

The Prohibited Zone

Israeli Planning Policy in the Palestinian Villages in Area C

Executive Summary

Introduction

Planning and construction are one of the major sources of daily friction between the Israeli authorities in the West Bank and its Palestinian residents. Even today, after the establishment of the Palestinian Authority, the State of Israel, through the Civil Administration, has sole authority to approve outline plans and to issue building permits for Palestinians in Area C, which covers 60 percent of the West Bank. Thus, Israel is obliged to provide appropriate planning solutions for the needs of the 150,000 Palestinians who live in Area C. In reality, however, the Civil Administration is not truly responsive to these needs. On the contrary, a major feature of its planning activities is the demolition of Palestinian buildings in Area C.

The main goal of *The Prohibited Zone* is to expose the planning factors behind the building restrictions and the large extent of house demolitions in Area C, focusing on the policies and practices of the Civil Administration. The report is based on comprehensive research, which included interviews, analysis of aerial photographs, data collection from various sources and searching for documents from the British Mandate period – some of which are revealed here for the first time.

The first part of the report presents the spatial phenomena and the legal aspects that are the background for the planning situation of the Palestinian communities in Area C. The fragmentation of the West Bank, by various means such as checkpoints and the Israeli settlement areas, make appropriate planning for the Palestinian population very difficult. The fragmentation of the area is partially due to Israeli land policy, which on the one hand substantially increased the extent of West Bank land now designated as government property, and on the other hand allocates state lands almost exclusively for Israeli use. In the realm of physical planning proper, Israel amended the Jordanian Planning Law enacted in

the West Bank before 1967, to create a highly centralized planning system under full Israeli control. The Palestinian population has no representation in this planning system. At the same time, Israel implemented a planning policy that contradicts the spontaneous evolution of the Palestinian villages in the area and their residents' natural tendency to abandon high density construction for more commodious forms of building that enable higher standards of living.

The second part, which is the heart of the report, analyses in depth the two main types of outline plans applying to Palestinian communities in Area C: The Mandatory Regional Outline Plans (hereinafter, "the Mandatory Plans") and the Special Outline Plans prepared by the Civil Administration (hereinafter, "the Special Plans"). The Mandatory Plans, approved some 60 years ago, still apply to most of the Palestinian villages in Area C. Due to a strict and mistaken interpretation adopted by the Civil Administration, it is now almost impossible to obtain a building permit based on the Mandatory Plans. The Special Plans are an invention of the Civil Administration; this type of plan does not exist in the Jordanian Planning Law. The main purpose of the Special Plans is to limit Palestinian construction in Area C, so as to leave large reserves of land for Israeli interests – primarily for settlements.

The report shows that the result of Israeli planning policy is severe restriction of building and development not only in those Palestinian communities within Area C; this policy also has negative effects on millions of Palestinians who live in Areas A and B, where responsibility for physical planning rests with the Palestinian Authority. The Civil Administration's policy has severely violated basic human rights of a large population, including the right to housing, the right to freedom of movement, the right to education and health, etc.

The Factual Situation

1. The Administrative Division of the West Bank

- Following the Interim Agreement between Israel and the PLO (1995) and more recent agreements, the West Bank has been divided into three administrative Areas: A, B and C. In Areas A and B, which together cover 40 percent of the West Bank, the Palestinian Authority has full control over physical planning and construction. In Area C, which

covers 60 percent of the West Bank, planning authority rests exclusively with the Civil Administration. Consequently, in Area C, all construction and every planning scheme require the approval of the Israeli Civil Administration.

- Area C is currently home to some 150,000 Palestinians, of whom 47,000 live in 149 communities that have their built-up areas entirely within Area C. The rest live in villages and towns that have their built-up areas partially in Areas A and B and partially in Area C.

2. Israeli Land Policy

- On the eve of the Israeli occupation of 1967, approximately 70,000 hectares in the West Bank were designated as state land. Israel attempted to increase this figure, in order to secure large reserves of land for the settlements enterprise. Accordingly, during the period of its rule Israel declared some additional 90,000 hectares of West Bank land (previously considered private Palestinian property) as government property. Most of the declared state lands were included within the jurisdiction areas of the Israeli settlements' regional and local councils, and Palestinians are barred from using them. Today about a third of West Bank land is designated as government property. In addition, tens of thousands of hectares in the West Bank had been declared closed military zone or were expropriated for military purposes. Palestinians are not allowed to use these lands either.
- As a general rule, Israeli policy dictates that state lands in the West Bank are to be used by Israelis only. Accordingly, already in 1987, the Civil Administration decided that the outline plans for Palestinian villages should not include state lands. Consequently, the Palestinian population is excluded from most public land resources, and is prevented from using approximately one third of the total land area of the West Bank.

