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A large black plastic water tank sits on a metal stand in a desert landscape. In the background, there is a large, cylindrical, silver water storage tank and a fence. The sky is clear and blue.

Construction and Rehabilitation of Water Sources in Area C: An overview of the applicable legal and permit regime

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Cover photo (front): Muarrajat, West Bank, JC Tordai, 2010.
Cover photo (back): Qusin, West Bank, JC Tordai, 2010.



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The **Norwegian Refugee Council (NRC)** is an independent, international humanitarian non-governmental organisation that provides assistance, protection and durable solutions to refugees and internally displaced persons worldwide.

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All legal information provided in this document is intended as a general guide only and is not a substitute for seeking legal advice from a qualified lawyer.

Introduction

The climate in the occupied Palestinian territory (oPt) is generally characterised by winter rain and summer drought, with much variation in annual precipitation across the territory. Despite the small size of the area, the annual rainfall in the West Bank varies from 700mm in the north, near Jenin, to 80-100mm in the south-east, near the Dead Sea.¹ Since the establishment of the Palestinian Authority in 1994, pursuant to the Oslo Accords between Israel and the Palestine Liberation Organization, international institutions and non-governmental organizations have been assisting it in its role of supplying water to the Palestinian population in Gaza and the West Bank (excluding East Jerusalem). However, one of the main challenges the Palestinians (as well as international organizations) face, is not environmental, but the restrictions and limitations set forth by Israel on access to water.²

In its 2009 assessment of the Palestinian water sector, the World Bank stated that each Israeli, including settlers in the West Bank, enjoy a per capita availability of fresh water resources over four times that of a Palestinian, and that the Palestinian per capita water budget for agriculture is one fifth that of Israel.³ The settlements are consuming about 44 MCM (Millions of cubic meters) of water per year extracted from wells within the West Bank, and Israel pumps an additional 10 MCM/y from wells in the West Bank to sell to Palestinian providers and consumers.⁴ According to the World Bank, although connection to safe water supply has improved since 1994, one third of Palestinians communities across the West Bank still lack network services, and many rely heavily on water purchased from Israel.⁵ In total, Palestinians are forced to purchase 52 MCM/y from *Mekorot*, the Israeli national water company, over half of the water Palestinians consume in the West Bank.⁶ At the same time, Israel restricts movement and access to water infrastructure and tanks,⁷ and place additional constraints on planning and implementation of water projects.⁸ These restrictions, together with the increased dependency on *Mekorot* for access to water, result in high prices and poor quality of water, particularly in Area C. Communities depending on tankered water pay up to 400 per cent more for every litre than those connected to the water network.⁹

This memo is intended for the use of legal practitioners, and provides an overview of the legal and administrative regime controlling the water sector in Area C of the West Bank. The Palestinians in Area C, who live under full Israeli civil and military control, suffer greatly from the complexities of the political situation in the West Bank, and often suffer limited access to available and clean water. Due to restrictive military law and lack of representation in planning committees, their ability to improve their situation is also impeded. The first chapter of this memo provides a historical-legal overview of the water regime in the West Bank, and the second chapter details the legal and political regime which controls the sector today, in light of this history. This chapter also reviews the legal mechanisms provided under the 1995 Interim Agreement on the West Bank and the Gaza Strip, as well as criticism of their design and implementation. The third chapter provides a legal framework and analysis of the laws and regulations applicable in Area C, under both international and domestic law. The fourth chapter then elaborates on several procedures, and highlights several practical implications of the current legal regime, in order to provide general direction to those interested in implementing a water related project in Area C.

¹ UNDP, *Climate Change Adaptation Strategy and Programme of Action for the Palestinian Authority*, 2010, p. 8.

² See Emergency Water Sanitation and Hygiene group (EWASH) in the Occupied Palestinian Territory, *Down the Drain: Israeli restrictions on the WASH sector in the Occupied Palestinian Territory and their impact on vulnerable communities*, March 2012, p. 9.

³ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, April 2009, p. 4.

⁴ *Ibid*, p. 5.

⁵ *Ibid*, p. 16.

⁶ See The Palestinian Water Authority, *Getting the Facts Right: Correcting inaccuracies in COGAT's factsheet "Water in the West Bank"*, p. 2; The Israeli Water Authority, *The Water Issue Between Israel and the Palestinians: Main Facts*, February 2012, p. 8.

⁷ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, *supra* note 3, pp. 22-25.

⁸ *Ibid*, pp. 53-55.

⁹ See EWASH, *Down the Drain*, *supra* note 2, p. 8.

1. Water in the West Bank - Historical Legal Context

Israel and the occupied West Bank share two main water systems, the Mountain Aquifer and the Jordan River Basin, which have been in continuous use throughout history. The Mountain Aquifer derives its recharge from rainfall, mostly in the West Bank, and flows underground in three directions, West, North-East, and East, which are sometimes referred to as three separate aquifers. Two of the three aquifers (the Western and North-Eastern) flow towards Israel and underlie Israeli territory as well as Palestinian, while the Eastern aquifer lies almost completely within the West Bank and discharges towards the Dead Sea. In addition, the Jordan River is the main above-ground water source in the area, and its water is shared by the people living in Jordan, Israel, and the oPt.

Following the 1948 War, Jordan took control of the West Bank and, together with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), was responsible for providing assistance to the Palestinians who were made refugees by the War. One of the key demands from both the refugees and the host communities in the region involved the need for adequate supplies of water. Consequently, between 1953 and 1955, U.S President Eisenhower's Special Representative to the region, Ambassador *Eric Johnston*, negotiated an agreement to share the water of the Jordan River between Jordan, Israel, Lebanon and Syria. The Jordan Valley Unified Water Plan (or the "Johnston Plan") aimed to develop a consensus for the use of the water resources of the Jordan River basin and, although the provisions of the plan were subsequently followed de facto, it was never ratified officially.¹⁰ In 1966, Jordan established the West Bank Water Department (WBWD) in order to develop and maintain the West Bank water supply system.¹¹

In the years following the 1967 War, Israel imposed military control over the West Bank and, in a series of military orders,¹² seized control over water and land resources, and took over the WBWD.¹³ Under the occupation, the military commander operated the WBWD to extract water from the West Bank to sell it to the Palestinian population and to settlements.¹⁴ This period is characterised by deterioration of Palestinian water sources and the emergence of new drillings serving Israeli settlements. In 1967, approximately 750 wells existed, of which 413 were in operation in the West Bank, but in 1990 approximately 364 Palestinian-owned wells were functioning.¹⁵ Additionally, in 1982, the Israeli Military Commander handed over control of the water infrastructure in the West Bank to *Mekorot* which operates 42 wells in the West Bank, mainly in the Jordan Valley region. The majority of the wells which *Mekorot* operates are serving Israeli settlements, with some of the systems operated by the settlements' municipal water companies.¹⁶

In 1995 Israel and the Palestine Liberation Organization signed the Interim Agreement on the West Bank and the Gaza Strip (the "Oslo II Agreement" or the "Interim Agreement") under which Israel recognised Palestinian water rights in the West Bank. The Oslo II Agreement was not meant to finalise the rights and duties of the parties with regards to control over the oPt, but was designed to cover a transitional period of not more than five years from the date of signing the Agreement on the Gaza Strip and the Jericho Area on

¹⁰ Sharif S. Elmusa, "Toward a Unified Management Regime in the Jordan Basin: The Johnston Plan Revisited", *Yale F&ES Bulletin*, 1998, 297, p. 303.

¹¹ Jaas M, *West Bank Water Department – Institutional Reform Towards National Bulk Supply Utility, Report of the General Director*, West Bank Water Department, 2007.

¹² Following its occupation of the West Bank, the Israeli Commander imposed military law, issuing Military Order No. 2 of 1967, which stated that the existing law in the West Bank is valid only to the extent to which it does not conflict with military orders.

¹³ Military Order No. 92 of 1967 granted control over water issues in the West Bank to the Israeli Military Commander. Military Order No. 158 of 1967 stated that Palestinians could not construct any new water installation without first obtaining a permit. Military Order No. 291 of 1968 annulled all land and water-related arrangements for registration which existed prior to Israeli occupation and were not completed prior to 7 June, 1967.

¹⁴ Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water, Israel-occupied Palestinian territories*, 2009, p. 15.

¹⁵ Ralph H. Salmi, "Water, the Red Line: the Interdependence of Palestinian and Israeli Water Resources", *Studies in Conflict and Terrorism*, Vol. 20(1), Jan-March 2007, 15, pp.16-17.

¹⁶ Amnesty International, *Troubled Waters*, *supra* note 14, p. 15. The municipal water companies are responsible for water and sewage systems within the boundaries of those municipalities.

4 May 1994.¹⁷ For that reason, it was agreed that the water rights and future needs of the population would be negotiated and settled in a future permanent agreement but, until that time, the parties would agree on the coordination of the management of water supplies and wastewater treatment, and specified additional water resources, which should be made available to the Palestinians during the same interim period.

Under the Oslo II Agreement, the power and responsibility over water and sewage which related solely to Palestinians, and had previously been held by the Israeli Military Commander, were to be transferred to the Palestinian Authority, while all other responsibilities were to remain under Israeli control.¹⁸ In addition, the future water needs of Palestinians in the West Bank up to 1999, the end of the Interim Period, were estimated in the agreement,¹⁹ and it was agreed that any additional supply of water that one side would purchase from the other would be for “the full real cost incurred by the supplier, including the cost of production at the source and the conveyance all the way to the point of delivery”.²⁰

After the Oslo II Agreement, the responsibility for WBWD and its workers was transferred to the Palestinian Authority. Together with the Palestinian Water Authority and various municipalities, this body manages the majority of wells in the oPt. However, the dependency of Palestinians in the West Bank on water supplied by *Mekorot* increased after the signing of the Oslo II Agreement and, according to reports by the World Bank and by Amnesty, about half of municipal and industrial water supply in the West Bank in 2007 was bought from it.²¹

The implementation of the Oslo II Agreement has been incomplete and suffered much interference, making the practical application of the arrangements set out in the agreement far more complicated than planned. As detailed in Chapter 2, the cooperation between Israel and the Palestinian Authority has suffered greatly in the years following the signing of the agreement, in a way that has adversely affected the operation of the water authorities in the West Bank.

