with the plan.

Application of the partial provisions of Plans RJ/5 and R/6 that have survived is like enforcing a criminal law in which the table detailing the penalties for various violations has been lost.

The Civil Administration Uses an Unapproved Version of the Plan

Our research for this report raised a surprising finding: the orders of Plan S/15 as used by the Civil Administration were not finally approved. The version used by the Civil Administration planning institutions, a copy of which was forwarded to us at our request, was published in the Official Gazette of the mandate government at the time of the deposit of the plan in 1946. During the process of approving the plan, various changes were made to the deposited version, with the result that the orders as approved in 1948 differ in certain respects from those in the deposited plan.

In development areas, for example, the deposited version permits the erection of an outbuilding with an area of 25 square meters,²⁸⁷ whereas the approved plan permits an outbuilding with an area of up to 30 square meters.²⁸⁸ In these areas, the approved plan permits more uses (such as agricultural buildings, water and electricity installations) than does the deposited version.²⁸⁹ Moreover, the approved plan includes orders that are not even mentioned in the deposited version, such as provisions for the conservation of buildings²⁹⁰ and safety distances from electricity lines.²⁹¹ Although the deposited and approved versions are generally similar, in the case of specific applications for building permits the differences may be of importance.

The circumstances that led to the use of the deposited plan are unclear. The reason may be the difficulty of locating documents from the mandate period – further evidence of the problems associated with the current use of the regional outline plans. In any case, it would seem that the Civil Administration has for some 30 years applied a plan in a version that was never approved, and which lacks legal status.

²⁸⁶ Strangely, the Supreme Court has chosen to ignore this fact. In the case of the Qalandiya Teachers’ Association (see p. 56 above), the Supreme Court approved the decision by the HPC to void the building permits granted to Palestinians on the grounds that these were contrary to the provisions of Plan RJ/5 – although the court was presented with an incomplete version of the plan, lacking the plan’s map that had not been located at the time and missing the tables discussed above. The petitioners argued that Plan RJ/5 could not be applied without the missing map, and only based on its written orders, but the judges rejected this argument, determining that “we have not been presented with any reasonable grounds explaining why the loss of a map should automatically lead to the repeal of a plan that was previously legally approved.” Ruling in H CJ 145/80 **Al-Ta’uniyah Jam’ayat Askan Al-Mu’alamun et al. v Minister of Defense et al.**

²⁸⁷ Definition of the term “Outbuilding” in Part II of the orders of the deposited plan.

²⁸⁸ Section 4(14) and the Zoning Table in the authorized plan.

²⁸⁹ Schedule of Permitted Uses, Part I in both versions of the plan.

²⁹⁰ Section 28 of the orders in the approved plan permits the District Committee to demand the conservation of buildings of architectural, historical, or other value. The deposited plan does not include a similar provision.

²⁹¹ Section 45 of the orders of the approved plan.

Conclusion

The regional outline plans were intended to achieve several goals, including the issue of building permits in areas for which no detailed plans had been prepared. The Israeli authorities, however, use these plans almost exclusively for the purpose of enforcement and for demolishing Palestinian buildings. This use ignores the fact that the plans permit construction for residential and various other purposes in the agricultural zone (i.e. in most of Area C), subject to various restrictions and conditions. Indeed, the mandatory authorities used the plans extensively as a basis for issuing building permits.

The application of plans prepared decades ago in a different legal, planning, political, social, and demographic context is inherently problematic. This difficulty is compounded by the fact that the orders of two of the three regional outline plans have only partially survived, raising doubts about the legality of Civil Administration's current use of these plans for enforcement purposes. These doubts are exacerbated by the requirement of the Jordanian Planning Law for periodic updating of outline plans. In the case of the regional outline plans, no such updates have been made since the final versions of the plans were approved in the 1940s.

If the Civil Administration decided to update the regional outline plans, it would **not** be entitled to reduce the building rights they confer. For example, the authorities cannot impose a total prohibition on construction in the agricultural zone. The regional outline plans form part of the legislative infrastructure existent in the West Bank at the time of its occupation in 1967. International humanitarian law prohibits the occupying power from changing existing legislation unless this is necessary for absolute security needs or for the benefit of the occupied civilian population. In these circumstances, strengthening the restrictions set in the regional outline plans is illegal, and the Israeli authorities are not empowered to take such a step.

Apart from these problems, the way the Civil Administration implements the regional outline plans is flawed by three substantive deficiencies. Firstly, the Civil Administration applies these plans in an extreme and mistaken interpretation, resulting in the rejection of building permit applications even in cases without any planning or legal justification. Secondly, as a matter of policy the Civil Administration refrains from granting relaxations and from exercising the flexibility orders included in the plans themselves. The systematic refusal to allow relaxations on plans approved over 60 years ago is unacceptable and incompatible with accepted planning and legal standards.

Thirdly, the Civil Administration's planning institutions have created a cyclical sequence of arguments that almost completely eliminate the possibility of obtaining building permits on the basis of the plans. The refusal to permit land subdivision for example, drastically reduces the building possibilities that can be realized in accordance with the plans. The decision in principle to prevent subdivision evokes another set of secondary prohibitions: in a large original plot where one building already exists, the denial of subdivision approval prevents any further construction. This refusal is not required by the the regional outline plans themselves, however; rather it is the result of prohibiting a practice (land subdivision) that the plans themselves provide a planning and legal framework for its approval.

In recent years, the Civil Administration has begun to prepare special outline plans for some of the Palestinian villages in Area C. These plans, which are amendments to the mandatory regional outline plans, claim to provide appropriate planning solutions for the tens of thousands of Palestinians living in the area. The special outline plans ostensibly apply the order in the regional outline plans that mandates detailed planning in rural development areas. In practice, however, the special outline plans are not detailed plans; their primary goal is to define a limited area outside which Palestinian construction is almost totally prohibited. The Civil Administration maintains that in villages in which

special outline plans have been approved, there is no need or justification to permit construction on land outside the areas of the plans that are zoned for agriculture in accordance with Plans RJ/5, R6, or S/15.²⁹² In Chapter Six, we will discuss this argument in depth, as well as the extent to which the special outline plans are reasonable in planning and legal terms.

²⁹² For example, when deciding to issue a final demolition order against a building erected in the village of Bil'in without a permit, the Local Planning Subcommittee noted that "this is an agricultural zone in accordance with R/6... The village of Bil'in has an approved plan [special outline plan] a notice concerning its approval was published on 6 November 1992. This plan covers an area of 26.6 hectares and has a capacity of over 157 percent of that required for the population of Bil'in in 2015... In light of all the above, it is evident that there is no proper reason in general, and in planning and demographic terms in particular, for establishing any residential buildings outside the boundary of the statutory outline plan for the village." Minutes of the Local Planning Subcommittee No. 3/07 dated 11 February 2007 (File 1527/1/06).

Case Study

Umm ar-Rihan: A Forest Reserve for Palestinians, a Development Area for Settlers

The village of Umm ar-Rihan is situated in the northwest of the West Bank, about 1.5 kilometers east of the Green Line (see map on p. 68). Although the village currently has a population of approximately 420,²⁹³ it does not have an updated outline plan. The only plan applying to the area is Regional Outline Plan S/15, which was approved at a time when the village had just a few dozen inhabitants.²⁹⁴ It is therefore hardly surprising that Plan S/15 does not mark a development area for the village of Umm ar-Rihan.

As is the case with many other communities in the West Bank, Umm ar-Rihan is a secondary village created as the result of migration from the parent village (see Chapter Four). Umm ar-Rihan was founded at the end of the 19th century by residents from Ya'bad.²⁹⁵ The village was initially a seasonal agricultural community,²⁹⁶ but by 1922 Umm ar-Rihan had become a small permanent village,²⁹⁷ and since then it has grown steadily.

Land

The village extends over an area of approximately 93 hectares, 66.6 of which are registered with the Lands Registrar. The principal built-up section of Umm ar-Rihan covers an area of some four hectares of land registered with the Lands Registrar in the names of the Palestinian owners. A secondary residential compound of five buildings is situated to the southeast of the main residential compound, also on private land registered with the Lands Registrar. Most of the agricultural lands of the village are not registered with the Lands Registrar; these lands lie to the north of the principal residential compound, close to the settlement of Tal Menashe.²⁹⁸

Existing Buildings and Building Permits

There are currently dozens of residential buildings in Umm ar-Rihan, as well as a school, a mosque, the local council house (construction of which has been halted due to an order to stop work issued by the Civil Administration), a clinic (against which a demolition order has been issued), a small cemetery, and three grocery shops.

With the exception of part of the school building constructed in accordance with a permit issued by the Civil Administration in 1985, all the buildings in the village were erected without permits.

The Planning Situation

Plan S/15 zones the entire built-up area of the village as a forest reserve – the zone in which the strictest restrictions apply to building (see Table 2). However, subject to the approval of the District

²⁹³ Conversation with Billal Zeid, head of the village council of Umm ar-Rihan, 22 January 2008. According to the Palestinian Central Bureau of Statistics, the village had 385 residents in mid-2007. See www.pcbs.gov.ps.

²⁹⁴ According to figures stated to us in the village, there were 28 residents in Umm ar-Rihan in 1928. In 1950, two years after the approval of Plan S/15, the village had a population of 52.

²⁹⁵ David Grossman, op. cit., note 152, pp. 396-410, and particularly pp. 396-397, 399.

²⁹⁶ David Grossman, op. cit., note 156., p. 177.

²⁹⁷ Ibid, p. 181.

²⁹⁸ Meeting with residents of Umm ar-Rihan, 22 January 2008.

Committee and the Conservator of Forests, the plan permits the construction of homes, agricultural buildings, and recreation facilities in forest reserves. In legal terms, therefore, there is no absolute obstacle to issuing building permits for residential buildings in Umm ar-Rihan. In practice, however, all the applications for building permits submitted by the residents of Umm ar-Rihan since 1967 (with the exception of a permit for part of the school building, as noted) have been rejected on the grounds that construction in the area is contrary to its zoning as a forest reserve in the regional outline plan.

In 2005, for example, the Inspection Subcommittee issued a demolition order against a two-storey residential building established on a lot owned by Mahmud `Ali Sa`id Zeid, a resident of Umm ar-Rihan. In its decision, the committee noted that “the building is situated within a nature reserve, including a governmental forest reserve in accordance with Plan S/15... The construction is contrary to the Forests Ordinance, which effectively prohibits all construction within a forest reserve.”²⁹⁹ In an attempt to prevent the demolition of the building, Mr. Zeid submitted a detailed local plan to legalize the construction, but in November 2005 this plan was rejected by the Local Planning Subcommittee, which ruled that **“there is no proper reason to convert a green area defined as a nature reserve in outline plan S/15, which applies to the site, into an area for construction.”**³⁰⁰

In reality, the building in question is situated on the inner edge of the main residential compound of the village, adjacent to an occupied home. The building is at least 100 meters away from the forest trees, from which it is separated by an olive grove. The building was intended for Bassam Zeid, the son of the land owner, and his pregnant wife. Until his marriage, the son lived in his parent's adjacent home, a building with two bedrooms and an area of approximately 80 square meters occupied by six persons, not including Bassam. The new home was thus intended to enable him to set up his new family in the village and to provide appropriate housing for himself, his wife, and their future children.³⁰¹

The decision to reject the application for a permit is based on the boundaries of the forest reserve as defined in Plan S/15. During the mandate period, the forest reserve extended over a much wider area than today. Plan S/15 defines some 8,400 hectares in the area as a forest reserve,³⁰² but most of this area has since been cleared. In 1991, the Israeli authorities declared Reihan Forest Reserve, with an area of just 267.3 hectares.³⁰³ This reserve is dozens to hundreds of meters away from the principal built-up compound of Umm ar-Rihan, which includes Bassam Zeid's new home.³⁰⁴

Over the years, the planning institutions in the Civil Administration have approved several detailed plans for the adjacent settlements – Reihan, Shaked, and Hinanit, all of which are situated within the mandatory forest reserve marked in Plan S/15. For example, Plan 103/1 was approved for the settlement of Reihan, extending over 120.9 hectares within the area of the forest reserve as marked in

²⁹⁹ Minutes of the Inspection Subcommittee No. 6/05 dated 3 February 2005 (file J 34/04). It should be noted that the mandatory Forests Ordinance (1936) permits the authorities to prohibit construction on state land situated within a forest reserve, but it does not impose such a restriction on privately-owned land (such as the lot belonging to Mr. Zeid in Umm ar-Rihan). See section 3 of the Forests Ordinance.

³⁰⁰ Minutes of a meeting of the Local Planning Subcommittee No. 17/05 dated 15 November 2005. Emphasis added.

³⁰¹ Meeting with Mr. Bassam Zeid, resident of Umm ar-Rihan, 22 January 2008. As of the time of writing, the case is pending in legal proceedings and the demolition of the building has been suspended by order of the HCJ.

³⁰² In plan S/15, the forest is divided into two main areas, southern (over 6,500 hectares) and northern (about 1,270 hectares), connected by a narrow strip. In addition, several forest enclaves are scattered to the south of the main forest area, with a total additional area of some 600 hectares. These figures are based on a computerized graphic measurement of the plan.

³⁰³ See: http://www.inature.info/wiki/%D7%A9%D7%9E%D7%95%D7%A8%D7%AA_%D7%99%D7%A2%D7%A8_%D7%A8%D7%99%D7%97%D7%9F.

³⁰⁴ The secondary residential compound in the village, which consists of just five homes, is situated within the Reihan Forest Nature Reserve. The Civil Administration now prevents further construction in this area, but has not acted to demolish the buildings erected in the past.

the regional outline plan.³⁰⁵ Within the area of the mandatory forest reserve, Plan 199/1 has also been approved for the Shahak Industrial Zone (38.4 hectares), and hundreds more hectares of the land of the mandatory forest reserve have been allocated for the future expansion of this industrial park.³⁰⁶ Plan S/15 does not permit industrial buildings in nature and forest reserves, so the construction of the Shahak Industrial Zone is contrary to the provisions of the mandatory plan.

This did not prevent the Civil Administration's planning institutions from approving detailed plans for the Shahak Industrial Zone and the adjacent settlements that release land defined as a forest reserve in Plan S/15 for construction and development. Yet the same planning institutions refuse to allow the residents of Umm ar-Rihan to build in their village on the grounds that this is contrary to the zoning of the land as a forest reserve in the mandatory plan – **although the principal residential compound in the village, in which most construction now takes place, is not within the updated boundaries of the nature reserve as declared by Israel in 1991.**

Thus, the Civil Administration's planning policy in the Umm ar-Rihan area exhibits flexible use of various definitions of the boundaries of the forest reserve, according to political needs and according to the ethno-national identity of the people for whom the construction is intended. In the case of Palestinians, the Civil Administration dogmatically sticks to the reserve's boundaries as defined 60 years ago in Plan S/15, although this reserve does not exist on the ground and most of its area has been cleared. In the case of the settlers, the Civil Administration does not hesitate to approve detailed plans for construction in extensive areas located in the heart of the mandatory forest reserve. In the case of authentic needs for nature preservation, the Civil Administration (rightly) depends on the true boundaries of the nature reserve as approved in 1991, **which make up about four percent of the area defined as forest reserve in Plan S/15.** This is just one of many examples of the ways in which the Israeli authorities use nature reserves and archeological sites (see the case study of Zif, p. 146) to prevent Palestinian construction in Area C.

Demolition Orders and Infrastructures

The demolition order issued against Bassam Zeid's home is not an unusual case. As of the time of writing, at least 10 demolition orders issued by the Inspection Subcommittee against buildings in the village are pending; most of these buildings are residences.³⁰⁷ Since it does not recognize the village in planning terms, the Civil Administration does not permit the establishment of vital infrastructure. The homes are not connected to the electricity grid and residents are obliged to use generators. The refuse produced in the village is burnt and buried in an open site just a few dozen meters from the last homes of the village. The residents receive water supply from the Israeli company Mekorot only because this connection was authorized during the early years of the Israeli occupation, before the Civil Administration developed its restrictive planning policies.

The Planning Future of Umm ar-Rihan

Despite the lack of proper statutory planning, Umm ar-Rihan has developed over the years into a full-fledged village including residences, public buildings, and local infrastructures. In planning terms, there can be no doubt that the village is entitled to recognition and to an updated plan meeting its needs.

³⁰⁵ The plan, approved in April 1999, zones some 4.5 hectares of its area for a nature reserve, while all the remainder is zoned for the development of the settlement.

³⁰⁶ See the website of Shahak Industrial Zone: <http://www.p-shahak.co.il>.

³⁰⁷ Visit to Umm ar-Rihan, 22 January 2008.

As explained above, Plan S/15 did not mark a development area for the village, and the Israeli authorities use this fact to justify their refusal to recognize Umm ar-Rihan. However, far-reaching changes have occurred in the area since the approval of the regional outline plan. Numerous villages that were very small at the time the plan was prepared have since grown and expanded, and communities have been established that did not even exist during the mandate period (including all the adjacent Israeli settlements, built with the approval of the Civil Administration). The fact that Plan S/15 did not mark a development area for Umm ar-Rihan 60 years ago cannot deny the need to define such an area today.

Moreover, the fact that the village was not indicated on the S/15 plan should not be interpreted as non-recognition on the part of the mandate authorities. Umm ar-Rihan appears on the list of recognized communities (the Administrative Divisions Proclamation) as published by the mandate government in 1947. In this proclamation, the mandate government declared Umm ar-Rihan to be a recognized administrative entity belonging to the parent village of Ya`bad in municipal terms.³⁰⁸ Accordingly, it is tendentious to argue that the mandatory authorities considered Umm ar-Rihan an unrecognized village with all its homes slated for demolition. The administrative recognition of the village shows that the mandate government saw the village as a legitimate community deserving appropriate planning solutions. It is true that Plan S/15, prepared not long before the proclamation was issued, did not define a development area for the village. But this was not due to non-recognition of the village, as the Civil Administration claims, but rather to the simple fact that, at the time, Umm ar-Rihan was a hamlet that did not need planning solutions beyond those provided by the regional outline plan.

Dramatic changes in the spatial reality in the area have recently occurred following the completion of the Separation Barrier in 2003. Umm ar-Rihan and six other Palestinian villages have been left in an enclave on the "Israeli" side of the barrier, largely disconnected from the remainder of the West Bank, and their residents have been subjected to a strict permits regime.³⁰⁹ The resulting partial disconnection of the village from service centers in Jenin and elsewhere on the "Palestinian" side of the barrier has accentuated the need for appropriate planning solutions for Umm ar-Rihan. Thus, after erection of the barrier, access to medical services provided in the past in Jenin and other communities has been impaired, creating an immediate need for a clinic in Umm ar-Rihan. Unsurprisingly, the Inspection Committee has issued a demolition order against the clinic built in the village without a permit.

According to recently-published information, the Ministry of Defense has permitted the Civil Administration to prepare a special outline plan for the village.³¹⁰ As of the time of writing, however, no such plan has as yet been deposited. Even if it is eventually approved, it may be assumed that the plan will follow the format of the special outline plans prepared by the Civil Administration for other Palestinian villages in the West Bank (see Chapter Six). In essence, these are "blue line plans"; their principal goal is to delineate the development area of the village and reduce it to as small an area as possible, without providing an appropriate response to the present and future planning needs of the residents.

³⁰⁸ The Administrative Divisions (Amendment) Proclamation, 1947, *The Palestine Gazette No. 1552 – Supplement No. 2*, 30 January 1947, pp. 125-133.

³⁰⁹ See *Between Fences*, op. cit., note 16, pp. 41-50.

³¹⁰ Announcement by Tony Blair, the Quartet emissary to the Middle East, 13 May 2008. See: <http://tonyblairoffice.org/2008/05/towards-a-palestinian-state.html>. The announcement mistakenly states that the plan for Umm ar-Rihan has already been approved.

Case Study

Yanun: A Demolition Order against the Only Access Road to the Village

Yanun is one of the smallest villages in Samaria, with a current population of approximately 110.³¹¹ Many residents have left the village due to protracted and violent harassment by settlers from the adjacent outpost of Gva'ot Olam.³¹² In 2002, the village was almost completely emptied of its inhabitants after a series of attacks in which settlers burnt the generator that supplies electricity to the homes of Yanun.³¹³ With the help of Israeli and international peace activists, some of the residents returned to their homes, though they continue to face harassment by the settlers.³¹⁴ In addition to these difficulties, the village also suffers from the severe building restrictions imposed by the Civil Administration.

Location and History

Yanun is situated on a hillside to the southeast of Nablus. This is an isolated village; the outermost homes of the nearest Palestinian community – the town of Aqraba – are some three kilometers to the south. The isolation and small size of Yanun have heightened its vulnerability to settler violence. The village is currently surrounded to the north, east, and west by the settlement of Itamar and its associated outposts, including the outpost of Gva'ot Olam (see map on p. 70).

Yanun is one of the oldest villages in the area. Historical documents show that the site has been inhabited continuously since at least the 16th century.³¹⁵ In 1871 there were 14 households (approximately 80 residents) in Yanun.³¹⁶ A population census in 1931 counted 120 residents and 22 buildings in Yanun.³¹⁷ During the British mandate period, Yanun was recognized as an independent village in the administrative division of Palestine.³¹⁸

The historical core of the village was founded next to a small spring. Today, the village comprises two parts: Yanun at-Tahta (the "lower" or southern section), which is closer to Aqraba; and Yanun al Fauqa (the "upper" section). The outpost of Gva'ot Olam was established just a few hundred meters from Yanun al Fauqa. The distance between the two sections of the village is approximately 1.5 kilometers. The built-up compound of the lower village is in Area B, under Palestinian planning authority, while the upper village is situated entirely in Area C. According to the geographer David Grossman, the oldest part of the village is situated in Yanun at-Tahta, while the upper village was founded only in the late 19th century by Muslim families from Bosnia.³¹⁹ The residents of Yanun themselves, however, claim that Yanun al Fauqa, where the spring is located, was the first point to be inhabited, while the lower village developed during the British mandate period after the authorities built a reservoir permitting

³¹¹ According to Rashed Murad, head of the village council, in a meeting on 20 April 2008. According to the Palestinian Central Bureau of Statistics, 158 people resided in Yanun as of mid-2007. See: www.pcbs.gov.ps.

³¹² See: <http://www.haaretz.co.il/hasite/pages/ShArt.jhtml?itemNo=281971>.

³¹³ See: <http://www.haaretz.co.il/hasite/pages/ShArt.jhtml?itemNo=22128>.

³¹⁴ Meeting with Rashed Murad, head of Yanun village council, 20 April 2008.

³¹⁵ David Grossman, op. cit., note 156, p. 234.

³¹⁶ David Grossman, *The Arab Population and the Jewish Outpost: Dispersion and Congestion in Palestine in the Late Ottoman Period and the British Mandate Period*, Jerusalem: Magnes, 1994, p. 250.

³¹⁷ E. Mills, op. cit., note 225, p. 66.

³¹⁸ See note 308 above.

³¹⁹ David Grossman, op. cit., note 156, p. 233.

permanent residence.³²⁰ In a tour of the area, ancient buildings – some probably hundreds of years old – were indeed observed in the upper village.

Existing Buildings and Infrastructures

Yanun comprises 17 inhabited residential buildings as well as a number of abandoned buildings. 10 families live in the upper village, each in its own home, and seven families live in the lower village. The residents of the village make a living mainly from farming. The only public buildings in the village are a small school in Yanun al Fauqa, a mosque in Yanun at-Tahta, and a makeshift clinic that opens once every two weeks in a residential building. There are no shops in Yanun and the village is completely dependent on supplies from Aqraba.

A pump provides the homes of Yanun with drinking water from the small spring. In summer, however, there is little or no water in the spring and the residents are obliged to purchase water at a high cost from containers.³²¹ The village is not connected to the landline telephone network. There is no orderly removal of refuse in Yanun and sewage seeps into the soil in cesspits. Electricity is now provided through the electricity grid.

Planning Status and the Demolition of Buildings

The only plan applying in those parts of Yanun that are in Area C is Regional Outline Plan S/15. Although Yanun was a small village at the time the plan was prepared, its authors marked a development area for the village. As explained above, according to Plan S/15 a rural development area is the zone permitting the most extensive building possibilities and where the least restrictions apply.

Nevertheless, the Civil Administration severely limits development and construction in Yanun. According to local residents, some 20 years ago several buildings in the village were demolished. Since then, the residents have been reluctant to undertake further construction.³²² Today, after many residents have left the village due to settler violence, there are several empty homes. Combined with the fear that new buildings will be demolished, this has created a reality where there is no new construction work in the village, and hence no house demolitions. This situation does not prevent the Civil Administration from exercising its enforcement powers in the village, however.

The dramatic events of 2002 – the abandonment of the village and the residents' subsequent return – made Yanun internationally famous. As a result, the village received a donation from Belgium for connection to the electricity grid. As noted, electricity was previously supplied by a generator, and after this was set on fire by settlers, the village was left without an electricity supply. The donation was used to erect pylons along the road from Aqraba to Yanun al Fauqa carrying electricity wires connecting the village to the grid for the first time. At the same time the residents of Yanun renewed the access road from Aqraba, which was partly a dirt track. The road was surfaced with asphalt.

According to the Jordanian Planning Law applying in the Area C, “the execution of any works on behalf of the roads authority required for the purpose of maintaining or improving any road, if these works are undertaken within the boundaries of that road,” as well as infrastructure work by any local or governmental authority, do not constitute “building” and do not require a permit.³²³ In September 2003, in spite of these provisions, the Inspection Subcommittee issued an order to stop work against the erection of the pylons and the upgrading of the road. In June 2006, after protracted proceedings, the committee issued a final

³²⁰ Meeting with Rashed Murad, head of Yanun village council, 20 April 2008.

³²¹ Ibid.

³²² Ibid.

³²³ Article 34(4) of the Jordanian Planning Law.

demolition order “for the electricity line + improvement of access road + foundations.” The residents of Yanun were ordered to dismantle the electricity pylons they had erected, disconnect the village from the grid, demolish the asphalt coating of the only access road connecting them to the outside world, and “restore the former situation within 14 days.”³²⁴

Thanks to pressure applied by the Belgian donors, the Civil Administration has refrained from demolishing the pylons and the road.³²⁵ To the best of our knowledge, however, the demolition order has not been withdrawn and the Inspection Subcommittee could activate it at any time it chooses without further warning to the residents of Yanun.

Through its enforcement operations in Yanun, the Civil Administration has exacerbated the difficult situation that already exists due to the violence of settlers in the area. The Civil Administration's harsh building restrictions assist – whether deliberately or not – in the creeping transfer of Yanun residents from their village. Villagers claim that if it were possible to establish new homes, many of the residents who have left Yanun would return, in spite of the harassment by the settlers.³²⁶ Positive migration and an increase in the number of residents in the village could help the villagers cope with the settlers. However, as noted, the enforcement operations of the Civil Administration's planning institutions prevent this.

The case of Yanun shows that, as far as the Israeli planning institutions are concerned, there is not necessarily any difference between a village on land zoned for agriculture in the regional outline plans and a village for which a development area was indicated. In both cases the Civil Administration does not hesitate to exercise its powers against construction without permits, even if these are intended for the establishment of infrastructures without which it is difficult to imagine life in the twenty-first century.

³²⁴ Inspection Subcommittee, Final Order for Cessation of Works and Demolition in File S/122/03, 29 June 2006.

³²⁵ Meeting with Rashed Murad, head of Yanun village council, 20 April 2008.

³²⁶ Ibid.

Appendix: Building Permits Based on the Regional Outline Plans

During the British mandate period, the regional outline plans were the sole statutory basis for the issuing of building permits in hundreds of villages for which no detailed plans or parcellation schemes were prepared. The State Archives in Jerusalem house copies of hundreds of permits issued during the period for villages in the Hebron Region, which forms part of the mandatory Jerusalem District covered by Regional Outline Plan RJ/5. Table 5 presents some examples chosen from dozens of permits copies of which are held by Bimkom. We should note that the permit documents that are held in the State Archives do not include maps showing the approved buildings; their level of detail is limited. However, all these permits prove that the mandatory authorities routinely used Plan RJ/5 to issue building permits in Palestinian villages.

