

DESTRUCTIVE PLANNING POLICIES

WEST BANK, 2018-2022

Recent policy changes have drastically increased the rate and ease of demolitions and confiscations

On November 17, 2022 the school in the village of Asfai in Masafer Yatta received a demolition order. On November 23, it was demolished. Four business days had passed.

A tent was set up on top of the rubble to serve as a temporary emergency school, along with a small water tank and a portable bathroom.

On December 6 the tent, bathroom, and water tank (after the water was dumped out) were all confiscated suddenly and without prior notice.

Since then some students have continued to attend school on the pile of rubble with no form of shelter, others trek four kilometers through an active military training zone to the next closest school. The rest have dropped out.

Demolition of the school in Asfai on November 23, 2022. Photo credit: Guy Butavia



The demolition order was authorized under Military Order 1797, one of a series of changes to the enforcement of demolitions and confiscations in the past few years which have made proceedings much faster and much harder to delay or appeal. The confiscation, authorized under a shift in enforcement against unlicensed “mobile structures,” is yet another recent change.

Restrictive planning policies and demolitions in Area C of the West Bank have been used for decades to limit development of Palestinian communities.

These recent changes suggest a concerning escalation in Israel's restrictions of Palestinian building and planning.

The changes close legal loopholes Palestinians have depended upon to address acute humanitarian needs in the face of Israel's discriminatory planning policies.

The Israeli State's restrictive planning policies date to the late 1980s when Israel prepared Special Outline Plans for Palestinian communities that only covered already built-up areas, leaving no room for natural growth. Israeli settlements, by contrast, were granted wide swaths of territory for future development.

Today, the area in which Palestinians can apply for permits for construction (lands with a Detailed Plan or a Special Outline Plan) is 22,000 dunams (0.6% of Area C). The area zoned for development for Israeli settlement in Area C is around 200,000 dunams, nine times the amount allotted for Palestinians. An additional 330,000 dunams fall within settlements' jurisdictional area, available to be zoned in the future for settlement interests and expansion.

The Palestinian population has continued to grow since the 1980s, necessitating new building and infrastructure. Permits, which are required for any construction in Area C, are almost uniformly denied to Palestinians, often on the grounds that the area is not zoned for construction.

Between 2016 and 2021, there were 2,550 requests for permits submitted but only 24 were granted, less than 1%. Without permits, structures that are built are at constant risk of demolition or confiscation by the Israeli authorities. The extremely limited area available for development, along with Israel's policy of denying building permits and regularly demolishing structures in Area C that do not have permits are aimed at circumscribing development to Areas A and B.

A handful of new Israeli Civil Administration (ICA) planning ordinances, military orders, and legislative bills passed since 2018 point to an intensification of restrictions:

the implementation of demolitions and confiscations has been expedited; legal and planning actions to delay demolitions and confiscations is now almost impossible; receiving permits is even more difficult. Many of these changes apply retroactively to structures, putting thousands of existing buildings and infrastructure at risk of immediate destruction.

This briefing outlines the recent changes and paints a picture of their cumulative consequences for Palestinian communities.

There are two primary types of changes: the first expedites demolitions and confiscations; the second prevents planning processes that would protect buildings from demolitions or confiscations. Whereas building new structures and avoiding demolitions and confiscations before these changes was difficult, now it is virtually impossible.

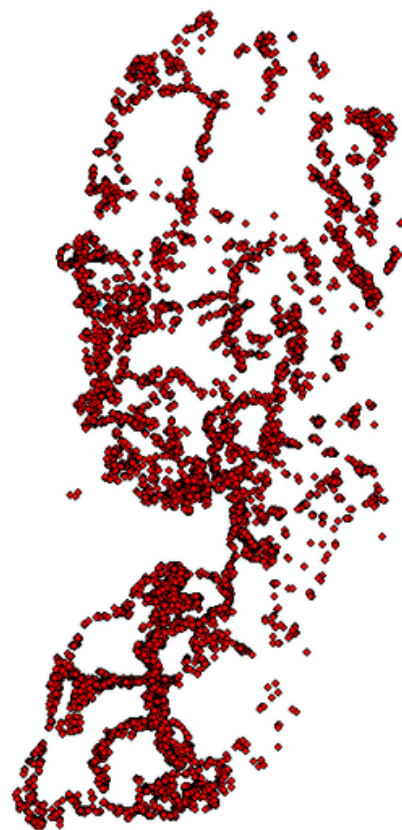


fig. 1 Around 22,000 demolition orders have been given to Palestinian structures as of September 2022.