¹⁷ In the Agreement on the Gaza Strip and the Jericho Area, Israel and the PLO agreed on an Israeli withdrawal from the Gaza Strip, excluding settlements, and from Jericho, and established the Palestinian Authority which took authority over those areas. The agreement also marked the beginning of a five-year interim period for additional negotiations on the establishment of a Palestinian state. The Agreement was later incorporated into the Oslo II Agreement.

¹⁸ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Washington, D.C., 28 September 1995 (the “Oslo II Agreement” or the “Interim Agreement”), Annex III, Article 40(5).

¹⁹ *Ibid*, Articles 40(6) - 40(7).

²⁰ *Ibid*, Articles 40(18).

²¹ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, *supra* note 3, p. 16; Amnesty International, *Troubled Waters*, *supra* note 14, p. 21.

2. Water Governance in the West Bank

The Oslo Interim Agreement set forth the basic understandings between the parties concerning water and sewage, namely: Israel's recognition of Palestinian water rights in the West Bank, mutual recognition of the necessity to develop additional water for various uses, and the coordinated management of water and sewage resources and systems during the interim period.²²

In order to operate under the agreement's work-frame, Israel and the Palestinian Authority also agreed on several principles, which control the coordinated management of water and sewage. These principles include maintaining existing quantities of water sources utilization, while taking into account the Palestinian population's needs; acting in order to prevent deterioration of water quality or harm to water and sewage systems; and using water resources in a sustainable manner.

The list of principles governing water and sewage issues was created on the basis of good will. In practice, however, Israel has used the agreement to operate freely in Area C, under the guise of maintaining quality assurance of the water resources and prevention of damage to water infrastructure. Indeed, when faced with criticism over its violation of international law and the Interim Agreements in all matters pertaining to access to water in the West Bank, Israeli water authorities claim that the purpose of their actions, including demolition orders and denying development of new sources, is to maintain water quality and prevent unauthorised use. In addition, while the list of principles did not restrict water consumption for the Israeli settlements in any way, it asserted that future needs of the Palestinian population would be supplied from the Eastern Aquifer and other "agreed upon" sources.²³ However, not all available sources are being utilized due to various hardships, such as lack of sufficient funding, technical difficulties, and restrictions on access set by the Israeli Civil Administration.²⁴

The mechanism prescribed by the Interim Agreement in respect to water and sewage management involves three main entities: the Joint Water Committee, the Palestinian Water Authority and the Staff Officer for Water Affairs at the Israeli Civil Administration.

2.1 The Joint Water Committee (JWC):

For the purpose of coordination, a Joint Water Committee (JWC) and several Joint Supervision and Enforcement Teams (JSETs) were established under the Oslo II Agreement.²⁵ According to the Agreement, the JWC has overall authority for surveying and protecting existing resources; developing new water supplies; maintaining existing infrastructure; and constructing new ones. The JWC is also responsible for the daily management of resources and systems, and it functions as a coordinating body with most work being undertaken on the ground separately by one or other of the parties. Section 12 of Article 40 of the Interim Agreement lists the various functions the JWC is responsible for:

²² The Interim Agreement, *supra* note 18, Annex III, Sections 1-3 of Article 40.

²³ *Ibid*, Article 40, Section 3(1) and Section 6, respectively.

²⁴ Out of the 70-80 MCM allocated under the "future needs" provision, by 2004 the Palestinians have received licenses for 17 wells, totalling 16.7 MCM, and have lodged applications for a further 82 wells for 31.5 MCM. Development of the 17 wells began in 1996, but proved problematic as sites had to be moved to comply with Israeli security requirements. Movement of rigs and materials was also impeded by Israeli movement and access restrictions and technical difficulties were encountered with drilling in the complex geology (see World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, *supra* note 3, p. 36); see also B'Tselem, *Disputed Waters: Israel's Responsibility for the Water Shortage in the Occupied Territories*, 1998, p. 7; Center for Economic and Social Rights, *Thirsting for Justice: Israeli Violations of the Human Right to Water in the Occupied Palestinian Territories*, May 2003, p. 15.

²⁵ The Interim Agreement, *supra* note 18, Schedule 8, Article 40. These JSETs followed precisely the same monitoring system as had been followed since the early 1970s by the West Bank Water Department. The JSETs teams would be responsible for locating unauthorized water connections, for supervising infrastructure developments, and for monitoring well extractions, spring discharges and water quality. However, according to the World Bank report, restrictions on movement of Palestinian members of the JSETs made it impossible for them to take part in its work over the years (see World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, *supra* note 3, p. 51).

12. The function of the Joint Committee will be to handle all issues related to water and sewage in the West Bank, *inter alia*:
 - a. Coordinated management of water resources.
 - b. Coordinated management of water and sewage systems.
 - c. Protection of water resources and water and sewage systems.
 - d. Exchange of information relating to water and sewage laws and regulations.
 - e. Overseeing the operation of the supervision and enforcement mechanism.
 - f. Resolution of water and sewage related disputes.
 - g. Cooperation in the field of water and sewage as detailed in this Section.
 - h. Arrangements for water supply from one side to the other.
 - i. Monitoring systems. The existing regulations concerning measurement and monitoring shall remain in force until the JWC decides otherwise.
 - j. Other issues of mutual interest in the sphere of water and sewage.

The Interim agreement provided that the JWC shall comprise of equal number of Israeli and Palestinian representatives and that resolutions will be through consensus. Both parties agreed that any licensing and drilling of new wells and increasing production from any water source by any of the parties will require preliminary authorization of the JWC, and that any development of water resources and evaluations, by any of the parties, will require a prior approval of the Committee. In addition, the parties established four subcommittees to work within the framework of the JWC: the Committee for the Issue of Water Prices, the Hydrological Committee, the Committee for Water Works, and the Committee for Sewage Issues. The subcommittees conduct *ad hoc* meetings but do not convene regularly.

2.2 The Palestinian Water Authority:

The Palestinian Water Authority is the regulatory body for the water sector in the Palestinian Authority. The authorities and duties of the Palestinian Water Authority include the implementation of provisions in the Interim Agreement pertaining to water issues, related communications with the Israeli side and the management and distribution of the water resources in Palestinian areas. The establishment of the Water Authority was regulated within the Palestinian Water Law (Law No. 2/1996) in respect to the establishment of the Palestinian Water Authority and, a year later, the Internal Regulations of the Palestinian Water Authority (Resolution No. 66/1997) were approved. Section 5 of Resolution No. 66/1997 prescribes as follows:

Section 5:

The Water Authority shall be responsible for:

- (1) Execution of the policy pertaining to water, approved by the National Water Council at the Palestinian Authority areas....
- (2) Management and development of the water resources, exploration and drilling of underground water...

...

(7) in addition to the aforesaid, the Water Authority will be responsible, together with the Ministry of International Planning and Cooperation and in coordination with the other official entities, to follow up on the following issues: a. To operate/follow up on matters of bilateral negotiations in matters of water rights. b. Follow up on the performance of Article 40 of the Oslo II Agreement through the Joint Palestinian Israeli Water Committee c. participation in multi-participant discussions and supervision on the activity derived therefrom.

The status of the Water Authority as the managerial and planning arm regulating the water and sewage sector at the Palestinian Authority has been clarified in several laws after the 1996 law. Currently, the powers of the Water Authority are regulated by the Water Law No. 3/2002, under which the Palestinian Water Authority is the body which monitors and supervises negotiations with the Israeli side in respect to a permanent solution on the water issue, as well as being the body responsible for the provision of permits for use and production of water in the Palestinian private and business sector. The Palestinian Water

Authority is also the body which determines the Palestinian representatives to the sub-committees of the Joint Water Committee.

2.3 *The Israeli Civil Administration – The Water Affairs Office*

In the areas under Israeli control in the West Bank, the Water Affairs Office in the Israeli Civil Administration is in charge of the supervision and management of water issues. Its work includes examining and approving or denying requests for water and sewage projects in Area C, tracking the implementation of Israeli government or international funded water projects and issuing orders to lay water infrastructure by *Mekorot*. In approving or rejecting projects, the Staff Officer for Water Affairs considers not only the management of the water sources in the West Bank, but also external factors, such as “security risks” for Israeli settlements. It should be noted that the aforementioned decision-making process does not include any representation of the local Palestinian population.²⁶

2.4 *Criticism of the JWC Mechanism*

Even though the provisions of Article 40 aim to ensure equality and cooperation between the two parties, the Palestinian party and international entities have criticized the current arrangements in the JWC as one of the causes for the inability of the Palestinian people to exercise their right to water. Most often, criticism of the JWC focuses on several arguments:

1. The mechanism set forth in Article 40 and especially the consensus requirement, provides the Israeli members of the Committee with a *de facto* veto right on all of its resolutions. Because Israel enjoys water allotment from West Bank sources in sufficient quantities to supply the needs of the Israeli settlements it is the Palestinian population which is more often in need of obtaining the approval of the JWC.²⁷ Reportedly, Israel often conditions permits for Palestinians on reciprocal approval of development of water sources for settlements, an arrangement the Palestinian side has rejected so as not to legitimize them.²⁸ Since Israel is also the residual downstream beneficiary of the Western and North-Eastern Aquifers, it lacks the motivation to approve projects which will increase Palestinian extraction of water.²⁹
2. The most significant projects approved by the JWC are the improvement of existing water systems, rather than creating additional water sources for the Palestinian population – most of which are rejected. According to the World Bank, 202 applications for drilling wells have been filed over the years, out of which the Joint Committee has approved only 65 applications (32%). Moreover, since the implementation of projects approved by the JWC for Area C require a permit from the Israeli Civil Administration, only 38 of the 65 approved applications have been implemented (equalling only 19% of the total applications), after the Israeli Civil Administration approved and completed planning and relevant proceedings.³⁰
3. The frequency of the JWC’s meetings is influenced directly by the political situation, and its meetings are scarce and insufficient. In the first years after signing the agreements, the Committee met on average ten times a year. Commencing in 2002, the annual average number of meetings is three meetings, while in 2008 only one meeting was held.³¹

²⁶ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, *supra* note 3, p. 54.

²⁷ *Ibid.* p. 34; B’Tselem *Disputed Waters*, *supra* note 24, p. 6. Israel water allotment is set to 103 MCM from the Nablus-Gilboa Basin (73 per cent of the aquifer’s capacity); 40 MCM from the East Basins (42.5 of their full capacity); and 340 MCM of the Yarkon-T’ninim Basin (94 per cent of its full capacity). In total, the Israeli allotment is 483 MCM, 80 per cent of shared water basins.