Table 5: Examples of Building Permits Issued by the Mandatory Authorities Based on Plan RJ/5

Village	Date	Permit No.	Details of Permit
Al Jab'a	22 August 1944	BPJ/121/5	A two room residence with a volume of 392 cubic meters ³²⁷
Al Jab'a	25 August 1944	BPJ/121/6	A two rooms residence with a total area of 49 sq.m. and a volume of 196 cubic meters
Beit Kahil	6 February 1945	BPJ/102/14	A residential room with a volume of 196 cubic meters
Beit Kahil	27 October 1945	BPJ/9/15	A two room residence with a volume of 240 cubic meters
Idna	6 October 1943	BPJ/113/47	Residential room with an area of 144 cubic meters, at a distance of ten meters from the middle of the adjacent main road
Idna	29 June 1944	BPJ/113/59	Residential building of two rooms with a volume of 392 cubic meters
Idna	4 December 1944	BPJ/113/68	One residential room with an area of 49 sq.m. and a volume of 196 cubic meters, at a distance of four meters from the middle of an existing road
Kharas	6 October 1943	BPJ/117/9	A two room residence with a volume of 364 cubic meters
Kharas	5 December 1944	BPJ/117/13	A residential room with an area of 35 sq.m. and a volume of 140 cubic meters at a distance of four meters from the middle of an existing road
Sa'ir	16 July 1945	BPJ/107/47	A two room residence with a volume of 280 cubic meters
Sa'ir	29 January 1946	BPJ/107/44	A two room residence with a volume of 288 cubic meters
Yatta	20 June 1944	BPJ/120/128	A two room residence with a volume of 400 cubic meters
Yatta	20 June 1944	BPJ/120/126	A hostel with a volume of 576 cubic meters
Yatta	25 August 1944	BPJ/120/130	A two room residence with an area of 56 sq.m. and a volume of 224 cubic meters

³²⁷ Most of the permits state only the volume of the building, without detailing its area.

The mandatory Town Planning Ordinance of 1936 established a legal obligation to deposit any plan for objections, including detailed plans and parcellation schemes. According to the ordinance, publication regarding the deposit of plans was required in the official gazette of the Palestine government. Our examination of all the volumes of the official gazette for the relevant years (from 1942, when Plan RJ/5 was approved, and through the end of the British mandate in 1948) did not yield notice of the deposit of detailed or parcellation plans for the villages mentioned in Table 5. Our examination shows that no land settlements were undertaken in these villages, and their land was not registered with the Lands Registrar at the time the permits were granted. Accordingly, the permits issued during the mandate period in these villages were granted under Plan RJ/5 and the valid planning regulations only, without any approved detailed plans or parcellation schemes.

Delineation Line – The Special Outline Plans

Introduction

Until about 20 years ago, the mandatory regional outline plans were virtually the only planning instruments that enabled the issue of building permits in Palestinian villages in the West Bank. By contrast, many villages in the West Bank, including several in Area C, now have local outline plans prepared by the Civil Administration. This chapter is devoted to these plans, which are known as “special outline plans” or “special partial outline plans.”

The processes that produced the format of the special outline plans have their origins in the late 1970s. During this period, the military government (whose planning powers were transferred to the Civil Administration in 1982) initiated outline plans for Palestinian villages in the area. The principles embodied in the plans were agreed together with the Planning Bureau, and the plans themselves were prepared mainly by outside Israeli planners, with little or no involvement on the part of the local population.

In 1979 the military government commissioned Israeli planners to prepare plans for some 180 villages. The plans were completed in 1983 but, to the best of our knowledge, not a single one of these plans was ever approved.³²⁸ In 1984 the Civil Administration commissioned plans from outside planners for 103 villages in Samaria. The Planning Bureau instructed the planners to include in the planning areas all the built-up areas of the village. These plans, too, were not approved.³²⁹ According to the director of the Planning Bureau, one of the main reasons for the failure to approve the plans was the discrepancies between the population figures used by the authors of the plans and the number of residents according to Civil Administration figures.³³⁰ According to the authors of the plans, the number of residents was significantly higher than the Civil Administration had assumed and, accordingly, the area of the plans was substantially larger than that required in the opinion of the Planning Bureau. This incident reveals a phenomenon that was to become one of the main characteristics of the special outline plans: an almost obsessive preoccupation with the boundaries of the plans and an effort to limit the plans to as small an area as possible.

After the failure of these two initiatives, which had been outsourced, the Civil Administration decided to prepare outline plans for the Palestinian villages itself. Over the period 1980-1987, special outline plans were approved for 19 villages in the West Bank.³³¹ The rate of approval of the plans accelerated dramatically in later years, and by the time the interim agreement was signed (1995), the Civil Administration’s planning institutions had approved around 400 special outline plans for Palestinian villages all over the West Bank. It should be noted that the number of plans is not identical to the number of villages covered. In some cases (such as Ras at-Tira and Ad-Dab’a) a single special outline plan was approved for two villages, while in others (such as Jiftlik) the Civil Administration approved several plans for a single village.

³²⁸ State Comptroller, *Annual Report No. 37 for 1986 and for the Accounts for Fiscal Year 1985*, Jerusalem, 1987, Part B, pp. 1218-1219.

³²⁹ Ibid.

³³⁰ Ibid.

³³¹ Moshe Ravid, *op. cit.*, note 153, pp. 87, 90-107.

As part of the administrative division of the West Bank (see Chapter One), most of the land within the boundaries of these plans was defined as part of Area A or B. However, many of the special outline plans became “islands” of Area B within a sea of Area C. Moreover, the boundaries (the “blue line”) of the plans are not identical with the administrative division of the West Bank into Areas A, B, and C. In many cases, part of the land within the plans remained in Area C. Of the hundreds of special outline plans approved before the interim agreement, 146 apply to land that is partly within Area C, and four are situated entirely within Area C.³³²

After the interim agreement, the Civil Administration dramatically curtailed planning activities in the Palestinian villages. Between 1996 and 2004, no new special outline plans were deposited, and the Civil Administration only began to promote plans for Palestinian villages in Area C in 2005. Since then, and through June 2008, 13 special outline plans have been approved for villages in Area C: 10 for Palestinian villages with built-up areas entirely in Area C, and three for villages that have part of their built-up area situated in Area B. In the latter case, the plans are a kind of extension adjacent to Area B.³³³

The goal of this chapter is to review the special outline plans in depth. First we will describe the plans’ orders and their overt and covert goals. Next we will assess to what extent the plans appear reasonable in planning terms, and will examine the legal problems they raise. Our review of the outline plans includes both an internal analysis of the plans themselves, and an external analysis, which compares the plans to accepted professional standards in Israel and to plans approved by the Civil Administration for the settlements.

The Principles of Delineation

In 1987, the Higher Planning Council (HPC) of the Civil Administration approved criteria for the “delineation of villages,” as a preliminary step toward the preparation of special outline plans.³³⁴ The delineation was to set the boundaries of the development area for the Palestinian village, which the outline plan would later cover. The delineation consisted of drawing a line on an aerial photograph of the village. In most cases, the line enclosed an area including most, but not all of the built-up area at the time the aerial photograph was taken.³³⁵ Thus, even at the time the delineation was done, some built-up areas of villages remained outside the line defining their development area.

The HPC approved criteria are meant to define the boundaries of the special outline plans and to determine the extent of the areas to which they would apply, but they do not relate to broad planning principles, to the specific planning context, or to the substance of the plans themselves. According to the prescribed principles, the delineation line should enclose all the actual built-up area in a continuous way, including open areas between buildings. However, it should not include isolated buildings on agricultural plots adjacent to these areas; ribbon construction along roads should be prohibited; the area designated for construction must accommodate the expected population growth through the target year (about 25 years from the date of the delineation); intensively-farmed areas are not to be included in the delineated area, with the exception of small compounds surrounded by buildings; neither should the delineation line include state land or land expropriated by the army.³³⁶

³³² The Civil Administration, “Outline Plans for Palestinian Villages in Areas C,” reply to a question under the Freedom of Information Law submitted by Mr. Nir Shalev, 6 April 2008. Of these 146 plans, 65 apply only to small areas within Area C (less than two hectares in each plan).

³³³ In addition, four detailed plans have been approved for the Jahalin tribe. See p. 33.

³³⁴ Higher Planning Council, “Addendum to Minutes Dates 9 December 1987 – Delineation of Villages,” 13 December 1987.

³³⁵ Moshe Ravid, *op. cit.*, note 153, p. 87.

³³⁶ Higher Planning Council, note 334 above, *ibid.*

These principles dictated the **most prominent feature of the special outline plans – their limited area**: just a few hectares, or a few dozen hectares at most, for each village (see Table 6). The criteria adopted by the HPC also established a direct link between the question of land ownership and planning considerations, directing that, as a general rule, Palestinian construction can take place only on privately-owned Palestinian land. State land, which covers extensive areas due to Israel's declaration policies (see Chapter Two), was intended by the HPC for Israeli interests, primarily for extensive construction in the settlements. Most of the state land was indeed included in the settlements' areas of jurisdiction.

Delineation of the area is the first and most important stage in preparing a special outline plan, since, as explained, it defines the boundaries of the plan. In many cases, the area was amended slightly during the process of preparing the plan and depositing it for objections relative to the delineated area,³³⁷ but the differences are not substantial. For example, the delineated area set for the village of Bil'in is 26.5 hectares, whereas the area of the special outline plan as eventually approved is 26.6 hectares. The delineated area for Budrus is 15 hectares, while the special outline plan later approved for the village covers an area of 18.5 hectares. The delineated area for An-Nabi Elyas is 7.5 hectares, while the special outline plan approved for the village covers an area of 8.7 hectares.³³⁸

Table 6: Size of the Area Included in the Special Outline Plans

Name of village	Population (mid-2007) ³³⁹	Plan no.	Plan area in hectares	Publication on approval
Deir Nidham	940	1545	8.6	1992
Ti`nnik	1,127	1168	12.2	1992
An-Nabi Elyas	1,255	1230	8.7	1992
Kharbatha Bani Harith	3,006	1551	30.1	1992
Jinsafut	2,356	1219	22.7	1993
Az-Za`ayyem	2,459	1543	26.5	1994
Arab al Furiyat	440	1784	11.1	1995
Kharayib Umm al Lahim	400	1519	7.7	1995
Khirbet Jubara	336	1235/05	7.6	2006
Al Buweib	537	1721/05	22.2	2007

³³⁷ Moshe Ravid., op. cit., note 153, p. 87.

³³⁸ The figures for the delineated area of the villages were taken from Ravid, *ibid.*, pp. 90-107. The figures for the areas of the plans as ultimately approved appear in the plan documents: Plan 1527 for Bil'in (approved for validation in 1992); Plan 1511/91 for Budrus (approved in 1993); and Plan 1230 for An-Nabi Elyas (approved in 1992).

³³⁹ According to the Palestinian Central Bureau of Statistics, www.pcbs.gov.ps.

Hadalin: The Exception that Proves the Rule

To the best of our knowledge, the only case in which the Israeli authorities delineated an extensive area for a Palestinian community is the Bedouin village of Hadalin in the southeast Hebron mountains. Hadalin has a population of 1,200, most of whom make a living from herding flocks.³⁴⁰ The village includes 18 built-up compounds separated by extensive open spaces. The residential and grazing areas together total approximately 360 hectares.

In 2004, the Civil Administration issued demolition orders against several buildings in the village. The residents of the village submitted a petition to the High Court of Justice (HCJ),³⁴¹ and the Civil Administration subsequently announced that it was considering preparing an outline plan for Hadalin. The residents responded by submitting a professional opinion prepared by Bimkom presenting the principles for appropriate planning for the village.

The Civil Administration recently forwarded a map to the petitioners showing the planned delineation area of the village, within which “enforcement operations will not be undertaken regarding construction by members of the tribe.”³⁴² The delineated area encompasses some 250 hectares, a figure that is without parallel in any other Palestinian village (see Table 6).

The decision to allocate an extensive delineation area to Hadalin was probably due mainly to the village’s location in a peripheral desert region, far away from any settlement.

The Covert and Overt Goals of the Plans

The orders of the special outline plans present four principal goals: (A) To define the building areas in the village pending the preparation of a detailed plan; (B) to increase the permitted building areas (relative to the mandatory regional outline plans); (C) to expand the building and development areas of the village while protecting, improving, and expanding existing roads; (D) to establish rules for granting building permits and land subdivision.

Some of these professed goals are inconsistent with the practice of the delineation that was the basis for preparing the plans. For example, the professed goal “to expand the building and development areas of the village” is incompatible with the restrictive criteria established by the HPC for the purpose of defining the delineation area. As a general rule, the HPC guidelines state that the delineation line should freeze the existing limits of Palestinian construction; indeed, isolated buildings in agricultural plots should be left outside the delineation area. That is not a practice aiming to “expand” the building area significantly beyond that existing at the time the aerial photograph was taken and the delineation line was drawn. The underlying assumption of the plans is that the village’s housing and development needs will be met by increasing the density of construction within the existing built-up area, and by infill construction in the limited open spaces between existing buildings, rather than through the addition of substantial undeveloped open areas.

The emphasis on defining the area of the plans suggests that their espoused goals conceal a different purpose: to limit and restrict Palestinian building areas. Official Civil Administration documents do not mention any such goal. However, other bodies that have played a central role in the settlements

³⁴⁰ According to the Palestinian Central Bureau of Statistics, Hadalin has a population of just 420, but this figure probably relates to just one of the sections of the village.

³⁴¹ HCJ 310/05 **Yusuf `Udah Salameh Hadalin et al. v Commander of IDF Forces in the West Bank et al.**

³⁴² Letter from Einav Golomb, Senior Deputy to the State Prosecutor, to Rabbis for Human Rights, 11 June 2008.

enterprise have made no effort to conceal this intention. These bodies argue that limiting the dispersion of construction in the Palestinian villages is vital in order to ensure the future of Jewish settlement in the area.

In 1983, the Settlement Division of the World Zionist Organization, a non-governmental body that served for many years as the main channel for the foundation of the settlements and the direction of state funds for this purpose,³⁴³ prepared a master plan for the Samaria Regional Council.³⁴⁴ The master plan proposes several objectives for promoting the settlements enterprise in the area, one of which is “limiting the dispersion of Arab building” and “preventing the creation of blocks of Arab communities.” The master plan proposes several ways to meet these objectives, the first of which is “legally approved outline plans for Arab communities in the area, including an effective inspection component.”³⁴⁵

The master plan details the areas in which Palestinian construction is active and growing, such as the strip adjacent to the Green Line from Kafr Qassem in the south to the Reihan block in the north. In these areas, the plan proposed dynamic action to prevent the expansion of Palestinian construction liable to block the connection between Samaria and the coastal plain:³⁴⁶ **“in all the areas defined as extremely vital... immediate action on the subject of planning Arab dispersion is essential both within and outside the area.”**³⁴⁷

The concept that outline planning of the Palestinian villages is vital in order to ensure the success of the settlements enterprise is also reflected in another document prepared by the Settlement Division in 1983, in this case in cooperation with the Mateh Binyamin Regional Council. Entitled “Overall Regional Planning in Mateh Binyamin,” the purpose of the document is to develop ways of increasing the number of settlements and their population within the area of the regional council.³⁴⁸ The proposed regional plan applies to an area of about 95,000 hectares, of which only 22,200 hectares fell within the area of jurisdiction of Mateh Binyamin. Thus the plan also covered extensive Palestinian rural areas outside the area of jurisdiction of the settlements and the regional council.

The authors of the document state that **“the Arab population will continue to reside in the same towns and villages. This will be through increasing the density in the communities and adding limited areas outside their cores,** not by establishing new communities or uncontrolled expansion into agricultural areas and along roads. **The Arab population is not a consumer of extensive new areas for residential purposes, as compared to the Jewish population which has to consume extensive areas for the purposes of settlement.”**³⁴⁹

According to these sources, the principal goal of outline planning in Palestinian villages – i.e. the goal of the special outline plans – is **not** to ensure their future or prosperity. The intention of the authors of the plans was to limit the spatial expansion of Palestinian villages and to restrict it as much as possible, in order to leave extensive areas for the construction of the Israeli settlements. **Accordingly, combined with other mechanisms (such as the ownership-based tool of declaring state land), the special outline plans from the beginning were a planning instrument intended to help the Israeli authorities in the struggle over the control of land in the West Bank.**

³⁴³ Talia Sasson, op. cit., note 69, pp. 118-120.

³⁴⁴ World Zionist Organization – Settlement Division, *Master Plan for the Samaria Regional Council (As Part of the Master Plan for the Development of Settlement in Samaria and Judea)*, 1983.

³⁴⁵ Ibid., p. 7.

³⁴⁶ Ibid., p. 8.

³⁴⁷ Ibid., p. 14 (emphasis in original).

³⁴⁸ See Ben Bassat, op. cit., note 48, p. 11.

³⁴⁹ Ibid., p. 46 (emphasis added).

The Plan's Map and its Orders

As explained above, the boundaries of each of the special outline plans were defined before the plans themselves were prepared, by delineating and marking the intended building area on an aerial photograph. The plans' maps are also presented on an aerial photograph to a scale of approximately 1:2,500 – 1:3,000³⁵⁰ showing the boundaries of the plan as well as roads and the various residential areas. The maps show up to three different residential zones. With the exception of roads and, in rare cases, open areas in which building is prohibited, the special outline plans do not designate additional zones.

Another typical characteristic of the plans is the fact they indicate areas outside the blue line of the plan in which various military orders and other prohibitions on construction apply. These vary from plan to plan according to its specific profile. For example, the plan's map for the village of Zif (see p. 122) indicates archeological sites outside the boundaries of the plan. According to the Civil Administration, existing residential buildings adjacent to the archeological compound were not included in the plan area in order to protect these sites. Similarly, the maps of the plans for the village of Jiftlik (see p. 120) label closed military zones adjacent to the plan boundaries. The plan's map for the village of Al Funduq shows a strip for the right of way of a road that has not yet been built, according to which the boundaries of the plan were determined (see map on p. 115). The detailed designation outside the plans of areas where construction is prohibited is another element in a whole system of instruments that aim to delineate and restrict the Palestinian sphere of development.

The plans' provisions took the form of standard orders that apply in each of the hundreds of special outline plans approved by the Civil Administration over the years. These orders were not adapted on a local level to match the profile of each community. The only differences between the orders of the various plans are the name of the village, the plan number, the extent of land included in the plan, and the internal division of the area to the various zones. In terms of resource investment, the use of standard orders reflects a speedy and efficient planning process that ignores the local data of each village and its specific needs and imposes a standardized uniformity.

As in the plans, the orders also define only four zones: roads and three residential areas. However, as noted above, not all the plans show the three residential zones. In some cases just a single residential zone is indicated, and in many plans only two zones appear. In some recent plans, another zone is included: open landscape area, which appears mainly along the edges of main roads passing through or next to the plan areas. By definition, building is prohibited in an open landscape area; accordingly these areas are not mentioned in the orders.

The plans do not zone areas for public uses such as public buildings, public parks, or commercial buildings, although these uses are permitted in the residential zones.

Building Orders

The three residential zones are differentiated in terms of the building provisions that apply in each zone. The densest zone is residential area C, the old core of the village. This zone does not appear in all the plans, presumably since many villages established during and after the British mandate period do not have a defined core. Two additional building zones are residential B (medium density) and residential A (minimum density). Table 7 summarizes the main provisions in the standard orders.

³⁵⁰ The scale in the special outline plans prepared from 2005 on is precise, and the plan's maps are presented on a geometrically corrected aerial photograph (orthophoto) and, in one case (Khirbet Jubara) on a topographical map.

Table 7: Building Orders in the Special Outline Plans

Zone	Min. lot area	Max. building area per floor	Max. building area for entire building	Max. no. of floors	Max. no of housing units per lot	Max. area of outbuildings on a lot	Building lines		
							Front	Side	Back
Residential A	600 sq.m.	30% of lot area or 250 sq.m., whichever is the lower	60% of lot area or 500 sq.m., whichever is the lower	2	2	25 sq.m.	5 m	4 m	5 m
Residential B	400 sq.m.	40% of lot area or 250 sq.m., whichever is the lower	80% of lot area or 750 sq.m., whichever is the lower	3	4	25 sq.m.	4 m	3 m	4 m
Residential C	-	Max. 250 sq.m.	Max. 750 sq.m.	3	6	25 sq.m.	3 m from middle of the adjacent road	3 m	3m ³⁵¹

The building orders show that in residential zone A the maximum density per hectare is 33 housing units; in residential zone B – 100 housing units; and in residential zone C – 150 housing units.³⁵²

One of the main characteristics of the plans, and a direct result of their limited area, is thus their high level of density.

The standard orders state that in plots with an area of 2,000 square meters or more, the planning institutions may condition the granting of a building permit on the preparation of a detailed plan for the plot to enable the allocation of areas for public uses.

An examination of the zones as marked on the plans' maps reveals that when the plans were prepared, no attempt was made to adapt the building orders to reflect existing construction. In many cases, the building lines of the existing buildings deviate from those permitted in accordance with the standard orders. To enable approval of these existing buildings, special building orders would have to be prepared, but the authors of the plans ignored the form of the existing buildings and made no effort to draw up site-specific provisions.

Over the years several versions of the standard orders were prepared; some of the differences between the versions are substantial. In their original format, the orders set a density of 100 housing units per hectare in a residential zone A. This was later reduced to 66 housing units per

³⁵¹ In residential area C, the plans permit a smaller side and rear building line, provided the new building does not include openings facing the neighboring house and that the distance between the two buildings is not less than 1.5 m. Section 7 of Part Six of the standard orders.

³⁵² As noted above, the orders do not establish a minimum plot size in the village core (residential area C). The density of 150 housing units per hectare was calculated on the assumption that the minimum plot size is 400 square meters as in residential zone B.

hectare, and in the latest version to only 33 housing units. Accordingly, the version of the orders that applied when many of the special outline plans were approved differed considerably from the current version.

Nevertheless, in many instances it seems that the Civil Administration retroactively applies the updated plan orders even to plans that were approved on the basis of a different version of the standard orders. It is unclear what legal mechanism exists that permits the application of the updated orders to older special outline plans approved at a time when a different version of the orders was in force. According to the Jordanian law applying in the area, the amendment of a plan's orders – and especially a substantive change such as reducing permitted building densities – requires a new deposit.³⁵³ In the case of the special outline plans this step has never been taken, notwithstanding the occasional amendments of the standard orders.

Various documents that were reviewed for this report suggest that the Civil Administration's policy on the binding version of the standard orders is inconsistent. As noted, we were informed that the most recent version of the standard orders applies to all the special outline plans, including those approved 20 or more years ago. However, the State's responses to several HCJ petitions referred to the version of the standard orders that was valid at the time the relevant plan was approved.³⁵⁴ As we shall see below, inconsistency in its approach to the plans and in its assessment of the true potential development rights they imply is a prominent feature of the way the Civil Administration implements these plans.

Increasing the Permitted Building Area?

One of the professed goals of the special outline plans, as noted above, is to “increase the permitted building area” as compared to the mandatory regional outline plans. It is certainly true that the special outline plans substantially increase the permitted building areas compared to those permitted by the regional outline plans **in the agricultural zone**. However, the regional outline plans marked development areas for hundreds of villages in the West Bank. In the development areas, the regional outline plans applied the building orders established in the mandatory planning by-laws (see Chapter Five, p. 76). Compared to the building opportunities in the rural development areas, the improvement the special outline plans confer is often negligible at best.

The case of Special Partial Outline Plan 1511/91, approved for the village of Budrus in 1993, is a good example of this. In its response to a petition submitted by residents of the village against the approval of the plan (see p. 139), the State argued that Plan 1511/91 “drastically” increased the building rights compared to those permitted by mandatory Regional Outline Plan R/6, which previously applied to the area. The State claimed that the increase was due both to the reduction of the minimum lot size and to an increase in building percentages.³⁵⁵

In fact, however, Plan R/6 indicated a development area for the village of Budrus and applied the planning regulations (by-laws) of the mandatory Lydda District to this area; these regulations do not set a minimum lot size. Accordingly, the State's argument that Plan 1511/91 reduced the minimum lot size relative to the preceding statutory situation is clearly incorrect. The mandatory planning regulations permit the erection of buildings of up to three floors in the development area

³⁵³ Article 25(5) of the Jordanian Planning Law.

³⁵⁴ For example, the State's response in HCJ 2187/03 **Mustafa Hassan Yusuf Qabha and 10 Others v Minister of Defense et al.**, dated 8 February 2004, includes a reference to the special outline plan approved in 1995 in the village of Barta'a ash-Sharqiya. The capacity of the special outline plan as detailed in the state's response was calculated on the basis of a density of 66 housing units per hectare in a residential zone A, rather than 33 housing units as determined by the updated version of the standard orders.

³⁵⁵ Notification on Behalf of the Attorney-General in HCJ 1598/93 **Mahmud `Alian `Awad `Abdulkarim et al. v Minister of Defense et al.**, 17 June 1993, para. 13.

in the village of Budrus, with a maximum coverage of 75 percent of the area of the lot or 150 square meters, whichever is the lower. The maximum total floor area is thus 450 square meters per lot.

By comparison, in residential zone B, which includes over one-third of the area of Plan 1511/91, the minimum lot size is 400 square meters and the maximum building area is 40 percent or 250 square meters per floor, whichever is the lower. In the case of a lot with an area of 400 square meters, the plan thus enables a maximum building area of 160 square meters per storey, compared to 150 square meters according to the mandatory planning regulations. Plan 1511/91 states that the total building area permitted on all floors of a building in residential zone B is 80 percent or 750 square meters, whichever is the lower. In a lot with an area of 400 square meters, the maximum total building area is therefore only 320 square meters, compared to 450 square meters according to the mandatory planning regulations applied in the area under Plan R/6. In other words, not only did the special outline plan not increase building rights, but for lots with the minimum area fixed in the plan, it actually **reduced** these rights.

A similar picture emerges for construction in residential zone A, which includes approximately one-third of the area of Plan 1511/91. In this zone the plan permits the establishment of two-storey buildings, as compared to three-storey buildings according to the mandatory planning regulations. The minimum lot size in Plan 1511/91 is 600 square meters, and the maximum building area on each floor is 30 percent of the lot area or 250 square meters, whichever is the lower. In a lot with an area of 600 square meters, the plan thus permits a maximum floor area of 180 square meters per storey, and a total area of 360 square meters for the building as a whole. The mandatory building regulations that applied before allowed a total building area of 450 square meters.

Therefore, contrary to their professed goals, the special outline plans do not increase the permitted building areas in many cases compared to the mandatory outline plans. In fact, they sometimes actually reduce the permitted building areas. In minimum sized lots according to the special outline plans it is impossible to utilize all the potential building rights the plans allow, since the maximum building area cannot be exhausted in these lots.

According to the standard orders, using up the maximum permitted building area on each floor (250 square meters) in residential zone B, where the minimum lot area is 400 square meters, is possible only in a lot with an area of 625 square meters. Using up the total maximum building area for the building as a whole (750 square meters) is possible only in a plot with an area of approximately 940 square meters. In residential zone A, where the minimum lot size is 600 square meters, the maximum permitted building areas can be used up only in lots with an area of at least 830 square meters. To fully utilize the building rights permitted by the special outline plans, therefore, the building lots must be much larger than the minimum size set in these plans. This factor is important in terms of the plans' actual capacity (see below, p. 113).

By contrast, the mandatory regional outline plans enable the full utilization of the permitted building areas within the framework of their minimum defined lot area.³⁵⁶ In this respect, much more detailed planning work produced the mandatory regional outline plans, which coordinated the different building orders in a way that enables full utilization of building rights on minimum sized lots.

