

Planning in East Jerusalem Completely Halted by New Protocol

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Introduction

Systemic discrimination in the Israeli planning system has created a severe and longstanding housing crisis in the Palestinian neighborhoods of East Jerusalem. Planning in East Jerusalem has been inadequate and restrictive, ultimately neglecting to provide sufficient residential development for the Palestinian population. As a result, building permits are nearly impossible to obtain, which leads to countless demolitions of Palestinian homes per year.

Most of the land in Palestinian areas of East Jerusalem is unregistered private land. The road to obtaining full land registration is risky due to discriminatory laws and practices currently implemented in conjunction with the planning system – namely the Absentee Property Law and the Settlement of Land Title (SOLT) procedures. The planning authorities do not usually prepare plans on private land, even though they can and have done so in the past. They also do not tend to designate state land for Palestinian use as they do for Israelis, for example through the advancement of settlements. This is in stark contradiction to international obligations to provide for the welfare of East Jerusalem residents. The Palestinian residents themselves have filled the void to a minor extent, promoting their own plans when possible; most of the detailed plans in East Jerusalem in recent decades are private plans initiated by Palestinian landowners yet with very limited housing supply.

At the end of 2022, a new protocol was set in place, requiring landowners, interested in submitting private plans, to prove full ownership as part of the planning process. As a result, during 2023, not a single private plan on land that was never fully registered (most of East Jerusalem after the large land expropriations for settlements in the 1970s), passed the preliminary stage of the statutory process. As of the middle of 2024, only one such plan was accepted. In comparison, over the preceding five years, an average of nearly 100 private plans passed this preliminary stage annually, offering a minimal lifeline which has now been completely blocked.

The following table shows the sudden halt in promotion of private Palestinian plans according to land category; the majority of plans that previously managed to move ahead were always in the unregistered land category.¹

Table No. 1: Plans that Passed Preliminary Stage (2018-2023)

* Land categories in table relate to situation prior to 2018 when SOLT processes were renewed

** Red line indicates transition from Mukhtar Protocol to new protocol

	Unregistered land	Land in the process of registration	Registered land	Total
2023	0	36	14	50
2022	99	14	15	128
2021	138	20	25	182
2000	76	36	29	138
2019	64	34	25	121
2018	85	35	34	154

The new protocol replaced what was known as the “Mukhtar Protocol” under which a private plan could be submitted with the consent of community leaders (mukhtars). While not without its own problems, namely fraud and exploitation, the former protocol at least minimally addressed the housing crisis by facilitating successful submission of numerous private plans every year, albeit with insufficient housing units. Many of these plans were eventually approved.

In August 2023, Government Decision No. 880 addressed the growing housing crisis by committing to approve 2,000 new housing units for Palestinians in East Jerusalem per year over the course of five years. However, adoption of this new protocol effectively closes nearly all potential avenues for Palestinian residential development, further exacerbating the housing crisis. If this planning stranglehold is not rectified, the above-mentioned state goal to approve 10,000 housing units for Palestinians by 2028 will be unattainable.

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 1 The information in the table was partly collected and analyzed independently from information available on the Planning Authority’s website and partly received in September 2024 from the District Planning Bureau following a request according to the Freedom of Information Act which also stated that one small plan passed the preliminary stage in the first half of 2024. The preliminary stage of planning is the first official step along the cumbersome statutory path a plan must follow; this stage is often also referred to as passing “prerequisite conditions” which is a closer translation of the Hebrew term.

“Mukhtar Protocol” vs. New Protocol

A solution to the housing crisis in East Jerusalem is dependent on the provision of equitable housing opportunities; the key to this is the planning system. As mentioned above, in lieu of the state providing adequate planning and housing opportunities, Palestinian landowners often assume the responsibility and immense burden to self-initiate private plans. According to the Planning and Building Law, residents must provide documentation showing land ownership or sufficient connection to the land in order to submit a plan.

On land that is fully registered in the “Tabu” (land registry), proof of ownership is straightforward. The difficulties begin when land is not registered (or not fully registered).² The Planning and Building Law recognizes both situations by adding the phrase “connection to the land,” insinuating that official land ownership status is not essential to the planning process. It is important to note that land issues and planning issues are separate categories of governance with individual and distinct laws. The Ministry of Justice is responsible for land management while the Interior Ministry oversees the planning system. The Planning and Building Law indicates that there is indeed a connection between the two categories, but also clearly stresses the need to keep them separate. Planning authorities do not have the authority to make decisions concerning land and property.