²⁸ EWASH, *Down the Drain*, *supra* note 2, p. 12.

²⁹ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, *supra* note 3, p. 54.

³⁰ *Ibid.* p. 48; See also B’Tselem, *Not Even a Drop: The Water Crisis in Palestinian Villages Without a Water Network*, July 2001, p. 5.

³¹ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, *supra* note 3, p. 47.

4. Article 40 allowed Israel to continue enjoying the water sources in the West Bank, including exclusive use of the Jordan River, and at the same time prevented an increase in the Palestinian extraction of water, in spite of increasing needs.
5. More than once, the granting of approval by the Israeli Civil Administration to the implementation of a wastewater treatment plan was subject to the connection of adjunct settlements to facilities funded by NGOs or the Palestinian Water Authority, adding financial constraints on the execution of such plans, and compromising their humanitarian nature.³²

In conclusion, the mechanism created by the Interim Agreement in the form of the Joint Water Committee has perpetuated the exclusive control of Israel over the water sources of the West Bank, and limited Palestinian access and ability to develop new water sources. Moreover, Palestinian water sources in Area C are subject to additional scrutiny and supervision of the Israeli Civil Administration which exercises its authority to approve or deny construction work³³ in a manner that strengthens Israeli control over the West Bank. Palestinians are systematically denied building and/or drilling permits for water structures, while *Mekorot* is allowed to drill into water sources in a manner that dries out existing wells that serve the Palestinian population.³⁴ As a result, Palestinians extract about 20 per cent of the estimated potential of the Mountain Aquifer,³⁵ while Israel extracts the balance, and overdraws on the estimated potential of the aquifer by more than 50 per cent.³⁶ In addition, settlement activity around springs, and over-extraction of water from the Mountain Aquifer by Israel have led to dramatic decline in discharge in recent years, as well as restrictions on Palestinian access to water.³⁷ As a result, Palestinian water consumption in the West Bank barely reaches 70 litres a day per person, while water consumption in Israel and the Israeli settlements reaches four times that much. The World Health Organization's (WHO) recommended minimum of daily water consumption is 100 litres per person.³⁸

³² *Ibid*, p. 54.

³³ For more details on building permits see Chapter 4 of this document.

³⁴ Center for Economic and Social Rights, *Thirsting for Justice*, *supra* note 24, pp. 13-14.

³⁵ Average annual estimate of the three aquifers comprising the Mountain Aquifer were elaborated in Schedule 10 pursuant to Article 40 of Oslo II Agreement.

³⁶ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, *supra* note 3, p. 11.

³⁷ See OCHA, *How Dispossession Happens: The Humanitarian Impact of the Takeover of Palestinian Water Springs by Israeli Settlers*, March 2012, pp. 4-6.

³⁸ Amnesty International, *Thirsting for Justice: Palestinian Access to Water Restricted*, October 2009, pp. 2-5; EWASH, *Thirsting for Justice, Palestinian Rights to Water and Sanitation*, 27 March 2012.

3. Legal Framework and Analysis

3.1 *The Right to Water in International Law*

There are several international legal provisions that are relevant to issues relating to water and water infrastructure in the West Bank, including Area C. While Israel does not acknowledge the application of many of the relevant international humanitarian and human rights law provisions to the West Bank, such a position is contrary to international consensus, as well as to the International Court of Justice's Advisory Opinion on the Legal Consequences of the Wall, that reiterated the applicability of humanitarian and human rights law to the West Bank.³⁹ The main relevant applicable law is set out below.

3.1.1 International Human Rights Law

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Israel is a state party, states that “[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” In its General Comments, the Committee on Economic, Social and Cultural Rights, which is the body responsible for monitoring the implementation of the ICESCR, affirmed that the right to water is a material part of the right to adequate housing. General Comment 4 on the right to adequate housing states that “[a]n adequate house must contain certain facilities essential for health, security, comfort and nutrition” and that “[a]ll beneficiaries of the right to adequate housing should have sustainable access to... safe drinking water”.⁴⁰ The Committee reaffirmed its position in 2002, in its General Comment dedicated specifically to the right to water, in which it asserted that the human right to water is indispensable for leading a life in human dignity.⁴¹

In its consideration of Israel's third periodic report on the implementation of the ICESCR in 2011, the Committee on Economic, Social and Cultural Rights dedicated a paragraph to the issue of access to water in the oPt and raised concerns “that Palestinians living in the Occupied Palestinian Territory do not have access to sufficient and safe drinking water and adequate sanitation”.⁴² The Committee was also concerned “about the continuing destruction of the water infrastructure in Gaza and in the West Bank, including in the Jordan Valley, under military and settler operations since 1967”.⁴³ In its conclusions, the Committee urged Israel “to take measures to ensure the availability of sufficient and safe drinking water and adequate sanitation for Palestinians living in the Occupied Palestinian Territory” and to “take urgent steps to facilitate the restoration of the water infrastructure of the West Bank including in the Jordan Valley, affected by the destruction of the local civilians' wells, roof water tanks, and other water and irrigation facilities under military and settler operations since 1967”.⁴⁴

³⁹ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004,136, pp. 179-180.

⁴⁰ CESCR, *General Comment No. 4: The Right to Adequate Housing*, (Art.11(1)), Section 8(b), E/1992/23, 13 December 1991.

⁴¹ CESCR, *General Comment No. 15: The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2002/11, 20 January 2003. The comment states that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses (Sec. 2 of the comment), and that water must be adequate for human dignity, life and health (Sec. 11). While adequacy may vary according to circumstances, three factors apply in all circumstance: (1) Availability. The water supply for each person must be sufficient and continuous for personal and domestic uses and the quantity of water should be in accordance with World Health Organization (WHO) guidelines. (2) Quality. Water must be safe and free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. (3) Accessibility. Everyone must have access to the water and water facilities and services without discrimination, and water must be affordable for all, including the most vulnerable or marginalized sections of the population, in law and in practice. Anyone, without discrimination, must have information accessibility – the right to seek, receive and impart information concerning water issues (Sec. 12).

⁴² The Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant, *Concluding observations of the Committee on Economic, Social and Cultural Rights – Israel*, E/C.12/ISR/CO/3, 16 December 2011, Sec. 29.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

As part of its duty to respect the right to water, Israel is obligated to refrain from interfering directly or indirectly with the enjoyment of the right to water, and may subject the right to water “only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”.⁴⁵ Under this duty, the demolition of water infrastructure for reasons other than protecting water sources or in a discriminatory manner constitutes a severe breach of the right to water. In a context where communities are already suffering from water shortage and lack of access to water, the demolition of cisterns and other water harvesting, storage, and distribution facilities denies such communities access to even the minimum amounts of water that they are able to collect by their own.

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which Israeli is also a state party, prohibits any kind of discrimination in all its forms, including distinctions as to race, colour, or national or ethnic origin. The Article asserts the obligation of states parties to enforce the equality before the law in the enjoyment of, among other rights, the right to economic, social and cultural rights, in particular the right to housing and the right to public health, medical care, and social security.⁴⁶ The way Israel applies its governance to water extraction, and construction of water infrastructure in the West Bank, as well as wide gap in accessibility and quantity of the water available to Palestinians in comparison to Israeli settlers, may be considered a violation of the convention.

The right to water is protected by two more international conventions to which Israel is a state party – the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child. Article 14(2) of the CEDAW stipulates that states parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply”. Article 24(2) of the Convention on the Rights of the Child requires states parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking-water”.

3.1.2 International Humanitarian Law

Israel also has obligations regarding the right to water due to its occupying power status in the oPt. The Hague Regulations impose limitations on an occupying power, especially with respect to the use of private and public property and the natural resources of the occupied territory. Article 43 of the Hague Regulations⁴⁷ imposes two obligations on an occupying power: to restore and ensure, as far as possible, public order and safety in the occupied territory, and to respect, unless absolutely prevented, the laws in force in the occupied territory.⁴⁸ It is conventionally understood to impose a positive obligation by barring an occupying power from extending its own legislation over the occupied territory and a negative obligation to serve as a temporary administrator whose responsibility is to preserve the status quo in the occupied territory, and safeguard the interests of the local population.⁴⁹

In regard to public property, Article 55 of the Hague Regulations states:

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.⁵⁰

⁴⁵ Article 4 to the ICESCR.

⁴⁶ Article 5(e)(iii) and (iv) to the ICERD.

⁴⁷ Article 43 to the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907.

⁴⁸ See, e.g., Yoram Dinstein, “Legislation under Article 43 of the Hague Regulations: Belligerent Occupation and Peacebuilding”, *Program on Humanitarian Policy and Conflict Research, Harvard University*, Occasional Paper Series 1 (2004).

⁴⁹ See Marco Sassoli, “Legislation and Maintenance of Public Order and Civil Life by Occupying Powers”, *the European Journal of International Law*, Vol. 16(4), 2005, 661.

⁵⁰ Article 55 to the Hague Regulations.

In addition, Article 46 of the Hague Regulations prohibits the confiscation of private property. Together, Articles 46 and 55 limit an occupying power's ability to make use of water sources in the occupied territory to those of public ownership, for the limited purpose of supplying the needs of the occupying forces, and to a manner that would not make the water source unusable over time.⁵¹

The Fourth Geneva Convention⁵² ("IVGC") also imposes obligations on an occupying power in relation to the residents of the occupied territory, which are entitled to special protection and humane treatment. The occupying power is responsible for the welfare of the population under its control and must ensure that law and order is maintained and basic necessities are provided. According to Article 55 to the IVGC, an occupying power has to ensure the food and medical supplies of the population, and may not requisition food or medical supplies in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. The Occupying Power must also make arrangements to ensure that fair value is paid for any requisitioned goods.

In addition, Article 54(2) and (4) of the First Additional Protocol of the IVGC related to the Protection of Victims of International Armed Conflicts prohibits damaging structures essential for the survival of the protected civilian population. Section (1) of the Article prohibits starvation as a method of warfare. Section (2) prohibits an occupying power to "attack, destroy, remove, or render useless objects indispensable to the survival of the civilian population such as ... drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive."⁵³

Other relevant humanitarian law provisions include Article 33 of the IVGC and Article 50 of the Hague Regulations, which prohibit collective punishment, and Article 53 of the IVGC, which prohibits the destruction of private or public property, except for military necessity. Finally, Article 147 of the IVGC defines extensive destruction and appropriation of property that are not justified by military necessity and carried out unlawfully and wantonly, as grave breaches of the Convention. All these Articles may apply to unjustified destruction of water structures in Area C.

