

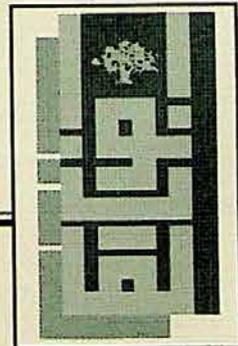
**Legal Studies**

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**LEGISLATION  
PERTAINING TO PLANNING  
AND CONSTRUCTION  
IN PALESTINE**

**Usama Halabi**  
Compiled by Mousa Abu Dheim

**BIRZEIT UNIVERSITY  
LAW CENTER**





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**MINISTRY OF PLANNING AND  
INTERNATIONAL COOPERATION**

**LEGISLATION PERTAINING TO  
PLANNING AND CONSTRUCTION  
IN PALESTINE**

**PRESENTATION, CLASSIFICATION AND ANALYSIS**

**BY  
USAMA HALABI**

**Compilation  
Mousa Abu Dheim**

Tashri'at al-Tanzim wal Bina' fi Filāstin

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PLANNING AND CONSTRUCTION  
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## INTRODUCTION

A knowledge or at the very least an examination of the laws and regulations governing the planning and construction sector in a state or civil society is of inestimable importance to all those concerned with this sector, including students of law, engineering or planning and surveying who wish to become qualified in this field; the engineer, surveyor or planner whose work and personal skills are based on principles and legal standards stipulated by the legislator; the researcher who studies and analyzes the status quo in order to make recommendations for its improvement; the planning sector officials who are obliged to make sound and legal decisions within the jurisdiction granted to them; and the citizen who approaches the competent authority for a permit to build a house, factory, or hotel. These people and many more like them in Palestinian society, as in other societies, are frequently if not daily, obliged to deal with the laws and regulations concerning planning and construction.

This paper was written in an attempt to facilitate access to the laws and regulations pertaining to planning and construction in force in the Palestinian areas occupied in 1967 (taking into consideration the variation between the West Bank [and Jericho] and the Gaza Region), and also to contribute to the formulation of a unified legal system in the Palestinian areas. To this end we aim to achieve the following objectives:

**Firstly**, to collect, classify and publish in one volume, the laws and regulations pertaining to planning and construction promulgated in Palestine from the beginning of the 1920s until 1995. These will therefore comprise those issued during the British Mandate, the period of Jordanian rule in the West Bank and Egyptian rule in the Gaza Region, the military orders issued during the Israeli occupation and finally the legislation promulgated by the Palestinian National Authority. These laws and regulations will be listed in chronological order of their issuance with reference to the place of their publication and the date of their abrogation or amendment. Parallel to this, the Birzeit University Law Center has compiled the full-text of these laws and will be eventually putting this full-text online.

**Secondly**, to deal in some detail with the significant elements of the laws and regulations in force in the West Bank (and Jericho) and the Gaza Region in relation to the following matters:

- Administration of the planning authorities: structure, function and responsibility.
- Different planning schemes: preparation, submission, deliberation, authorization, amendment and abrogation .
- Construction licenses and permits: conditions and procedures for application, acceptance and refusal, and the right to appeal to the decision of the relevant authorities.
- Public participation in the planning process.

**Thirdly**, to deal with discrepancies and similarities between the laws and regulations governing planning and construction in the West-Bank and those in the Gaza Region, and to submit recommendations for the improvement of the present legal structure with the aim of paving the way towards a unified law in both areas.

## CHAPTER ONE

### LAWS, REGULATIONS, AND ORDERS CONCERNING PLANNING AND CONSTRUCTION IN PALESTINE from 1921 until 1994

In the following, we will present a list of laws, regulations and orders concerning planning and construction issued during the twentieth century including:

- the British Mandate in Palestine (1918 - 1948)
- the era of Jordanian rule in the West Bank (1948 - 1967)
- the era of Egyptian administration in the Gaza Region (1948 - 1967)
- the Israeli occupation since 1967, and
- orders issued by the Palestinian National Authority
- The Palestinian-Israeli Agreements

Laws, regulations and orders in the list are placed in chronological order (in accordance with the date of issuance, amendment, or abrogation of the related law, regulation or military order).

