



NORWEGIAN
REFUGEE COUNCIL

Legal Memo

Demolition Orders in East Jerusalem – Legal Procedures

OBJECTIVE:

This fact sheet focuses on (1) demolition orders issued by Israeli authorities against homes and other structures in occupied East Jerusalem which are built without an Israeli-authorized permit, or in violation of the specifications of such a permit; and (2) the legal procedures that may be taken by the owner, holder or user of the affected structures to challenge the demolition proceedings.

Applicable Law in East Jerusalem

Although international law and the international community have established that East Jerusalem is occupied territory and subject to the relevant laws of occupation,¹ the State of Israel, which unilaterally annexed East Jerusalem in 1967,² considers the area to be subject to Israeli jurisdiction.³ Since 1967, Israel has continued to impose Israeli domestic law on East Jerusalem and rejected any assertion that it is the occupying power. Israeli law currently provides the only domestic recourse to justice for people in East Jerusalem and consequently is the law discussed in this fact sheet.

Over the years, Israeli authorities adopted planning policies that have severely constrained the development of Palestinian areas in East Jerusalem and have led to a severe housing shortage.⁴ Furthermore, in the past few years, the Jerusalem Municipality has introduced onerous new procedures which make it almost impossible for Palestinian East Jerusalem residents to obtain a building permit. As a

¹ There have been numerous UN Security Council and General Assembly Resolutions rejecting Israel's unilateral annexation of East Jerusalem and recognising its status as occupied. These include SCR 242 of 1967 which demanded Israel withdraw from territories it occupied in 1967; and SCR 478 of 1980 which set out that annexation by force is forbidden under international law and confirmed the application of international occupation law to East Jerusalem. This position was recently confirmed by the ICJ Advisory Opinion on the Wall on 9 July 2004.

² Between 1948 and June 1967, a divided Jerusalem meant that West Jerusalem was under Israeli control and East Jerusalem was under Jordanian control. Following the 1967 War, Israel unilaterally annexed East Jerusalem. Further to gaining control of East Jerusalem, Israel immediately increased the area from 6 sq. km to 70 sq. km (mostly land from 28 Palestinian villages in the West Bank) which it annexed to West Jerusalem.

³ According to Israel, this situation was further formalised in 1980 when the Israeli parliament passed the Jerusalem Law which declared a "united" Jerusalem to be the capital of Israel.

⁴ Bimkom, *The Planning Deadlock: Planning Policy, Land Regularization, Building Permits and House Demolitions in East Jerusalem*, December 2004, pp. 9-51 [Hebrew].

result, these residents are often forced to build new houses or extensions to their existing homes without having acquired the necessary permits.