³⁵⁶ As noted, the mandatory planning regulations do not define a minimum lot area. In terms of the building lines established in the regulations, they permit the exhaustion of the maximum permitted building areas in lots with an area of 250 to 300 square meters. The building orders in the regional outline plans themselves also permit the exhaustion of permitted building areas in plots of the minimum size defined in the plans, with the exception of Plan S/15, in which a slightly larger plot will be needed to this end in the case of the agricultural zone.

Level of Detail

As noted, the special outline plans do not allocate areas for public uses (such as schools and clinics). The authors of the plans assume that these needs will be met in two ways: 1) Thanks to the goodwill of private landowners who will agree to defer residential construction in favor of public uses; 2) Through the provision that, in plots of over 2,000 square meters area, the planning institutions may condition the granting of building permits on the preparation of a detailed plan and the allocation of areas for public needs. Moreover, the plans do not show building lots or land subdivision. This is in contrast to the detailed plans for the Israeli settlements, which include land subdivision and the allocation of areas for diverse public needs (see comparative map on p. 117). It should be emphasized that the Civil Administration uses the special outline plan format only for Palestinian villages. Our review did not produce a single case of a special outline plan prepared for an Israeli settlement.

The Civil Administration argues that it is impossible to indicate building lots in most of the villages in the West Bank since their land is not registered with the Lands Registrar.³⁵⁷ However, even in villages in which the land was registered with the Lands Registrar prior to 1967 (such as Bir al Basha and Barta'a), the special outline plans do not show building lots and do not address the structure and boundaries of land ownership in the registered plots. Accordingly, the Civil Administration's argument looks more like an excuse for low-quality planning that neglects the collection of vital data, than a genuine justification for the lack of land subdivision in the special outline plans. Showing building lots is certainly more difficult in unregistered land, but it is not impossible. The mandatory authorities prepared a detailed plan for the village of Salfit in the Samaria district, including division into building lots, on the basis of a comprehensive land survey. The mandatory detailed plan for Salfit also allocated areas for public uses and indicates these on the plan's map although no land settlement has been undertaken in Salfit and to this day the land in the village has not been registered with the Lands Registrar.³⁵⁸

The building provisions included in the standard orders are also vague and defective. For example, the orders do not define a minimum lot size for residential area C (the village core), so it is impossible to calculate the exact maximum density permitted in this zone.

The Civil Administration's planning authorities claim that the mandatory regional outline plans are not detailed enough, and that this is one of the reasons for the difficulties in granting building permits on the basis of the plans.³⁵⁹ However, despite the general and flexible nature of the regional outline plans, their level of detail is sometimes greater than that of the special outline plans. For example, Regional Outline Plan S/15 has detailed orders for the minimum area of a habitable room, its minimum height, the type of floor coating, and the area of its windows.³⁶⁰ The standard orders of the special outline plans, many of which apply to villages in the mandatory district of Samaria, have no such detailed provisions, confining themselves to specifying permitted building rights without setting building orders that ensure decent living conditions.

³⁵⁷ Local Planning Subcommittee, discussion of Special Outline Plan 1720/05 for the village of Zif, 25 April 2007. The comment was made by the director of the Planning Bureau during the course of the discussion, but was omitted from the official minutes.

³⁵⁸ A notice concerning the approval of the detailed plan for Salfit, Plan SR/36, was published on 4 April 1946. The total area of the plan is approximately 111 hectares and is intended for a target population of 2,000. In addition to two residential zones, and to agricultural areas in which residential construction is permitted, albeit at a very low density, the detailed plan also marks land for public buildings, a cemetery, roads, and open spaces. The municipal status of Salfit was changed during the period of Jordanian rule from a village to a town.

³⁵⁹ Higher Planning Council, Hearing of Objections to the Partial Regional Plan for Small and Miniature Broadcast Installations (plan 56), 27 February 2008. The comments were made by the director of the Planning Bureau during the course of the discussion but were omitted from the official minutes.

³⁶⁰ Sections 20-22 of Regional Outline Plan S/15 approved in 1948.

A low level of detail, then, is another prominent trait of the special outline plans. This is largely due to how the plans were prepared – in a way intended to save time and resources – as well as to the decision not to perform adequate planning surveys before preparing the plans. A planning survey provides the vital data base without which it is impossible to prepare a plan that relates to the situation in the field and addresses the needs of residents. This is a fundamental planning flaw. Moreover, the low level of detail also limits the plans’ ability to be implemented. The failure to allocate areas for public needs and the fact that the plans don’t mark building lots mean that many areas within these plans cannot be utilized, and the densities they assume cannot be achieved (this aspect will be discussed in greater detail below).

[Non-]implementation of the Plans

As seen above, the principal goal guiding the authors of the special outline plans was to establish a boundary beyond which Palestinian construction would not be permitted. The authors were not unduly concerned with the precise nature of construction within the plans, or whether the plans would be implemented in practice. As noted in an expert report commissioned in 1990 by the Civil Administration itself, “the delineations [on the basis of which the special outline plans were prepared] were actually intended to define permitted and prohibited areas for construction.”³⁶¹

This conclusion is confirmed by the fact that in most cases the Inspection Unit of the Civil Administration does not enforce the planning orders and does not take action against construction without permits within the areas of the special outline plans, **even when this is contrary to the orders of these plans.** In 1998, this policy was officially approved when the legal advisor for the Judea and Samaria Area established that:

The Inspection Unit of the Civil Administration will not undertake enforcement operations against unlawful construction by Palestinians in Areas C, or against unlawful construction in the Israeli settlements (where a planning committee has been established and has been granted the powers of a local planning and building committee within such an area) that lie within the area of a new and valid plan (i.e. a plan prepared after June 1967). The police will assist the authorized planning and building bodies in enforcing the law in such cases. Notwithstanding the above, the Inspection Unit will undertake enforcement operations against unlawful construction as stated in this section when the region’s authorities determine, from time to time, that there is a security, military, or other interest in so doing.³⁶²

In spite of its rather convoluted wording, the implication of this instruction is evident: the Civil Administration will only undertake enforcement operations in areas subject to the mandatory regional outline plans. Within the Israeli settlements (where special local committees were appointed as described in Chapter Three), the inspection bodies in the Civil Administration do not act to enforce planning laws, even in cases when they are aware of violations.³⁶³ Similarly, the Civil Administration does not, in most cases, undertake enforcement operations within the areas of the special outline plans, all of which were approved for Palestinian villages after 1967, and does not act against construction undertaken in violation of their orders.

³⁶¹ Moshe Ravid, op. cit., note 153, p. 83.

³⁶² Letter from Col. Shlomo Politis, Legal Adviser for the Judea and Samaria Area, to GOC Central Command, 23 August 1998.

³⁶³ During a hearing in a HCJ petition against the illegal construction of hundreds of housing units in the Matityahu East neighborhood in the settlement of Modi’in Illit, Attorney Anner Hellman from the State Prosecutor’s Office stated that the Civil Administration does not have figures relating to the said construction since “the Inspection Committee in Judea and Samaria does not inspect building within the settlements” in which special local planning and building committees operate. Hearing in HCJ 143/06 **Peace Now Movement v Minister of Defense et al.**, 12 January 2006.

From the point of view of the Civil Administration's planning institutions, issues such as the height of buildings established within the areas of the special outline plans, the number of housing units on each lot, the building areas, the building lines, etc. are of marginal importance. Even construction on the right of way of internal roads marked in the plans does not warrant intervention, provided the roads in question are not used by Israelis. **In practical terms, the special outline plans thus constitute "blue line plans" intended to do no more than delineate the boundaries of development areas in the villages.**

Part of the Plot Is Situated Outside the Plan Area: Thus Construction Is Not Permitted

A rare case in which the Civil Administration undertook enforcement operations against a building erected without a permit within the area of a special outline plan was encountered recently in the village of Qarawat Bani Hassan to the southeast of Qalqilya.

In November 2006, the Inspection Subcommittee issued an order to stop work against a residential building established within the area of Special Partial Outline Plan 1280/90, approved for the village in 1992. According to the plan, the building is situated in residential zone A. The order to stop work includes incorrect coordinates according to which the building was constructed outside the plan area, at a distance of some 20 meters from the actual site. This may explain the initiation of enforcement proceedings in this case.

After the order was issued, the landowner submitted an application for a building permit. In January 2007, the Inspection Subcommittee rejected the application, claiming that the area of the plot on which the building was established is 7,100 square meters, and accordingly a detailed plan must be prepared before a building permit can be issued.³⁶⁴ This is based on the provision in the standard orders establishing that in plots with an area of 2,000 square meters or more, the Planning Committee is **entitled** (but not obliged) to condition the granting of a building permit on the preparation of a detailed plan.

The total area of Plan 1280/90 is 39 hectares. Since the interim agreement, 98 percent of the area of the plan is situated within Area B, and only its edges (some 7,000 square meters) are situated in Area C. The plot on which the building stands offers a miniature example of the fragmentation of the West Bank as a whole (Chapter One). Of the total area of the plot, 3,400 square meters are situated in Area B; 2,600 square meters within the plan area that falls in Area C; and 1,100 square meters are also in Area C, but outside the blue line of the plan (see map on p. 115).

In an attempt to prevent the demolition of the building, and complying with the Inspection Subcommittee's instructions, the landowner prepared a detailed plan for the entire plot at his own expense. In July 2007 the Local Planning Subcommittee reviewed the detailed plan and rejected it on the grounds that it extends the boundaries of Plan 1280/90 by "annexing" 1,100 square meters of Area C outside the blue line of the special outline plan, thus increasing the area of the plan by some 0.3 percent(!) The committee noted that the capacity of Special Partial Outline Plan 1280/90 is 30 percent

³⁶⁴ Inspection Subcommittee Minutes No. 02/07 dated 18 January 2007 in File 88/06.

more than that required according to the forecast population of the village in 2025; accordingly, there is no planning justification to increase the development area of the village.³⁶⁵

The inherent paradox in this case is that in order to issue a building permit, the Civil Administration demanded the preparation of a detailed plan applying to the entire area of the plot. Yet after the landowner submitted just such a detailed plan, the Local Planning Subcommittee rejected it on the grounds that a small area of the detailed plan lies outside the boundaries of the special partial outline plan. As a result, the Civil Administration effectively prohibited construction on the entire plot, although most of it lies within the approved Plan 1280/90.

This case illustrates the arbitrary way of determining the boundaries of the special outline plans, without considering the pattern of land ownership and while dividing existing plots. In Qarawat Bani Hassan, as in many other places, the administrative division between Areas B and C was also done arbitrarily, without attention to the boundaries of plots, the actual built-up area, or even the precise boundaries of the special outline plan.

Capacities and their Calculation

As noted above, the decision to reject the detailed plan submitted by the owner of the plot in Qarawat Bani Hassan was justified on the grounds that the capacity of the special partial outline plan approved for the village exceeds the projected population of the village in 2025. This is not an unusual case: in areas outside the special outline plans, the planning institutions in the Civil Administration often reject applications for building permits or detailed plans on the grounds that the capacity of the special outline plan meets the needs of the village for many years to come.

In 2006, for example, the Local Planning Subcommittee rejected a detailed local plan submitted by a resident of the village of As-Sawiya to the south of Nablus. The plan sought approval for a building erected without a permit outside the boundaries of the approved special outline plan. The committee justified its decision by noting that the capacity of the plan is 119 percent higher than required in order to meet the expected population of the village through the year 2015.³⁶⁶ Similarly, in 2007 the Local Planning Subcommittee rejected a detailed plan submitted by residents of Khirbet ad-Deir to the south of Bethlehem in an effort to prevent the demolition of buildings established without permits outside the boundaries of the special outline plan for the village. The committee found that the capacity of the special outline plan approved for the village is 40 percent higher than that required by 2025 and, accordingly, there is no planning justification for permitting the expansion of the built-up area of the village.³⁶⁷ In another case, the Local Planning Subcommittee rejected an appeal against the decision of the Inspection Subcommittee to refuse a building permit for an agricultural outbuilding erected by residents of Bil'in, on the grounds that the building was situated outside the boundaries of the special partial outline plan approved for the village in 1992 – a plan with a “capacity” that is “over 157 percent of that required for the population of Bil'in through 2015.”³⁶⁸

³⁶⁵ Local Planning Subcommittee Minutes No. 5/07 dated 26 July 2007 in File 1280/38/06.

³⁶⁶ Local Planning Subcommittee Minutes No. 16/06 dated 16 November 2006 in File 1334/20/05.

³⁶⁷ Local Planning Subcommittee Minutes No. 5/07 dated 26 July 2007 in File 1641/23/06.

³⁶⁸ Local Planning Subcommittee Minutes No. 3/07 dated 11 February 2007 in File 1527/1/06.

Although the calculation of capacities is a practice that is extraneous to the plans themselves and is not mentioned in their orders, it is central to the Civil Administration's use of the plans to justify prohibiting building outside their boundaries. The calculation of capacity is based on a double computation, analyzing both the village's projected population and the figures implied by the plan itself. In the first stage, a statistical estimate is prepared of the expected number of residents in the village in the target year. The figure is divided by six or seven (the expected number of persons in a typical household) to produce the required number of housing units.

In the second stage, the number of housing units that can be built according to the plan is computed. This figure is multiplied by six or seven (the number of people in a typical household) to determine the number of residents who can live in the plan area. The difference between these two figures – the expected number of residents in the target year and the number of residents who can live in the plan area – is the plan's surplus capacity relative to the projected needs of the village.

In Bil'in, for example, where the approved special outline plan covers an area of 26.6 hectares, the Civil Administration has calculated that it is possible to establish 754 housing units in which 4,524 people will live. According to the statistical forecast, the population of Bil'in in 2015 will be 2,880. Accordingly, the Civil Administration claims that the plan provides surplus capacity of 57 percent relative to the required number of housing units in the target year.

Changing Formulas

Accordingly, the critical part of calculating capacity relates to the data of the plans themselves – the density they permit (nominal capacity), on the one hand, and the expected implementation (actual capacity), on the other.

The formula used by the planning institutions to calculate the **nominal capacity** of plans is the number of housing units that may be established in the plan area, according to the orders, less 30 percent. This formula reflects the assumption that 70 percent of the area of the plan intended for development will be used for residential purposes and the remainder for public needs.

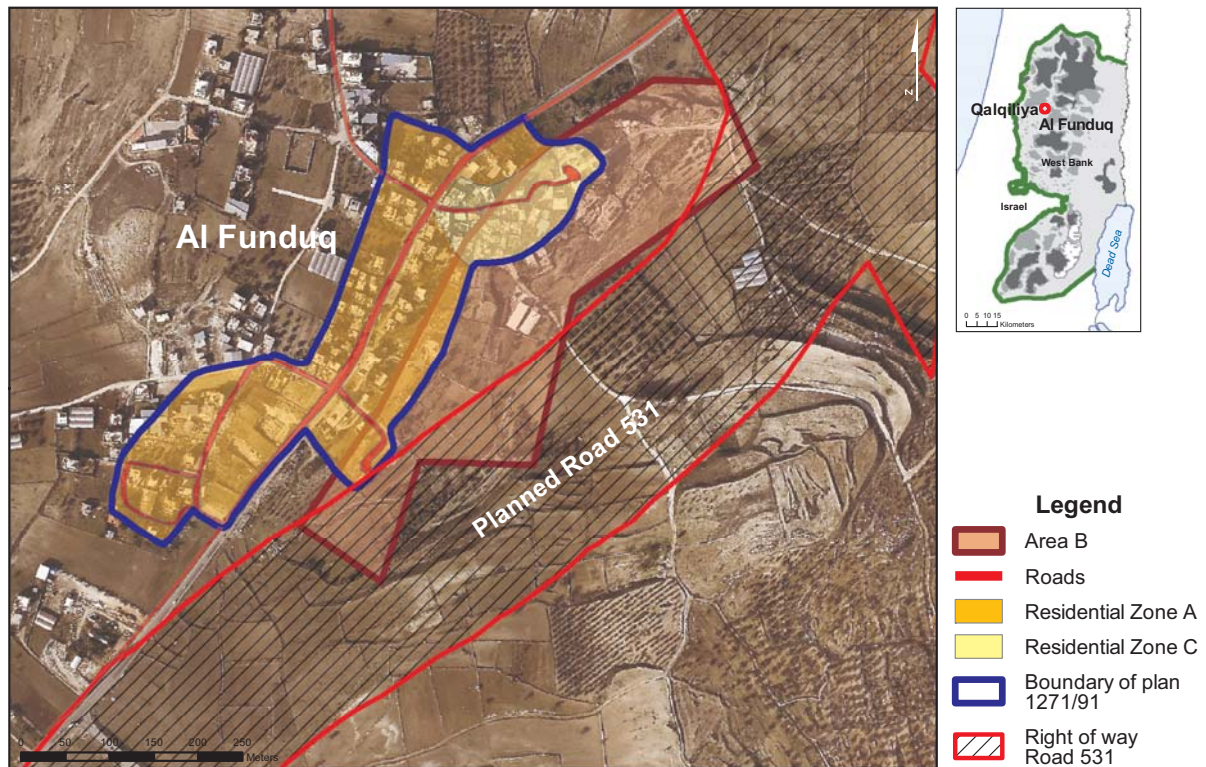
Actual capacity is computed by multiplying the nominal capacity by the expected implementation of the plan. Even in the case of local outline plans prepared for entire communities within the State of Israel, it is only rarely possible to implement in practice the full extent of the plan's potential building rights. In Arab villages inside the State of Israel, for example, actual implementation is usually no higher than 40 or 50 percent.

For the formula to calculate nominal capacity, the Civil Administration has applied a consistent approach since the preparation of the earliest special outline plans and through to the present. In the case of actual capacity, however, the planning authorities in the Civil Administration have used various formulas over the years.

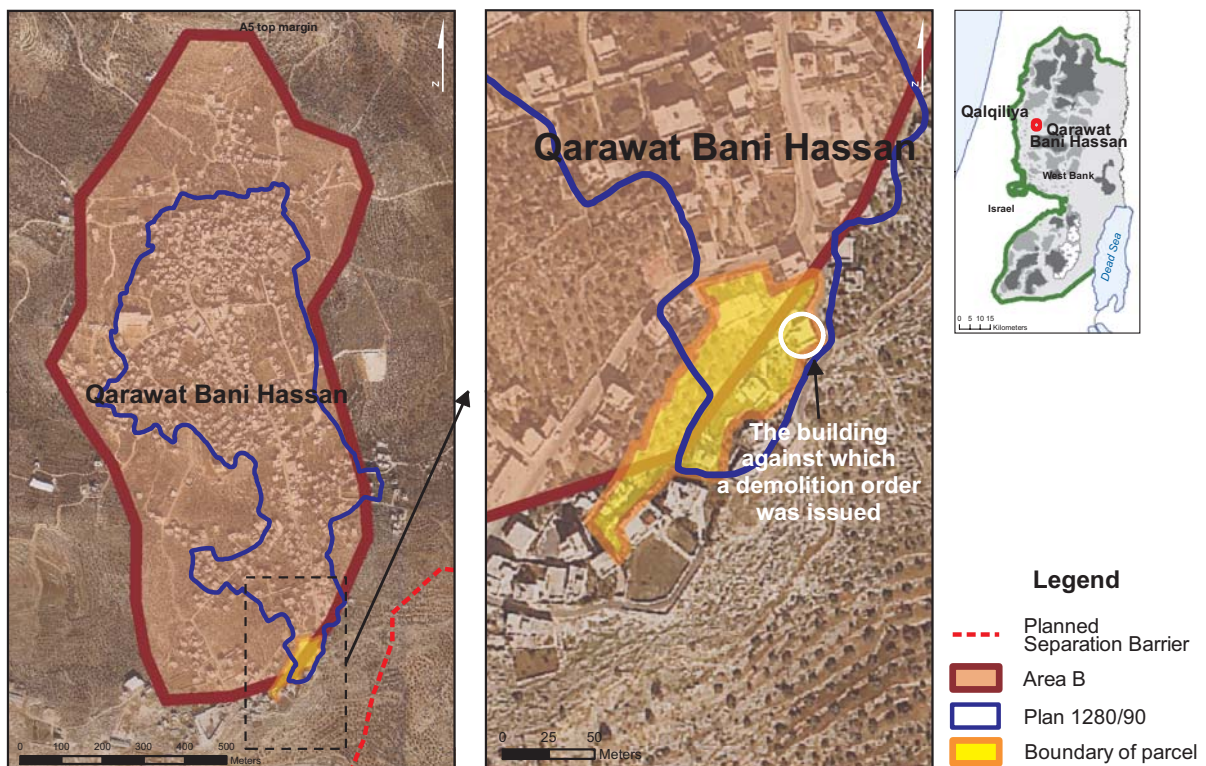
In the late 1980s and early 1990s – when the first special outline plans were approved – the Civil Administration argued that actual capacity was identical to the nominal capacity. According to the formula applied at the time, after offsetting 30 percent of the number of housing units that could be built in the plan area on account of public needs, 100 percent implementation should be anticipated. In other words, the assumption was that the maximum number of housing units permitted by the plan would indeed be built in the plan area.³⁶⁹ Accordingly, the Civil Administration assumed an extremely high level of density within the areas of the special outline plans, both in terms of the expected number of housing units (a figure of 100 housing units per net hectare, or a figure of 70 housing units per gross hectare) and in terms of the population (approximately 400 or more residents per net hectare – a density that is not found in any community within the State of Israel).

³⁶⁹ Moshe Ravid, op. cit., note 153, p. 87.

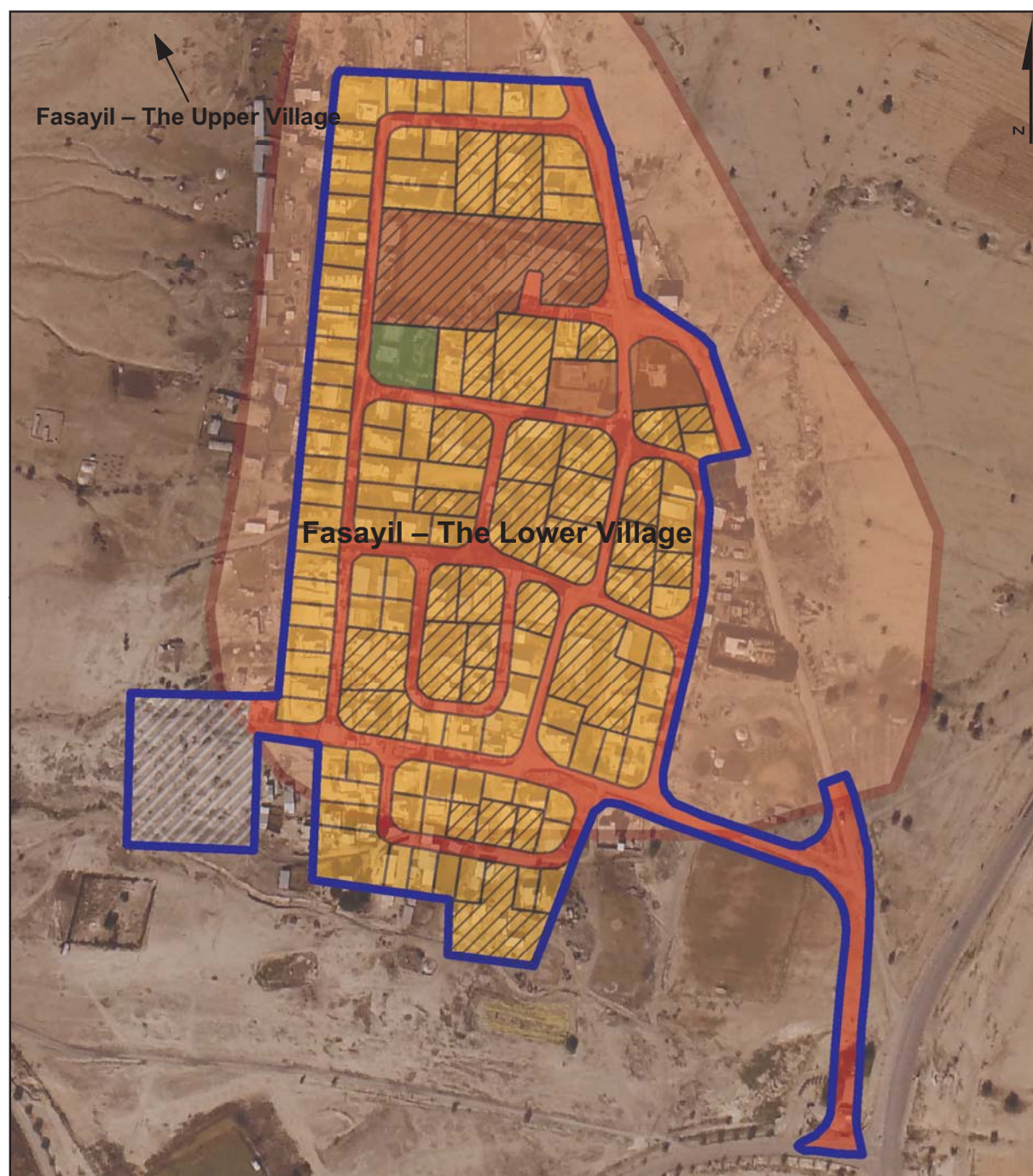
The Special Outline Plan for the village of Al Funduq and the route of Road 531, which has not yet been constructed



Qarawat Bani Hassan, the Special Outline Plan and the building against which a demolition order was issued