Most land in East Jerusalem has never been fully registered. Land registration procedures, formally known as Settlement of Land Title (SOLT)³, were suspended by the State of Israel in 1967 and renewed only in 2018 – see below. In the absence of land registration, it was necessary to find an alternative way to prove attachment to land for the purpose of planning. The “Mukhtar Protocol” was created to fill this vacuum and was recognized by the Israeli courts as a practical and reasonable solution. As mentioned, this allowance provided necessary relief to the housing crisis, even if nominal.

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2 According to Israeli Law, these are the various land categories: 1/ Fully Registered and Recorded in the Land Registry (known as the “Tabu”) – 15%, 2/ Registered but not recorded or in the process of being recorded – 15%, 3/ Unregistered and Unrecorded – 70%. Percentages pertain to land remaining in East Jerusalem after the large land expropriations for settlements in the 1970s.

3 SOLT is the official procedure, according to Israeli Law, for ascertaining ownership rights of a certain bloc of land, precisely measuring and determining its boundaries and recording them in the Land Registrar, known as the “Tabu”. The registration of such rights is considered nearly incontestable. The process is expected to affect all residents and landowners. As part of the process, the discriminatory Absentee Property Law is utilized to transfer properties in their entirety or in part, whose owners are considered to have been “absentee” at some point in the chain of ownership, to the Custodian of Absentee Property (CAP). For more info on SOLT and the involvement of the CAP as well as the General Custodian (GC) therein, see [“The Grand Land Theft”](#), Bimkom & Ir Amim, June 2023.

In comparison to the “Mukhtar Protocol,” the new protocol has had a detrimental impact on private residential planning (and building) in East Jerusalem⁴. According to the new protocol, planning and building submissions are required to include Jordanian property tax certificates from the early 1960s or earlier (or Israeli property tax until the year 2000) along with records detailing the historical chain of ownership up to the present. These requirements, usually demanded only as part of SOLT procedures-- which are problematic in themselves-- are new to the planning process. Additionally, the new protocol requires that the District Planning Bureau approach state authorities, such as the Custodian of Absentee Property (CAP), the General Custodian (GC), the Israel Land Authority (ILA), the Municipality, and the SOLT registrar to check whether they have claims on the same land. In the past, the SOLT registrar was not on this list, and the Planning Bureau often did not wait for responses from the other entities to proceed. Now, the SOLT registrar has been in effect given the right of veto within the planning process.

The added requirements present East Jerusalem Palestinians with two difficulties - a bureaucratic and a fundamental one. The bureaucratic difficulty is related to the challenge of obtaining the necessary documents. The fundamental difficulty is the real danger of losing land under the Absentee Property Law, which is applied through the new protocol, as it is via SOLT.

Table 2: Comparison between Old and New Protocols

Demand	Mukhtar Protocol	New Protocol
Mukhtars Affidavit	Obligatory	Optional
Plan w/ Mukhtars signature	Obligatory	Optional
Regional Surveyor Confirmation	Obligatory	Obligatory
Plan Initiator’s Affidavit	Obligatory	Obligatory
Letter from Planning Bureau to State Authorities, such as property custodians	Did not include SOLT registrar; was not always completed	SOLT registrar has the right of veto on pre-req approval
Historical Chain of Ownership	X	New demand
Jordanian Tax Document (Maleyah)	X	New demand

4 Similar changes to regulations for building permit applications (separate track than planning) have been instated at around the same time. This document focuses on the planning track.

The Subordination of Planning Processes to SOLT Procedures

One justification for eliminating the "Mukhtar Protocol" and establishing a new, more stringent protocol was to compel residents to participate in the controversial SOLT processes when attempting to promote private plans. This was explicitly stated in an official document signed by the Deputy Attorney General in June 2022, directing the District Planning Bureau to prepare a new protocol. Indeed, the new regulations, outlined above, are aligned with the SOLT demands. This makes planning and building almost impossible while SOLT remains inescapable.

The decision to resume SOLT in East Jerusalem was conceivably based on the idea that land registration can have financial and other benefits. Accordingly, budget for the process was initially included as part of 2018 Government Decision No. 3790 aimed at reducing socio-economic gaps in the city. However, the tangible consequences of SOLT are already underway; to the best of our knowledge, at the time of publication, SOLT processes are taking place in 184 blocs of varying sizes (~6,000 dunam) and have been completed in 44 blocs (~2,000 dunam).⁵ Most of the land included in the blocs where the process has been completed serve state and/or settler interests, while further dispossessing Palestinians and leading to the appropriation of their land.

Moreover, it is important to underscore that the SOLT procedure is dependent on claims being filed by land holders/owners, and in turn contingent on full transparency along with special efforts made by state authorities to create a fair, clear, and public process. This has not been the case, and as a result, even those who would potentially not have anything to lose by participating have not always been able to do so. For most individuals, when the necessary information is available, the dilemma regarding whether or not to participate is immense. If they file a claim, they risk losing their property to the Custodian of Absentee Property as part of the process. Yet, if they do not participate, they risk confiscation of their land by the state in accordance with SOLT laws that allow for appropriation of unclaimed lands.