#### **I. Laws and regulations issued during the British Mandate (1918 - 1948)**

1. Town Planning Ordinance Number 3 of 1921<sup>1</sup>
2. Regulation (licenses) Concerning Town Planning of 1923<sup>2</sup>
3. Regulation (maps) Concerning Town Planning Schemes of 1927<sup>3</sup>
4. Regulations issued by the Central Planning Commissions, in accordance with Article 1 of the Town Planning Ordinance of 1921<sup>4</sup>

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<sup>1</sup> Robert Harry Drayton, *The Laws of Palestine in Force on the 31st Day of December 1933* (hereinafter referred to as Drayton), Vol. 2, p.1643. This Ordinance was subsequently amended by Ordinance No. 16 of 1922, Ordinance No. 36 of 1929, and Ordinance No. 30 of 1934.

<sup>2</sup> Drayton, Vol. 3, p. 2820

<sup>3</sup> Drayton, Vol. 3, p. 2827

<sup>4</sup> *Palestine Official Gazette*, Issue 163, May 16, 1926, p. 346-394.

5. Regulation Concerning Town Planning (temporary buildings) of 1930<sup>5</sup>

6. Town Planning Ordinance Number 28 of 1936<sup>6</sup>  
This Ordinance repealed the Town Planning Ordinance of 1921 and its amendments, although all by-laws and regulations published in the Palestinian Official Gazette in accordance with the provisions of the 1921 Ordinance remained in full force and effect until they were later repealed or amended. Among the most important issues tackled by this Ordinance was the distribution of planning jurisdictions on local, regional, and national levels. Under the terms of this Ordinance, regional outline schemes were made. They covered the area of Palestine which was divided into the following six districts: Jerusalem, Nablus, Galilee, Haifa, Lydda and Gaza. This Ordinance is still applicable in Gaza and this will be dealt with in more detail in the next chapter.

7. Town Planning (Amendment) Ordinance Number 8, of 1938<sup>7</sup>.  
This Ordinance amended the Town Planning Ordinance of 1936, including the definition section. The definition of "construction" was amended to read "Any construction erected with stones, concrete, bricks, iron, wood, or any other material, in addition to any foundation, wall, ceiling, chimney, corridor, balcony, crest, visor of that construction, or any other part of it, or any part annexed to it, as well as every wall, barrier, fence, or any other construction that cordons that piece of land, or aimed at cordoning that land or courtyard, or at bordering them".

8. Gaza Old Town Building Rules of 1938.<sup>8</sup>

9. Town Planning (Amendment) Ordinance Number 5, of 1939<sup>9</sup>.  
Among the most significant amendments this law introduced to the Town Planning Ordinance Number 28 of 1936 was replacing article number 19

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<sup>5</sup> Drayton, Vol. 3, p. 2828.

<sup>6</sup> *Palestinian Official Gazette*, Issue 589, May 4, 1936, p. 235

<sup>7</sup> *Ibid.*, Vol. 1, 1938, p. 17.

<sup>8</sup> *Ibid.*, Appendix 2, August 25, 1938, Issue 809. Issued by the Southern District Building and Town Planning Commission in accordance with Article 4, of the Town Planning Ordinance of 1936.

<sup>9</sup> *Ibid.*, Vol. 1, 1939, p. 10.

with a new article that gave the District Commissions the authority to revise, suspend the implementation of, or abrogate any detailed scheme or outline scheme (although the later required the prior approval of the High Commissioner).

10. Regulation Concerning the Demolition of Dangerous Constructions of 1941<sup>10</sup>

This regulation obliges the owner of any building to preserve it, and to secure the safety of people living in it. If the building is found in a dangerous condition, the owner should notify the Municipal Council who, after the building is inspected by an engineer sent by the Council, may direct the undertaking of all the necessary measures in order to ensure the tenants' safety, at the owner's expense.

11. Regulation Concerning Town Planning Licenses of 1941<sup>11</sup>

This regulation specifies which installations require a building license (Article 3) and the conditions to obtain a license (Article 4).

12. Regulation Concerning Erecting Walls and Fences, of 1941<sup>12</sup>

This regulation authorizes the Municipal Council to order land owners to erect walls or fences around their lands, in order to prevent the possibility of endangering the public safety. In the event of non-compliance within the stated period of time, the council may take necessary actions at the owner's expense.

13. Town Planning (Amendment) Ordinance Number 31, of 1941<sup>13</sup>

This was an additional amendment to the Town Planning Ordinance Number 28, of 1936.

14. Regulations Concerning the Regional Plan for the Jerusalem District (RJ5), of 1942.

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<sup>10</sup> *Ibid.*, April 10, 1941, Issue 1088. Issued by the Gaza Municipal Council by virtue of Article 99 of the Municipality Law of 1934.

<sup>11</sup> *Ibid.*, August 9, 1941, Appendix 1, Issue 1112. Issued by the Gaza District Building and Town Planning Commission, by virtue of Article 4, of the 1936 Town Planning Ordinance.