3. Planning and Construction Laws in Area C: From a Stratified System to Centralized Control

- **Abolition of planning institutions and representation of the Palestinian public:** Planning and construction in Area C are subject to a Jordanian law enacted in 1966. Israel retained most of the orders of the law. However, through military orders, it completely revised the structure and composition of the planning system. Thus, Israel

abolished the Local Planning Committees in Palestinian villages, as well as the District Planning Committees, transferring all their powers to the Civil Administration's Higher Planning Council and its subcommittees. The result is a centralized planning system under full Israeli control. Today all planning institutions in the Civil Administration are staffed only by Israelis, without any representation of the Palestinian population. This means that the Palestinians have no real influence on the planning decisions affecting their communities.

- **Separate planning system for Israeli settlements:** At the same time, Israel established a separate planning system for settlers, by appointing Local Planning Committees in the settlements. These committees are authorized to issue building permits for settlers and to initiate planning schemes for them. By contrast, as far as Palestinians are concerned, the authority to issue building permits rests exclusively with the Higher Planning Council or its subcommittees.

4. The Mandatory Regional Outline Plans: Mistaken Interpretation and

Strict Implementation

- **Old plans:** The Mandatory Plans, prepared during the 1940s, still apply to the vast majority of the Palestinian communities in Area C. These plans (RJ/5 in the southern part of the West Bank, S/15 in its northern part and R/6 on its western edges) designate most of their area as an agricultural zone. Yet the plans allow for substantial construction in the agricultural zone, both for residential purposes and for other uses (agriculture, industry, infrastructure and more).
- **Refusal to issue building permits:** During the British Mandate, as well as throughout the first decade of the Israeli occupation, thousands of building permits were issued in West Bank Palestinian villages based on the Mandatory Plans. However, since the end of the 1970s, with the expansion of the settlements enterprise, Israel began to use the Mandatory Plans in a restrictive manner. Since then, these plans have been used primarily to justify house demolitions and rejection of applications for building permits submitted by Palestinians. For example, in 1972 alone, the Israeli military authorities issued more than 2,100 building permits for residential buildings in West Bank Palestinian villages. In the vast majority of these villages, the only valid plans at the time were the Mandatory Plans. In 1972, 97 percent of the applications for building permits submitted by

Palestinians were approved. By comparison, throughout 2000-2007 the Civil Administration approved only 5.6 percent of the applications for building permits submitted by Palestinians. The total number of building permits issued to Palestinians during these seven years was 91, an average of 13 building permits per annum. It is to be assumed that at least some of these building permits were given on the basis of the Mandatory Plans.

The dramatic fall in the number of building permits issued on the basis of the Mandatory Plans is due to the way in which the Civil Administration implements these plans: harsh and mistaken interpretation, refusal to allow land subdivision and refusal to permit relaxations from the plans' orders.

- **Harsh and mistaken interpretation:** The Civil Administration has adopted an extreme and mistaken interpretation of the Mandatory Plans. For example, the Mandatory Plans allow the construction of two-storey buildings, with a building area of 150 to 180 square meters on each storey. In contrast, the Civil Administration claims that the maximum permissible building area (150-180 square meters) applies to the entire building, and not to each storey.
- **Refusal to allow land subdivision:** The Mandatory Plans allow the construction of only one residential building on an original, un-subdivided plot. However, the plans establish that, subject to the approval of the planning institutions, it is permissible to subdivide the original plots into building lots of 1,000 square meters (on tenth of a hectare) each, and to erect one residential building on each of these new lots. This option is particularly important in the West Bank, where many of the original plots measure several hectares and sometimes even dozens of hectares. The Civil Administration rarely, if ever, allows land subdivision. Consequently, the maximum building rights allowed for in the Mandatory Plans cannot be realized, since their utilization is subject to land subdivision.
- **Refusal to approve relaxations:** Moreover, the Civil Administration refuses to approve relaxations from the orders of the Mandatory Plans – although the law allows this. For example, plan RJ/5 stipulates a minimal distance of five meters between the building and the boundaries of the lot. The law allows the planning institutions at the Civil Administration to approve a smaller distance, by granting a relaxation. Yet the Civil Administration refuses to approve relaxations from the orders of the Mandatory Plans.

Consequently, applications for building permits are denied even where the deviation from the plan's orders is minimal (for instance, a distance of 4.5 meters, rather than five meters, from the boundaries of the lot).