MILITARY ORDER 1797 AND THE 96-HOUR WINDOW

In 2018, Israel passed Military Order 1797 which expedites the demolition of "new" structures that do not have a permit. It authorizes the ICA to demolish these structures within 96 hours of delivering a demolition order. The term "new structure" refers to any structure in construction or to one that was completed no more than six months before the order was delivered. Residential structures can be issued a demolition order if they are uninhabited or have been inhabited for fewer than 30 consecutive days. Since many structures are built piecemeal, over the course of decades as residents save money, "new" encompasses hundreds of structures that Palestinians have been building and investing in for years.

The order also removes all administrative and legal rights to appeal demolition orders prior to actual demolition, rights that had been enshrined in the 1966 Jordanian Planning and Building Law, which governs demolition proceedings in the West Bank. In the Jordanian planning law the receiver of a stop work order was invited to a hearing to present evidence or arguments that counter the legality of the order.

In the Israeli implementation of this law, immediately after the hearing, during which the arguments were almost always denied, the Subcommittee for Supervision of Construction of the ICA would issue a final demolition order and give the owner a week or two before demolishing. That order could be appealed ex gratia by requesting clemency from the head of the ICA, but such requests were almost always denied.

The owner was also entitled to retroactively legalize the unauthorized

structure by applying for a building permit and submitting a Detailed Plan, both of which froze enforcement of the demolition until a final decision was given. As a last resort, the owner could appeal to the High Court of Justice requesting an interim injunction to freeze the demolition until a final ruling was issued.

Under the new military order, the right to retroactively legalize unauthorized structures has been abrogated. A request to cancel the demolition within the 96 hour warning period is allowed only when the ICA enforcer should not have been able to hand out a demolition order in the first place, i.e., if the structure is not "new," if it has a permit, or if it is within a Detailed Plan. If an owner wants to appeal in the court system, a right which is not explicitly granted in the military order, he or she has only 96 hours to gather materials, find a lawyer, submit the paperwork, and receive a temporary stay on the demolition from the judge while the petition is reviewed. The order offers no avenues or time for the owner of the structure to retroactively legalize it.

In theory, the new order makes no distinction between structures built by Palestinians and Israelis in Area C. However, statistics given by the ICA in response to a Freedom of Information request show that significantly more Palestinian structures received demolition orders.

Between 2019 (when the military order went into effect) and the first half of 2020, five times more demolition orders were given to Palestinian structures than to Israeli ones.

IMMEDIATE PUNITIVE DEMOLITIONS

In an effort to augment the already stringent regime of demolitions, **another recent change enables the immediate demolition of entire structures that continued to be constructed after receiving a stop work order.** Previously, if an owner of a structure received a stop work order and continued building, often out of humanitarian need, the ICA was authorized to demolish only that which had been built after the order was given. In 2022, a new regulation amended that rule to authorize immediate demolition of the entire structure, including buildings that had stood for many years, if any construction continued after issuance of the order.

In May 2022, the owner of the building

pictured below received a stop work order. The following month, he submitted a request for a building permit.

Subsequently, he appealed to the Subcommittee of Enforcement of the ICA to freeze proceedings, given his submission of a building permit application. While waiting to hear about his building permit, the owner continued to build. Despite his pending application, in October the ICA issued an order that the entire building be demolished within seven days, citing the new regulation. The owner and his legal team submitted an appeal to the courts, which granted an interim injunction. The interim injunction, however, arrived too late; the building had already been demolished.



Demolition of an entire structure after one floor was added, Hebron District.
Photo credit: Eid Hathleen

IMMEDIATE CONFISCATIONS

The past few years have seen a shift in enforcement of “mobile structure” confiscations, an additional change that has drastically reduced Palestinians' capacity to build or maintain built structures.