The detailed outline plan for the village of Fasayil



0 50 100 150 200 250
Meters

Legend

Plan 1412/20/87



Area B



Plots built upon prior to Plan's approval



Plan Boundary



Residential Buildings



Public Buildings



Open Public Space



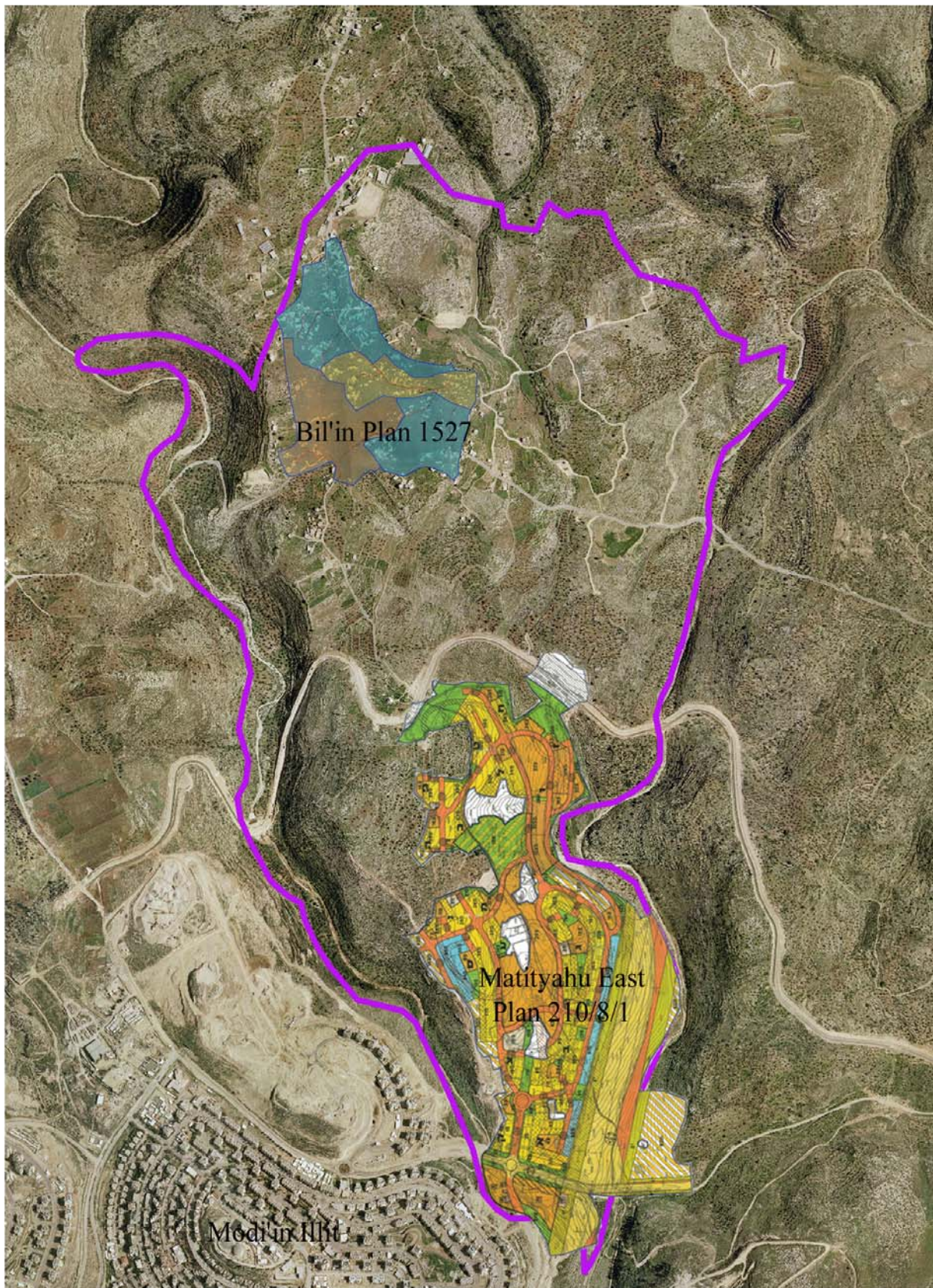
Roads



Cemetery

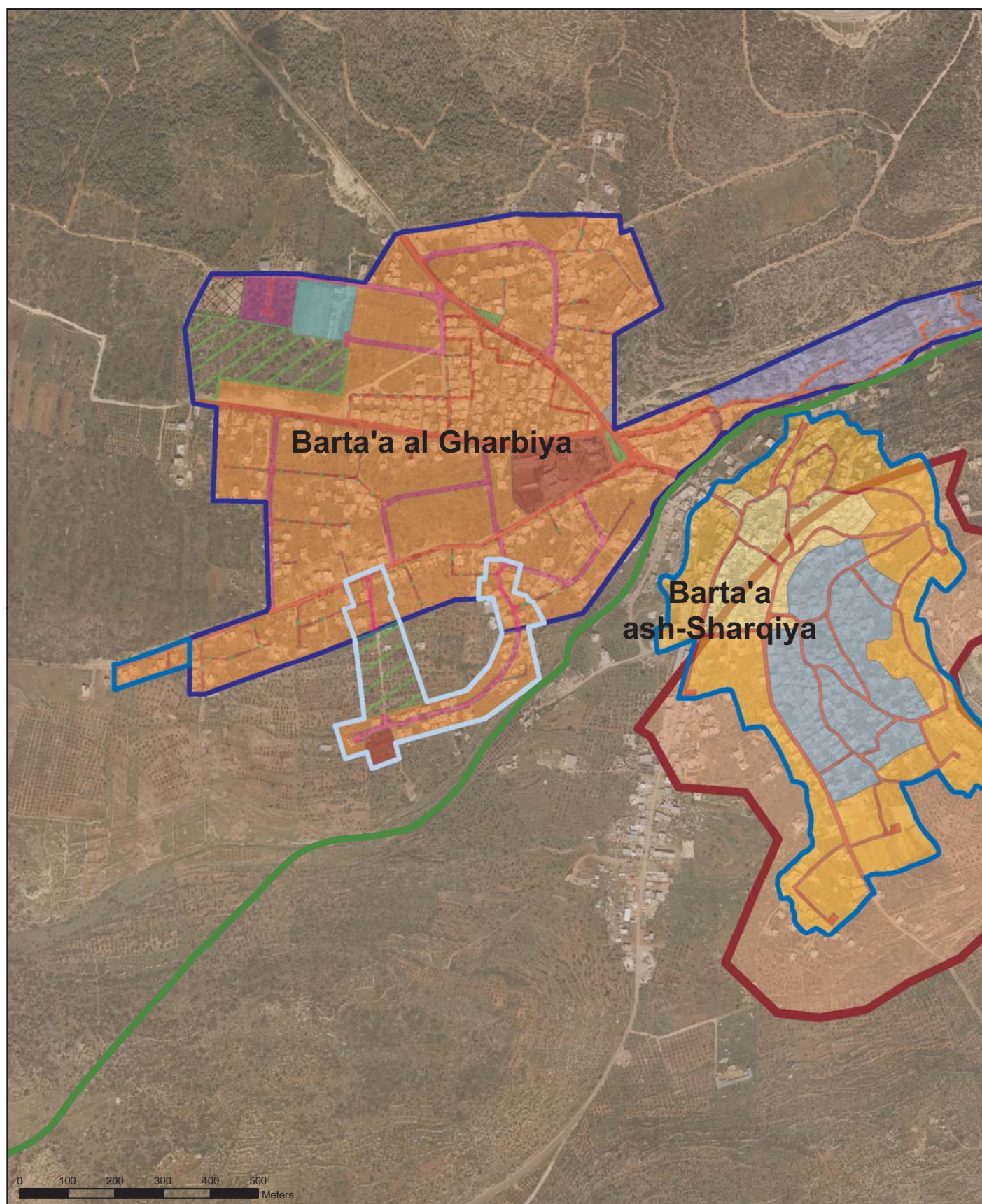


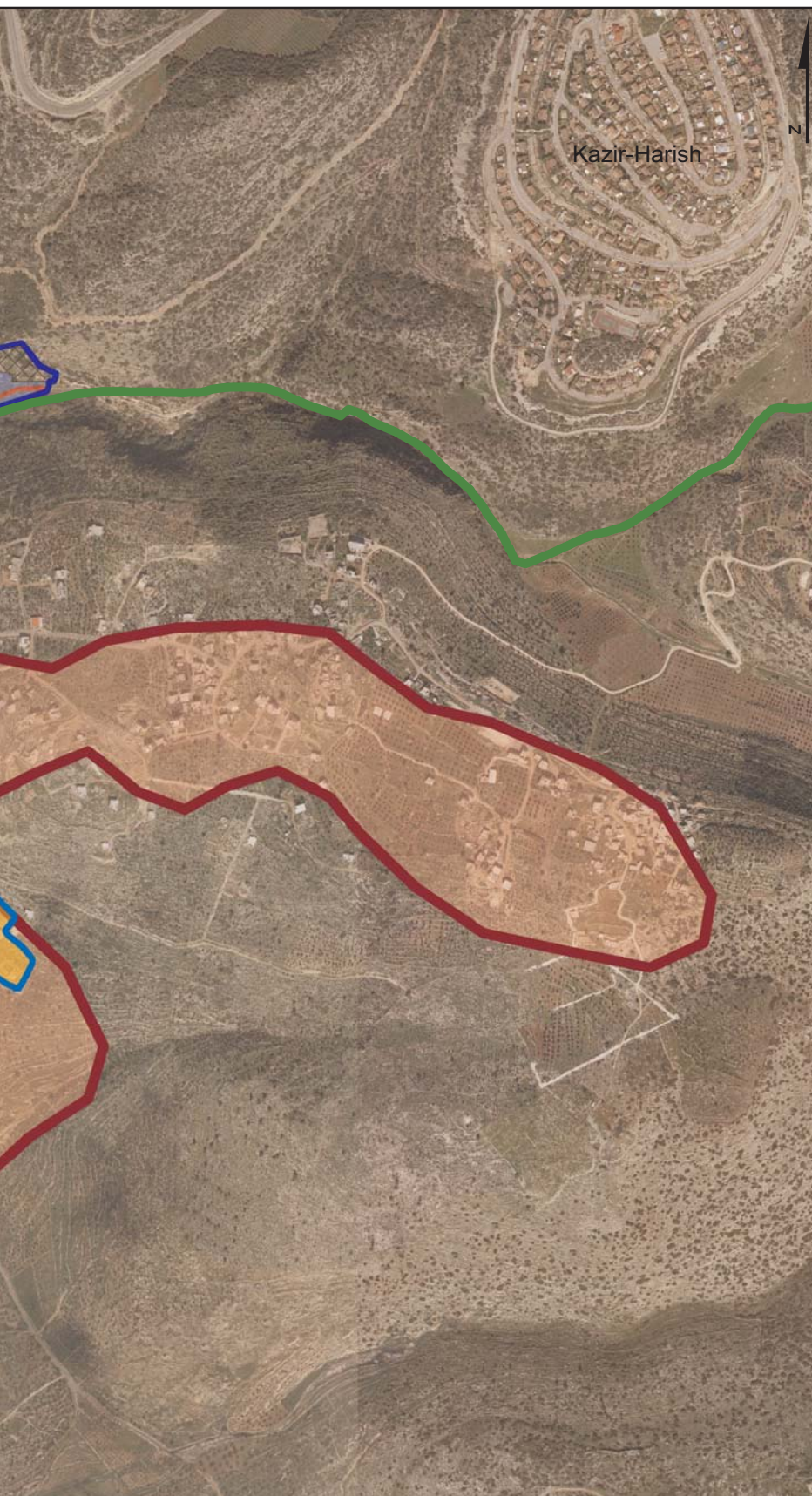
Level of detail in plans for Palestinian villages and in plans for settlements



Detailed plan 210/8/1 for the Matityahu East neighborhood in the settlement of Modi'in Illit is situated mostly on the village lands of Bil'in (marked by the purple line). The plan, approved by the Higher Planning Council in 2007, covers some 82 hectares. It designates 16 zones and includes subdivision into building lots (below). The Special Partial Outline Plan 1527, which the Civil Administration approved to the village of Bil'in, covers only 26.6 hectares and has only four zones – three residential zones and a partial system of roads (above)

Outline plans in Barta'a al Gharbiya and in Barta'a ash-Sharqiya

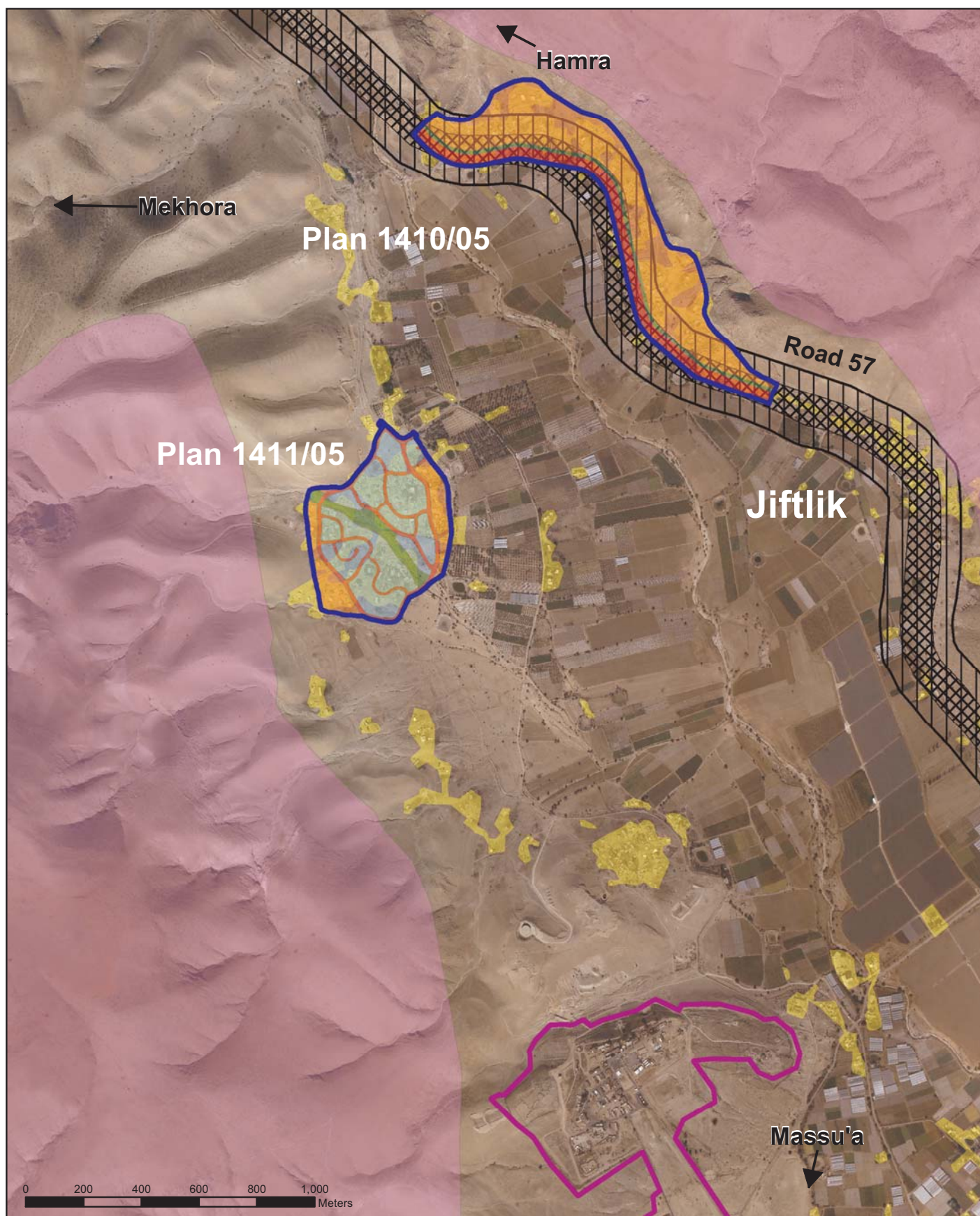




Legend

- The Green Line
- Area B
- Outline Plans - Barta'a al Gharbiya**
 - Residential Zone A
 - Special Residential Zone
 - Dense Residential Zone
 - Public Building Site
 - Commercial Zone
 - Recreation Zone
 - Open Public Space Zone
 - Light Industry Zone
 - Agricultural Zone
 - Cemetery
 - Existing or Approved Road
 - Planned Road or Road Expansion
 - Path
 - Boundary of plan 1015
 - Boundary of plan 220
 - Boundary of plan 364
- Plan 1108**
 - Residential Zone A
 - Residential Zone B
 - Residential Zone C
 - Roads
 - Plan Boundary

Jiftlik: The Special Outline Plans and the strip of Road 57





Legend

- Built-up area
- Military Base
- Closed Military Zone

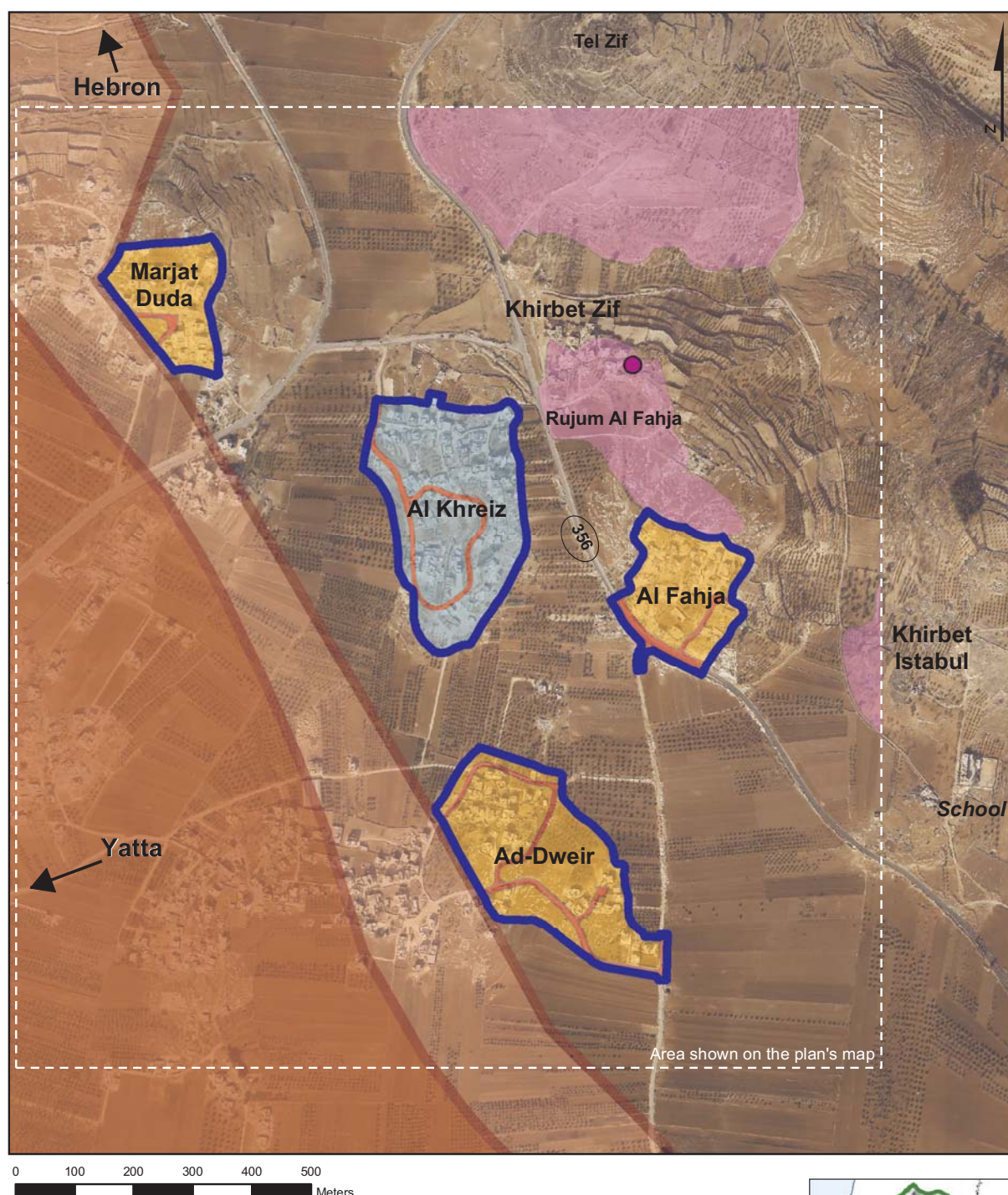
Special Outline Plans

- Residential Zone A
- Residential Zone B
- Open Space
- Roads
- Plan Boundary

Right of way - Road 57 according to Plan 50

- Right of way
- Building Prohibition Line

Zif: Two of the four neighborhoods of the village were left outside the boundaries of the Special Outline Plan



Legend

Plan 1720/05			
	Plan Boundary		Focal Archeological Site
	Area A		Archeological Site
	Residential Zone A		Roads
	Residential Zone B		



This approach was sharply criticized in a 1990-report written by experts from the Civil Administration itself.³⁷⁰ The authors of the report noted that the average future level of density in some of the outline plans prepared by the Civil Administration for several Palestinian cities was 15.7 housing units (86 residents³⁷¹) per gross hectare, ranging from 11.1 housing units in Beit Jala to 19.1 in Jenin.³⁷² While planning logic dictates that density of construction will be higher in cities than in villages, the density in the 19 special outline plans approved before the submission of the expert report was 70 housing units per gross hectare – approximately 4.5 times the density in the outline plans prepared by the Civil Administration itself for the Palestinian cities. In terms of population, the discrepancy between the planned density in the cities and that in the villages was even greater (a factor of approximately 4.9). The authors of the report note that by comparison with the future densities in the cities of the West Bank, the density in the special outline plans for the villages “seems unreasonable.” The surprising explanation they offer for this is that this high density “is presumably intended to satisfy the residents.”³⁷³

According to the expert report, the high nominal density established by the special outline plans and the expectation of 100 percent implementation as determined by the Civil Administration led to absurd results. The authors note, for example, that the actual capacity in accordance with the special outline plan approved for the village of Qadum (51.5 hectares), based on the assumption of 70 housing units per gross hectare, is 3,605 housing units and 21,630 residents. According to these calculations, the plan would meet the needs of the village until at least the year 2100.³⁷⁴

In addition to these problems, the expert report also noted defects in the delineation of the boundaries of the villages: “the size of the area allocated for each community was not examined in accordance with its actual future needs.”³⁷⁵ The authors of the 1990 report also noted the difficulty in implementing the plans, particularly due to their failure to allocate areas for public needs:

Even insofar as the existing public buildings in the villages meet the needs of the current population, they will certainly not be adequate in the future given population growth and, perhaps, also given rising needs.

By the year 2005, it may be anticipated that all the open spaces still available within the village [within the confines of the special outline plan] will be filled with buildings of one or two stories, with foundations and columns for the construction of additional floors for sons who reach marrying age. The village will not reach full utilization of the building rights for all the floors, but the ground coverage will be more dense, and **toward the year 2015 will be filled completely, so that no vacant space will remain whatsoever for public needs.** It may be anticipated that within a relatively short period pressure will develop on the part of the village to extend the planning boundaries, in part in order to include open spaces that can be earmarked for public needs.

If such areas are indeed added, these will be areas in the margins of the village or outside, leading to the seepage of the village and its additional growth.

The absence of public areas in proximity to the centers of gravity of the population of the village will lead to a deterioration in the quality of life of the residents. In

³⁷⁰ Ibid., pp. 87, 90-107.

³⁷¹ The average size of households in the cities is smaller than in the villages. According to the report, the average in cities was just 5.5 persons at the time the report was written.

³⁷² Moshe Ravid, op. cit., note 153, p. 86.

³⁷³ Ibid., p. 87.

³⁷⁴ Ibid., p. 96. The number of residents was calculated according to six persons per household.

³⁷⁵ Ibid., p. 86.

some lots (whose owners do not own additional land), the full scope of building rights will be exploited. Accordingly, the appearance of the village will be a jumble of buildings of one, two, three, and four stories (three stories above shops).³⁷⁶

After the completion of the expert report, the Civil Administration made various changes to the standard orders and to the formula for calculating actual capacity. In plans approved during the period 1992–1995, the building density in residential zone A was reduced from 100 housing units per net hectare to 66 housing units,³⁷⁷ and in the current version of the standard orders the density in this zone has been reduced still more, to just 33 housing units per net hectare. The density of construction in residential zones B and C has not been changed, however, and remains very high.

At the same time, the Civil Administration abandoned its assumption that nominal capacity and actual capacity are identical in the case of the special outline plans. The calculations of capacity in several plans from the mid-1990s that were the subject of HCJ deliberations were based on expected utilization of just 40 to 45 percent. In the case of Special Outline Plan 1108, for example, approved in 1995 for the village of Barta'a ash-Sharqiya (43.2 hectares), the plan ostensibly permits the construction of 2,570 housing units after the offsetting of 30 percent for public needs. However, the State declared before the HCJ that the actual capacity of the plan is just 1,095 housing units (see Barta'a Case Study, p. 142). The State's response reveals that the Civil Administration assumed that the actual density per net hectare in residential zone A would be 30 housing units (forecast utilization of 45 percent relative to the figure of 66 housing units that could be permitted in accordance with the standard orders applying at the time); the density in residential area B would be 40 housing units (compared to 100 as permitted by the plan); and the density in residential area C would be 60 housing units (compared to 150 as permitted by the plan). Thus the calculation formula assumes utilization of 40 percent in residential areas B and C and 45 percent in residential area A.³⁷⁸

Expected utilization of 40 percent seems reasonable, at first glance. However, the question as to whether a given level of expected utilization is reasonable must be examined against the background of the nominal density permitted by the plan. As already noted, an expected utilization of around 40 percent is usually assumed in the case of outline plans for Arab villages within the State of Israel. However, the nominal density in these plans is lower than in the case of the special outline plans in the West Bank. For example, the approved outline plans for the village of Barta'a al Gharbiya, which is within the State of Israel, establish a nominal density of 40 housing units per net hectare; thus the actual density (assuming utilization of 40 percent) is 16 housing units per net hectare. By contrast, the special outline plan approved by the Civil Administration for the adjacent village of Barta'a ash-Sharqiya, on the Palestinian side of the Green Line, establishes a nominal density of 85 housing units per net hectare, and an actual density of 34 housing units per net hectare – over twice the density in Barta'a al Gharbiya (see p. 144).

Whatever the case may be, the documents we hold show that in the case of special outline plans approved in recent years, the expected utilization assumed by the Civil Administration is much higher than 40 percent. In a recent decision by the Local Planning Subcommittee concerning Special Outline Plan 1721/05 for the village of Al Buweib, the actual capacity of the plan was calculated on the basis of expected utilization of 65 percent.³⁷⁹ On the same date that the committee discussed

³⁷⁶ Ibid., p. 97, emphasis added.

³⁷⁷ For example, see the orders of Special Partial Outline Plan 1527 approved for Bil'in in 1992.

³⁷⁸ Response of the State in HCJ 2187/03, *Mustafa Hassan Yusuf Qabha and 10 Others v Minister of Defense et al.*, 8 February 2004.

³⁷⁹ Local Planning Subcommittee Minutes No. 9/07 dated 31 December 2007. The nominal capacity of the plan is 537 housing units, and the actual capacity – as calculated by the committee – is 350 units (2,100 residents).

the plan for Al Buweib, it also heard objections to Special Outline Plan 1725/05 for the village of Ad-Deirat. In this case, the committee assumed utilization of 57 percent.³⁸⁰

Thus we can see that in three villages (Barta'a ash-Sharqiya, Al Buweib, and Ad-Deirat), the **same planning committee** expected three different levels of utilization: 43 percent in Barta'a ash-Sharqiya, 57 percent in Ad-Deirat, and 65 percent in Al Buweib. When the Civil Administration itself adopts an inconsistent approach to calculating capacity, it is difficult to understand the rationale behind its approach.

Critical Review

Credible evaluation of actual capacity requires in-depth analysis that is not based on simplistic formulas. The calculation of capacity must take into account numerous variables that were ignored by the Civil Administration during the preparation of the special outline plans. A critical variable, particularly in the West Bank, is the pattern of land ownership, yet as noted the special outline plans were prepared without reference to this factor.

An understanding of the internal boundaries between the plots included within the plan area is vital for realistic evaluation of the number of housing units that could be built there. The arbitrary definition of the boundaries of the special outline plans inevitably reduces the area in which construction can be implemented at the density level proposed by the plan. In most Palestinian villages, the area of the existing plots is greater than the minimum plot size set in the plans and used as the basis for calculating their capacity. Since accepted practice in the Palestinian villages is for each resident to build on the plot he owns, and since the existing plots are larger than the plans' minimum lot size, the number of buildings that will actually be erected within the plan areas is significantly lower than that permitted in accordance with the standard orders.

In many cases, construction is planned in lots where buildings already exist, by the addition of one or two floors. To add floors to an existing building, new constructional work is often required. In some cases, it is necessary to demolish and rebuild the existing building – which can be done only in exceptional cases. In lots where buildings already exist, there is no realistic possibility of utilizing the building rights assumed by the special outline plans, either in terms of the number of floors or in terms of the number of housing units.

For example, Special Partial Outline Plan 1271/91, approved in 1993 for the village of Al Funduq, covers an area of 8.1 hectares, of which 1.3 hectares are defined as residential zone C (the old core of the village; see map on p. 115). The actual capacity of the area zoned as residential area C, based on expected utilization of 40 percent, is 55 housing units. In a recent visit to the village, we counted just 25 housing units in this same area – less than half the figure assumed by the Civil Administration. According to the residents of the village, there is no real possibility of building in most of the compound marked as residential area C in the plan, since the area includes old, dilapidated buildings and the owners are opposed to demolition.³⁸¹

A further important issue that is virtually ignored by the special outline plans is the topographical and geological dimension: do the land conditions permit the construction of buildings in the areas zoned for this purpose by the plans? Do the surfaces and slopes allow the full utilization assumed by these plans? Given the geological structure of the area, is it possible to build several stories – or even to form foundations permitting construction on any scale? As elsewhere, no analysis of the vacant areas included in the plans was done to ensure the absence of physical constraints on construction before the special outline plans were approved.

³⁸⁰ Ibid. The nominal capacity of the plan is 410 housing units, and the committee's decision reflects an actual capacity of 233 units (1,400 residents).

³⁸¹ Visit to Al Funduq, 13 July 2008.