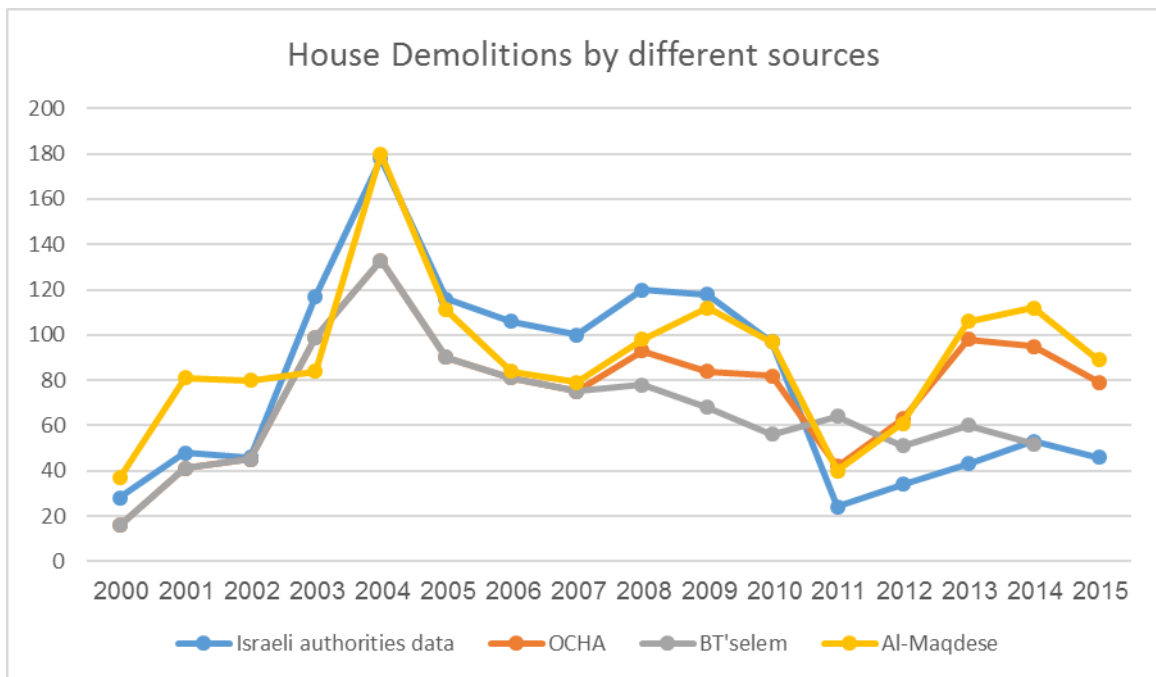
Data on House Demolitions

Because of the lack of adequate planning for East Jerusalem and considering the need to meet the growth of the population, a significant number of buildings are built without a permit in order. Construction in the absence of a permit is met with harsh sanctions provided by the *Israeli Planning and Building Law of 1965* — house demolitions and heavy fines.

A decision to demolish a house or a structure is dependent on different variables, including, but not limited to: the location of the house; the authorities' demolition budget; the political approach of the mayor, the Minister of the Interior or the Prime Minister; and external diplomatic pressure. Thus, in the event that the landowner does not him/herself demolish the house he/she built without a permit, the authorities have very broad discretion regarding the timing of the demolition.

The existing data on house demolitions in East Jerusalem should be reviewed with caution. Different bodies are monitoring these demolitions and sometimes the figures differ as a result of a decision to count certain types of demolitions while ignoring others. Yet, it is still possible to identify certain trends throughout the years.

Because of the information gaps in the various reporting schemes, the information below provides a comparison between the Israeli authorities' data and the data of various organizations that track house demolitions in East Jerusalem: 'Al-Maqdese for Society Development', 'B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories', and the 'United Nations Office for the Coordination of Humanitarian Affairs' (OCHA).



Reviewing the data from recent years shows that, starting from 2011, there is a gradual increase in demolitions and then a small decrease in demolitions during 2015. While the 2011-2014 increase in demolitions may be attributed to the political changes in the City Council's coalitions during those years, the 2015 decrease may stem from the Municipality's refraining from executing demolitions in order not to raise tension in East Jerusalem at times of escalating security concerns.

From the outset of 2016 there has been a significant increase in house demolitions in East Jerusalem. Although comprehensive data in this regard is not yet available, according to the NGO 'Ir-Amim', as well as other sources, the Jerusalem municipality has practically doubled its enforcement efforts against structures built without authorization. Whereas during 2014-2015 the average of the documented data, as provided above, was 70-80 structures a year, the data updated to October 2016 provides that 166 structures have already been demolished since the beginning of 2016. Although the data clearly shows a change of policy, the Jerusalem municipality argues otherwise and claims that it is merely enforcing judicial demolition orders (see below) according to the courts' decisions.⁵

Demolition Orders

A demolition order is an order that is given by an Israeli municipal, governmental or judicial authority compelling the owner, occupant, builder or municipal or governmental authorities to demolish a particular structure or building (as specified in the order). In practice, there are three main categories of demolitions carried out against a home or other structure:

- (1) **Demolitions pursuant to domestic planning laws:** Under Israeli planning and building laws, particularly *the Planning and Building Law of 1965*, demolitions are carried out in cases where a home or other structure is built without the requisite permit(s), or in a manner that is deemed to violate the specifications of a permit.
- (2) **Punitive demolitions:** Punitive demolitions are carried out pursuant to *Article 119 of the Emergency Defence Regulations 1945* in situations where an occupant of the house has been found to be involved, or is suspected of being involved, in acts of violence committed against Israelis. Punitive demolitions are also carried out when the said occupant is no longer living in the house, either because he/she is detained or dead due to his/her involvement in acts of violence against Israelis.
- (3) **Demolitions due to military necessity:** Military authorities can also order demolitions in relation to military operations, a measure that, in certain circumstances, is permitted under international humanitarian law, but is strictly limited to cases of absolute military necessity.