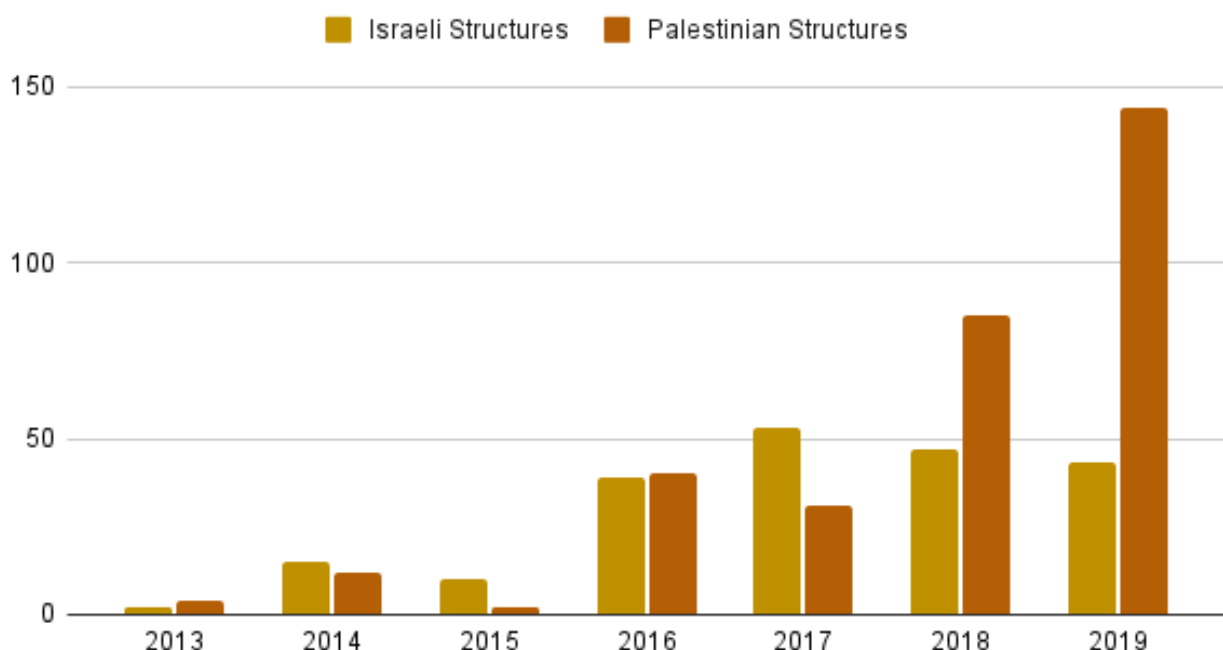
A 1993 ordinance meant to enable quick confiscation of caravans built by Israelis on private Palestinian land has, in recent years, been used increasingly to confiscate a wide variety of Palestinian structures. A response by the ICA to a Freedom of Information request shows that in 2015 only 10 structures owned by Israelis, and two owned by Palestinians, were confiscated. In 2016, the numbers were almost even: 40 Palestinian and 39 Israeli structures were confiscated.

In 2019, there was a sudden and dramatic increase in the number of immediate confiscations of Palestinian structures: 144 Palestinian and 43 Israeli structures were confiscated.

In 2020, the ordinance was altered to allow confiscation of structures up to 90 days after they were put up. Furthermore, the ordinance uses an expanded understanding of “mobile structure” that includes caravans, tents, solar panels, and water tanks.

The 1993 ordinance has become far removed from its original purpose. Instead of protecting the property of Palestinian residents, the ordinance is used to further limit Palestinian development. The structures now being confiscated, unlike the ones the original ordinance targeted, are not necessarily situated on another’s private land; mostly they are built by Palestinians on private Palestinian land and within the boundaries of historical village areas. **The 1993 ordinance enables immediate confiscation without any warning, preliminary hearing, or ability to appeal. Its immediate timeline also precludes any possibility for the owner to retroactively obtain a permit.**