Even if we ignore these issues, an allocation of 30 percent for public needs is inadequate and inconsistent with accepted planning standards. Most of the special outline plans prepared during the 1990s do not include a separate calculation of the area of roads marked on the plans' maps. In other words, the area of the roads is included in the residential zones. This means that these plans need an additional offset for public areas, since their nominal capacity as calculated by the Civil Administration includes residential construction on an area zoned for roads on the plans' maps. Accordingly, for these plans it should be assumed that at least 50 percent of the plan area will be used for public needs (including roads).

In most of the special outline plans with which we are familiar, the road system is not comprehensive or appropriate. Most of the plans merely show two or three main roads in the village area, without indicating secondary roads within the area zoned for residential construction. As a result, even if the plans calculate the area of roads separately, this calculation is usually incomplete, since it does not include areas to be allocated for secondary roads permitting access to the buildings.

According to the standard orders, roads are **not** one of the permitted uses in residential zones. Apart from residential homes, the orders permit public buildings, commercial buildings, light industry and industrial buildings, and open public spaces – but not roads – in residential zones. Since the plans show residential areas without delineating secondary roads providing access to the buildings to be erected there, it is impossible to build in these areas without constructing roads. And since roads are not a permitted use in residential zones, as noted, the areas of the plans zoned for residential construction, and in which the plan's map does not mark roads, may be utilized only by violating the orders of the plan. **Thus the implementation of the plan involves the violation of its orders.**³⁸²

The higher the density set in plans, the larger the relative extent of the allocation needed for public spaces, since the need for public institutions (schools, clinics, etc.), open public areas, and roads increases in direct proportion to the number of residents living in the community. Moreover, the accepted approach is that the estimate of the required areas for public needs should be higher the lower the level of detail in the plan. Accordingly, given the relatively high density established by the special outline plans, an allocation of public needs of at least 50 percent of the area should be included, rather than 30 percent as calculated by the Civil Administration. In the detailed plans approved by the Civil Administration for the Israeli settlements, the proportion of land allocated for public needs is more than 50 percent, and sometimes as high as 80 percent or more (see Table 8).

Inevitably, the larger the proportion of the plan area assumed to be used for public needs, the smaller the number of housing units that can be built within the plan area. Accordingly, the formula used by the Civil Administration to calculate the nominal capacity of the plans is unrealistic and the actual capacity it assumes is therefore also incorrect.

The practice of defining density in terms of the number of housing units per hectare is rarely encountered outside Israel. In most countries, density is usually expressed as a function of population, i.e. the number of residents per unit of area.³⁸³ The reason for this is that, apart from the question of the number of housing units that may be built in a given area, planning and other constraints (in such fields as transport, infrastructures, etc.) affect the size of the population that can live in the area. In terms of population, and even based on utilization of only 40 percent, the special outline plans propose a higher level of density (number of residents per gross hectare) than in any rural community in the State of Israel. For example, the Civil Administration claims that the actual capacity of the special outline plan approved for Bil'in (26.6 hectares) is 754 housing units

³⁸² A further possibility in the standard orders is for the residents of the village to prepare, at their own expense, a detailed plan changing the road system. Given the high costs of detailed planning, particularly in the case of an entire community, this is a purely theoretical possibility.

³⁸³ Mike Turner, "Building Density, Open Areas, and Quality of Life in Residential Neighborhoods," in: Yisrael Kimchi (ed.), *The Urban Environment*, Jerusalem: Jerusalem Institute for Israel Studies – Environmental Policy Center, 2005, p. 98.

and 4,524 residents, as mentioned above. This reflects expected utilization of 41 percent. According to this calculation, when the actual capacity is reached, the density within the plan area will be 170 residents per gross hectare. Similarly, according to the Civil Administration's calculations of capacity, the number of residents in the special outline plan for Barta'a ash-Sharqiya will be 152 per gross hectare, and in Budrus – 177 residents per gross hectare. By way of comparison, the average density in the built-up areas of rural communities within the State of Israel is just 15.8 residents per gross hectare (see p. 131 below) – **approximately one-tenth of the intended density of the Palestinian villages according to the Civil Administration.**

With the exception of one town (Bnei Brak, where the number of residents per gross hectare is approximately 203), such a high population density level is not even found in Israeli cities, in which density levels are naturally higher than is usual in villages. For example, the number of residents per gross hectare within the boundaries of the outline plan for the city of Kfar Sava is approximately 57. In the area of the outline plans for the city of Ramat Gan – one of the most crowded cities in Israel – the figure is only 98.³⁸⁴

An international comparison also confirms how unreasonable the population densities assumed by the Civil Administration for Palestinian villages in the West Bank are. In Inner London (as distinct from the relatively sparsely populated metropolitan area), the most densely populated city in Britain, the population density is approximately 90 residents per gross hectare.³⁸⁵ In New York, one of the most densely populated cities in the United States, the number of residents per gross hectare is 102.³⁸⁶ In other words, when determining the area it allocates for development in Palestinian villages, the Civil Administration assumes that the future population density in these areas will be 70 percent or more higher than in several of the largest and most populated cities in Israel and the Western world. There is no real chance that such an assumption can materialize.

In light of all the problems noted above – the high level of nominal density; the failure to address the division of land ownerships; the lack of detail; inadequate allocation for public needs; the inclusion of roads in the calculation of the area zoned for residential uses; and the lack of access solutions for compounds zoned for construction – **it may be estimated that the actual capacity of the outline plan is about half that assumed by the Civil Administration, and in some cases even less.** It should be emphasized that this is a general evaluation; actual capacity varies from plan to plan and from village to village in accordance with the unique profile of each community.

The situation in the field supports this conclusion. In most of the villages for which special outline plans have been prepared, the buildings erected since the approval of the plans are mainly of one or two stories. In most villages, the higher and denser construction that the special outline plans have proposed is absent in reality.

Exceptions to this are a number of villages whose built-up area is mainly in Area B, where high-rise construction with high density levels can be observed. Most of these villages, such as Bir Nabala and Az-Za'ayem, are situated on the urban periphery of Jerusalem. The reason for the high-rise

³⁸⁴ The number of residents per gross hectare was calculated in accordance with the statistics of the Central Bureau of Statistics (CBS; www.cbs.gov.il) from the end of 2006. Since the CBS statistics relate to areas of jurisdiction, rather than to the areas of the outline plans, we deliberately chose the cities of Kfar Sava and Ramat Gan for our comparison, since the outline plans for these cities cover all or virtually all the area of jurisdiction. Regarding the area of jurisdiction, the CBS figures show that the number of residents per gross hectare was 74 in Jerusalem and just 59 in Tel Aviv.

³⁸⁵ According to the figures of the UK Statistics Authority. The figures are correct as of 2002, the last year for which official data are available. See: <http://www.statistics.gov.uk/STATBASE/ssdataset.asp?vlnk=7662>.

³⁸⁶ <http://fedstats.gov/qf/states/36/3651000.html>. The figures are correct as of 2000, the last year for which official data are available.

construction in these villages (sometimes as many as eight or more floors) is due to the urbanization these villages have experienced as they became part of the Jerusalem metropolis, as well as the strict restrictions imposed on Palestinian construction in Area C and in East Jerusalem. These restrictions have led tens of thousands of Palestinians from Jerusalem to move to adjacent villages in Area B, and the growing demand for housing, combined with the lack of land for residential construction, have encouraged high-rise construction there.

Environmental Considerations

The planning authorities in the Civil Administration argue that environmental considerations are a major factor in the preparation of the special outline plans. They claim that the delineation of Palestinian construction and increasing the density levels are necessary in order to protect open spaces and agricultural land.³⁸⁷

Increasing density is indeed a common practice as part of sustainable development emphasizing environmental considerations.³⁸⁸ However, such development is intended to secure diverse environmental and social objectives of which saving land resources is only one. Sustainable development has three overall goals: to meet the present and future physical and social needs of the residents; to meet their economic needs and enable economic growth; and to protect the ecosystem. Sustainable development must address the different and contradictory needs that are derived from each of these aspects: “full realization in one of these areas will contradict the others and, accordingly, cannot be called sustainable development.”³⁸⁹

For example, increasing the density of construction may save land, but dense construction without proper spaces between buildings increases electricity consumption and wastes energy. Accordingly, planning based on the principles of sustainable development cannot be confined to a single aspect of the mutual relations between humans and their environment. It must balance various needs and adapt planning to meet the unique profile of each community and preserve its character.³⁹⁰

Sustainable development is impossible without the full and substantive participation of the public in the planning process. Securing the environmental objectives of sustainable development – saving natural resources such as land, water, and energy – depends on the acceptance of this objective by the target population: “promoting sustainable development depends on the institutionalization and long-term functioning of partnerships including residents, institutional bodies, and interest groups... Planning, implementation, and long-term management of built and natural spatial elements... should represent diverse aspirations of the interested parties, and above all the consumers of local services... Democracy in the sense of a regime that involves the citizens in discussions relating to policy making and decisions is the key to protecting the environment.”³⁹¹

In light of these principles, we shall now examine the extent to which the special outline plans and the level of density they propose are reasonable in environmental terms.

³⁸⁷ Response of the respondents in HCJ 1598/93 **Mahmud `Alian `Awad `Abdulkarim et al. v Minister of Defense et al.**; Local Planning Subcommittee Minutes No. 1/08 regarding Special Outline Plan 1720/05 for the village of Zif, 20 January 2008.

³⁸⁸ Ministry of Construction and Housing, *Guidelines for Planning Sustainable Communities and Neighborhoods*, Jerusalem: April 2007, p. 26.

³⁸⁹ *Ibid.*, pp. 10-11.

³⁹⁰ *Ibid.*, pp. 26, 49.

³⁹¹ *Ibid.*, p. 18.

Public Participation and Level of Detail

The Palestinian public is not involved in the process of preparing the special outline plans, nor do the plans address this population's aspirations and needs or the character of its communities. In fact, the plans are imposed on the residents of the villages from above, without any consultation. The only stage when the Palestinian public is allowed to state its position on the plans is the objections procedure – an inherently adversary process. In any case, the majority of objections are rejected.

As noted, the authorities do not undertake a planning survey before preparing the plans. Such a survey is vital for plans that aim for high density levels and to promote the protection of environmental values. The collection and analysis of data on land conditions to ensure the optimal definition in environmental terms of the development area, and to enable the efficient exploitation of land resources, are an essential condition for planning that promotes the protection of the environment. In practice, the only research that the Planning Bureau seems to have undertaken prior to the preparation of special outline plans is a partial analysis of the topographical conditions.

The failure of the plans to address the division of land ownership often means that many residents are left without building land within the plan area. As mentioned above, the accepted practice in Palestinian society is that each resident builds on land he owns. The failure to address this cultural aspect produces ongoing development pressure in the adjacent open areas by residents who do not own land within the plan boundaries, hindering achievement of the professed environmental goals.

The failure to address the issue of land ownership is just one aspect of the generalized and unspecific character of the plans. Sustainable development requires detailed planning that provides appropriate solutions for all the needs of the community – both for residential buildings and for public areas. In the absence of detailed planning it is difficult, if not impossible, to ensure preservation of land resources. As noted in the expert report commissioned by the Civil Administration (see p. 123 above), the fact that the special outline plans do not allocate areas for public needs leads to ongoing development pressures to establish public infrastructures outside their boundaries.³⁹² In the context of the special outline plans, this phenomenon is particularly significant since the high densities these plans propose require generous allocation of public areas.

Density Levels

As explained above, the updated version of the standard orders defines three residential zones: residential area A (with a density of 33 housing units per net hectare); residential area B (100 housing units per net hectare); and residential area C (up to 150 housing units per net hectare).

In order to analyse how reasonable these density levels are in planning terms, we may compare them to the accepted standards in Israel. One of the principal goals of the Israeli National Outline Plan - Plan 35 is to promote preservation of land resources. We should emphasize that Plan 35 applies only within the State of Israel and has no legal status in Area C; our reference to this plan here is purely for the purpose of comparison.

Plan 35 sets average minimum and maximum density levels for construction; the maximum density level is twice the minimum. However, the plan permits the planning institutions to approve density levels lower than the minimum in the case of a population of low socioeconomic status, or when the size of the household is above the national average³⁹³ of 3.34.³⁹⁴ These provisions are particularly

³⁹² Moshe Ravid, op. cit., note 153, p. 87.

³⁹³ Plan 35, Sections 6.3, 12.2.2.

³⁹⁴ Central Bureau of Statistics, *Statistical Yearbook 2007 – No. 58*.

relevant in the case of the population of the Palestinian villages in Area C, which are characterized both by large households (six or more persons) and by low socioeconomic status.

According to Plan 35, the minimum density in rural communities ranges between 15 housing units per net hectare in the Beersheva sub-district and 30 housing units in the Sharon sub-district. In the sub-districts that border on the West Bank (such as the Ramle sub-district), and in most other sub-districts, the rural density is 25 housing units per net hectare. In towns with a forecast population of up to 50,000, the minimum density is between 30 (Beersheva sub-district) and 70 (Tel Aviv sub-district) housing units per net hectare.³⁹⁵

In the special outline plans, the density in the residential zone with the most dispersed construction – 33 housing units per net hectare – is higher than that imposed by Plan 35 in Israeli villages in rural areas adjacent to the West Bank (15 to 25 housing units). In residential areas B and C, the special outline plans set densities of 100 to 150 housing units per net hectare. According to Plan 35, such high densities can only be permitted in Israel in large cities. Applying such density levels to the Palestinian villages will destroy their rural character and convert them into semi-urban communities, violating one of the basic principles of sustainable development: the protection of the character of existing communities.

As explained above, the capacity calculations prepared by the Civil Administration assume that the building rights implicit in the special outline plans will only be partially utilized. Accordingly, the actual density level will be lower than that proposed in the plans. However, the expected utilization and the capacity calculations are extraneous to the plans themselves. Even in Israeli communities, utilization rarely, if ever, reaches 100 percent. For example, the detailed plan approved by the Civil Administration for the settlement of Reihan permits 159 housing units. In fact, however, only 43 families live in the settlement.³⁹⁶ In any case, since the plans' nominal density levels are significantly higher than those in rural communities in Israel, even the actual density levels according to the expected utilization assumed by the Civil Administration are unreasonable, and in many cases exceed those permitted in Plan 35.

The Principle of Equality

Plan 35 encourages development in areas adjacent to existing built-up areas, and permits the establishment of new villages or towns only in exceptional circumstances. This policy recognizes the fact that “new communities in an open area are not, by definition, sustainable communities.”³⁹⁷

Planning based on the principles of sustainable development requires an egalitarian approach to different population groups,³⁹⁸ together with recognition of the unique needs of each such group. The unequal application of environmental practices such as dense construction – for example, their application only to specific populations – may undermine the foundation on which sustainable development is based and may suggest that professed environmental considerations conceal extraneous goals.

Since 1967, Israel has established 121 settlements in the West Bank, as well as dozens of additional settlement locations (authorized and unauthorized outposts, army settlement outposts, etc.). With the exception of the Jewish settlement in the heart of Hebron, all these settlements were established in open areas, and the Civil Administration has approved detailed plans for almost all of them.

³⁹⁵ “Table 1: Average Net Residential Density” in Plan 35.

³⁹⁶ See the website of Samaria Regional Council: <http://www.shomron.org.il/Index.asp?CategoryID=289>.

³⁹⁷ Ministry of Construction and Housing, op. cit., note 388, p. 71.

³⁹⁸ Eran Feitelson, “Proposal for a System of Indicators for Sustainable Development in Israel,” in: Eran Feitelson (ed.), *Indicators of Sustainable Development in Israel: Concluding Report – Stage 1*, Jerusalem: Jerusalem Institute for Israel Studies – Environmental Policy Center, 2004, p. 183.

Moreover, the Civil Administration created the planning infrastructure that enabled the construction of access roads to the settlements and their connection to the territory inside the Green Line. All these actions severely damaged open spaces and caused extensive environmental destruction. The mere existence of the Israeli settlements constitutes a gross violation of the principle of equality without which sustainable development is impossible.

An examination of the density levels approved by the Civil Administration in plans for settlements (see Table 8) also shows the discriminatory use of the practice of crowding. As noted, Plan 35 establishes density levels per net hectare for different types of communities (villages, small towns, cities, etc.). In terms of preserving land resources, these definitions are of limited relevance, since what ultimately matters is the density per gross hectare – i.e., the number of housing units in the full plan area, including land zoned for public buildings, industry, roads, commerce, public parks, and infrastructures. This is because the damage to open spaces is not confined to residential lots but relates to the entire area of the community.

The higher the density per net hectare, the greater the required allocation for public spaces, as explained above.³⁹⁹ Accordingly, increasing the density of residential zones will not necessarily substantially raise the density per gross hectare. A recent study showed that in Israel, the national average density in built-up areas (as distinct from areas of jurisdiction, which also include spaces that have not yet been developed) in urban and suburban communities is approximately 82.5 residents per gross hectare (about 25 housing units). In rural areas, the analogous figure is 15.8 residents per gross hectare (about four housing units).⁴⁰⁰ According to the expected utilization as estimated by the Civil Administration, many of the special outline plans envisage as many as 170 or more residents per gross hectare – **approximately 11 times the level in rural communities in Israel, and more than twice the level in Israeli cities.**

An analysis of the correlation between net density and gross density shows that even in cities it is impossible to reach densities of more than 40 to 60 housing units per gross hectare. Higher density levels entail intolerable damage to the residents' quality of life.⁴⁰¹ Indeed, even in the ultra-Orthodox urban Israeli settlements established in the West Bank (Modi'in Illit and Beitar Illit), which have exceptionally dense construction, the number of housing units per gross hectare does not exceed 50. In 2002, for example, the Civil Administration approved Detailed Plan 210/4/2 for a new neighborhood in the settlement of Modi'in Illit totaling 2,722 housing units. Although the neighborhood is planned with the exceptionally high average density of 176 housing units per net hectare, the density per gross hectare is only 48.6 housing units.⁴⁰²

Table 8 presents a comparison of the density levels and allocation for public spaces in 10 communities in the West Bank in which the Civil Administration has approved plans: four Palestinian villages (special outline plans), two rural settlements, three settlements established in the community village format, and one urban settlement (detailed outline plans).

³⁹⁹ Mike Turner, op. cit., note 383, p. 107.

⁴⁰⁰ Motti Kaplan, "Indicators in the Field of Open Spaces," in: Eran Feitelson (ed.), op. cit., note 398, p. 65. Kaplan notes only the number of residents per square kilometer and does not calculate density in terms of the number of housing units per gross hectare. The above calculation was based on the figures of the Central Bureau of Statistics for the average size of urban (3.31 persons) and rural (4.01) households in Israel in 2007. Central Bureau of Statistics, op. cit. note 394.

⁴⁰¹ Mike Turner, op. cit., note 383, p. 101.

⁴⁰² Plan 210/4/2 for the "Ne'ot Hapisga" neighborhood of the settlement of Modi'in Illit. The plan area is 56 hectares, of which about 15.4 hectares are zoned for residential construction.

Table 8: Construction Density and Allocation for Public Areas in Plans Approved by the Civil Administration

Community	Type	Plan no. and year approved	Plan area (hectares)	Gross area for development (hectares) ⁴⁰³	No. of housing units (nominal capacity) ⁴⁰⁴	Density (housing units) Per gross hectare for development	Average density (housing units per net hectare)	Public spaces as percent of gross area for development ⁴⁰⁵
An-Nabi Elyas	Palestinian village	1230 (1992)	8.7	8.7	609	70	100	30%
Dhafer al 'Abed	Palestinian village	1115 (2006)	12.6	12.6	540	42.9	71.4	40%
Khirbet Jubara	Palestinian village	1235/05 (2006)	7.6	7.6	183	24	40	40%
Zif	Palestinian village	1720/05 (2008)	22.9	22.9	837	36.6	58.1	37%
Sal'it	Agricultural village (settlement)	112/1/1 (1999), 112/1/2 (1999), 112/3 (2003)	141.4	73.8	426	5.8	14.8	60%
Carmel	Agricultural village (settlement)	507/1 (2005)	220.4	38.8	133	3.4	18	80%
Reihan	Community village (settlement)	103/1 (1999)	120.9	58.4	159	2.7	16.3	83%
Tene-Omarim	Community village (settlement)	515 (2000)	51.7	47.6	214	4.5	21.1	78.7%
Beit Aryeh	Community village (settlement)	102/3 (2001)	140.9	103.5	1,039	10	40	75%
Efrata	Urban (settlement)	410/5 (1995), 410/5/1 (1999)	167.8	94.4	1,204	12.8	39.6	67.8%

⁴⁰³ In the detailed plans for the settlements, the term “gross area for development” refers to the area of the plan less agricultural areas (including agricultural buildings), nature and landscape reserves, and areas for future planning for which no building orders were established by the plan.

⁴⁰⁴ In the special outline plans for the Palestinian villages, nominal capacity was calculated according to the formula used by the Civil Administration, i.e.: the number of housing units that may be established in accordance with the plan orders, less 30 percent for public needs. In plans in which separate areas were zoned for roads, the area of roads was added to the land allocated, under this formula, for public uses. The calculation was based on the building provisions included in the updated standard orders: 33 housing units per net hectare (residential A), and 100 housing units per net hectare (residential B). Although the standard orders permit a net density of up to 150 housing units in residential area C, we assumed for the purpose of this calculation that the density in this zone will be only 100 housing units per net hectare. It should be noted that only one of the four Palestinian villages in the table (An-Nabi Elyas) has a plan including areas zoned as residential area C. The nominal capacity in the plans for the settlements appears in their orders.

⁴⁰⁵ The term “public spaces” refers to all areas not zoned for residential use, including public buildings, open public spaces, roads, industry, light industry, etc.

The table reveals enormous differences between the different communities: the special outline plans for the Palestinian villages set density levels ranging from 24 to 70 housing units per gross hectare. In the plans for the Israeli settlements, the density level per gross hectare is 2.7–12.8 housing units. The density level per gross hectare in the densest settlement (Efrata) is about half the figure for the least dense Palestinian village (Khirbet Jubara). The density level per net hectare is also significantly higher in the special outline plans than in the detailed plans for the settlements.

Sixty to 83 percent of the gross development area in the plans for the settlements is allocated for public needs, as compared to 30 to 40 percent in the Palestinian villages. The actual discrepancy is greater still, since the special outline plans do not mark public zones; accordingly, the utilization of public areas in these communities can be expected to be lower than the table assumes.

These discrepancies are also reflected on the micro level. The settlement of Sal'it is situated next to the Palestinian village of Khirbet Jubara, and the settlement of Reihan is adjacent to the village of Dhaher al 'Abed. The density (number of housing units) per gross hectare in the plan for Khirbet Jubara (24) is four times higher than the analogous figure for Sal'it (5.8). The density per gross hectare in Dhaher al 'Abed (42.9) is no less than 16 times higher than in Reihan (2.7).

These figures show that the Civil Administration applies a different planning and environmental policy in the Palestinian communities, on the one hand, and in the Israeli settlements, on the other. In the plans for the Palestinian villages, the objectives are to limit land use and encourage dense construction. In the settlements, the trend is often the opposite – to include in the plan as extensive areas as possible, producing particularly low density levels.

The planning authorities in the Civil Administration argue that the plans for settlements cannot be compared to the special outline plans for the Palestinian villages. They state that “planning for new communities [the settlements] is distinct... from planning relating to existing villages... Planned construction, that takes place in accordance with the orders of a valid approved plan and after the granting of the appropriate authorizations enables allocations for public needs.”⁴⁰⁶ In many cases, this argument is factually incorrect. For example, the plans for Carmel and Tene-Omarim show many existing buildings that were constructed before the preparation and approval of the detailed plans for these settlements. The presence of these buildings did not prevent detailed statutory planning for these settlements.

In any case, high density levels can actually be reached in a community that is planned in advance, particularly in the case of a settlement founded on declared state land, where there are no problems of land ownership and thus no property-related constraints on the subdivision of plots for construction. The reason for the substantial discrepancies between the density levels in the plans for the Palestinian villages and the plans for the settlements is the application of a different planning and environmental policy that relates to each community not on the basis of its planning needs, but in accordance with the ethno-national identity of its residents. This planning discrimination seriously undermines the environmental arguments presented by the Civil Administration in an effort to justify the special outline plans and the density of construction they propose.

In general terms, there is nothing wrong with increasing density in the context of detailed planning prepared according to sustainable development principles, and with due attention to public needs and desires, while maintaining the character of the community and balancing the different values such development seeks to secure. The special outline plans are inconsistent with these principles. In practice, the environmental arguments the Civil Administration uses to justify the high density proposed for the Palestinian villages seem intended to obscure political goals. The latter relate

⁴⁰⁶ Item 81 in Local Planning Subcommittee Minutes 1/08 dated 20 January 2008, relating to the objections to Special Outline Plan 1720/05 for the village of Zif.

mainly to the restriction of the spatial dispersion of Palestinian construction, in order to leave substantial land reserves for the settlements and other Israeli interests.

Ownership and Construction

One of the main issues raised in the objections submitted by Palestinian residents against the special outline plans is the non-inclusion in the plan area of plots they own. The residents argue that the decision to include only restricted areas within the plan, while leaving land (and, in some cases, buildings) under their ownership outside its boundaries, injures their rights and may leave them without a housing solution.

Civil Administration sources adamantly reject this claim. They argue that a situation in which building rights are determined according to an ownership key is contrary to any planning logic, and its result would be uncontrolled construction that wastes land resources and requires the erection of expensive infrastructures.⁴⁰⁷ Yet the truth is that the policy of the Civil Administration itself encourages just such a pattern of construction since, as explained, it creates a close link between land ownership and building rights and, as a general rule, prevents Palestinian construction on state land. The allocation of state land for Palestinian construction, in the same way such land is allocated for construction in the settlements, could challenge the traditional pattern according to which landowners always build on their own land, and could promote gradual change in the patterns of construction in Palestinian society.

Even when an area intended for development includes only private land, detailed planning on the basis of a proper planning survey could help provide partial solutions for the issue of land ownership. In 1986, for example, Palestinian planners prepared a detailed outline plan for Bir Nabala. The plan, which the Civil Administration refused to approve – presumably because it found its area (145 hectares) too large – was based on an examination of the structure of land ownership in the village. The authors of the plan were guided by the principle that although it was not possible to ensure that every **resident** would be able to own a building lot, every **extended family** should have a building area inside the plan boundaries.⁴⁰⁸

Such an approach could weaken the direct link between land ownership and building rights, since it moves the association from the concrete and strongest level (the individual) to a more abstract and looser level (the extended family). As noted, however, the Civil Administration's special outline plans are not based on a planning survey, ignore the pattern of land ownership, and do not ensure that every extended family will have sufficient land under its ownership within the plan area.

The planning authorities in the Civil Administration argue that the delineation of the village and the definition of a special outline plan will force the residents to begin to buy and sell land, so that a resident who owns several plots in the plan area will sell land to residents who do not have land within its blue line. In fact, however, the restriction of the village's development area actually deters the residents from buying and selling land. When construction outside the plan area is prohibited, those who own plots inside the plan have an interest in retaining the land they own to ensure sufficient building areas

⁴⁰⁷ Local Planning Subcommittee Minutes No. 4/07, 25 April 2007.

⁴⁰⁸ Anthony Coon, op. cit., note 9, pp. 87-88.

for the family in the present and in the future. Moreover, the delineation of the built-up area by means of the special outline plan can be expected to raise land prices inside the plan. Since most of the rural Palestinian population is of low socioeconomic status, many residents who do not own land within the plan area will be unable to afford to acquire land there.

Accordingly, rather than creating an economic mechanism encouraging land transactions, the restrictive nature of the special outline plans actually perpetuates the existing pattern of ownership. In these circumstances, village residents who do not own sufficient land in these plan areas are forced to build outside its boundaries, despite the risk that their home will be demolished.