This fact sheet focuses on the first category of demolitions. Pursuant to the Planning and Building Law 1965, there are two main categories of demolition orders: administrative orders and judicial orders.

Administrative Demolition Orders

Administrative Demolition Orders ('Administrative Orders') are issued by the Chairman of the Local Planning and Building Committee (in Jerusalem, the Mayor serves as Chairman), or the Chairman of the District Planning and Building Committee (under the Israeli Ministry of the Interior), when a building, or part of it, has been constructed without the requisite permit, or in contravention to the specifications of a

⁵ Nir Hasson, *Haartzet*, 28 October 2016: <http://www.haaretz.co.il/news/politics/.premium-1.3105462> (in Hebrew).

building permit or a plan.⁶ Administrative Orders typically stipulate that the structure in question must be demolished and authorise the officers of the relevant Planning and Building Committee to carry out the demolition.

Issuing of Administrative Orders

Administrative Orders may only be issued against new structures that have not been inhabited or are not yet suitable for habitation when first discovered by the relevant Planning and Building Committee inspectors. Administrative Orders are issued against the building itself and, as mentioned, empower the relevant authorities to demolish the structure. However, unlike Judicial Demolition Orders (see below), Administrative Orders are **not aimed at a specific person** (such as the builder, the members of the household inhabiting a structure, etc.) and **do not require private individuals to demolish contested structures themselves.**



A home demolished in the Silwan neighborhood in Jerusalem, October 28, 2014. (Haaretz, Feb. 1, 2015) Credit: Emil Salman

Administrative Orders are issued only following the submission of an affidavit, signed by an engineer from the Local Planning and Building Committee or the Municipality,⁷ and following a consultation with the Legal Advisor of the Municipality, affirming that the Administrative Order can be issued. The Administrative Order must state the following:⁸

- The structure, or a section of the structure, was built without a permit;
- The structure has yet to be completed, or was completed no more than 60 days prior to the submission of the affidavit; and
- Prior to the submission of the affidavit, the structure was unoccupied or had been occupied for no more than 30 days.

Administrative Orders should also include, among others, a description of the structure or the section of the structure that is to be demolished. Once issued, Administrative Orders should be pasted on an external wall of the structure in question or, in the absence of such a wall, elsewhere in the immediate vicinity where the Administrative Order may be visible.⁹

⁶ Where a demolition order is issued for a building that was built in violation of a permit, the order applies for the parts of the structure that exceed or deviate from the original building specifications in the permit.

⁷ When an Administrative Order is issued by the Chairman of the District Planning and Building Committee, the affidavit should be signed by the District Planner.

⁸ Planning and Building Law, 5725-1965, Article 238A(a).

⁹ *Ibid.*, Article 238A (e).

Attaching the Administrative Order as described above is considered a notification to any interested party. After this, the Administrative Order can be executed within a very short period. For structures built without a permit, demolition can occur after 24 hours. In other cases, such as where the structure was built in contravention of a building permit, the Administrative Order may be executed after 72 hours.

Challenging an Administrative Order

Application to the Court of Local Affairs

In order to cancel or delay the demolition issued under an Administrative Order, individuals who hold rights in the relevant building (*e.g.*, owners, tenants) or other interested parties (for example, neighbours whose property may be damaged as a result of the demolition¹⁰) may file an application requesting the cancellation of the order as soon as possible with the relevant Court of Local Affairs. In conjunction with this application, it is recommended to:

- Submit a request to the Court of Local Affairs for an interim injunction that orders the authorities to refrain from demolishing the house until a final decision is given by the Court; and
- Apply for a building permit, where possible; or
- Commence with planning procedures. (**For more on this issue**, see: Fact Sheet 'Applying for a Building Permit in East Jerusalem'.)