Therefore, blurring the lines between the planning institutions and SOLT essentially paralyzes the planning process by undermining and stripping it of its independence. In practice, by subordinating the planning processes to SOLT, the already minimal production of housing supply for Palestinians in East Jerusalem has come to a complete stop. Planning institutions must act sensitively regarding land in Jerusalem, especially given the looming presence of the Absentee Property Law. It is vital to maintain the delicate balance between planning and property rights, ensuring that planning remains accessible also to those whose land rights have yet to be fully registered in the official land registry of the state.

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⁵ See: SOLT tracking site. Please note that of the approximately 230 blocs where the new SOLT process is either in process or completed, close to 90 are in Beit Hanina, on large swaths of built-up land in the neighborhood. The new planning protocol is not relevant here because the land was previously part of Jordanian SOLT processes that were discontinued by the State of Israel; however, other obstacles and risks are relevant, such as the Absentee Property Law.

Recommendations

We therefore propose four recommendations for how to rectify the detrimental impacts of the new protocol:

1. Stop all SOLT procedures or at the very least maintain the independence of planning processes, without the intervention of SOLT considerations. To this end, the right of veto given in the new protocol to the land registrar must be promptly removed.
2. Freeze application of the Absentee Property Law in East Jerusalem. Or at the very least, end the involvement of the Custodian of Absentee Property in planning and SOLT processes, which are not under its authority.
3. Revise the new protocol so as to ensure its sustainability. Such a protocol should, for example, include a directive to establish local neighborhood land-ownership committees, in which accepted community representatives alongside experienced professionals are members. Together, they would examine proof of connection to the land without having to pass on information and conclusions to governmental bodies that should not be involved in the planning processes (i.e. the Custodian of Absentee Property and the SOLT registrar).
4. Another viable option to ensure the protocol's sustainability is for a public statutory entity to join private residents in formally submitting plans.⁶ By law, statutory entities (i.e. government institutions) can submit plans on private land without being subject to certain stipulations, including proof of ownership or attachment to the land, which could help bypass this potential obstacle. Even under the previous protocol, reliance by the state authorities on exclusively Palestinian private initiatives to solve such a serious and widespread housing crisis was neither sustainable nor effective. Proactive involvement of the municipality and/or the state in planning for Palestinians in East Jerusalem is required, if equitable housing goals are to be attained.⁷

Conclusion

If the trends highlighted above continue, the housing crisis and planning stranglehold that has existed in East Jerusalem for years is slated to only intensify. This situation is a direct outcome of the longstanding discrimination against Palestinians in Israeli planning and building policies, which according to the ICJ's July 2024 Advisory Opinion amounts to prohibited discrimination under international law. Such policies ultimately lead to an exponential rate of unpermitted

6 Ongoing tracking of data on the Israel Planning Authority site shows that the municipality has joined 10 private Palestinian plans during 2023, of different sizes, mostly in Beit Hanina.

7 In addition to joining plans, it is also imperative that large plans promoted for years by the residents be assisted rather than thwarted by the authorities; two such plans are Plan #0185306 in Tel Adasa and Plan #0477943 in as-Sawahrah.

building and eventual home demolitions, which serves as a major impediment for Palestinians to develop their communities and remain in the city. This systemic neglect and suppression of residential development coupled with the threat of home demolitions becomes a mechanism of forced displacement and ultimately deprives Palestinians of the basic right to housing and shelter.

While Government Decision No. 880 was intended to nominally address this issue by including a goal to approve 10,000 housing units for Palestinians in East Jerusalem by 2028, this can only be reached if the entire system actively works to remove barriers in the planning process. The newest and currently most problematic obstacle is the new protocol for submitting private plans on unregistered and unregulated land. This stringent protocol has completely frozen planning in most neighborhoods of East Jerusalem, severely reducing if not entirely eliminating the nominal housing supply for Palestinians.

This freeze alongside the acceleration of SOLT is leading to a clear dead end. The only way to address the housing crisis in East Jerusalem is to reverse this trend—to allow for the planning and building of new homes and for the retroactive legalization of existing ones rather than their demolition. To this end, it is necessary to stop the current SOLT procedure or at least remove the involvement of the CAP and the Land Registrar in the planning processes. In addition, it is imperative to author a sustainable planning protocol that will benefit the Palestinian population. These are the necessary first steps towards a planning policy that is based on equality and justice for Palestinians in Jerusalem.



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