Lastly, Article 49(6) of the IVGC prohibits the occupying power from transferring its own population into the occupied territory. The illegality of Israeli settlements under this Article extends to all infrastructure supporting settlements, including fences or roads which stop Palestinians from accessing or developing water structures.⁵⁴

3.2 The Right to Water under Domestic Law

Generally, the applicable domestic law in the West Bank is the legislation that was valid in this region on the eve of its occupation by Israel in 1967 (including layers of Ottoman, British and Jordanian law) in addition to Israeli military orders, that amended this legislation from time to time. Israeli laws do not have

⁵¹ Mara Tignino, *Reflections on the Legal Regime of Water during Armed Conflicts*, presented at the Fifth Pan-European International Relations Conference, The Hague, 9-11 September 2004.

⁵² Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

⁵³ See Eyal Benvenisti, *Expert Opinion: Regarding the Destruction of Structures Essential for the Survival of the Protected Civilian Population due to Lack of Construction Permits* (HCJ 5667/11), 2011 (Available at: http://rhr.org.il/eng/wp-content/uploads/Benvenisti_Eyal_Expert_Opinion_15_9_11_English_unofficial_final-1.pdf). In an official statement dated 31 January 2011, the Palestinian Water Authority also accused Israel of using the demolition of water cisterns to "target some of the most vulnerable and marginalized Palestinian communities in the occupied West Bank" (See Dr. Shaddad Attili – Minister of the Palestinian Water Authority, *Statement on the Government of Israel's destruction of water cisterns in the occupied Palestinian territory*, 31 January 2011).

⁵⁴ See, e.g., *the Report of the Independent International Fact Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, Including East Jerusalem*, sections 36, 82 and 85, discussing the impact of settlements on access to water (A/HRC/22/63, submitted on 7 February 2013).

a direct application to the Palestinian population of the West Bank, although they may affect the population indirectly, though the application of administrative duties on the Israeli Civil Administration. Therefore, a brief review of the right to water under Israeli law would serve as a useful background to understanding the water regime in the West Bank and its problems.

3.2.1 The Right to Water in the Israeli Legal System

In Israel, the right to water is enshrined in the Water Law of 1959 which establishes that every person is entitled to receive water and use it, subject to the provisions of the law.⁵⁵ More recently, the right to water was elevated to a constitutional level when recognised by the Israeli Supreme Court as a protected part of the right to minimal dignified subsistence – in itself a derivative of the constitutional right to human dignity, pursuant to Israeli Basic Law: Human Dignity and Liberty.⁵⁶ In the relevant case, *Abu Masa'ad v. the Water Commissioner*, residents of several unrecognised⁵⁷ Bedouin villages in the Israeli Negev-Naqab appealed the decision of the Water Commissioner to deny them connection to the state's water system. In its decision, the Supreme Court ruled that the right to water is of a constitutional normative order, but that it must also be balanced against other competing factors. According to the ruling, while the water authorities are obligated to provide the communities that live in unrecognised villages a minimal amount of water, the "illegal" status of these villages may affect the level to which the water must be accessible to the residents:

"There is a balance between the extent to which the right to water is breached – with respect to the level of comfort in accessing water, rather than with respect to the possibility of having continuous access to it – and the benefit achieved by the breach of that right, that is – dealing with, and solving, the illegal localities phenomenon...

The balance is kept as long as a person's right to access water sources is protected, even if the access is somewhat uncomfortable and costly. It is important to emphasise that, in light of the illegal settlement factor, this is not an optimal water consumption mechanism, but a minimal one, meant to maintain a basic right to water, even if its exercise requires efforts and costs. The full exercise of the right to water requires a legal planning solution for the settlement, and that is up to the residents themselves to decide."⁵⁸

The application of the constitutional right to water depends to a great extent on the legal status of those who wish to exercise it. In its judgements, the Supreme Court refrained from ruling that the state must provide convenient access to water to all those who live under its control. Moreover, the application of constitutional rights to the Palestinian residents of the oPt is even more limited, since the Supreme Court raised in its rulings the proposition that the various Basic Laws, which operate as Israel's constitution, apply only to actions within Israel proper,⁵⁹ and to Israeli citizens in settlements.⁶⁰ Thus, Palestinians living in the oPt, who are neither within Israel or Israeli citizens, do not enjoy the protection of constitutional rights in direct application. Instead, they may assert such rights only through challenges to decisions and actions taken by the Israeli Civil Administration, according to Israeli administrative law standards, rather than constitutional law protections, as elaborated below.

⁵⁵ Article 3 of the Water Law, 5719-1959.

⁵⁶ Civil Appeal 9535/06 *Abu Mas'ad v. The Water Commissioner*, 5 June 2011.

⁵⁷ After the 1948 War, most of the Bedouin population in the Negev-Naqab fled, were expelled, or concentrated in an area known as "Seyag". The rest, who remained in other parts of the Negev-Naqab, live in localities that are unrecognized and deemed illegal by Israel. The residents of unrecognized Bedouin communities receive water supply by one of two mechanisms: purchase of water from the water centres located adjacent to recognized Bedouin communities and the transportation thereof by the resident to his home, or filing an application to the committee for allocation of drinking water for specific connection of several residents to water connection points, for humanitarian reasons. One of the main considerations in the operation of the first mechanism is the encouragement of the residents of illegal communities to move and reside in existing recognized communities. For more information see The Negev Coexistence Forum for Civil Equality, *The Arab-Bedouins of the Naqab-Negev Desert in Israel, Shadow Report Submitted to the UN Committee on the Elimination of Racial Discrimination (CERD)*, May 2006.

⁵⁸ *Ibid.* paragraph 45.

⁵⁹ H CJ 8276/05 *Adalah v. Ministry of Defence*, 12 December 2006.

⁶⁰ H CJ 1661/05 *Local Council Hof Aza v. the Israeli Knesset*, 9 June 2005.

3.2.2 The Right to Water in Area C

The right to water in Area C has never been defined in broad terms as it is in Israeli law. Rather, its scope and limits must be deducted from military orders, the actions and decisions of the Israeli Civil Administration, and any criticism of those actions by the Israeli courts. Unfortunately, these sources do not award the local population's right to water a broad protection.

As mentioned above, the law governing Area C of the West Bank is a multi-layered corpus of legislation. The main legal instrument that regulates the planning and maintenance of water structures in the West Bank is the Towns, Villages, and Buildings Planning Law (No. 79) of 1966, ("the Jordanian Planning Law") which was enacted by Jordan and came into effect approximately nine months before Israel occupied the West Bank. In 1971, the Israeli Military Commander issued the Order Concerning Towns, Villages, and Buildings Planning Law (No. 418) ("Military Order No. 418"), which changed the structure of the planning process in a way that provided the Israeli Civil Administration with the ability to control the entire planning and licensing process in the West Bank. While Areas A and B were transferred to the control of the Palestinian Authority, as part of the Oslo Accords, and – with the exception of issues under the authority of the JWC – are subject to the Palestinian planning and water laws, the Jordanian Planning Law is still in effect in Area C, as amended by Military Order No. 418.

The most significant amendment Military Order No. 418 made to the Jordanian Planning Law was the change to the hierarchy of the planning authorities. Under the Jordanian Planning Law, every administrative district of the West Bank had a district planning committee, in charge of preparing an outline plan for that area. Following those plans, local planning committees issued building licences and prepared more detailed plans. In rural planning areas, village councils had the power to serve as a local planning committee. Military Order No. 418 abolished the district committees altogether, giving their powers to the Higher Planning Council – an organ of the Israeli Civil Administration. At the same time, the powers of the local planning committees were transferred to new bodies named the "Village Planning Councils", whose members are appointed by the Higher Planning Council. Thus, the local Palestinian population was stripped of its power to elect members to planning authorities or to be represented by them, giving the ultimate planning powers to the Israeli Civil Administration. The decisions and policy carried out by the various 'new' planning committees are subject to judicial scrutiny, under Israeli administrative law, and petitioners to the Israeli High Court of Justice may assert that the Israeli Civil Administration has exceeded its authority or acted unreasonably in making particular decisions or military orders.

In August 2011, the village council of *Ad-Dirat Ar-Rfa'iyia* and local NGOs filed a petition to the Israeli High Court of Justice, challenging the legality of Military Order No. 418, and demanding to reinstate Palestinian local and district planning committees in Area C. Important in the context of this memo, the petitioners also asked for an urgent interim injunction to stay any demolition of structures, including water structures, in built up areas of Area C. While the petition is still pending, the request for the interim injunction was denied as being "too broad and inclusive".⁶¹

Under Article 34(4) of the Jordanian Planning Law, construction work must not be commenced if its performance requires a license. The term construction is defined in a most broad way to include, among other things, the construction of a building, making changes to it, its expansion, repair or demolition; installation of a bathroom, toilet, sink, bowl or a cesspit in an existing building; laying a sewage system, drainage and digging cesspits and filtering wells; digging, demolition and filling; whitewashing or painting of exterior walls, and construction of walls and fences.⁶² Importantly, municipal and national agencies are excluded from the requirement to obtain building permits for laying underground pipe systems.⁶³ Therefore, the implementation of a water project in Area C by *Mekorot* requires only coordination with the Staff Officer for Water Affairs, and not the additional building permit. Since the majority of settlements

⁶¹ HCJ 5667/11 *Village Council of Ad-Dirat Ar-Rfa'iyia v. Defence Minister* (Justice Hayut, Interim decision, 22 August 2011).

⁶² Article 34(4) of the Jordanian Planning Law.

⁶³ *Ibid.*

are connected to the *Mekorot* national water system, the law effectively exempts the majority of settlers from a significant administrative burden in the process of developing water-related infrastructure.⁶⁴

During the years, many petitions have been filed in objection to particular decisions of the Israeli Civil Administration to demolish a water structure or to deny a license to build one. The vast majority of the appeals that are filed against such decisions are usually connected to specific incidents in which demolition orders were issued against residential and/or agricultural buildings, with a water structure being one of them. Petitions are then filed to the court hoping to reverse the decision, or at least delay the demolition for the duration of the trial if a temporary injunction can be obtained.