The Court of Local Affairs will only cancel the Administrative Order if the applicant can establish at least one of the elements listed below:

- The structure was built with a valid permit.
- The Administrative Order is invalid on the grounds that it was issued without meeting the necessary criteria for an Administrative Order (*e.g.* the building is not incomplete, newly completed, or newly occupied).
- The procedure for issuing the Administrative Order in a particular case was not carried out in accordance with the law (*e.g.* there was no affidavit; the affidavit was not in accordance with the law; the person who signed the affidavit was not authorised to do so; there was no legal consultation prior to the issuing of the order; etc.).
- The Administrative Order reflects grave defects in the use of discretion by the relevant authority, such as when there has not been any effective examination of the relevant data prior to issuing the Order.

Administrative Orders **become void and cannot be executed 30 days after the submission of the engineer's/District Planner's affidavit to the Chairman of the relevant Planning Committee**. If interested parties file an application to cancel the order and the Court of Local Affairs rejects the application, a new 30-day period in which the demolition may be carried out begins with the Court's decision. In addition, the Court of Local Affairs may extend the validity of an Administrative Order past the original 30-day period. However, in order to do so, the Court must find that the authorities have refrained from executing the demolition due to circumstances beyond their control.

Appeal to the Jerusalem District Court

¹⁰ See *e.g.*, Criminal Appeal 3249/05 *Bar Yosef v. The Chairman of the Local Planning and Building Committee*, Petach Tikva, (published in *Nevo*), 17 April 2005.

In the event that the application for the cancellation of the Administrative Order is rejected by the Court of Local Affairs, the applicant may appeal to the Jerusalem District Court. Alongside the appeal, the applicant (now turned appellant) may request an interim injunction from the District Court, ordering the Local Planning and Building Committee/Municipality to refrain from demolishing the home or other structure until the court issues its final decision.

Appeal to the Supreme Court of Israel

In the event that the appeal is rejected by the Jerusalem District Court, the appellant may file an application to appeal the Administrative Order to the Supreme Court of Israel. The Supreme Court holds discretionary power to reject or accept the application. If accepted, the appellant may commence an appeal procedure before the Court. In many cases where Administrative Orders are not implemented within the prescribed time, especially if the relevant building becomes inhabited for the required time, Judicial Demolition Order proceedings are often initiated.

Judicial Demolition Orders

Unlicensed construction is a criminal offence under Israeli law. A Judicial Demolition Order ('Judicial Order') is typically issued as part of a criminal procedure initiated against a person or persons (a) who build structures without the necessary permits or (b) for wrongful usage, where individuals (such as the landlord, the household, a resident, etc.) use a building for a particular purpose without obtaining the proper permits prior to construction. In contrast to Administrative Orders, **Judicial Orders are not restricted to new constructions.**

Issuing of an Indictment

Judicial Order proceedings are initiated by the Attorney General at the Court of Local Affairs and commence with the issuing of a criminal indictment. Since Judicial Orders are part of a criminal prosecution, the defendant named in the indictment (who could be the owner of the land, the builder, the members of the household inhabiting a structure, etc.) is requested to attend a court hearing to respond to the charges.

If the defendant is found guilty by the Court, in its judgment (which is often referred to as the demolition order), it may impose a term of imprisonment and/or a fine in addition to demolition of the structure(s) at issue.¹¹ The Court specifies who should carry out the demolition in its judgment. In most cases, the Court requires the defendant to carry out the demolition him/herself.¹² Non-compliance or failure to carry out the demolition can itself constitute an offence that can lead to another criminal procedure and, potentially, a further term of imprisonment and fine as well as a continued requirement to demolish the structure.¹³ If the Court has granted the relevant Planning and Building Committee the authority to demolish the building, as explicitly set out in its judgment, the relevant Committee can, as specified, carry out the demolition. In such cases, the Court may compel the defendant to pay for the expenses of the demolition.¹⁴ It is worth emphasising that, **in cases where the Court orders both the demolition of a building and payment of a fine, compliance with one segment of the verdict does not exempt the defendant from obeying the other penalty.** In general, in its judgment, the Court gives the defendant a period of time in which to pay the fine

¹¹ Planning and Building Law, 5725-1965, Articles 204-205.

¹² *Ibid.*, Article 205. When requested by the relevant Planning and Building Committee, the Court may grant the relevant Committee the power to implement the demolition order in certain cases (such as when the accused has not self-demolished as required).