- **Strict enforcement policy:** Instead of using the Mandatory Plans as a platform for granting building permits, the Civil Administration issues hundreds of demolition orders every year for Palestinian buildings erected without a permit. The Civil Administration justifies these demolition orders on the grounds that these buildings were erected in violation of the orders of the Mandatory Plans.
- **Ramifications of building restrictions in Area C on Palestinian communities in Areas A and B:** In villages that have their entire land in Area C, and where the only valid planning schemes are the Mandatory Plans, the Civil Administration enforces an almost complete ban on construction. However, the implications of the Civil Administration's policies related to the Mandatory Plans are far wider, and also restrict development in Palestinian communities in Areas A and B, which are under full Palestinian planning authority. In many parts of the West Bank, Areas A and B are islands surrounded by Area C. In these regions, Area C is the only place where infrastructures used jointly by several Palestinian communities – e.g., industrial zones and waste disposal sites – can be established. Since the Civil Administration rarely allows construction on the basis of the Mandatory Plans, vital infrastructure for Palestinian communities – both in Area C and in Areas A and B – cannot be set up. Thus, the severe building restrictions imposed by the Civil Administration in Area C harm millions of Palestinians throughout the West Bank.

5. The Special Outline Plans: Means to Restrict Development

- **Aims of the plans:** According to the Civil Administration, the Special Plans are designed to accommodate the needs of the Palestinian residents. But this report shows that their true goal is to restrict the spatial expansion of Palestinian construction as much as possible.
- **The plans and their main features:** The most prominent characteristic of the Special Plans is their small area – a few dozen hectares at most. When they were prepared, most plans did not even include all the existing buildings in the village. In virtually all cases, the plans do not include state land. The level of detail in the Special Plans is very low.

These plans were prepared without addressing the needs of the village residents and without collecting vital data. The plans include standard orders that have been applied to hundreds of villages throughout the West Bank, ignoring the unique local conditions of each village.

- **Unreasonable densities:** As a general rule, local outline plans are expected to meet the needs of the community for the near future (normally for 20-25 years ahead). Within this framework, local outline plans must provide housing solutions, allocate land for public buildings etc. In most cases, these solutions necessitate the inclusion of undeveloped areas within the boundaries of the plan. By contrast, the Special Plans assume that the housing solutions and other planning needs of the Palestinian villages will be provided for mainly by increasing the densities in the existing built-up areas of the village, and not by adding a substantial amount of undeveloped areas. These plans call for high building densities, which in some cases may reach a figure of 150 housing units per hectare. In the Palestinian villages, the Special Plans propose population densities (number of residents per hectare) that are higher than the population densities in the cities of Jerusalem, Tel-Aviv, London and New York. Such high population densities are inappropriate and unreasonable.
- **An excuse for house demolitions:** The Civil Administration is using the Special Plans mainly to justify the demolition of buildings erected outside their boundaries. Based on the high building densities called for in the plans, the Civil Administration argues that the Palestinian villages have housing solutions for many years ahead; hence, Civil Administration officials add, there is no reason for allowing construction outside the boundaries of the Special Plans. However, as noted above, the high building densities provided for in the Special Plans are unreasonable and in most cases cannot be realized.
- **The current planning situation in Palestinian villages:** There are 149 Palestinian communities having their entire built-up areas in Area C. As of June 2008, of these 149 communities, the Civil Administration has approved Special Plans for 16 villages, and other plans for two villages. In the remaining 131 villages, the only valid plans are the Mandatory Plans, which, as stated above, are used by the Civil Administration almost exclusively for enforcement purposes.

Conclusions

- The restrictive Israeli planning policy is a central tool in the ongoing struggle for control of land and the Civil Administration's attempt to secure large reserves of land for Israeli interests, primarily for the settlements.
- The large extent of house demolitions in Area C reflects a failure on the part of the Israeli authorities: outdated and inappropriate planning, which is unresponsive to the needs of the population. Since the chance of obtaining a building permit in large parts of Area C is null, Palestinian residents are forced to build in this area without a permit, in spite of the threat of demolition. Moreover, the demolition orders issued by the Civil Administration are often based on a mistaken interpretation of the Mandatory Outline Plans and/or a refusal to allow, within the limits of the law, relaxations from their orders.
- The restrictive planning policy, which does not offer any prospects of development for the Palestinian communities in Area C, together with the Civil Administration's strict enforcement measures, have produced severe infringements of human rights of the Palestinian population. Only a dramatic change in the planning policy implemented in Area C and a substantial reduction in the number of house demolitions will lower the level of daily friction between the Palestinian civilian population and the Israeli planning authorities.