Confiscations of Mobile Structures



DEMOLITIONS IN BUILT-UP AREAS

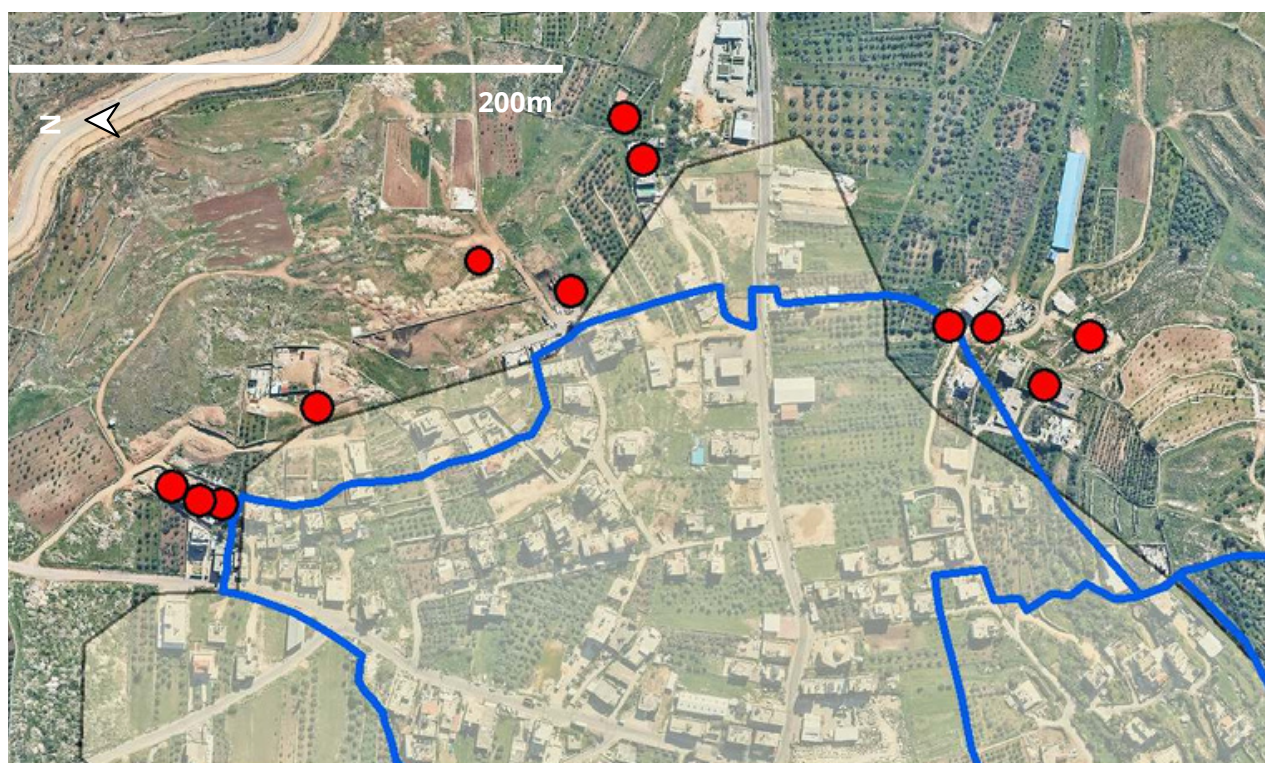
Not only have demolitions and confiscations been happening at a faster pace, they have also been implemented increasingly in highly built-up areas of Palestinian communities.

For decades, demolitions occurred primarily on the outskirts, aimed at limiting development and expansion of Palestinian towns. Demolitions tended to target structures in land designated as State Land or structures at the edges of villages close to settlements and far from Area B and the built up areas of Area C.

Lately, more and more demolitions have been occurring in built-up areas very close to Area B.

These structures cannot be perceived by Israeli authorities as posing a security risk to Israeli settlers, as resting on land available for settlement expansion, or as representing an expansion of Palestinian communities into new areas. Instead of preventing expansion, these demolitions are altering the status quo.

The map below provides clear visual evidence of this pattern. Bidu is a built-up village, most of which sits within Area B. In October 2022, 12 demolition orders were issued for structures just outside of Area B and the approved plan for the village.



- Area B
- Plans for Palestinians
- Demolition orders

fig. 2 Demolition orders in the village of Bidu, Ramallah District.

BLOCKING MEANS OF PROTECTION

Hand in hand with expedited implementation of demolitions and confiscations, Palestinians living in Area C have simultaneously lost some of the few methods that previously helped protect against demolitions.

LOSS OF ABILITY TO FREEZE DEMOLITION IMPLEMENTATION

Submission of a Detailed Plan application, although almost always rejected, bought the owner of a structure time, since it froze the demolition proceedings. In January 2022, the ICA suddenly and quietly removed this protection, and released an internal protocol which omitted a previous clause. The omitted clause had frozen enforcement proceedings of demolitions while a Detailed Plan was under review.

In the new protocol, only submission of a building permit application freezes demolition proceedings. **This protocol removes a key method through which Palestinians who had received a demolition order were able to stave off the demolition. It also applies retroactively. Hundreds of structures for which a Detailed Plan has been submitted are now at risk of immediate demolition.**

STRINGENT BUILDING PERMIT REQUIREMENTS AND PRECONDITIONS

Building permits, and the application process for them, are one of the few existing protections against demolitions and confiscations. Israeli authorities have recently made the application for building permits much more difficult.

In January 2020, a new regulation addressing the application process for building permits added many onerous requirements. These include information-gathering from Israeli bodies such as the Ministry of Health; compliance with Israeli standards which do not apply in the West Bank, such as fire safety and sanitation standards; and adherence to provisions of Israeli bodies such as the Aviation Authority.