¹³ *Ibid.*, Article 210.

¹⁴ *Ibid.*, Article 205.

and apply for a building permit. If no building permit has been obtained by the time this period has expired, the demolition should be implemented by the person identified in the judgment, whether that is the defendant or a specified authority.

Challenging a Judicial Demolition Order

Appeal to the Jerusalem District Court

Defendants convicted of an offence related to “illegal” building may appeal the conviction before the Jerusalem District Court. Alongside the appeal, the defendant (now appellant) may request that the District Court postpone the verdict, including the demolition of the structure in question, until the District Court issues its final decision.

Appeal to the Supreme Court

In the event that the appeal to the District Court is rejected, the appellant may file an application to appeal to the Supreme Court of Israel. The Supreme Court may reject the application or accept it, enabling the appellant to commence an appeal procedure. It should be noted that the court that issued the Judicial Order may, at its discretion, set a date for the demolition and postpone this date, even after it has passed.¹⁵ In general, the court will consider postponing a demolition in cases where the defendant has a chance to legalise the building, *e.g.* where an approved plan regarding the land on which the house is built exists, or where a plan is in the process of obtaining official approval.

Demolition without Conviction

A Judicial Order may be issued by the Court of Local Affairs even in cases where no one has been convicted of building illegally.¹⁶ In practice, Israeli authorities utilise these orders to demolish older buildings, where the authorities would face difficulties in convicting the person or persons responsible for the original “illegal” construction.

According to Article 212 of the Planning and Building Law 1965, the Court of Local Affairs may issue a Judicial Order where prosecutors can establish that a building offence was committed and one or more of the following circumstances applies:

- The person(s) who committed the offence cannot be located;
- It is impossible to serve the alleged offender(s) with a summons to attend the court hearings;
- The person(s) who owned the building when the alleged offence was committed, and who would therefore be prosecuted for the offence, is no longer the owner;
- It is impossible to prove who committed the offence; and/or
- The person who committed the offence is dead or cannot be convicted for reasons that do not warrant taking legal action.

The Supreme Court of Israel has stipulated that, in addition to the above conditions, such a Judicial Order would be justified only when the authorities can demonstrate that the demolition is done for the public

¹⁵ *Ibid.*, Article 207.

¹⁶ *Ibid.*, Article 212.

interest.¹⁷ Therefore, prior to ordering the demolition, the Court must weigh public considerations (such as the nuisance that the building may cause) against the personal interests of the individual(s) who is objecting to the demolition.

Legal Procedures in Judicial Orders without Conviction

When seeking a demolition order based on a Judicial Order without a conviction, the relevant Planning and Building Committee or the Attorney General initiates the procedure by filing a request with the Court of Local Affairs to demolish a certain home or other structure without convicting the person responsible for its construction.

The Court of Local Affairs may then either immediately issue a demolition order or establish a period for interested parties to respond to the relevant authority's application for the demolition. Where the demolition order is immediately issued, notice of the order will be sent to persons the court believes are interested parties and/or posted on the relevant structure(s), and it will state that those wishing to challenge the order must do so within a certain prescribed period of time (typically 30 days). If the interested parties fail to respond in time, the Court will issue a final notice that is again sent and/or posted on the structure(s) at issue, and the demolition can occur at any point following the termination of the subsequent period established by the court (typically 30 days).

Where the Court does not immediately issue a demolition order, notice will be sent to interested parties and/or posted on the relevant structure(s), also stipulating that those wishing to challenge the order must do so within a prescribed period of time. The Court then holds evidentiary hearings with witnesses on behalf of both parties and, subsequently, renders its decision. As this process remains a criminal proceeding despite the absence of a conviction, the burden of proof during hearings rests on the authorities to prove that a demolition order should be issued in the particular case.

Appeal to the District Court/Supreme Court

If the Court approves the order, the interested parties may appeal the decision to the Jerusalem District Court and, potentially, to the Supreme Court of Israel under similar procedures as those described above regarding Judicial Orders involving a named defendant.

¹⁷ See, e.g., Criminal Appeal 8338/09 *Dan Kadar v. State of Israel* (published in "Nevo", 31 January 2010), Section 9.