Detailed Plans

As noted, the standard orders state that one of the goals of the special outline plans is to “define the building areas of the community pending the completion of a detailed plan.” This implies that the special outline plans were intended as a preliminary stage ahead of detailed planning. The orders also include a section saying that a detailed plan for a village will be based on professional surveys, and that in the framework of such a plan the routes of roads, building areas, and even the boundaries of the development area as established in the special outline plan may be changed.⁴⁰⁹

The Civil Administration has published guidelines for Palestinians (village councils or individuals) who wish to submit detailed plans for villages. The guidelines include a requirement to undertake surveys on various aspects (population, existing construction, the fabric of land ownership, etc.) and to prepare a program.⁴¹⁰ It is worth noting that in the case of the special outline plans, the Civil Administration does not meet the requirements it imposes on the Palestinians: the special outline plans are not based on professional surveys and do not address those aspects that the Civil Administration (rightly) requires be considered before submitting detailed plans.

To the best of our knowledge, the planning authorities of the Civil Administration have not to date approved even a single detailed plan for an entire community submitted on behalf of Palestinian villages. At the same time, and although the declarative position is that the special outline plans are supposed to be a preliminary stage leading to detailed planning, the Civil Administration generally regards these plans as the last word in planning matters and does not initiate detailed plans for villages for which special outline plans have been prepared. In the 1990s, the Civil Administration prepared 13 detailed plans for large villages (including Habla, Nahalin, and Beit Suriq) for which special outline plans had previously been approved. However, none of these detailed plans were approved by the date of the interim agreement (1995), in accordance with which planning responsibility for most of the area of these villages was transferred to the Palestinian Authority.

Since 1995, the Civil Administration prepared detailed plans for just a single Palestinian community – the Jahalin tribe. The detailed planning in this case was intended to enable the eviction of the members of the tribe from land earmarked for the expansion of the settlement of Ma’ale Adummim and to ensure that no Palestinian population would remain in the seam zone created in this area by the Separation Barrier (see p. 33).

⁴⁰⁹ Section 9 of the standard orders.

⁴¹⁰ Eitan Ofir, Senior Planning Coordinator for the Arab Sector, Civil Administration, “Guidelines for the Submission of Detailed Outline Plans for Palestinian Villages in the Judea and Samaria Area.”

Fasayil: Detailed Planning Implemented in Practice

Apart from the plans for the Jahalin tribe, we are aware of only one other detailed plan that has been approved by the Civil Administration for a Palestinian village. The plan was prepared in the 1980s, before the consolidation of the special outline plan format, for the village of Fasayil in the Jordan Valley. The plan, numbered 1412/20/87, was prepared by an outside architect commissioned by the military government. In 1988 the plan was approved by the HPC.

The village of Fasayil consists of two compounds – upper and lower – that are about one kilometer from each other. The detailed plan applies only to the lower part of the village, most of which is now included in Area B, and which has a population of about 700 (see map on p. 116). The detailed plan covers an area of about 14.2 hectares and includes several zones (residential, public buildings, open public space, roads, and a cemetery). The plan zones approximately 39 percent of the area for public needs and the remainder for residential construction. The plan's map includes subdivision for lots, but the orders cannot be found.

The residential area (about 8.7 hectares) is divided into 125 lots. The table attached to the plan's map allocates most of the lots to specific residents of the village, who are named. The lots in the plan are not of equal size; their area ranges from 350 square meters to 3,382 square meters. Buildings already existed on most of the larger lots at the time the plan was prepared: 28 lots that were already built up before the plan was prepared account for some 3.4 hectares, an average of 1,200 square meters per lot. The total area of the 97 new lots defined by the plan is 5.3 hectares – an average of 540 square meters per lot. This suggests that the plan attempted to impose a new pattern of building on the residents of the village and to increase its density by creating smaller lots than those that existed previously.

Nevertheless, our analysis reveals that, on the whole, building that has been undertaken within the plan area since its approval is consistent with the zones shown on the plan's map. Most of the new roads that appear in the plan's map have been constructed, although secondary roads that do not appear in the map have also been added. Residential construction has also taken place almost entirely within the lots zoned for this purpose by the plan, with the exception of a small number of homes built in a compound allocated for an open public area and in land zoned for roads. Construction outside the boundaries of the plan is limited, adjacent to the boundaries, and almost entirely in Area B.

Since we do not have access to the plan orders, it is impossible to determine whether the construction in the field is consonant with their provisions or not. However, the high level of correlation between the zones marked on the plan's map and the actual construction shows that when reasonable detailed planning is provided – even when it is intended to change accepted construction patterns among the population and increase density – the Palestinian residents tend to respect the restrictions imposed by the plan and to build accordingly. This contrasts with the situation in the special outline plans, where the low level of detail generally hinders the prospects that they will be realized.

Roads – Another Means of Restricting Palestinian Construction

During the same period when hundreds of special outline plans were prepared for the Palestinian villages, the Civil Administration also promoted a Partial Regional Outline Plan for Roads (Plan 50), which was approved in 1991. Although Plan 50 ostensibly has no connection with the special outline plans, in practice this plan is an additional planning mechanism imposing restrictions on Palestinian construction by defining prohibited areas for construction along existing and planned roads.

The professed goal of Plan 50 is to delineate the network of primary and regional roads in the West Bank. The plan does not relate to internal and secondary roads within communities. It sets the planned width of the right of way for various roads, as well as building lines relative to the center of the road.

Plan 50 is based on the National Outline Plan for Roads (Plan 3) which applies within the Green Line. Before Plan 50 was approved, the Israeli national outline plan was amended and the width of the right of way and the building lines defined in the original version of Plan 3 were reduced. The Civil Administration ignored this amendment (Plan 3, Amendment 7, 1990), which was approved at the end of 1991, and Plan 50 retained the original definitions from Plan 3. As a result, the width of the roads and the building lines in Plan 50 are significantly larger than those currently defined in the parallel national outline plan applicable within the State of Israel. Plan 50 thus imposes building restrictions above and beyond those that apply within the Green Line (see Table 9).

The main impact of these restrictions is felt by the numerous Palestinian villages situated close to the routes of existing or planned roads. Plan 50 defined many of these roads as primary or regional roads, although in practice they are local roads consisting of two narrow lanes with a low volume of traffic. For example, Road 57 in the Jordan Valley is a two-lane road with a maximum width of 15 meters and a low volume of traffic. Despite this, Plan 50 defines it as a primary road with a width of 100 meters and a building line of 70 meters to either side (see Case Study – Jiftlik, p. 153).

Table 9: The Outline Plans for Roads in Israel and the West Bank

Type of Road	Maximum width of road strip		Building line relative to the center of the road ⁴¹¹	
	Plan 3 (Israel)	Plan 50 (West Bank)	Plan 3 (Israel)	Plan 50 (West Bank)
Highway	100 m	120 m	At least 75 m, not more than 150 m	150 m
Suburban highway	60 m	---	At least 50 m, not more than 100 m	---
Primary	50 m	100 m	At least 50 m, not more than 100 m	120 m
Regional	40 m	60 m	At least 40 m, not more than 80 m	100 m
Local primary	---	40 m	---	70 m

⁴¹¹ In order to calculate the building line relative to the margins of the road, half the width of the road strip must be deducted from the building line defined relative to the center of the road. For example, in accordance with Plan 50, along a road with a width of 120 meters and a building line, relative to the center of the road, of 150 meters, the building line relative to the margin of the road is 90 meters.

In many other cases, Plan 50 defined roads that did not even exist at the time the plan was approved. Despite this, the restrictions established in this regard remain intact. In the village of Al Funduq to the southwest of Nablus, Special Partial Outline Plan 1271/91 covers an area of 8.1 hectares. The plan's map shows the planned route of Road 531 outside the blue line of the plan, and in accordance with Plan 50 this road is defined as a regional road with a width of 60 meters and a building line of 100 meters from the center of the road. In the southern and eastern section of the special outline plan, the boundaries of the plan converge with the line marking the prohibition on building relative to Road 531, which was an important factor in delineating the development area of the village (see map on p. 115). Road 531 has never been constructed, and it is doubtful whether it will be built in the future, yet it already has had a substantial impact on development prospects in Al Funduq.

While Plan 50 has a direct impact on building possibilities in Palestinian villages, most of the Israeli settlements are located at some distance from the main roads, and the authorities have built access roads connecting each settlement to the adjacent main road. Accordingly, Plan 50 creates very few restrictions on building in the settlements. In reality, the road system delineated by Plan 50, most of which remains in Area C, was intended mainly to serve Israelis and to permit rapid access between the settlements and to and from the Green Line.

The authors of Plan 50 thus used two ways of imposing severe restrictions on Palestinian construction. The first was adopting outdated and excessive orders included in the original version of Plan 3, ignoring the changes that were made in the Israeli outline plan before Plan 50 was approved. The second was the spurious definition of local roads as primary or regional roads, thus leading to a significant expansion of the right of way within which building is prohibited relative to the previous statutory situation and to real needs. Thus a purported planning consideration – the desire to protect existing and planned roads – is used by the Civil Administration to impose severe restrictions on Palestinian construction, without any real planning justification.

The Special Outline Plans – A Legal Perspective

The planning activities of the Civil Administration are subject to the Jordanian Planning Law (see Chapter Three), which distinguishes between three types of plans: regional, outline, and detailed. The format of a special outline plan is not recognized in the law and is an invention of the Civil Administration. The law creates a correlation between the type of plan and the type of community to which the plan applies. In cities, the law requires the preliminary preparation of an outline plan applying to the entire area of the community. In the second stage, detailed plans must be prepared for the different neighborhoods. In small towns and villages, the law requires the preparation of a single plan – a detailed outline plan.

Article 19 of the law itemizes a long list of mandatory issues that must be addressed by an outline plan. These include roads alignment, sewage and water installations; defining industrial and light industry zones; building orders; defining areas for public needs, etc. Article 23 of the law specifies mandatory issues that any detailed plan must address. These include the location of residential and public buildings, open spaces, and commercial buildings; and the definition of areas to be confiscated for public needs. Attention to these issues is not subject to the discretion of the planning institutions: the law explicitly establishes that the plan must “specially include orders regarding [these] matters” (Article 23 of the law).

The special outline plans do not meet these conditions. The plans do not allocate areas for public zones and do not mark these on the plans' maps. Accordingly, the special outline plans violate the provisions of the law regarding **both** outline plans and detailed plans.

According to Article 14 of the law, a comprehensive planning survey must be undertaken before preparing any plan. The survey must address the physical conditions, land uses, existing buildings, patterns of land ownership, and other aspects. The preparation of the special outline plans does not include a planning survey; this is one of the reasons why the plans do not exactly define the public needs to be met in their areas. The plans were prepared on the basis of a population projection for the target year, without a full program that takes the age distribution of the population into account and enables a more accurate estimate of needed public facilities (such as kindergartens, schools, employment centers).

The State Comptroller's annual report for 1987 sharply criticized the special outline plans, the first of which were under preparation at the time. The Comptroller wrote that "in accordance with the [Jordanian] Planning Law, detailed plans are to be prepared for the villages. The report noted that the plans prepared for the villages were general plans, and the public zones there were not detailed but were purely programmatic."⁴¹² These comments did not make much impression on the staff of the Civil Administration. Since publication of the report, the Civil Administration has approved special outline plans for hundreds of villages using the format rejected by the state Comptroller as illegal.

The Petition Was Deleted, the Basic Issues Were Not Resolved in Court

To the best of our knowledge, the only case in which the court has been asked to consider the legality of the special outline plans was the petition submitted in 1993 by the residents of Budrus.

In 1992, the Civil Administration deposited Special Partial Outline Plan 1511/91, which delineates an area of 18.5 hectares in the village of Budrus. Several residents of the village, whose homes and land were not included in the plan area, submitted objections, which were rejected. After the plan was approved by the HPC, the residents of Budrus who had filed the objections submitted a petition to the HCJ⁴¹³ demanding that the decision of the HPC – and the plan itself – be voided.

The petition noted the legal defects that marred the special outline plans: the fact that this type of plan is not recognized by law; the fact that no planning survey was undertaken before preparing the plan; and the fact that, in its essence, the plan is no more than the arbitrary delineation of the area in which the Planning Bureau has decided to permit residents of Budrus to build.

In its response to the petition, the State argued that the format of the special outline plans was born as a result of necessity, since over many years plans had not been prepared for the Palestinian villages, leading to a shortage of residential areas, on the one hand, and to widespread illegal construction, on the other. The State added that since detailed planning was a protracted process incurring considerable investment of resources, the Civil Administration had developed the rapid and efficient solution of the special outline plans.

Regarding the specific case of Budrus, the State announced that the actual capacity of the plan is 545 housing units, which will meet the needs of a future population of 3,270 to 3,800 residents (177 to 205 residents per gross hectare) – far beyond the needs of the village in the foreseeable future. Accordingly, the State argued, there is no planning justification in increasing the plan area and including the petitioners' homes.

⁴¹² State Comptroller, op. cit., note 328, p. 1219.

⁴¹³ HCJ 1598/93 **Mahmud `Alian `Awad `Abdulkarim et al. v Minister of Defense et al.**

The petitioners eventually reached an understanding with the State regarding their buildings, and in December 1993 the petition was deleted without the court ruling on the basic arguments raised in the petition, and without any changes in the plan.

Conclusion

The professed goal of the special outline plans – a format invented by the Civil Administration for the Palestinian villages – is to meet the planning needs of their residents. In most cases, however, the plans do not address the genuine needs of the Palestinian residents, and this fundamental flaw hinders their implementation. In practice, rather than providing planning solutions for the residents of the villages, the special outline plans constitute a key component in the efforts by the Civil Administration to restrict Palestinian construction in Area C.

The current position of the Israeli authorities is that, as a general rule, Palestinian construction and development should take place in Areas A and B, which are under the responsibility of the Palestinian Authority, while Area C, which covers most of the land of the West Bank, should be used for Israeli needs, and its future should be determined in the permanent agreement. According to this distorted approach, construction in the Israeli settlements in Area C does not establish facts on the ground and cannot influence a future agreement between Israel and the Palestinians, whereas Palestinian construction in the same area must be prevented since this could prejudice the final character of the future agreement.

The declarative position is that the special outline plans are merely a preliminary stage prior to detailed planning. From the Civil Administration's perspective, however, these plans are the last word on the subject. There seems to be no intention of preparing detailed plans for those villages for which special outline plans were approved in the past, although the Jordanian Planning Law, which applies in the area, specifically requires the preparation of a detailed outline plan for each village.

The special outline plans are prepared without the knowledge of the residents of the villages, without their participation, and without their even being consulted. The only opportunity the Palestinian residents have to attempt to influence the planning outcome is through the objections proceedings, after the planning institutions in the Civil Administration have already decided on the format and boundaries of the plan. Accordingly, the potential for changes to the plan is insignificant. Since notice of the plans' deposit is published in newspapers which often do not reach the villages (see Chapter Three), in many cases the residents of the village only learn that a plan has been deposited for their community after the period during which objections may be submitted has ended. If the Civil Administration were genuinely interested in involving the residents in the planning procedures, or at least in hearing their objections, it could find a way to inform them of the deposit of the plan (for example, by forwarding notice to the heads of the village) and would not confine itself to the minimum legal requirement (publication of notices in the press).

The Planning Bureau is still producing special outline plans, albeit at a slow pace, in the same format that has been applied for 20 years or more. Even if we overlook the fact that the special outline plans do not exist in the Jordanian law and are not recognized thereby, any planning institution is obliged to examine the practical consequences of its practices for the target population and to consider whether changes may not be required in its adopted planning method. In the case of the special outline plans, the reason why no such examination has been undertaken seems to be the simple fact that the principal goal of these plans is not to meet the planning needs of the Palestinian population, but rather to ensure Israeli interests, and primarily the needs of the settlers.

The special outline plans were prepared with the intention of facilitating the settlements enterprise in the West Bank by delineating and increasing the density in the Palestinian villages. In many cases this goal has been achieved. In essence, these plans reflect a discriminatory policy based on the application of positive planning criteria for the residents of the settlements and of negative planning criteria in the case of the Palestinian population.

The principal function of the special outline plans is to limit the building areas available to the Palestinians. In addition, the special outline plans have increasingly been used in recent years for propaganda purposes. In many cases, the Civil Administration justifies the demolition of buildings outside the area of the special outline plans by arguing that their capacity meets the needs of the village for many years to come. The Civil Administration uses similar arguments to reject demands to expand the area of the plans, although, as we have seen above, the actual capacity of the plans as calculated by the Civil Administration is not based in reality and cannot be implemented in most cases.

These arguments by the Civil Administration are also raised in the legal arena, in the State's responses to HCJ petitions submitted by Palestinians whose homes are the object of demolition orders. In all the cases of which we are aware, the petitions were deleted after the parties reached agreement outside court, or the HCJ accepted the State's position without examining the arguments of the Civil Administration in depth (see the Barta'a Case Study, p. 145).

Thus the special outline plans, which were prepared with the intention of restricting Palestinian construction, have also secured a no less important goal from their authors' point of view, even if their inventors did not have this in mind: to refute judicial criticism of the planning policy of the Civil Administration.

Case Study

Barta'a – One Village, Two Planning Worlds

The village of Barta'a offers a rare opportunity to examine how reasonable the special outline plans are. The Green Line border established in 1949 cuts the village in half: Barta'a al Gharbiya (West Barta'a) was included in the territory of the State of Israel, while Barta'a ash-Sharqiya (East Barta'a) was left in the West Bank.⁴¹⁴

In 1967 Israel occupied Barta'a ash-Sharqiya and the fence dividing the two sections of the village was dismantled. In administrative terms, however, the division remained intact. Residents of Barta'a ash-Sharqiya were subject to military rule, while their relatives in Barta'a al Gharbiya are Israeli citizens subject to Israeli law. In terms of planning and building, the western side of the village is under the Haifa District Committee, while planning authority in the eastern side (with the exception of some 90 hectares defined as Area B in the interim agreement) is vested in the Civil Administration.

The physical, environmental, and demographic profile of both sections of the village is quite similar. Most of the residents of both sections of the village belong to the Qabha extended family. The 1997 census counted 2,688 residents in Barta'a ash-Sharqiya. The rate of population growth in the eastern section of the village is 3.5 percent per annum. Accordingly, the population of Barta'a ash-Sharqiya was estimated at 2,980 in the year 2000. According to the figures of the Israeli Population Registry, the population of Barta'a al Gharbiya in the same year (2000) was 2,750, and the annual growth rate was 3.8 percent.⁴¹⁵

The planning needs of the eastern section of the village are therefore similar to those of the western section. Nevertheless, and in spite of the planning discrimination against Arab citizens within the State of Israel,⁴¹⁶ the planning situation in the Israeli section of the village differs substantially from that in Palestinian Barta'a.

Planning in Barta'a al Gharbiya

Three approved outline plans currently apply to the western section of Barta'a. The most important of these is Plan 1015, approved in 1982, which covers an area of 80.8 hectares and includes 11 zones.⁴¹⁷ The plan zones most of the area (63.2 hectares) for residential use, with a maximum density of 40 housing units per net hectare. The outline plan includes detailed orders, as well as subdivision into building lots in most of the residential area. Two additional outline plans have been approved for the village: Plan 220 (approved in 1995) and Plan 364 (approved in 1999). These plans expanded the development area of the village by another 6.4 hectares in addition to the area included in Plan 1015.

The outline plans for the Israeli section of Barta'a include state land. For example, the area of Plan 1015 includes a plot with an area of 21 hectares that is owned mainly by the Jewish National Fund and managed by the Israeli Land Administration.

⁴¹⁴ Moshe Braver, *The Borders of Israel, Past-Present-Future: Geopolitical Aspects*, Tel Aviv: Yehoshua Orenstein, Yavne publishing house Ltd., 1988, pp. 148-149.

⁴¹⁵ The figures for Barta'a ash-Sharqiya are taken from the website of the Palestinian Central Bureau of Statistics (www.pcbs.gov.ps). In mid-2007, the latest date for which figures are available, the population of Barta'a ash-Sharqiya was 3,707.

⁴¹⁶ The Or Commission noted the discrimination faced by the Arab citizens of Israel in the fields of jurisdiction areas, planning, and building. See: *Report of the State Commission of Inquiry on the October 2000 Clashes between the Security Forces and Israeli Citizens*, Part One, Chapter A, Sections 35-37, Jerusalem, August 2003.

⁴¹⁷ Residential A, special residential, dense residential, public buildings, light industry, open public space, commerce, recreation area, agriculture, cemetery, roads and paths.

In 2000, the Ministry of the Interior initiated a new outline plan for Barta'a al Gharbiya. The new plan, Plan 983 was prepared by an outside architect and recently approved for deposit by the Haifa District Committee.⁴¹⁸ The target population in the plan, which includes detailed orders, is 5,200 residents (1,240 housing units) in the year 2020. The total area of the plan is 126.9 hectares, and it includes 15 zones.⁴¹⁹ The plan zones 72.1 hectares for residential uses, with a density of 40 housing units per net hectare; some 8.7 hectares for public buildings; and nine hectares for open public space. As in the case of Plan 1015, Plan 983 also includes extensive areas owned or managed by the State.

The nominal capacity of the new plan is 2,884 housing units (72.1 hectares multiplied by 40), whereas the plan documents state that the requirement for housing units in the western section of Barta'a will be just 1,240 housing units in 2020. Nevertheless, the authors of the plan were required to increase the extent of areas zoned for residential uses relative to the approved statutory situation. The documents of Plan 983 provide two explanations for this. The first is the low level of utilization in the Arab sector in Israel (just 40 to 50 percent); in recognition of this pattern, the Ministry of the Interior instructed the authors of the plan to include additional residential areas, beyond those required on the basis of a calculation of nominal capacity. The second is the pattern of land ownership: in order to ensure housing for residents who do not own land within the boundaries of the approved plans, it was decided that the new plan will allocate additional new areas for residential uses, including state land. The new plan assumes utilization of 43 percent. The documents anticipate that by the target year the actual average density in Barta'a al Gharbiya will be 17 housing units per net hectare and 9.8 housing units per gross hectare. In population terms, the density will be 41 residents per gross hectare.

Planning in Barta'a ash-Sharqiya

In 1995, the Civil Administration approved Special Partial Outline Plan 1108 for Barta'a ash-Sharqiya. The plan has an area of 43.2 hectares and includes four zones: roads, residential A (26.6 hectares), residential B (11.5 hectares), and residential C (5.1 hectares). The administrative division agreed in the interim agreement divided the plan area into two parts: approximately 33 hectares are now included in Area B, and the remainder is in Area C.

As in the case of the other special outline plans, Plan 1108 does not allocate land for public needs. The road system that appears on the plan's map is relatively elaborate, but the area of roads was not calculated separately and is included in the area zoned for residential use. Accordingly, the total area of roads (approximately four hectares) must be offset from the area included in the various residential zones (43.2 hectares).

The plan does not include subdivision into building lots. Its orders are generalized and non-specific and it makes no reference to the pattern of land ownership in the plan area, although the land in Barta'a ash-Sharqiya is registered with the Lands Registrar. According to our research, no state land was included in the plan area.

A Comparative Examination

As mentioned above, at the time of writing the new outline plan (Plan 983) is being promoted for Barta'a al Gharbiya. The new plan will considerably increase the building areas in the western section of the village. Since the plan has not yet been approved, we decided to adopt a conservative approach and compare Plan 1108, approved by the Civil Administration for Barta'a ash-Sharqiya, with the

⁴¹⁸ Minutes of the Haifa District Planning and Building Committee, 11 September 2007.

⁴¹⁹ Residential, residential A, residential B, residence and commerce, public buildings, hotels and leisure, open public space, commerce and light industry, industry, recreation and leisure, agriculture, cemetery, refuse site, roads, promenade.

approved outline plans in the western section of the village (see map on p. 118). While we did not take into account the proposed changes in Plan 983, we did use the programmatic data included in the new plan in order to determine the targets for Barta'a al Gharbiya in terms of population and the required number of housing units. The comparison shows that in every relevant parameter the planning in Barta'a ash-Sharqiya is inferior to that in Barta'a al Gharbiya.

Table 10 summarizes the quantitative data of the plans applying to the Israeli section of Barta'a (Plans 1015, 220, and 364 combined), on the one hand, and of Plan 1108 applying in the Palestinian section of the village, on the other hand. The figures for the population target and capacity of Plan 1108 are not included in the plan documents, but were taken from the State's response to a HCJ petition submitted by residents of Barta'a ash-Sharqiya (see below). In its response, the State calculated the actual capacity of the plan on the basis of expected utilization of 43 percent.

Although the number of residents in the eastern section of Barta'a is already 10 percent higher than the number in the western part of the village, the area of Plan 1108 is less than half that of the approved outline plans for the Israeli section of Barta'a. As a result, the number of residents per gross hectare in Barta'a-ash Sharqiya in 2000 (69) was 115 percent higher than the analogous figure for Barta'a al Gharbiya (32). The character of construction assumed by the plans is also vastly different in the two sections of the village. In the Israeli section construction has a rural character and the maximum permitted density is 40 housing units per net hectare. By contrast, Plan 1108 zones about 40 percent of the area (residential zones B and C) for construction at a density of 100 to 150 housing units per net hectare. Such a high density level cannot maintain the rural character of the village and imposes urban patterns of construction on the residents.

Table 10: The Plans Applying in Barta'a – Key Statistics

Village	No. of residents (2000)	Plan area (hectares)	Residential area (hectares) ⁴²⁰	Nominal density (housing units) per net hectare ⁴²¹	No. of housing units (actual capacity) by target year ⁴²²	Actual density (housing units) per gross hectare by target year	Population target	No. of residents (actual capacity) per gross hectare by target year ⁴²³
Barta'a ash-Sharqiya	2,980	43.2	30.2	85	1,095	25.3	6,570	152
Barta'a al Gharbiya	2,750	87.2	66.3	40	1,240	14.2	5,200	59

⁴²⁰ In the plan for Barta'a ash-Sharqiya, the residential area was calculated according to the formula used by the Civil Administration (the offsetting of 30 percent of the total plan area).

⁴²¹ In Plan 1108, the nominal density was calculated by offsetting 30 percent (for public needs) from the number of housing units that may be built in the plan area in accordance with the standard orders applying at the time, which permitted the construction of 66 housing units per net hectare in residential area A.

⁴²² The figures for the population target and actual capacity (housing units) for Barta'a ash-Sharqiya are taken from the State's response in HCJ 2187/03 **Mustafa Hassan Yusuf Qabha and 10 Others v Minister of Defense et al.**, 8 February 2004. The figures for the target population in the approved plans for Barta'a al Gharbiya and the required number of housing units are taken from the program of the new Plan 983, although this advocates a considerable expansion of the development area of the village.

⁴²³ The calculation was undertaken by dividing the figure for the target population by the number of hectares included in the plan area.

The differences are not confined to quantitative aspects. The approved outline plans for the Israeli section of Barta'a include 11 distinct zones, compared to just four in Plan 1108. The plan for Barta'a ash-Sharqiya ignores the need to allocate land for public uses, though it should be noted that the plans approved for Barta'a al Gharbiya also fail to allocate sufficient space for these needs. The new outline plan seeks to solve this problem by significantly increasing the areas zoned for public needs.

The level of detail of the plans approved for the Israeli section of Barta'a is greater than that in Plan 1108. The special partial outline plan does not include specific orders adapted to meet the local needs of Barta'a ash-Sharqiya. The general provisions in the plan are the standard orders applying in hundreds of villages as explained above. Unlike the plans approved for Barta'a al Gharbiya, Plan 1108 does not divide land into building lots.

The Civil Administration claims that the actual capacity of Plan 1108 is 52 percent greater than that required for the population of Barta'a ash-Sharqiya in the year 2015. In terms of population, the density the Civil Administration anticipates for the eastern section of the village (152 residents per gross hectare) is higher than that in densely-populated cities inside Israel and is unreasonable. **Although the area of Plan 1108 is less than half that of the approved plans for Barta'a al Gharbiya, and about one-third of the area in Plan 983 under preparation, the Civil Administration claims that the special outline plan provides housing solutions for a target population (6,570 persons) that is 26 percent higher than the target population of the plans in the western section of the village.**⁴²⁴

In light of the data in Plan 1108, these assumptions are unrealistic. As noted, only part of the 43.2 hectares zoned for residential purposes can actually be used for construction. Four hectares marked on the plan's map for roads must be deducted from this area. The result is that after offsetting 30 percent for public needs, the area that the plan itself allocates for residential construction is approximately 26 hectares. No planning survey was undertaken before the plan was prepared, and it is not based on an analysis of land ownership patterns in the village. As a result, it is possible that certain residents in Barta'a ash-Sharqiya do not own land within the boundaries of the plan, while others may own large areas of land there.