Unlike decisions to demolish particular water structures, the legality and reasonability of the Israeli Civil Administration's general policy of restrictions on the development of the water sector in Area C has not yet been challenged in court. While it is difficult to foresee future rulings in case such a petition were ever to be filed, it seems unlikely that the Israeli High Court of Justice would declare the policy of the Israeli Civil Administration regarding water structures as illegal, based on several indications.

First, the High Court of Justice has thus far refrained in interfering with the far-reaching changes to the structure of the Jordanian planning system, as implemented by several Israeli military orders.⁶⁵ The High Court of Justice has also tended to approve the policies of the planning authorities at the Israeli Civil Administration insofar as they relate to the preparation of zoning plans, for Palestinian towns in the West Bank prior to the application of the Oslo II Agreement, and in Area C after its application.⁶⁶ These policies are generally characterised by refraining from providing some towns with outline plans, thus disconnecting them from basic services, while using zoning plans in order to limit the development of other towns through the application of restricting development plans. Both the planning process and the avoidance of planning does not allow for the Palestinian population's participation in the decision making process.⁶⁷

A second indication is the policy of the Israeli High Court of Justice regarding the Israeli Civil Administration's general demolition policy. In this respect, the Israeli High Court has been consistent in dismissing petitions against demolition orders and determining that administrative failures in planning do not constitute justification for illegal building. Petitions against demolition orders have been denied in the past even if they regarded large building clusters and towns and not just single buildings.⁶⁸

Third, the scope of intervention by the High Court of Justice is limited in nature. The High Court of Justice is not an appellate instance with the power to reach new conclusions based on an evaluation of the case in front of it. The discretion of the court is limited to examining whether the administrative decision in question was reached within the duties and powers of administrative law. It has, generally, the power to examine the process and scope of the decision-making body, rather than a scrutiny of the decision itself.⁶⁹

Last, the tendency of the High Court of Justice is to accept the Israeli government's interpretation of the provisions of the Interim Agreements, according to which enforcement of demolition orders against cisterns in Area C are within the boundaries of the duties and responsibilities Israel undertook in the

⁶⁴ See Haim Gvirtzman, "The Israeli-Palestinian Water Conflict: An Israeli Perspective", *Mideast Security and Policy Studies*, No. 94, January 2012, p. 7.

⁶⁵ The legality of Military Order No. 418 was deliberated in the *Dudin* case (HCJ 4154/91 *Dudin v. the Military Commander at the West Bank*, 6 November 1991). The court dismissed the claim regarding the illegality of Military Order No. 418 without thorough discussion, claiming that the changes that the order created were essential for the operation of the licensing mechanism after the replacement of the Jordanian government.

⁶⁶ The *Dudin* case, *Ibid.* See also Bimkom, *The Prohibited Zone: Israeli planning policy in the Palestinian villages in Area C*, June 2008.

⁶⁷ See, e.g., HCJ 10408/06 *Kabha v. The Higher Planning Committee*, 25 September 2007.

⁶⁸ See, e.g., HCJ 5493/08 *Khatib v. The Supervision Subcommittee*, 7 November 2010; HCJ 2228/08 *Tkatka v. Local Planning Subcommittee in Judea and Samaria*, 13 May 2010; HCJ 8918/03 *Hassan v. The Supervision Subcommittee*, 4 June 2009; HCJ 2389/04 *Basharat v. Military Commander in Judea and Samaria*, 10 December 2006.

⁶⁹ See, e.g., HCJ 910/86 *Resler v. Minister of Defence*, 12 June 1988, pp. 505-506; HCJ 297/82 *Berger v. Minister of Interior*, 12 June 1983, pp. 42-43.

Interim Agreement; and that the high number of enforcement actions in Area C is a result of the refusal by the Palestinian Authority to take action against water theft by private persons.⁷⁰

Despite these strong indications, however, the constitutional status attached to the right to water in the *Abu Mas'ad* case⁷¹ may still have an effect on the way the High Court of Justice would interpret and evaluate the actions and orders of the Israeli Civil Administration. The emphasis on the importance of minimal access to water may obligate the military commander in Area C to ensure minimal access to water to towns suffering from a water supply problem, even if such towns are unrecognised or “illegal” settlements, as the case is in many Palestinian towns in Area C. The precedent set in *Abu Mas'ad* may encourage the High Court of Justice to be less lenient towards the Israeli Civil Administration’s policy on water sources and structures in Area C since, more than once, such structures constitute the only available source of drinking and/or irrigation water for local communities. In these cases, their demolition may not only deprive communities of any access to water, but also end up in forcibly displacing families and towns from their place of residence.

⁷⁰ The Israeli Water Authority, *The Water Issue Between Israel and the Palestinians: Main Facts*, *supra* note 6.

⁷¹ The matter of *Abu Mas'ad*, *supra* note 56.

A Practical Guide: Laws and Procedures Applicable to Water Structures

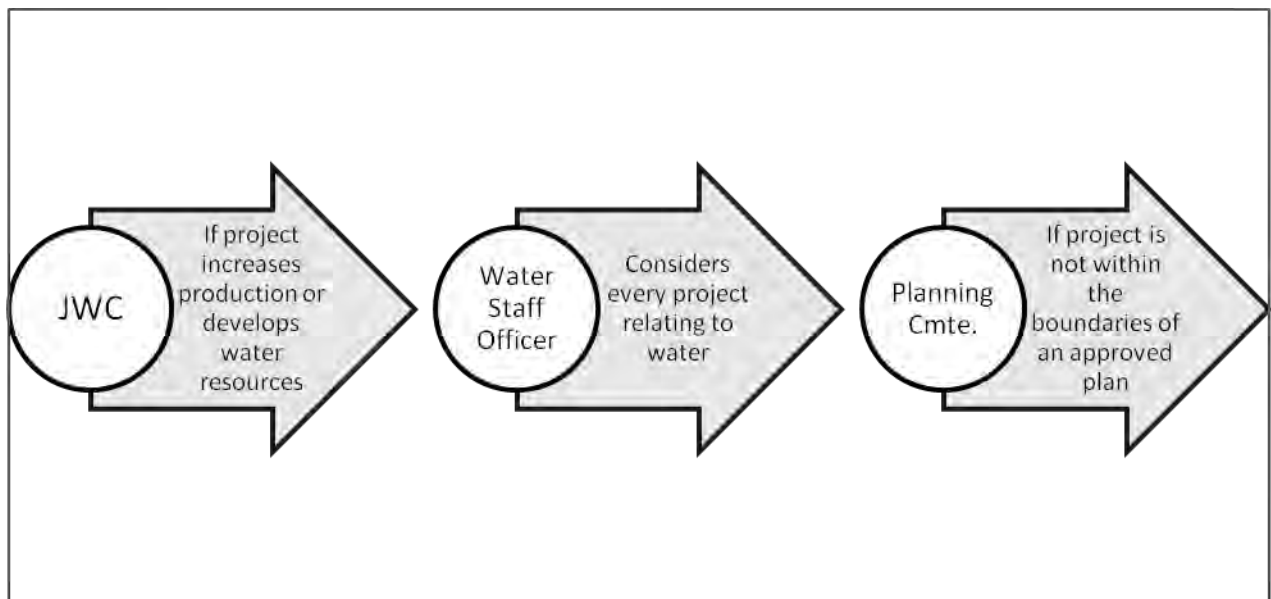
As of March 2013, the Israeli Military Commander continues to have control over all military and civilian affairs in Area C, including land administration and planning. As noted above, Article 2(12) of the Jordanian Planning Law, demands that a permit is obtained for any “construction”, and the definition of the term has been broadly interpreted by the Israeli Civil Administration to include tents, caravans, water wells and cisterns, additions to existing structures, digging or extending roads, renovations and rehabilitation. The process for obtaining a permit is complicated, bureaucratic and costly, and the lack of political will of Israel to allow for Palestinian development in Area C makes it almost impossible to obtain a building permit from the Israeli Civil Administration.

Set out below is a summary description of the permit system relevant to the water structures in Area C, as well as useful information regarding relevant administrative and legal processes. The purpose of this chapter is to provide interested parties with relevant information, but is not meant to replace legal counsel, or endorse the continued application of the following laws and procedures to Area C. The concerns raised in the 2011 report by the Committee on Economic, Social and Cultural Rights and the difference in levels of access to water between the Israeli settlements, which are illegal under international law, and the Palestinian communities in Area C, highlight a water regime which disproportionately disadvantages Palestinians and fails to ensure their sufficient access to water as required by international law. A permit regime which perpetuates this situation raises serious human right issues.

In March 2013, the Israeli Civil Administration published a guide for the use of international NGOs, explaining the different procedures involved in applying for a building permit.⁷² Of note, the guide requires that anyone interested in initiating a project which requires a building permit approach the Israeli Civil Administration at early stages of the procedure in order to “receive planning information and guidelines from the Planning Department”. While this may represent the intention of the Israeli Civil Administration to confirm its control over all construction in Area C, the guide does not specifically address the issue of water structures, and may not apply to all possible situations. It is preferable that specialist legal advice be obtained in relation to the construction of individual water projects.

3.3 The Process of Approving Water Projects

3.3.1 Obtaining a Permit for Water Structures



⁷² The Israeli Civil Administration, *Guide to Receiving a Building Permit*, 7 March 2013.

According to Annex III, Schedule 8, of the Oslo II Agreement, any licensing and drilling of new wells and the increase of production from any water source must be approved by the JWC, as well as any development of water resources and systems by any of the parties. The terms “increase of production” and “development of water resources and systems” is interpreted by the Israeli Civil Administration in a wide-reaching way that might apply to any significant water project, including maintenance and restoration projects to existing wells if they would result in increased production. Importantly, on several occasions the Israeli Civil Administration has also interpreted the agreement to mean that construction and restoration of water cisterns also require the approval of the JWC, but their actions have not been consistent on this point. According to this interpretation, the Staff Officer for Water Affairs in the Israeli Civil Administration might insist that a project which falls under the clause must win the approval of the JWC before initiating the process within the Israeli Civil Administration.