In addition, **the regulation sets preconditions which enable the Higher Planning Council to reject outright any application that does not meet even one of the preconditions.** The council is granted expanded authority to add other conditions such as requesting an expert environmental opinion. These regulations place difficult hurdles in front of those attempting to submit a building permit application that will prevent an impending demolition.

Moreover, the Subcommittee for Local Planning, which is responsible for planning for Palestinians and receives building permit requests, was granted authority to reject without discussion applications that have any mistakes, even though minor mistakes are common. In the past, submitting a building permit request would protect a structure until a discussion was held by the planning subcommittee, even if not all the documents were in order. Now, applications are rejected immediately, removing the possibility for protection.

It is worth noting that the planning system in the West Bank differs substantially for Palestinians and Israelis. Residents of Israeli settlements have local planning committees—composed of Israeli settlers—that have the authority to grant building permits and initiate plans, whereas Palestinian residents can only apply to the ICA.

Between 2016 and 2020, the number of permits approved for Israelis was 348 times the number approved for Palestinians: 8,356 building permits in settlements and 24 for Palestinians.

REFUSAL TO CONSIDER PERMIT APPLICATIONS AND PLANNING

The January 2020 regulations also required applicants submitting permit requests in closed military zones to receive special permission from the military commander as part of the application process. In November 2021, this restriction was tightened; the Higher Planning Council decided that the military commander's pre-approval was now a prerequisite not only for building permit applications, but also for consideration of submitted plans.

As a result, any attempt to legalize unauthorized structures—even for entire communities residing in villages on lands which were declared in the 1970s or 1980s as closed military zones, would automatically not be considered and no discussions would take place until the military commander's permission was received by the applicant.

More than one million dunams in Area C are designated closed military zones. Much of the area was already inhabited by Palestinians when it was declared as such. Additional structures situated in "security areas" in proximity to roads and settlements must also receive the commander's pre-approval. Dozens of Palestinian communities now have almost no avenue for planning. Their applications are automatically not considered while settlement plans in similar situations are considered in a pre-planning procedure by the head of the ICA. This places a much greater burden on the Palestinian applicants and further delays the application process.

NARROWING LEGAL HORIZON

In most demolition and confiscation cases Palestinians can no longer appeal to the High Court, which was the last bulwark in a system designed to make legal building almost impossible and demolitions as efficient and expeditious as possible. In 2018, the Knesset approved a bill initiated by then Minister of Justice Ayelet Shaked that transferred jurisdiction of Palestinian appeals regarding building and planning, including appeals against demolition orders, from the High Court to the Jerusalem District Court of Administrative Affairs. The administrative court system operates much more quickly than the High Court, giving petitioners less time to delay the irrevocable loss of a roof over their heads. The District Court also commonly preconditions the issuance of an interim injunction on the deposit of substantial sums of money, which deters claimants from approaching the court and has become an insurmountable obstacle.

Moreover, the High Court has a history of exercising a wide lens judicial review that takes into account larger legal questions of Israeli control over the occupied territories, international law, and the state's duty to protect the population under occupation. Although the High Court commonly approved demolitions, it used its discretion in individual cases and pushed for a compromise to delay demolitions. The District Court, however, is designed to take a narrow, technical approach; if the structure is illegal there is little room to consider other factors, humanitarian or otherwise.

CONCLUSION

For decades, Israel has used restrictive planning laws and demolitions to curtail Palestinian development in Area C. There have been a number of changes in the last few years, implemented by different bodies, ostensibly for a variety of purposes. In outlining all of these changes, this paper illuminates their cumulative effect:

Almost all legal and administrative recourse to appeal or delay a demolition or confiscation order has been removed.

Building in an area not zoned for construction, without a permit—the conditions under which Palestinians are forced to build by virtue of discriminatory policies—will almost definitely result in a demolition or confiscation. These changes mean that the violent and irrevocable loss of a home or school or infrastructure will take place either immediately or up to four days after receiving an order. Even if owners want to use the one legal option left to them, appealing to the courts, there is simply not enough time.

BIMKOM IS CALLING ON THE INTERNATIONAL COMMUNITY TO IMMEDIATELY ADVOCATE FOR:

- An end to demolitions and confiscations
- An end to the planning obstacles
- Approval of building permits in Area C including in communities living in closed military areas
- Approval of Detailed Plans for Palestinian communities in Area C
- Repeal of administrative and legal amendments of the past years
- Installation of administrative and legal guarantees to allow Palestinians to exercise their right to due process



Confiscation of temporary school tent, water tank, and portable bathroom in Asfai, December 6, 2022.
Photo Credit: Basel Adra