In both sections of the village the authors of the outline plans assumed utilization of 43 percent. However, the plans for Barta'a al Gharbiya addressed the question of land ownership and allocated areas for public needs. Accordingly, the prospects for the utilization of the construction committed under these plans are greater than in the case of Plan 1108, which ignored these aspects. Moreover, the plans for the western section of the village assume a nominal density of 40 housing units per net hectare, as opposed to 85 housing units per net hectare in the eastern section. As a result, the actual density calculated for Barta'a ash-Sharqiya is almost twice the comparable figure for the western section of the village. The actual capacity as assumed by the Civil Administration is therefore excessive and cannot be realized.

Notwithstanding these flaws, the HCJ recently accepted the position of the Civil Administration's planning authorities and rejected a petition submitted by residents of Barta'a ash-Sharqiya against demolition orders issued for buildings established outside the blue line of Plan 1108. In its ruling, the court stated that "the plan meets the needs of the population and its estimated growth until at least 2015."⁴²⁵ This statement ignores the generalized character of the plan, its numerous defects, and the fact that its assumptions regarding utilization have no basis in reality.

⁴²⁴ See note 422 above.

⁴²⁵ Ruling in HCJ 10408/06 **Mustafa Qabha et al. v Higher Planning Council**, 25 September 2007.

Case Study

Zif – Only Settlers May Build in Archeological Sites

The village of Zif is situated to the northeast of Yatta, on both sides of Road 356, which connects Hebron with the communities to the south of the city. The village was founded during the first half of the 19th century after Palestinians from Yatta began to settle the area, living in caves, tents, and shacks. The various sections of the village now include a total of 102 homes occupied by 894 residents. Most of the buildings were established between 1965 and 1979.

Population and Infrastructures

Zif includes four distinct sections or subsidiary villages: Khirbet Zif, Al Khreiz, Khirbet Istabul, and Al Fahja, all of which are managed by a single village council. To the best of our knowledge most of the homes in the village were built without permits, and demolition orders are currently pending against 30 houses in the village. Between 1983 and 2000, 23 homes were demolished in Zif, six in 2002 alone.

The village does not have a sewage system. Water and electricity are provided from Yatta. The water supply is erratic and residents rely on cisterns for collecting rainwater; the Civil Administration recently issued demolition orders against eight of these cisterns. An attempt in 2002 by the Palestinian Authority to connect the village to the telephone network proved unsuccessful after the Civil Administration uprooted the poles.

The public buildings serving the residents of the village include a school built in Khirbet Istabul attended by 380 students in the first through tenth grades. The Civil Administration issued a building permit for the first floor of the building, which was erected in 1986. The residents later added a second floor and a building containing toilets, against which a demolition order is pending. A mother and child clinic was established in Al Khreiz in 1993 by the organization Médecins Sans Frontières. The mosque built in Al Khreiz in 1992 was constructed without a permit and a demolition order has been issued against it.

The Special Outline Plan

In November 2006 the Civil Administration deposited Special Outline Plan 1720/05 for the Zif area. Several objections were submitted to the plan and heard by the Local Planning Subcommittee in April 2007. Almost all the objections were rejected and in May 2008, after two minor changes were made in the plan, a notice concerning its approval was published in the press. The plan's map is an orthophoto on a scale of 1:2,500 and its provisions are the standard orders.

The plan covers an area of 22.9 hectares and includes four separate compounds that are not territorially continuous. Three of the compounds are defined as residential area A and one as residential area B. Two of the compounds – Ad-Dweir and Marjat Duda – are adjacent to Area B and are a continuation of built-up areas in Area B. There is no municipal connection between these compounds and Zif, and they are managed by a separate village council. The plan also includes the subsidiary villages of Al Fahja and Al Khreiz which form part of Zif village council. The distance between the different compounds in the plan areas ranges from 200 to 1,000 meters. The plan does **not** include two of the subsidiary villages that are under the responsibility of the village council – Khirbet Zif and Khirbet Istabul. Thus the plan includes sections of three distinct communities – Zif (all of which is in Area C), Ad Dweir and Marjat Duda (which are partly in Areas A and B). The plan's boundaries were established without reference to the municipal division (see map on p. 122).

Approximately 90 percent of the plan area is zoned for residential use (12.9 hectares are zoned as residential area A with a density of 33 housing units per net hectare; 7.7 hectares are zoned as residential area B with a density of 100 housing units per net hectare). The remaining 10 percent (2.3 hectares) are zoned for existing and planned roads.

The plan does not include most of the agricultural areas of the village, and it effectively ignores the agricultural activities that form the main source of livelihood of the residents. The areas outside the boundaries of the plan are subject to the mandatory Regional Outline Plan RJ/5, which defines them as an agricultural zone.

The decision not to include the agricultural areas of the village in the special outline plan reflects an approach that ignores the basic need of the residents to make a livelihood. According to the Civil Administration's interpretation of Plan RJ/5 (see Chapter Five), it is difficult, if not impossible, to obtain building permits in the agricultural zone even for wells/cisterns and agricultural outbuildings such as storerooms, packing sheds, and shelters. The failure to include the agricultural area in the special outline plan perpetuates the existing planning situation that serves to restrict agricultural and economic activity and enables the issuing of demolition orders such as those recently issued against eight cisterns.

In its decision, the Local Planning Subcommittee justified the exclusion of the agricultural lands from the plan on two main grounds: firstly, the desire to maintain open areas as a land reserve for the Palestinian population, which doubles in size every 15 to 20 years. Secondly, due to a legal consideration. The committee stated that the Civil Administration would be willing to include agricultural land in the plan only if a complete prohibition were imposed on construction on this land. Since the West Bank is subject to belligerent occupation, international law permits the Israeli authorities to modify existing legislation – including the orders of the mandatory regional outline plans – only for evident security needs or for the benefit of the local residents. Accordingly, the committee stated, the inclusion of agricultural lands in the plan area, while prohibiting construction on these lands, would be contrary to international law, since Plan RJ/5 does not completely prohibit construction in the agricultural zone.⁴²⁶

It is difficult to accept this argument. The committee itself noted in its decision that the areas outside the special outline plan would continue to be subject to the orders of Plan RJ/5. Accordingly, in statutory terms, there is no difference between the inclusion of these agricultural lands in the area of Plan 1720/05, while maintaining the orders of the mandatory regional outline plan, or leaving them outside the boundaries of the plan. The decision not to include these lands within the boundaries of the special outline plan seems to be due to the fact that the Civil Administration regards the blue line of the plan as the border of the development area of the village. Leaving the agricultural land outside the line is intended to enable strict enforcement against construction in these areas, on the grounds that the residents of the village have sufficient planning solutions within plan 1720/05.

Roads

In addition to the residential areas, the plan also delineates several roads. Sections of roads were indicated in each of the four compounds in the plan, but these roads are already inadequate and do not meet the residents' needs. Numerous homes in the area are not served by the planned access roads. Conversely, there are roads in the village that are not shown on the plan's map; it is unclear what will become of these.

⁴²⁶ Attorney Kamar Mishraki-Asad of Rabbis for Human Rights, request for the correction of minutes, 29 May 2007.

The plan's map also indicates several new roads. One of these is the road in residential area B (Al Khreiz). However, this planned road will cause more harm than good. Even after the route of the road was changed following objections, the planned road functions as a type of miniature ring road and does not provide access to all the existing homes, let alone meet the needs of the residents of the hundreds of housing units that are due to be constructed in the area in accordance with the plan orders.

This road is eight meters wide, with a building line of five meters to either side. Even now, the existing buildings do not meet this condition, since the road was planned at a distance of less than five meters from the homes. In some sections, the road as shown on the plan's map runs alongside the walls of homes, overlaying courtyards, fences, terraces, and trees. Road alignment on the plan's map was not based on field inspections or on topographies showing slopes, nor was it prepared by a traffic engineer. Instead, the authors of the plan confined themselves to a general review of the existing situation, with marginal attention to topography.

Thus the road system marked in Plan 1720/05 does not include all the existing roads, does not permit access to many lots in the area, and does not connect the different sections of the plan.

Archeological Sites

As noted above, Khirbet Zif, one of the four compounds that comprise the village, was not included in the plan. The Civil Administration justified this on the grounds that the existing buildings in this compound are situated "within the Tel Zif archeological site. This fact constitutes a powerful planning reason for preventing the possibility of construction in the site."⁴²⁷ According to the plan's map, most of the homes in Khirbet Zif are indeed situated within an archeological site – but **not** the Tel Zif site, but the site of Rujum al Fahja. Our visit to the site together with an archeologist showed that the site has various archeological findings, including manmade caves. However, there were no important archeological findings to justify a prohibition against construction in most of the adjacent area where the homes are. Moreover, in 1982 the archeology officer of the Civil Administration issued a permit to build a residence in Rujum al Fahja.⁴²⁸ Thus the professional authorities in the Civil Administration saw no obstacle to construction on the site, subject to archeological supervision. Therefore, we believe that construction could be allowed in this area subject to various restrictions. Nevertheless, the Local Planning Subcommittee decided to leave this area outside the plan in order to "prevent the possibility of construction in the site."

No-one denies that cultural, heritage, nature, and landscape sites warrant preservation. Once again, however, there seems to be a double standard applied by the Civil Administration. Archeological sites in Palestinian villages are treated one way, but another way when they are located in an area earmarked for Israeli settlements.

In many areas intended for settlement expansion or the development of industrial zones serving the settlers, the Civil Administration itself undertakes salvage and preservation excavations to enable construction on the archeological site. In 1998, for example, the archeology officer in the Civil Administration initiated salvage excavations on a site earmarked for the establishment of an industrial zone in the settlement of Shim'a which, like Zif, is situated in the southern Hebron mountains. In the same year the archeology officer performed salvage excavations to the north of the settlement of Sansana to permit expansion of the settlement. This action was undertaken although at the time of the excavations the compound was not yet defined as a zone for settlement. Only in 2005 was the site

⁴²⁷ Item 33 in Local Planning Subcommittee Minutes No. 1/08 dated 20 January 2008.

⁴²⁸ Archeology Officer in the Civil Administration, Permit for Building Works in the Village of Zif, 17 August 1982. The home built according to this permit remains outside the boundaries of the special outline plan.

included in the area of jurisdiction of Hebron Mountain Regional Council – the municipal authority to which Sansana belongs.⁴²⁹

Another example of the Civil Administration's double standard for archeological sites is Detailed Plan 515 for the settlement of Tene-Omarim. The plan includes two archeological sites with a total area of 7,900 square meters. The settlers erected a building in one of the sites. The plan does not provide for the demolition of the building, in spite of its location in the heart of an archeological site, and recently the building was even extended.

Clearly, the Civil Administration's decision not to include archeological sites in the area of Plan 1720/05 and not to undertake salvage excavations on the site to enable construction reflects a discriminatory policy. The proximity of many of the homes in Zif to the archeological site should not exclude these homes from the boundaries of the plan. If archeological excavations on the site reveal important findings requiring maximum protection, they should indeed be preserved and the site should be capitalized on for tourism and economic development serving the residents of the village. Another possibility is to designate the area of findings as an open public area to be included in the plan, but subject to preservation orders.

Capacity of the Plan

The principal argument of the objections was that the purpose of Plan 1720/05 is to limit the built-up area of the village and that it does not offer any real possibilities for development. The objections also argued that before preparing the plan the Civil Administration failed to collect reliable data relating to the population in the area – data without which proper planning is impossible.

It certainly seems that the Planning Bureau is unaware of the number of residents who live in the plan area. In a letter of response to the objections, the Civil Administration claimed that the population of Khirbet Zif, Al Khreiz, and Ad-Dweir was 2,790 in 2003, and that the average natural growth rate of the residents of the area is 2.88 percent per annum.⁴³⁰ In the same letter, and in complete contradiction of this figure, it was noted that according to the Palestinian Authority the average annual growth rate in the neighborhoods within the plan area is just 0.29 to 0.42 percent. The Planning Bureau argues that the village has a constant migration rate of 1.8 percent per annum. It is worth noting that according to the Palestinian Central Bureau of Statistics, the forecast growth rate in the area is 3.8 percent per annum.⁴³¹

These contradictory figures show that the Planning Bureau prepared the plan without access to a reliable database. This is because, contrary to the law's requirements, no planning survey was undertaken before the plan was prepared. Accordingly, the figures for the natural growth rate on which the authors of the plan relied are incorrect and do not reflect the actual situation.

As for the capacity of the plan, the Civil Administration noted in its letter that, according to its orders, 575 housing units can be built in the plan area, after offsetting 30 percent for public needs. By contrast, the Local Planning Subcommittee argued in its decision that the plan has a capacity of 900 housing units, again after offsetting 30 percent for public needs. Thus the Civil Administration itself presents two contradictory versions of the number of housing units that may be built in the plan area. The first version (554 units) is based on expected utilization of 64 percent. It is also worth noting that according to the formula used by the

⁴²⁹ To the best of our knowledge, the plan for Sansana – Plan 505/1 (Eshkolot) – has not yet been deposited. Despite this, several homes have been built in its area without permits.

⁴³⁰ Letter from Lt. Tamar Luster, Representative of the Legal Advisor for the Judea and Samaria Area, to Rabbis for Human Rights, 14 June 2007.

⁴³¹ http://www.pcbs.gov.ps/Portals/_pcbs/populati/pop11.aspx

Civil Administration to calculate nominal capacity (the offsetting of 30 percent for public needs), the number of housing units that may be built in the plan area is 837, and not 900 as claimed by the committee.

The plan ignores the land subdivision among the residents and the fact that most of the existing lots are larger than the minimum lot area set by the plan. Accordingly, the number of housing units that can be built within the plan area, even according to its orders, is much smaller than the Civil Administration's calculations. Moreover, the plan boundaries were not determined according to the areas zoned for construction but on an arbitrary basis. Some parts of the plan area are agricultural land where the residents do not want to build homes. Conversely, rocky land not used for agriculture was left outside the plan area for no adequate reason.

In its decision, the Local Planning Subcommittee determined that the plan provides housing for 5,400 to 6,300 residents (900 households of six to seven persons each). In a rare admission, however, the committee added that "at the time the plan was prepared in 2005, some 80 homes were in existence in the plan area, housing over 500 persons. Given the existing construction, we are aware that part of the plan area will not be able to reach maximum utilization. However, even taking into consideration the actual existing construction, the plan offers a capacity in excess of 4,000 persons – much larger than the anticipated growth of the population in the plan area."

However, the assumption that the actual capacity of the plan is at least 4,000 residents (expected utilization of 64 percent) is unreasonable. Such a number of residents would mean that the density (in population terms) would be 175 residents per gross hectare. Such high density is not found in any rural community inside the State of Israel, and is greater than the number of residents per gross hectare in every city within the Green Line, with the exception of Bnei Brak (see p. 127).⁴³²

In any case, this comment by the committee about the current situation is again not based on a thorough analysis of the existing construction and the relation between this and the projected capacity of the plan. The map of the approved plan indicates 135 buildings, rather than only 80 as the committee claimed on the basis of an earlier map. Our examination shows that there are actually 140 buildings in the plan area. Since each building often includes several housing units, it is impossible to determine the number of housing units in the village and the size of the population in the area merely by counting the number of buildings on an aerial photograph. Accordingly, the actual number of residents is probably higher than that stated in the decision of the Local Planning Subcommittee.

Conclusion

Plan 1720/05 for the village of Zif offers a miniature illustration of the typical problems of the special outline plans: an unreliable database that was prepared without a planning survey as required by law; the failure to address the area's subdivision by the residents into lots; the exclusion of many buildings from the plan area; and the use of archeological sites and nature reserves to restrict Palestinian construction and dispersion, although such sites do not significantly constrain the development of Israeli settlements.

At the beginning of 2008, 36 residents of Zif submitted a petition to the HCJ against the approval of the plan, together with Rabbis for Human Rights and Bimkom.⁴³³ As of the time of writing, no hearing has yet been held on the petition.

⁴³² According to the CBS statistics for the end of 2006 (www.cbs.gov.il).

⁴³³ HCJ 5118/08 **Mohammed Shatat and 35 Additional Residents of the Village of Zif v Higher Planning Council**.

Case Study

Jiftlik – A Virtual Highway in a Remote Corner of the West Bank

The village of Jiftlik in the Jordan Valley is the one of the largest Palestinian communities in Area C. Although Jiftlik has a population of almost 5,000,⁴³⁴ the Civil Administration only approved outline plans for the village in 2005. Until then, the thousands of residents living in the village had to confine themselves to the limited building rights provided under the framework of mandatory Regional Outline Plan S/15.

Historical Background

The name "Jiftlik" refers to a group of villages originally founded in the 16th century and known as "Qarawa."⁴³⁵ In the census held by the British mandate government in 1931, the village had 1,056 residents living in 179 buildings.⁴³⁶ The name of the village also appears in the administrative division of mandatory Palestine, and the authorities at the time granted it municipal recognition.⁴³⁷ However, Regional Outline Plan S/15 did not mark a development area for the village; all its land was zoned for agriculture, with the restricted building possibilities this implies (see Chapter Five).

Before 1967 the village included extensive areas of land. After the occupation of the West Bank, Israel declared most of this land to be a closed military zone. Palestinians were not permitted to enter these lands, and Jiftlik was confined to an area of some 1,000 hectares.⁴³⁸ Several of the first Israeli settlements built in the West Bank were situated close to the built-up area of the village, including Argaman (established in 1968), Massu'a (1970), and Hamra (1971).

Existing Buildings and Infrastructure

Hundreds of buildings, mostly of one storey only, are dispersed around the village. Jiftlik has a number of public buildings, including an elementary school, high school, clinic (based in a caravan), and 20 shops. Most of the buildings do not have permits.

The section of the village next to the settlement of Massu'a is connected to the Palestinian electricity grid. The remainder of the homes in the village, occupied by approximately 60 percent of the residents, receives electricity from generators. Until recently the Civil Administration did not permit the connection of these homes to the electric grid due to the lack of planning recognition. Today preparations are underway to connect those buildings situated within the special outline plans approved by the Civil Administration to the electricity grid. At the end of 2006 the military commander signed a temporary order permitting the connection to the grid of the sections of the village included in the areas of these plans.⁴³⁹ The temporary order provides powerful evidence of the close connection between the planning situation and the possibility of enjoying vital infrastructures: the Israeli authorities take the approach that planning recognition is a precondition for the connection of homes to infrastructures such as electricity.

⁴³⁴ According to the Palestinian Central Bureau of Statistics, in mid-2007 the population of Jiftlik was 4,536, but the villagers claim the number of residents there is higher.

⁴³⁵ David Grossman, *op. cit.*, note 156, p. 257.

⁴³⁶ E. Mills, *op. cit.*, note 225, p. 63.

⁴³⁷ See note 308 above.

⁴³⁸ Meeting with F., a resident of Jiftlik, 10 April 2008.

⁴³⁹ Order Concerning Engagement in Electricity (Regulation and Operation) (Judea and Samaria) (No. 427), 1971; Order Concerning Engagement in Electricity (Jiftlik) (Temporary Order), 5 December 2006.

Jiftlik receives drinking water from the Israeli company Mekorot, while water for irrigation is taken from a spring, cisterns, and 18 boreholes. The residents of the village make a livelihood from intensive farming, particularly the production of vegetables in irrigated fields. The village does not have a sewage treatment facility; sewage seeps into the soil from cesspits, polluting the artesian water reserves. Refuse is buried or burned randomly. The village is not connected to the landline telephone network. Most of the roads within the built-up areas of the village are narrow dirt tracks.

The Special Outline Plans

In 2005 the Civil Administration approved outline plans for three separate compounds in Jiftlik. In total, about 60 percent of the residential buildings in the village are included in the boundaries of the plans. The residents of Jiftlik only learned of the existence of the plans in 2006, after their approval, from United Nations staff members who updated them. Even now the residents do not have a copy of the plan orders, and accordingly are unaware of the building rights and restrictions these contain.⁴⁴⁰ The total area of the three plans combined is 75.1 hectares, but only 59 hectares are zoned for development. The remainder of the area (16.1 hectares) is included in the right of way of Road 57 or in the building prohibition line relative to the road (see map on p. 120).

The maps of all three plans show areas that the Israeli commander has declared closed military zones next to the plans' blue lines. The spatial distribution of these closed military zones seems to have played an important role in determining the boundaries of the special outline plans.

The Plans for the Eastern and Western Compounds

Special Outline Plans 1409/05 (Jiftlik East – Compound A) and 1410/05 (Jiftlik West – Compound B) cover two built-up areas situated along and to the north-east of Road 57. Plan 1409/05⁴⁴¹ allocates 12.8 hectares for construction, defined as residential area A (two-storey buildings with a density of 33 housing units per net hectare). Plan 1410/05⁴⁴² allocates 22.1 hectares for construction; again, this area is defined as residential area A.

As in the case of the other special outline plans, the plans for Jiftlik do not subdivide the area into lots and do not mark areas and/or plots for public needs. The level of detail of the plans is extremely low. They are based on the assumption that public needs will be met within the framework of the areas zoned for residential construction by way of agreements among the residents, rather than through orderly planning. There is no chance that this assumption will materialize.

The plans do not indicate any roads, with the exception of the existing Road 57. The maps of the plans do not delineate internal roads within the area zoned for development – neither access roads to existing buildings nor to future buildings. As noted, the plans define the development area as residential zone A. However, their orders do not permit the construction of roads in this zone. As a result, residential construction in extensive parts of the plans cannot be implemented according to the orders, since it is impossible to construct a residential neighborhood without paving access roads to the different buildings.

⁴⁴⁰ Meeting with residents of Jiftlik, 10 April 2008.

⁴⁴¹ The plan covers an area of approximately 20.2 hectares. Of this area, 5.9 hectares are included in the strip of Road 57 and 1.5 hectares are defined as an “open area” in which construction is prohibited (a green strip with a width of 10 meters to the north-east of Road 57).

⁴⁴² This plan covers an area of 30.8 hectares, of which 7.8 hectares are included in the strip of Road 57 and 0.9 hectares are defined as an “open area” in which construction is prohibited (a green strip with a width of 10 meters to the north-east of Road 57).

The maps of the plans mark the three zones they define (residential A, primary road, and open area) on an aerial photograph taken in 2003. The use of an old aerial photograph means that even at the time of their approval the plans failed to reflect the actual state of construction in the area, which continued to develop spontaneously from the time the photograph was taken and through the date on which the plans were approved. Even if we ignore construction after the photograph was taken, the maps of the plans clearly show many buildings that already existed in 2003 but which were left outside the boundaries of the plans.

The plans mark a 10-meter wide green strip to the north-east of Road 57 and define this strip as an open area in which construction is prohibited. The maps of the plans show dozens of existing buildings in this green strip; according to the orders of the plans, these buildings cannot obtain legal status. In its sections included in the plans, the width of the right of way of Road 57 is 40 meters, whereas in reality the maximum width of the road is only 15 meters. Many more buildings and parts of buildings are alongside the existing road, but within its statutory strip. Many of these buildings existed before the plans were deposited. According to the plans these buildings, too, cannot enjoy legal status.

This case illustrates the Civil Administration's extensive use of road plans as a tool for restricting Palestinian construction. The Outline Plan for Roads (Plan 50) approved by the Civil Administration (see p. 137) defines Road 57 as a primary road with a right of way of 100 meters and a building line of 70 meters to either side – although this is actually a secondary road with a low volume of traffic, and with an actual width of just 15 meters, as already noted. By way of comparison, the right of way of one of the main roads in Israel – the Cross-Israel Highway (Road 6) is 100 meters, although it serves traffic volumes dozens of times higher than Road 57.

In planning terms there is no justification for defining Road 57 as a primary road. The right of way of this road in Plan 50 was based not on planning considerations, but on the desire to define a broad area in which Palestinian construction is prohibited. Plan 50 creates a strip along Road 57 with a width of 240 meters (100 meters for the road strip, together with a building line of 70 meters to either side) – 24 hectares for every kilometer of the road – in which construction is prohibited. As a result, many of the buildings in Jiftlik were deemed illegal (see map on p. 120).

To obtain approval for even part of the existing buildings in Jiftlik, the Civil Administration had to include sections of Road 57 in the areas of Plans 1409/05 and 1410/05, to alter the orders of Plan 50, to reduce the right of way from 100 meters to 40 meters, and to reduce the building line from 70 meters to 10 meters. Despite the significant improvement by comparison to the previous statutory situation (in accordance with Plan 50), many of the existing buildings in the village are still within the road strip or the line of building prohibition and cannot enjoy legal status.

The Plan for the Southern Compound

In addition to the two plans discussed above, the Civil Administration approved a plan for an area several hundred meters south-west of Road 57. Special Outline Plan 1411/05 (Jiftlik Heights – Compound C) covers an area of 24.1 hectares. This plan has the highest level of detail of the three plans for the village, zoning 4.6 hectares for residential area A, 13.4 hectares for residential area B, 1.9 hectares for an open area, and 4.2 hectares for internal roads.

Like the other plans, however, this plan does not include land subdivision and does not allocate areas for public buildings, commerce, and industry. Already now, only three years after its approval, buildings have been erected in the compound zoned as open area in the plan.

As noted above, the Civil Administration does not usually take action to enforce the orders of the special outline plans, but focuses on preventing construction outside their boundaries. As a result, construction within the plan areas takes place on a spontaneous and uncontrolled basis, both on land zoned for residential buildings in the plans and on land zoned for roads or open spaces, as in the case of Plan 1411/05.

In addition, the three plans do not relate to the existing buildings within their areas. A review of the maps of the plans shows that many of the existing buildings in plots designated as residential zone A do not meet the orders in terms of the building lines and the permitted number of buildings on each plot. In formal terms, the plans do not provide legalization for many of the buildings in the heart of the areas zoned for construction and development. The reason is the failure to undertake a preliminary survey or to attempt to address existing construction and adapt the plan's orders accordingly.

Nevertheless, the Civil Administration assumes that the plans meet the needs of the village for many years to come and permit the construction of hundreds of new housing units. In practice, the actual building possibilities in all the plans (and particularly in Plan 1409/05) are limited, since maximum development according to the plan orders would require the demolition of numerous existing buildings – a completely unrealistic scenario. As a result, there is no practical possibility to utilize the plans' development potential.

According to the residents of Jiftlik, the scale of construction in the area has increased by about 70 percent since the approval of the three special outline plans for the village. Even now, however, construction within the boundaries of the plans takes place in the vast majority of cases without permits, spontaneously and on the basis of land ownership patterns. Construction does not relate to the orders in the plans – orders of which the villagers are not even aware, as noted above.⁴⁴³

Demolition Orders and House Demolitions

The special outline plans removed the threat of demolition facing hundreds of homes in Jiftlik, but some 40 percent of the existing buildings in the village were left outside the plans' boundaries and are still exposed to enforcement action by the Civil Administration. These buildings are scattered to the north and south of Road 57, as well as to the east and west of the plans approved for compounds A and B. In the areas along Road 57 that were not included in the plans for compounds A and B, the orders of Plan 50 remain in force. As will be recalled, this plan defines a total strip of 240 meters in which construction is prohibited; this area includes numerous existing buildings.

According to the residents of the village, the Civil Administration has issued about 100 demolition orders in recent years against buildings in Jiftlik outside the blue line of the three plans. Some 30 buildings have actually been demolished.⁴⁴⁴

House demolitions in Jiftlik are the result of the conflict between the Civil Administration's planning policy and the prevailing construction patterns in the village. Construction in Jiftlik is done by private initiative and for personal needs and is guided by the division of land according to ownership status. Since the special outline plans ignore the land ownership issue, those families without land within the plans' boundaries continue to build beyond their borders. As the villagers told us, "everyone builds on his own land. A person who doesn't have land inside the plans builds on his land outside",⁴⁴⁵ in spite of the risk of getting a demolition order.