After obtaining the approval of the JWC, any request for a permit for a water project in Area C is handed over to the Staff Officer for Water Affairs in the Israeli Civil Administration. The request should include a formal letter of explanation, a map indicating clearly the scope of the project – installations, trunk-line position, etc. This process is generally carried out through a formal meeting between the Head of the Joint Technical Sub-Committee (JTC) for the Palestinian Water Authority and the Staff Officer for Water Affairs at the Israeli Civil Administration in which the details of water projects are discussed. According to the Water Affairs Office, the process of requesting and receiving a permit is exactly the same regardless of the identity of the applicant, whether it is the Palestinian Water Authority, *Mekorot*, municipalities or settlements.⁷³ However, as noted, *Mekorot* and the municipal water companies are excluded from the requirement to obtain building permits for laying underground pipe systems, and usually do not rely on the development of water resources in the West Bank. Therefore, the procedure which applies to them is far easier to follow, and is often arranged through negotiations between different administrative bodies.⁷⁴

Once the details of the request have been clearly ascertained, the Staff Officer for Water Affairs will initiate an analysis of the project, which will include the input of various departments in the Israeli Civil Administration, including staff officers in charge of archaeology, environment, transportation, electricity, telecommunications, planning, and the Nature and Parks Authority.⁷⁵ These departments’ comments may and should be presented by the Staff Office to the person initiating the project as they are received, in order to facilitate dialogue. Such comments include information regarding the proximity of other infrastructure components near the site of the planned project, etc.

In addition, prior to issuing a license, the Israeli Civil Administration’s legal advisor reviews the project to ensure its compliance with the applicable law. The legal department examines every request presented before the Staff Officer for Water Affairs in order to consider whether the suggested project takes into account public interests and does not disproportionately harm private property.⁷⁶ At this stage the Staff Officer must be able to show what steps were taken to minimize damage to private property.

If the suggested project receives the Water Officer’s approval in principle, the application should proceed to receive the permit for the actual construction work. There are generally two types of permits needed for water projects: the first is a permit to lay an underground trunk-line (commonly referred to as an Order), which is a process that is usually conducted by a governmental or public agency. The second is a permit to build a structure above ground, such as a well, cistern, or a water-pressure booster. The permit to build water structures above ground is issued by the planning committee of the Israeli Civil Administration, and the process of obtaining such a permit varies depending to the planning situation of the land.

In the 1940s, the British Mandate authorities issued two regional plans for the West Bank. Plan RJ5 for the Mandatory Jerusalem district was approved in 1942 and applies from the southern *Hebron* hills in the

⁷³ State of Israel, Civil Administration of Judea and Samaria, *Civil Administration Quarterly: Inside the Water Department*, 2010, p. 9-11.

⁷⁴ See chapters 2.4 and 3.2.2 above.

⁷⁵ Civil Administration of Judea and Samaria, *Inside the Water Department*, *supra* note 73, p. 10.

⁷⁶ *Ibid.*

south of the West Bank to the vicinity of *Salfit* in its centre. Plan S15 for the Mandatory Samaria district was approved in 1948, and continues the planning scheme from *Salfit* and north to *Jenin*, past the boundaries of the green line. These two plans, together with Mandatory Plan L5 which applies to certain eastern parts of the West Bank, apply to most areas of the West Bank and provide the schematic planning guidelines for the West Bank.⁷⁷

It is the position of the Israeli Civil Administration that the regional plans cannot serve as a basis for issuing building permits for specific projects, since it considers them to be only a general planning framework. Instead, the Israeli Civil Administration requires that a special outline plan be approved for the plot on which the project is planned.⁷⁸ Over the years, the Israeli Civil Administration has approved a few special outline plans, setting out more detailed provisions for building and construction of structures for a few Palestinian communities.⁷⁹ Conversely, the majority of Israeli settlements enjoy detailed planning which was supported by Israeli municipal and governmental bodies, and allow settlers to obtain building permits with relative ease.⁸⁰

The Israeli Civil Administration advises that, if the planned project is within the borders of an existing special outline plan and if it does not involve a particularly large structure which affects the greater surroundings, the relevant local municipality or council is authorised to issue the building permit. If the water structure is intended for an area with no approved special outline plan, the applicant must lodge a request with the Israeli Civil Administration Planning Committee to approve a detailed outline plan for the lot on which the structure is intended to be built. According to a survey conducted by Bimkom, the Israeli Civil Administration has not approved a single detailed plan, for any type of structure that has been proposed by Palestinians since the commencement of the occupation.⁸¹

If the project is approved and the permit is issued, it is the sole responsibility of the relevant party who submitted the project for approval to also implement it. It should be noted here that, according to the water agreements signed between Israel and the Palestinian Authority, it is the responsibility of the Palestinian Water Authority to promote the development of the water and waste-water sector which serve Palestinian communities in the West Bank. The initiators can also engage the planning department within the Palestinian Water Authority directly.

⁷⁷ For an extensive review and criticism of the plans and the way they are used by the Israeli Civil Administration see Bimkom, *The Prohibited Zone*, *supra* note 66, pp. 35-44 and 55-89.

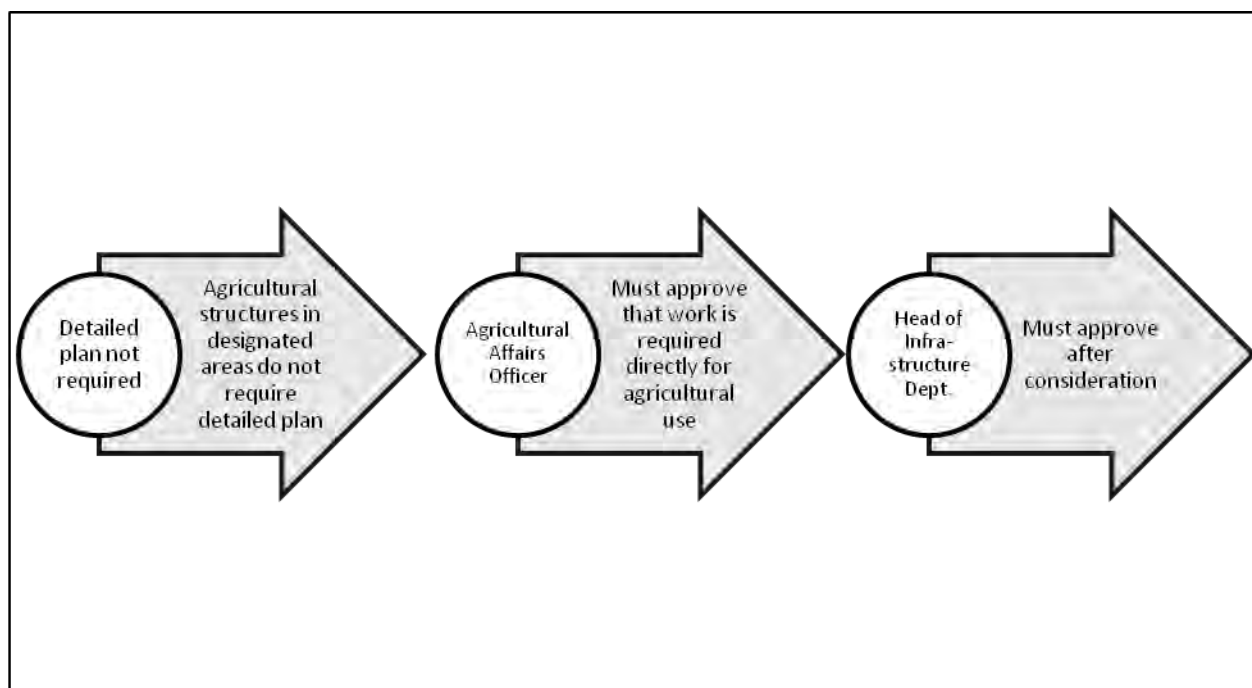
⁷⁸ For criticism of this position see Michael Sfar (ed) and Emily Schaeffer, *A Guide to Housing, Land and Property Law in Area C of the West Bank*, February 2012, pp. 63-64.

⁷⁹ Bimkom, *The Prohibited Zone*, *supra* note 66, pp. 101-102. Bimkom counted less than 20 special outline plans approved in Area C before 2008. According to Bimkom, special outline plans include the built-up areas of the villages but not isolated buildings adjacent to these areas; the plans also include only privately owned land but not Israeli-declared state land or expropriated land. Thus, special outline plans limit the development of Palestinian villages rather than enable development (see p. 102-103).

⁸⁰ Sfar and Schaeffer, *A Guide to Housing, Land and Property Law in Area C of the West Bank*, *supra* note 78, pp. 63-64.

⁸¹ Bimkom, *The Prohibited Zone*, *supra* note 66, p. 135.

3.3.2 Water Structures in Agricultural Areas



The Mandatory Outline Plans divided the West Bank into several types of areas, some of which were designed for rural development, as agriculture zones, or as nature reserves. The plans did not prohibit construction in any of these areas, but limited the types of structures which can be built in each of them. As for agricultural zones, which cover much of the West Bank, a single residential building is permitted per lot and alongside it the construction of water structures. Article 20(c) of the RJ5 Mandatory Plan regulations⁸² determines that –

20. The following buildings may be erected within the agricultural zone:

- ...
- (c) buildings and installations required for the supply of water and electricity including power houses

The same permission to build water structures on agricultural land appears in the S15 Mandatory Plan regulations.⁸³

Mandatory Outline Plans RJ5 and S15 both include some provisions regarding size, use, percentage to be built on, height and setbacks as to structures built on specifically designated lands. Due to this specification, it was the policy of the Israeli Civil Administration in the past that the planning institutions could not interfere with the possibility to build in agricultural zones according to the outline plans regulations.⁸⁴ However, in February 2006 the Israeli Civil Administration issued a stop work order for a structure that was built on an agricultural lot according to all the specifications of the outline plan. The owner's subsequent application for a building permit was denied since the lot was not included in a parcellation scheme or a detailed plan.⁸⁵ While the case was being litigated in the Israeli High Court of Justice, the Israeli Civil Administration issued, in March 2012, the Regulations for the Planning of Cities, Villages, and Buildings (Licensing of Agricultural Buildings) (Judea and Samaria). According to the new

⁸² British Mandate Regulations of the Regional Outline Planning Scheme Jerusalem District, 1942.

⁸³ See Article II(8) of the Schedule of Uses in British Mandate Samaria District Outline Regional Planning Scheme (Modification) 1946, as amended on 29 January 1948.

⁸⁴ See Bimkom, *The Prohibited Zone*, *supra* note 66, p. 73.

⁸⁵ H CJ 2657/07 *Ottman Manssur v. Local Planning Subcommittee*, 31 October 2012.

regulations, anyone who builds an agricultural structure in an area designed for agricultural use may apply for a permit in an expedited procedure and without submitting a detailed plan for the area. Based on the new regulations, the court removed the petition from its docket, ruling that the new regulations allow the petitioner to build agricultural structures even if a detailed plan does not exist.

Importantly, the application for the agricultural permit must include, among other requirements, the approval of the Israeli Civil Administration's Agricultural Affairs Officer that the work is required directly for agricultural uses; the approval of the Israeli Civil Administration's Head of Infrastructure Department, "which may consider issues involving public order and rule of law"; and the signed commitment of the applicant to remove or demolish the structure if the building permit expires or is revoked.⁸⁶ The regulations define agricultural structures and constructions to include:

"Green houses, hothouses, packing houses, structures and facilities for livestock cultivating, agricultural storage, cattle barriers, corrals, agricultural tool sheds, storage sheds for agricultural packaging materials, and any services structure or other structure except an agricultural road, grazing path, or structures which are designed or used for human dwelling, that is directly required for the purpose of agricultural activity and according to the extent of actual agricultural activity in the location, and as long as the use of the structures does not require sewage disposal."⁸⁷

The law does not expressly state whether other related structures such as water cisterns or wells fall under the definition of agricultural structures if they are used for purely agricultural purposes, however, the wording of the regulations would appear to support this interpretation, since they are not specifically excluded and may be either a 'facility for livestock cultivating' or any 'service structure'.

3.3.3 Rehabilitation of an Existing Water Structure

As mentioned, the mandate of the JWC is to approve drilling of new wells, any increase in extraction from any water source, and development of water sources and systems.⁸⁸ Therefore, rehabilitation work in Area C usually does not require an application to the JWC, but may require a permit from the Israeli Civil Administration if it considers the work to fall under the definition of "construction" work.⁸⁹ Conversely, it is the position of the Palestinian Water Authority that the rehabilitation of water cisterns in Area C does not require any prior approval or permit.⁹⁰ In areas that lack an applicable detailed plan, every application for a building permit, including for the building of water structures, will require an application to the Israeli Civil Administration to approve a detailed outline plan which allows for the water structure. If a neighbouring area is already covered by such a plan, there may be some legal arguments available for extending that plan to provide basic services for neighbouring communities.

Under Article 34(4) of the Jordanian Planning Law, the term construction does not include the "performance of any work on behalf of any local or governmental authority, for supervision, repair, renewal of any sewage system, installation of underground pipes or cables or other facilities including the passage within any street or land for such purpose". Therefore, the Jordanian Planning Law allows for *Mekorot*, as well as municipal authorities, to maintain and renew water and sewage systems without need to obtain a permit from the Israeli Civil Administration. In case there are written agreements between the local community and *Mekorot* regarding the provision and rehabilitation of the pipes, and specifically written agreements by *Mekorot* divesting its authority for rehabilitation of the pipes to the community, such written agreements could suggest that a permit is not required for rehabilitation work. Of note, the exclusion of any local or governmental authority from the need to apply for a standard building permit also

⁸⁶ Article 3(c)-(f) of the Regulations for the Planning of Cities, Villages, and Buildings (Licensing of Agricultural Buildings) (Judea And Samaria) (2012).

⁸⁷ *Ibid*, Article 1.

⁸⁸ The Interim Agreement, *supra* note 18, Annex III, Article 40(a) and (b).

⁸⁹ Article 34(4) of the Jordanian Planning Law requires a permit prior to commencing construction, and the definition of the term includes development and betterment.

⁹⁰ See Attili, *Statement on the Government of Israel's destruction of water cisterns in the occupied Palestinian territory*, *supra* note 53.

makes it easier for Israel to develop and maintain water facilities which serve mainly Israel itself and the settlements.

If the original infrastructure was built without a permit, any rehabilitation work might expose any maintenance work to a stop work order. However, a strong legal argument could be made in such a scenario, that the community has already acquired the right to continue using the relevant water structure over the years, and that Israel has a duty, as an occupying power, not to demolish the structure on which its survival depends.

Alternatively, if the original infrastructure was originally built by *Mekorot* with a permit or without need to obtain a permit then the community should request *Mekorot* to commence work to renew the pipes, or to give the community itself a written waiver to do so on behalf of *Mekorot*. An exchange of letters between the community and the company on the issue would also be helpful as evidence in any future legal proceedings, in addition to showing the humanitarian need for water and the failure, if that was the case, of the relevant authorities and *Mekorot* to respond.

3.3.4 Maintenance and Cleaning of Existing Water Structures

The process of cleaning and simple maintenance is not listed in any of the relevant laws as a type of construction that requires a permit, as long as it does not include any change to the land features of any building or fences.⁹¹ Nonetheless, the Israeli Civil Administration often requires permits for the transfer of drilling equipment and might seize it if such a permit was not obtained. Similarly, the Israeli Civil Administration may refer to the use of machinery to empty wells in order to clean them as a change to land features or as unpermitted digging, and therefore may seize the materials and machinery. The seizure may also occur while transferring the equipment, if the Israeli Civil Administration officers believe that it will be used for the purpose of unpermitted construction work.⁹² The Israeli Civil Administration may also claim that rehabilitating an existing water structure may cause additional extraction of water and therefore must require the approval of the JWC and, in the meanwhile, issue a stop work order against the rehabilitation and use of the water structure. In the event that the Israeli Civil Administration conditions maintenance work on the existence of permits, this demand can, in principle, be raised in court which will determine whether the specific type of work falls under the classification of ‘construction’ according to the Jordanian Planning Law.

3.3.5 Structures with a Permit Predating June 1967

Buildings and water structures with a license predating 1967 are considered legal under Israeli military law, pursuant to Section 6 of Military Order No. 418 which determines that “[p]lans approved and licenses issued prior to the entering into effect of this order, will remain effective”. According to Section 34(1) of the Jordanian Planning Law, however, any new addition or construction that was added after the occupation of the West Bank by Israel in 1967 requires a new license, even if it is attached to an old structure. Only “maintenance and improvement work which do not constitute work in the building”⁹³ do not require a new license, as mentioned above.

In addition, Articles 68 and 70 of the Jordanian Planning Law regulate the issue of plans and objections to plans which were prepared, deposited, or were approved but not published prior to the Jordanian Planning Law came into effect in 1966. The law states that all such plans would maintain their legal status under the then-new Planning Law. If the relevant proceedings have not been completed yet, it is possible to continue the planning proceedings from the point in which they stopped.

⁹¹ Article 34(4) of the Jordanian Planning Law.

⁹² The Israeli Civil Administration’s authority to seize materials and machinery used in unlicensed construction work derives from Articles 60-66 of the Israeli Military Order 1651, regarding ‘security provisions’.

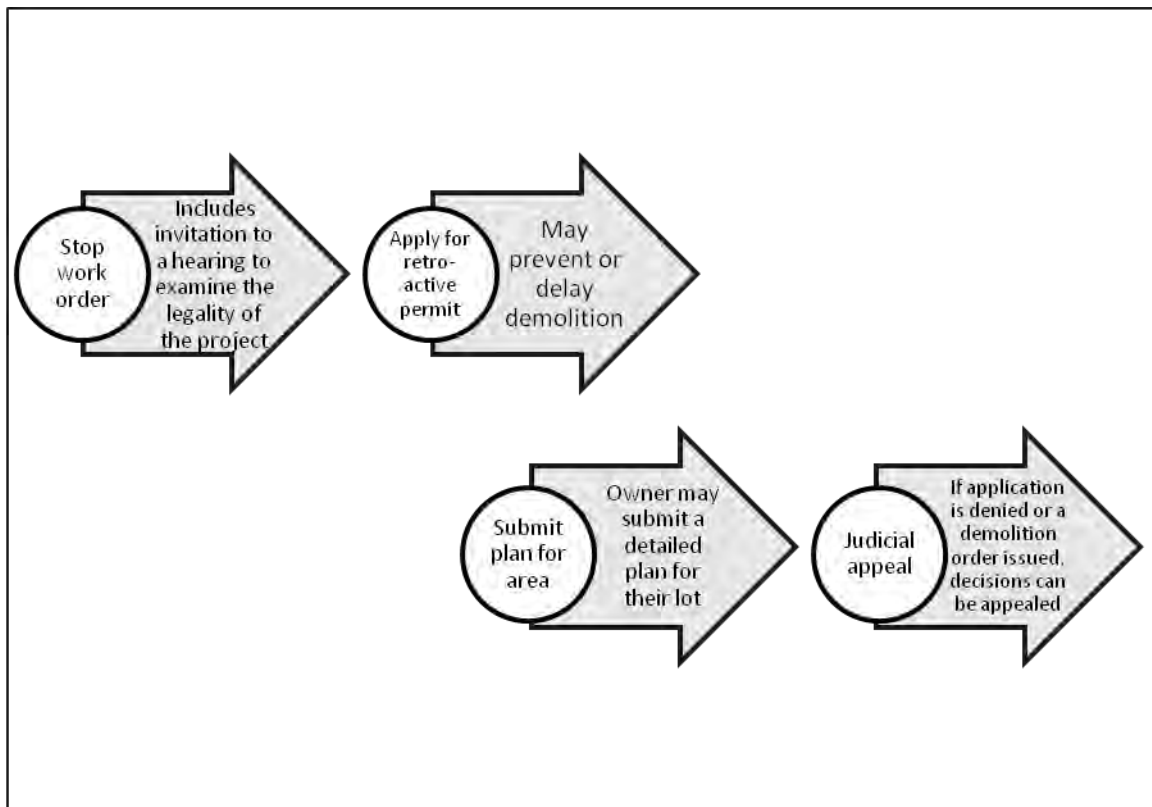
⁹³ Article 34(4)(a) of the Jordanian Planning Law.

3.3.6 Structures Predating June 1967 with no Permit

The law does not contain a provision which limits the authority of the current planning authorities in Area C to supervise and enforce current planning laws on constructions built without a permit prior to 1967. Such buildings, which may have been standing for decades without obtaining a permit, are theoretically at risk of being demolished, if their construction required a license in the time it was commenced, according to Articles 34(1) and 34(4) of the Jordanian Planning Law. Thus, more than once, warnings are issued against buildings and structures that have been in use for even ten years or more.