⁴⁴³ Meeting with residents of Jiftlik, 10 April 2008.

⁴⁴⁴ Ibid.

⁴⁴⁵ Ibid.

Implementation of outline plans in Palestinian villages demands in depth analysis of land subdivision according to ownership status. Without a comprehensive planning survey, it is impossible to obtain accurate data on this critical issue. However, the Civil Administration is taking a shortcut in all its special outline plans, including those for Jiftlik, by skipping the legal requirement for a planning survey. The result is a planning product that pretends to provide an appropriate solution, but in fact it has only a loose connection to the social and land ownership reality of the village. As the case of Jiftlik shows, ignoring the land ownership issue seriously undermines the prospects of implementing the plans and makes them no more than a delineation line.

Summary and Conclusions

The Civil Administration applies a deliberate and consistent policy in Area C with the goal of restricting Palestinian construction and development and limiting its spatial dispersion. This policy is directly responsible for the large number of house demolitions in Area C, but it also has much wider ramifications. Indeed, this policy is reflected in every relevant aspect of the Civil Administration's planning activities.

The mandatory regional outline plans, which still apply to the vast majority of the Palestinian villages in Area C, permit construction and development in extensive areas zoned for agriculture. In the past, the Israeli military regime itself used these plans as a key planning tool for issuing thousands of building permits in the rural Palestinian sector in the West Bank. Since the 1980s, however, and particularly since the administrative division of the West Bank (1995), the Civil Administration has almost completely stopped issuing building permits on the basis of these plans. The result is that instead of being an instrument to promote development, the plans are now used to issue demolition orders and to demolish buildings erected without a permit.

Indeed, the Civil Administration applies the regional outline plans in a way that makes the extensive areas to which they apply a virtual "no go zone" for Palestinian construction. Another tool Israel uses to prevent Palestinian construction is Partial Regional Outline Plan 50 for Roads, initiated by the Civil Administration. Plan 50 defines many local roads in the West Bank as primary roads, thus prohibiting building in extensive areas along the roads, even though these are actually narrow roads with a low volume of traffic.

The Civil Administration also views archeological sites, nature and landscape reserves as a justified prohibition of Palestinian construction in Area C, although in many cases the Civil Administration itself approved construction in such areas within the boundaries of the Israeli settlements. Extensive areas, particularly in the Jordan Valley, have been declared closed military zones, where Palestinian building is also forbidden. Above all, the Civil Administration has imposed a general prohibition of Palestinian construction and development on land that Israel has declared state land. The combined effect of these various measures is to prevent Palestinian construction on tens of percents of the total area of the West Bank, and in most of the land included in Area C.

The special outline plans are another key component of the Civil Administration's planning activities in Area C. These plans ostensibly represent the opposite of the various building prohibitions: their professed goal is to enable development in Palestinian villages in the area. In practice, however, these plans do little more than to draw an arbitrary and restrictive line that, in most cases, does not even encompass all the buildings existing in the area at the time the plan is prepared. The level of detail of the special outline plans is extremely low. Necessary planning surveys are not undertaken before the plans are prepared and vital data are not collected. With a few exceptions, these plans do not include any state land. The special outline plans make no reference to the division of land ownership and are prepared without the participation of the Palestinian public. Moreover, as this report has shown, these plans are an invention of the Civil Administration and do not meet the basic requirements of the Jordanian Planning Law that applies in the Area C.

In practical terms, the special outline plans effectively combine with the Civil Administration's other tools to restrict Palestinian construction in Area C. The Civil Administration uses the high density levels proposed in the plans to claim that they meet the needs of the residents of Palestinian villages for many years to come, and therefore there is no need for construction outside their boundaries. However, the density levels the plans propose are unparalleled in rural communities

inside Israel; indeed, these levels exceed the density in major metropolises in Israel and around the world and cannot be implemented in practice. The application of the special outline plans would destroy the rural fabric of life and transform the Palestinian villages in Area C into crowded urban areas. This has not prevented the Civil Administration from repeatedly using the special outline plans, both for propaganda purposes in its contacts with the general public and as a line of defense before the High Court of Justice in petitions submitted by Palestinians against demolition orders issued against buildings outside the plans' boundaries.

The various plans the Civil Administration has approved for the Israeli settlements in the West Bank (not discussed in this report) are an important, though covert, aspect of the planning policy it imposes on the Palestinian villages in the area. The plans for the Israeli settlements often present a mirror image to planning for the Palestinian communities. Where the only plans applying to most of the Palestinian villages in Area C are the mandatory regional outline plans, new plans have been approved for almost all the Israeli settlements. In contrast to the generalized character of the special outline plans approved for a small number of Palestinian villages in Area C, the Israeli settlements enjoy high quality detailed plans that zone land for public needs. While the area of the special outline plans for Palestinian villages is limited and restrictive, the plans for many of the settlements include extensive areas far beyond that required for planning needs in the present or in the foreseeable future.

Ultimately, as this report has shown, the planning tools the Civil Administration has applied to the Palestinian population in Area C are part of the broader struggle for control of land in the area. The policy of the Civil Administration aims to retain land reserves for the Israeli settlements and other Israeli interests. This goal determines the need to minimize the spatial dispersion of Palestinian communities.

This policy has serious implications for the Palestinian residents of the West Bank. The first circle affected includes 149 Palestinian communities whose built-up areas are situated entirely in Area C. The residents of these villages suffer from frequent house demolitions and from severe restrictions on construction and development. The second circle of impact includes hundreds of Palestinian communities where part of their built-up area or agricultural land is in Area C. The third circle of impact includes the Palestinian cities and villages located in Areas A and B, under Palestinian planning responsibility. As detailed in the report, even those Palestinian communities situated in Areas A and B need regional infrastructure that, in many parts of the West Bank, can only be established in Area C. The infrastructure includes industrial zones, water and electricity installations, waste disposal sites, and other public facilities. The Civil Administration's restrictive planning policy prevents the construction of this infrastructure; the result is direct or indirect injury to the entire Palestinian population of the West Bank – over two million residents.

In this light, it appears that the large number of building demolitions in Area C and the dismal planning condition of the Palestinian communities in the area are not incidental; they are the inevitable result of the Civil Administration's planning policy. As long as the area remains under Israeli belligerent occupation, the Civil Administration has the obligation to meet the planning and development needs of its Palestinian residents. As this report has shown, the Civil Administration has failed to meet this obligation, which is enshrined in international humanitarian law. The sad reality of Area C planning and building will change only if there is a major transformation of the Civil Administration's planning policy.

Palestinian Communities and Residents in Area C

Although the administrative division of the West Bank is defined in official agreements, no accurate statistics are available regarding the number of Palestinian communities in Area C or the size of the population that lives there. As explained in detail in the report, the division into Areas A, B, and C was often arbitrarily implemented. The division lines do not follow the borders of the built-up areas of the Palestinian villages or even of the boundaries of the special outline plans the Civil Administration approved for some of these villages prior to the interim agreement (1995). The result is that it is impossible to estimate accurately the total number of Palestinians currently living in Area C.

A special report published recently by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) determines that the built-up area of 418 Palestinian villages is situated partly or entirely in Area C. Assuming that the number of residents in the built-up area of each village is divided equally between Areas A, B, and C, OCHA estimated that the Palestinian population of Area C is currently over 228,600.⁴⁴⁶

In our opinion, this estimate is exaggerated. Due to the planning policy of the Civil Administration, Palestinians' ability to build in Area C is far more restricted than in Areas A and B. Accordingly, the number of residents in the built-up areas of Palestinian communities in Area C can also be expected to be lower per unit of land than in Areas A and B. With this in mind, we estimate that no more than 150,000 Palestinians currently live in Area C.

Table 11 below provides information about the Palestinian communities that are situated entirely within Area C. In addition to the name of the community, the sub-district where it is located, and its number of residents, the table also notes the few cases in which special outline plans or detailed plans have been approved for villages in this area. As the table clearly shows, the only plans applying in the vast majority of Palestinian communities in Area C are the mandatory regional outline plans.

The figures for the number of residents in the Palestinian communities in the table are based mainly on information from the Palestinian Central Bureau of Statistics (PCBS). However, due to the numerous difficulties involved in collecting data about the Palestinian villages in Area C, these figures are also not entirely accurate: they are more an approximation than a definite figure. In 1997 the PCBS carried out a population census that included not only cities and large villages, but also small communities. However, it seems that some of the villages we identified in Area C were not included even in that census and their names do not appear in its documents. Even in those communities that were included in the census, the PCBS publishes updated population forecasts only for communities that included at least 100 residents in 1997. No updated figures are available for smaller communities.

To present as reliable figures as possible for the number of Palestinians living in the communities whose entire built-up areas are situated in Area C, we drew on additional sources to the PCBS. These included local authorities in the area (for example, in the Jenin sub-district), residents of the villages, and non-governmental organizations. Notwithstanding all our efforts, we were ultimately unable to secure updated information on 26 of the 149 Palestinian communities with their built-up areas situated entirely in Area C.

⁴⁴⁶ Office for the Coordination of Humanitarian Affairs, *"Lack of Permit" Demolitions and Resultant Displacement in Area C*, East Jerusalem: May 2008.

Table 11: Palestinian Communities with Built-up Area Entirely in Area C

	Name of village /community	Sub-district ⁴⁴⁷	Number of residents (2007)	Special outline plan (plan number)
1	‘Aba	Jenin	171	1130
2	Abu al ‘Asja	Hebron	645	
3	Abu Qaqus	Jenin	N/A	
4	Abu Suhweila	Hebron	N/A ⁴⁴⁸	
5	Ad-Dab’a	Qalqiliya	279	1240
6	Ad-Damayra	Jenin	305	
7	Ad-Dawa	Nablus	80	
8	Ad-Deirat	Hebron	407	1725/05
9	Al ‘Aqaba	Tubas	300	
10	Al ‘Azazima	Bethlehem	N/A ⁴⁴⁹	
11	Al Bira	Hebron	322	1707
12	Al Buweib	Hebron	537	1721/05
13	Al Fakheit	Hebron	134	
14	Al Faqir	Hebron	424	
15	Al Farisiya	Tubas	220	
16	Al Fureidis	Bethlehem	738	1647/05
17	Al Hadidiya	Tubas	189	
18	Al Haffasi	Tulkarem	165	
19	Al Hafira	Jenin	79	
20	Al Halqum	Bethlehem	185	
21	Al Ka’abina	Jerusalem	976	
22	Al Malih	Tubas	213	
23	Al Maniya	Bethlehem	802	
24	Al Mansura	Jenin	154	
25	Al Masqufa	Tulkarem	212	
26	Al Mirkez	Hebron	42	
27	An-Nabi Musa	Jericho	N/A ⁴⁵⁰	

⁴⁴⁷ The location of the communities in the various sub-districts in the table is according to the Palestinian Central Bureau of Statistics. In some cases the association of villages with sub-districts by the Israeli Civil Administration differs from that presented here

⁴⁴⁸ In the 1997 census, 34 residents were counted in Abu Suhweila.

⁴⁴⁹ In the 1997 census, 59 residents were counted in Al ‘Azazima.

⁴⁵⁰ In the 1997 census, 45 residents were counted in An-Nabi Musa.

	Name of village /community	Sub-district	Number of residents (2007)	Special outline plan (plan number)
28	An-Nabi Samwil	Jerusalem	244	Nabi Samuel National Park Plan 51/107 ⁴⁵¹
29	‘Arab Abu Farda	Qalqiliya	150	
30	‘Arab al Fureijat	Hebron	440	1784
31	‘Arab al Hamdun	Jenin	N/A ⁴⁵²	
32	‘Arab al Jahalin	Jerusalem	1,205	1627/5/05, 1627/6/05, 1627/8/08 (detailed plans) ⁴⁵³
33	‘Arab ar-Ramadin al Janubi	Qalqiliya	201	
34	‘Arab ar-Ramadin ash-Shamali	Qalqiliya	71	
35	‘Arab ‘Assin	Jenin	N/A	
36	Ar-Rahniah	Bethlehem	110	
37	Ar-Rakeez	Hebron	23	
38	Ar-Rawa’in	Bethlehem	157	
39	Ar-Rifa’iyya	Hebron	336	1725/05
40	As-Sa’aïda	Jenin	131	
41	At-Tuba	Hebron	72	
42	At-Tuwani	Hebron	350	
43	Az-Zuweidin	Hebron	608	
44	Badiw al Mu’arajat	Ramallah	826	
45	Batan ad Dabea	Jenin	100	
46	Beit Nuba	Ramallah	303	
47	Bir al Basha	Jenin	1,344	1107/05
48	Bir Musallam	Hebron	197	
49	Birin	Hebron	180	
50	Dar Abu Basal	Salfit	N/A	
51	Dar an-Najjab	Jenin	N/A	
52	Deir al Qilt	Jericho	N/A	
53	Deir Razih	Hebron	339	
54	Dhaher al ‘Abed	Jenin	382	1115/05
55	Dhaher al Malih	Jenin	223	
56	Dkeike	Hebron	400	

⁴⁵¹ Plan 51/107 does not permit the construction of new buildings in the village of An-Nabi Samwill, neither does it allow the improvement of infrastructures or the erection of public buildings. The building prohibitions this plan imposes are considerably more severe than the restrictions entailed by the mandatory regional outline plan RJ/5, which applied to the locale prior to the approval of plan 57/107, which was initiated by the Civil Administration.

⁴⁵² In the 1997 census, 39 residents were counted in ‘Arab al Hamdun.

⁴⁵³ The residents of this village do not live in the plans’ area and have no intention of moving there.

	Name of village /community	Sub-district	Number of residents (2007)	Special outline plan (plan number)
57	Ein Samiya	Ramallah	181	
58	Fakht al Jul	Bethlehem	263	
59	Farasin	Jenin	20	
60	Fasayil al Fauqa	Jericho	300	
61	Fuqeiqis	Hebron	331	1754/05
62	Furush Beit Dajan	Nablus	1,191	
63	Hadalin	Hebron	1,200	
64	Halaweh	Hebron	52	
65	Hamida an Najada	Hebron	612	
66	Haribat an-Nabi	Hebron	50	
67	Harmala	Bethlehem	780	
68	Humsa	Hebron	N/A	
69	Ibziq	Tubas	60	
70	Imeinzil	Hebron	277	
71	Imreiha	Jenin	438	
72	I'raq an-Nataf	Jenin	50	
73	Isfey al Fauqa	Hebron	109	
74	Isfey at-Tahta	Hebron	81	
75	Iskeik	Hebron	172	
76	'Izbat Abu Adam	Salfit	10	
77	'Izbat al Ashqar	Qalqiliya	432	
78	'Izbat ar-Raghdiya	Jenin	70	
79	'Izbat at-Tabib	Qalqiliya	218	
80	'Izbat Jal'ud	Qalqiliya	147	
81	Jaba' (Tajammu' Badawi)	Jerusalem	976	
82	Jabal al Aqra'a	Jenin	50	
83	Jabal Harasa	Bethlehem	250	
84	Jafa an-Nun	Nablus	N/A	
85	Jiftlik	Jericho	4,536	1409/05, 1410/05, 1411/05
86	Jinba	Hebron	216	
87	Jubbet ad-Dhib	Bethlehem	200	
88	Kafr 'Aqab	Jerusalem	2,000	
89	Kardala	Tubas	170	
90	Khallet ad-Daba'a	Hebron	30	

	Name of village /community	Sub-district	Number of residents (2007)	Special outline plan (plan number)
91	Khallet 'Afana	Bethlehem	5	
92	Khallet al Balluta	Bethlehem	176	
93	Khallet Sakariya	Bethlehem	90	
94	Kharayib Umm al Lahim	Jerusalem	400	1519
95	Khirbet 'Abdallah al Yunis	Jenin	145	
96	Khirbet Abu 'Anqar	Jenin	14	
97	Khirbet al Fakheit	Hebron	68	
98	Khirbet al Kharaba	Hebron	N/A	
99	Khirbet al Majaz	Hebron	90	
100	Khirbet al Mantara	Hebron	N/A ⁴⁵⁴	
101	Khirbet al Marajim	Nablus	N/A	
102	Khirbet al Muntar al Gharbiya	Jenin	38	
103	Khirbet al Muntar ash-Sharqiya	Jenin	26	
104	Khirbet an-Nahla	Bethlehem	80	
105	Khirbet ar-Rahwa	Hebron	N/A ⁴⁵⁵	
106	Khirbet ar-Ras al Ahmar	Tubas	100	
107	Khirbet at-Tabban	Hebron	95	
108	Khirbet at-Tawamin	Hebron	N/A ⁴⁵⁶	
109	Khirbet at-Tawil	Nablus	120	
110	Khirbet at-Tayyah	Tulkarem	358	
111	Khirbet Bir al 'Idd	Hebron	151	
112	Khirbet Bism	Hebron	N/A ⁴⁵⁷	
113	Khirbet Ghuwein al Fauqa	Hebron	44	
114	Khirbet Humsa	Tubas	183	
115	Khirbet Jubara	Tulkarem	336	1235/05
116	Khirbet Ma'in	Hebron	246	
117	Khirbet Marah ar-Raha	Jenin	N/A	
118	Khirbet Mas'ud	Jenin	N/A ⁴⁵⁸	
119	Khirbet Sab'ain	Jenin	27	
120	Khirbet Sarra	Nablus	30	

⁴⁵⁴ In the 1997 census, 95 residents were counted in Khirbet al Mantara.

⁴⁵⁵ In the 1997 census, 36 residents were counted in Khirbet ar-Rahwa.

⁴⁵⁶ In the 1997 census, 24 residents were counted in Khirbet at-Tawamin.

⁴⁵⁷ In the 1997 census, 47 residents were counted in Khirbet Bism.

⁴⁵⁸ In the 1997 census, 46 residents were counted in Khirbet Mas'ud.

	Name of village /community	Sub-district	Number of residents (2007)	Special outline plan (plan number)
121	Khirbet Sarura	Hebron	N/A ⁴⁵⁹	
122	Khirbet Suruj	Jenin	43	
123	Khirbet Susa	Salfit	N/A	
124	Khirbet Tana	Nablus	200	
125	Khirbet Tawil ash-Shih	Hebron	194	
126	Khirbet Tell el Himma	Tubas	126	
127	Khirbet Tuqu'	Bethlehem	80	
128	Khirbet Yarza	Tubas	75	
129	Khirbet Zanuta	Hebron	50	
130	Maghayir al 'Abeed	Hebron	47	
131	Mantiqat Shi'b al Batin	Hebron	144	
132	Qalandiya refugee camp	Jerusalem	9,332	
133	Qawawis	Hebron	37	
134	Qeqis	Jenin	136	
135	Rashayida	Jericho	N/A	
136	Sa'adet Tha'la	Hebron	100	
137	Susiya	Hebron	N/A	
138	Tall al Khashaba	Nablus	120	
139	Tarusa	Hebron	20	
140	Tura ash-Sharqiya	Jenin	186	
141	Umm ar-Rihan	Jenin	385	
142	Umm Fagrah	Hebron	N/A	
143	Urqan Awad	Hebron	N/A	
144	Wad ad-Dabi'	Jenin	381	1130
145	Wadi Du'oq	Jenin	119	
146	Wadi Muhammad	Bethlehem	171	
147	Wadi Qana	Salfit	75	
148	Wadi Rasha	Qalqiliya	180	
149	Zif	Hebron	894	1720/05
	Total:		47,360	

⁴⁵⁹ In the 1997 census, 48 residents were counted in Khirbet Sarura.

Glossary

Blue line: a blue colored line on the plan indicating its boundaries.

Building line: the distance from the boundaries of a plot where construction is prohibited. The front building line relates to the side of the plot bordering the adjacent road. The rear and side building lines are defined in relation to the front building line.

Building permit: a license without which building is prohibited. According to the Jordanian Planning Law, which applies in Area C, almost any building action, including an extension to an existing building, requires a permit that may be received only in accordance with a detailed plan approved by law, or in accordance with an outline plan including detailed orders.

Building rights: the total development potential permitted in accordance with a plan approved by law; defined in terms of the extent of the permitted area of construction (site coverage, floor areas); number of stories in the building; number of housing units allowed in the building; etc.

Coverage: that part of a plot which is occupied (or covered) by the building. A coverage of 40 percent means that the building covers 40 percent of the area of the plot.

Density: the number of housing units that may be built in a given area. In Israel, density is usually expressed in terms of the number of housing units per 1,000 square meters or per hectare. For example, in the case of a building plot of 500 square meters, where the valid plan permits the construction of two housing units, the density is four housing units per 1,000 square meters or 40 housing units per hectare.

Deposit: in the Jordanian Planning Law, a procedure enabling the public to object to new plans and/or to propose their amendment. According to the law, the planning institutions must publish a notice in the press concerning the deposit of any new plan. Any interested person or body is entitled to submit an objection to any plan (regional, outline, or detailed) within two months from the date of publication.

Detailed plan: in the Jordanian Planning Law, a plan including detailed orders (such as the permitted height of buildings, the number of housing units, etc.) on a level and range that enables the issue of building permits. According to the law, the authority to approve detailed plans rests with the District Planning and Building Committee. Since the Israeli military commander has abolished the District Committees, the Higher Planning Council is the only body that is authorized to approve detailed plans for the Palestinian villages in Area C.

District Planning and Building Committee: in the Jordanian Planning Law, a planning institution responsible for an entire district. The members of the committee include representatives of government and of the local authorities. The committee is authorized to approve detailed plans. Following the occupation of the West Bank by Israel in 1967, the Israeli military commander abolished all the district committees and transferred their powers to the Higher Planning Council.

Floor area: the total of the areas of all the floors in a building.

Higher Planning Council (HPC): in the Jordanian Planning Law, the highest planning institution, with members including representatives of the government, local authorities, and the chairman of the Association of Engineers. The Higher Planning Council is authorized to approve regional and outline plans and to present recommendations to the Minister of the Interior on the declaration of planning areas. Following the occupation of the West Bank in 1967, the Israeli military commander changed the composition of the Higher Planning Council, which now has an all-Israeli membership, and permitted the council to set up subcommittees, each responsible for a specific field.

Inspection Subcommittee: a planning committee that operates within the framework of the Israeli Civil Administration. Its main function is to enforce the planning and building laws in Area C. The committee is appointed by the Higher Planning Council and its powers include granting building permits and issuing demolition orders.

Local Planning and Building Committee: in the Jordanian Planning Law, a local planning committee authorized to issue building permits in accordance with detailed plans approved by law, and to prepare and review outline and detailed plans. A city council, village council, or special body comprised of representatives of the government and of local residents may function as the local committee. Following the occupation of the West Bank in 1967, the Israeli military commander abolished the local committees in all the Palestinian villages, and today their powers are vested in the Higher Planning Council and its subcommittees.

Local Planning Subcommittee: a subcommittee of the Higher Planning Council responsible for planning the Palestinian villages in Area C. The committee's functions include drawing up planning guidelines; inspecting plans submitted for the approval of the planning institutions; and preparing plans for these villages. The committee also hears appeals submitted against the demolition orders issued by the Inspection Subcommittee.

Minimum lot area: the smallest area of a lot on which the plan permits construction. When a plan establishes a minimum lot area of 500 square meters, the practical result is that it is only possible to build on a smaller lot through relaxation.

Outline plan: in the Jordanian Planning Law, a plan applying to the area of an entire community and designating zones within the plan area. In large communities (cities, large towns), a separate outline plan is to be prepared, serving as the basis for detailed plans for the various neighborhoods. In small (villages) and medium-sized communities (small towns), a detailed outline plan is to be prepared, and there is no need to prepare a separate detailed plan. The authority to approve outline plans rests with the Higher Planning Council.

Parcellation scheme, land subdivision plan: a plan for the subdivision of land into lots that does not include building orders and, accordingly, is not a planning scheme. The Jordanian Planning Law stipulates that land may be divided into sub-lots, each with an area of less than one hectare, only in accordance with a parcellation scheme approved by the planning institutions. Parcellation schemes are not deposited and the public is not allowed to submit objections to them.

Plan, planning scheme: a document determining what may and may not be done with/on land, and on what conditions. Plans include written instructions (the orders) and, in most cases, also a map.

Planning area: in the Jordanian Planning Law, an area defined as a separate planning area for which a specific local committee is responsible. The Minister of the Interior has the authority to determine planning areas, acting in accordance with the recommendation of the Higher Planning Council.

Planning Bureau: in the Jordanian Planning Law, a professional body operating under the auspices of the Ministry of Interior and responsible for providing professional and technical assistance to the planning institutions. Since 1967, the Planning Bureau has functioned as part of the Israeli military administration in Beit El (the Bureau is now part of the Civil Administration).

Planning institution: a committee for planning and building issues authorized to review and approve plans and/or to issue building permits.

Regional outline plans: plans prepared during the British Mandate period (1920-1948) each of which applies to an entire administrative district. In spite of their name, these plans are not regional plans as defined by the Jordanian Planning Law, but local outline plans applied to extensive areas.

Four mandatory regional outline plans continue to apply in the West Bank, together covering most of the area (with the exception of areas for which other plans have been prepared).

Regional plan: in the Jordanian Planning Law, a plan applying to an entire region and addressing such issues as the establishment and location of new villages and towns; the expansion of existing communities or the restriction of their expansion; roads alignment, etc. The Higher Planning Council has the authority to approve a regional plan.

Relaxation: deviation from the orders of a valid plan. When granting building permits, the Jordanian Planning Law allows the planning institutions to approve certain relaxations, such as permitting additional building area or reducing a building line.

Right of way, road strip: the strip zoned for a road in a plan, even if the actual width of the road is smaller, and even if the road does not actually exist.

Road: a road (including sidewalks) or path, whether actually in existence or indicated in a plan.

Special outline plans, special partial local outline plans: plans prepared by the Israeli Civil Administration for Palestinian villages. The chief characteristics of these plans are the restricted area they cover and the lack of detail in their building orders.

Use: the range of things it is permitted to do in each of the zones. For example, a plan may establish that in an agricultural zone, it is permissible to erect residential or industrial buildings in addition to agricultural buildings such as greenhouses.

Zone, land zone: the principal purpose (e.g. residential, industrial, agricultural) for which the land may be used.

Between the years 2000 and 2007, the Israeli Civil Administration demolished 1,626 Palestinian buildings in Area C, which covers 60 percent of the West Bank, and where the Civil Administration has full planning authority. Although this is not a new phenomenon, the underlying factors behind house demolitions are not well known. The main purpose of *The Prohibited Zone* is to unveil these factors and to describe how Israel is using planning tools in an attempt to control Palestinian building and to restrict its spatial expansion.

The report indicates that the main reason for the large number of house demolitions in Area C is the Israeli planning policy. In most Palestinian locales in Area C, the only planning schemes still effective are the Mandatory Regional Outline Plans approved some 60 years ago. In the past, the Israeli military regime issued thousands of building permits, based on these plans. But today, the Civil Administration's stringent and erroneous interpretation of the Mandatory plans barely allows building permits to be issued by virtue of these plans. The Civil Administration has prepared new outline plans for a small number of Palestinian villages in Area C. However, these plans do not meet the needs of the villages, and their main aim is to delimit the built-up area in the Palestinian locales and to prohibit its expansion.

The primary victims of this policy are the 150,000 Palestinians who live in Area C, but it has far-reaching consequences for millions of citizens living in Areas A and B (together, 40 percent of the West Bank), which are under Palestinian planning authority. The building restrictions imposed by the Civil Administration in Area C prevent the construction of vital infrastructure for the Palestinian population of the entire West Bank, and impair the spatial connections between the various Palestinian locales. The chief aim of the Civil Administration's planning policy in Area C is to restrict the demographic growth of its Palestinian population and to guarantee large reserves of land for Israeli interests, primarily for settlements.