As a matter of practice, however, the authorities sometimes find it hard to explain why they suddenly initiate legal proceedings against older structures that were left standing for many years and, as a general policy, the Israeli Civil Administration refrains from issuing demolition orders against old buildings, except for those which pose a safety hazard. New construction work that would change the external appearance of the existing structure, however, might expose it to planning law enforcement procedures, due to the need to obtain a new permit for such construction work.⁹⁴

3.4 Stop Work and Demolition Orders



The legal procedure following the receipt of a stop work or a demolition order for a water structure is very much similar to that relevant to any other construction. If any structure is built without a valid Israeli Civil Administration-issued building permit it will be regarded by the Israeli authorities as illegal and will be exposed to stop work and/or demolition orders. Stop work orders require the owner, holder, or user of the structure to immediately refrain from any further construction and contain a summons for the owner, holder, or user to attend a hearing at the Inspection Subcommittee⁹⁵ in *Beit El* on a stated date. If the owner, holder, or user of the targeted structure does not attend the hearing or does not present a valid permit, a demolition order may also be issued. As a preliminary argument in the hearing, the owner,

⁹⁴ Article 34(4)(f) of the Jordanian Planning Law.

⁹⁵ The Inspection Subcommittee reports to the Higher Planning Committee and is responsible for the enforcement of the planning laws against illegal buildings in Area C.

holder, or user of the structure may submit objections to the stop work order which raise administrative issues such as lack of Israeli Civil Administration authority (e.g. the structure is not in Area C), mistakes in the stop work order; or defects in its issuance. A challenge to a stop work or demolition order is made first in the hearing and then through an administrative process of appealing to the planning committees of the Higher Planning Council of the Israeli Civil Administration at *Beit El*. After exhausting the administrative appeal process, a petition may be lodged to the Israeli High Court of Justice.

Another important way of avoiding demolition is asking the Inspection Subcommittee to delay the demolition process in order to allow time for the owner, holder, or user of the structure to apply for a retroactive building permit. In order to support the owner's case before the Inspection Committee, and immediately upon receiving a stop work order, the owner should file an application for a building permit in order to prevent, or at least delay, any further actions that might be taken against the structure and its builder. The documents required for any building permit application are as following:

- Ownership documents of the parcel: taxation deed (*malieh*) in unsettled lands or *tabo (kushan)* in settled lands
- A survey map
- Inheritance deed if the registered owner in the ownership document is deceased
- Photograph of the construction
- Applicants ID

If ownership documents are not available then an application cannot be filed and the building is under threat of immediate demolition. In this case petitions for intermediate orders may be filed to the High Court of Justice to stop the demolition due to an alleged breach of administrative standards in ordering the demolition. Even if such claims would eventually be rejected by the court, it is possible that during the time of the court proceedings an interim injunction would freeze and delay demolition for as long as possible in order to explore means of regularizing and legalizing the infrastructure.

When submitting the application for a building permit, the applicant will be required to pay a fee (at the time of publication the fee is around 400 NIS). The Inspection Subcommittee will receive the application and transfer it to the Planning and Licensing Subcommittee, which is responsible for approving plans for Palestinian communities. The Planning and Licensing Subcommittee examines whether the proposed plan for the structure complies with the requirements of the relevant outline plan. In most cases involving water structures in Area C, these are the regulations of Mandatory Regional Outline Plans RJ5 or S15. The Planning and Licensing Subcommittee will report its findings back to the Inspection Subcommittee for its consideration and final decision. In the vast majority of cases, the Planning and Licensing Subcommittee is likely to find that the proposed structure does not comply with the old and unchanged Mandatory Plans Regulations, that there is lack of sufficient proof of ownership or that the current structures on the lot exhaust the available building rights. Thereafter, the application will be denied.

During the time in which the Israeli Civil Administration is considering the application, the administrative demolition process is delayed. After rejection of the application for a building permit, there is a possibility for filing an appeal within 30 days from the rejection, according to Article 36 of the Jordanian Planning Law. The appeal against the Inspection Subcommittee's decision is filed to the Planning and Licensing Subcommittee, even though they are of the same rank, and in fact the appeal may sometimes challenge the finding of the local Planning Subcommittee itself. Appeals are regularly rejected.

If the appeal is denied, the owner, holder or user could also file a specific detailed plan for the lot, to the approval of the local planning subcommittee. Such a plan, if approved, may simplify the process of applying for a construction permit for any structure that complies with it, including the ones that are currently under threat of demolition. The preparation of such plans requires significant resources (at an average estimated cost of \$1000 per plan) and in many cases Palestinians choose not to file such plans due to the high cost and the low likelihood of success.

If all administrative appeals have been denied, the relevant community, specific members of it, or the owners of the project may file a petition to the Israeli High Court of Justice, against the administrative aspects of the decision, in the hope that the demolition order would be reversed or at least delayed for the period of the court proceedings. Additionally, at any point in the process it is possible to apply for an exemption from the need to obtain a building permit due to humanitarian needs, according to Section 7(4) of Military Order No. 418.

3.5 Israeli Enforcement of the Permit Regime

Any construction without a valid permit is generally regarded by the Israeli Civil Administration and by the Israeli courts as ‘illegal’ and is at risk of being demolished as part of the Israeli Civil Administration’s enforcement policy . According to the Jordanian Planning Law, performing construction work without a permit can also lead to criminal charges with a potential penalty of a fine and up to two years imprisonment.⁹⁶

Noncompliance by the owners of a property with an official warning to stop construction work is also punishable by imposition of a continued fine, which will be no less than 100 Jordanian Dinar (JD) and will not exceed 1000 JD, or imprisonment which will be no less than one month.⁹⁷ In addition, Article 67(27) allows the imposition of a fine against a person who violates any of the regulations promulgated pursuant to the law.

In practice, the Israeli authorities have not implemented the punitive provisions of the Jordanian Planning Laws, and were satisfied with demolishing structures they consider illegal. However, following amendment No 1598 to the Jordanian Planning Law (signed on 6 August 2007), the legal advisor of the Israeli Civil Administration issued a letter in 2008, addressed to all planning authorities in Area C informing them that the punitive Article will be enforced in the near future. So far, it has not been utilized against Palestinians.

The mere filing of an indictment due to unpermitted construction which, again, is not practiced by the Israeli Civil Administration, does not block the way for the planning authorities to send additional warnings regarding the unauthorized structure, and even demolish it. Article 38(17) of the Jordanian Planning Law, which was added by Military Order No. 418 determines:

“The authority of the court in a legal proceeding pursuant to this Article may not derogate from the power of any competent authority to exercise its powers according to this Article, including the issuance of a warning for performance or exercise of such warning, or to withhold such exercise of power.

Demolition orders are being issued regularly against water structures that have been built without a permit. In a 2011 response to a petition filed with the Israeli High Court of Justice, the Attorney General stated an intention to enforce demolition orders according to set priorities of urgency:⁹⁸

⁹⁶ Article 37B of the Jordanian Planning Law was added by Military order 1585 which amended Military Order No. 418 and proclaims:

Penalty:

37B. (a) Anyone performing work or construction which require a permit according to the provisions of the Law, without obtaining such permit, or uses a building constructed without a license as aforesaid, shall be liable for – a fine or two years imprisonment, and if the offense continues – an additional fine or additional imprisonment, seven days for every day in which the offence continues, after a warning to stop work had been delivered, according to Article 38 of the Law, for such a work, construction or use, as applicable.

⁹⁷ Article 38(10) of the Jordanian Planning Law

⁹⁸ Attorney General’s Response to HCJ 5377/09 *Regavim v. Minister of Defence*. Parts of which are cited in the verdict given on 10 August 2011. To the best of our knowledge, the Attorney General did not make a distinction between structures based on their type, and applies the same policy to all structures against which a demolition order was issued.

1. Structures on land in close proximity to settlements;
2. Structures located on state land;
3. Structures on land near to major roads; and, lastly,
4. Structures located within the Seam Zone or close to the Wall.

However, every water structure that has been built without a permit is exposed to demolition threat. The official position of the Palestinian Water Authority and the Ministry of Agriculture is that the destruction of essential water infrastructure in Area C and East Jerusalem is in violation of international law and international humanitarian law, and that it contradicts bilateral agreements between Israel and the PLO.⁹⁹ The Minister of the Palestinian Water Authority also declared that “the destruction of Palestinian water-related infrastructure is in clear violation of the 2001 Israeli-Palestinian Joint Water Committee ‘Joint Declaration for Keeping the Water Infrastructure out of the Cycle of Violence’”.¹⁰⁰

⁹⁹ Palestinian Water Authority and Ministry of Agriculture, *Official Position on the Demolition of Cisterns by the Government of Israel*, 5 June 2011.

¹⁰⁰ See Attili, *Statement on the Government of Israel’s destruction of water cisterns in the occupied Palestinian territory*, *supra* note 53. The Joint declaration was signed on 31 January 2001, and in it both parties agreed that they “view the water and wastewater sphere as a most important matter and strongly oppose any damage to water wastewater infrastructure”.

Conclusion

The Palestinian communities in Area C suffer from insufficient access to water predominantly due to political conditions. Although the local population has the right to clean and accessible water and sanitation under international law, the Israeli Civil Administration fails to supply the demand for water in an adequate manner, and its application of the Oslo II Agreement serves to maintain Israeli control over water sources in the West Bank. Moreover, the method in which the Israeli Civil Administration applies the Jordanian Planning Law and Israeli military orders in Area C is restrictive of new development and of rehabilitation of existing structures. Water structures that are being built, rehabilitated, or renovated without a permit are exposed to stop work orders and demolition, and, at worst, their owners risk criminal charges. At the same time, obtaining a building permit is a long and expensive process, and a positive result is unlikely at its end.

The Israeli Civil Administration's policies make it virtually impossible for Palestinians in Area C to build water structures legally, and imposes on the ability of non-governmental organizations to assist in improving the situation through ground-based action. Conversely, Israeli settlements in the West Bank, which are unlawful under international humanitarian law, have a disproportionately large water allocation and their connection to water systems is supported by the Israeli government and the Israeli Civil Administration. In light of the importance of the right to water in international law, as well as under domestic law, it is critical that current arrangements be fundamentally revised to bring them into line with international humanitarian and human right law, and ensure respect for the basic needs of the protection population, namely Palestinians resident in Area C.