<sup>12</sup> *Ibid.*, 1941. Issued by Gaza Municipality by virtue of Article 99 of the Municipality Law of 1934.

<sup>13</sup> *Ibid.*, November 10, 1941, Issue No. 1139.

While some specialists consider these regulations and the scheme they tackle as legal and endorsed in accordance with the Town Planning Ordinance Number 28 of 1936<sup>14</sup>, other specialists are skeptical as to their legality<sup>15</sup>. These regulations stipulate that the area of land on which construction is permitted should not be less than 1000 square meters, the number of buildings in each lot of land should not be more than one, the area of the building should not be any larger than 150 square meters, and the front side of the land should not be less than 40 meters long. The Israeli occupation authorities used these regulations, and the aforementioned regional plan after amending it in 1982<sup>16</sup>, to allocate lands for the establishment of Jewish settlements. Further this regulation and Plan were used to restrict construction in Palestinian villages by refusing building permits on the grounds that an area was strictly for agricultural use, or that one of the above mentioned conditions for the construction of new buildings was not present.

15. Regulations Concerning a Regional Plan for Nablus District (S15) of 1942<sup>17</sup>

These regulations dealt with a regional plan for the Nablus district which was similar in context to the one for Jerusalem (RJ5). Another plan for this district was submitted in 1946<sup>18</sup>, and endorsed in 1948<sup>19</sup>. The Israeli occupation authority in this regard has depended upon regulations entitled: "Samaria Regional Outline Planning Scheme (Amendment) 1945" which appears to be a mere preliminary draft of the 1946 district plan<sup>20</sup>.

16. Regulation Concerning Numeration of Buildings, of 1947<sup>21</sup>

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<sup>14</sup> R. Khamayseh, *Israel Planning Policy and Demolition of Buildings in the West Bank*, PASSIA, Jerusalem, 1989, p. 18.

<sup>15</sup> A. Coon, *Town Planning under Military Occupation: An Examination of the Law and Practice of Town Planning in the Occupied West Bank*, Al-Haq, Ramallah, 1992, p. 71.

<sup>16</sup> RJ5 was amended by Regional Planning Scheme, No. 1/82, known as the "Center Project".

<sup>17</sup> *Palestine Official Gazette*, April 7, 1942, Issue No. 1185.

<sup>18</sup> *Ibid.*, April 28, 1946, Issue No. 1479.

<sup>19</sup> *Ibid.*, January 29, 1948, Issue No. 1644.

<sup>20</sup> Coon, p. 71.

<sup>21</sup> *Palestine Official Gazette*, supra, May 15, 1947, Issue No. 1579, Appendix 2. Issued by Gaza Municipal Council by virtue of Article 99, of the Municipal Law of 1934.

The War of 1948 led to the partitioning of Palestine into two parts, one in which the state of Israel was established. This part comprised three districts: the Galilee, Lydda, and Haifa, as well as parts of the Nablus and Jerusalem districts. The other part included the town of East Jerusalem and parts of the Jerusalem district, Gaza, a small part of the Lydda district, and what would later become known as the West Bank (including part of Nablus district). Following the Jericho Conference in 1950, Jerusalem and the West Bank were annexed to the Hashemite Kingdom of Jordan, and came under the Jordanian Law, while Gaza Region came under the Egyptian administration.

## II. Laws and Regulations Issued or in Practice During the Era of Jordanian Rule in the West Bank and East Jerusalem (1948 - 1967)

1. Town Planning Ordinance of 1933<sup>22</sup>.

This Ordinance was issued during the time when the Emirate of Trans-Jordan existed under the rule of Prince Abdallah Ben Al-Hussein. This Ordinance remained in force until it was repealed in 1955.

2. Town Planning Ordinance Number 28, of 1936.

As the West Bank and Jerusalem were part of Palestine until they were annexed to the Hashemite Kingdom of Jordan, this Ordinance was applicable and continued to be so until it was repealed in 1955.

3. Schedule to the Town Planning Ordinance of 1933<sup>23</sup>.

4. Municipal Regulation Number 4, of 1938, Concerning Building<sup>24</sup>

This regulation prohibited any construction, reconstruction, changes or renovations without a permit for that effect from the Municipal Council.

5. Law Concerning Controlling and Preserving Roads Number 51, of 1938<sup>25</sup>

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<sup>22</sup> *Jordanian Official Gazette*, No. 378, May 1, 1933, p. 40.

<sup>23</sup> *Ibid.*, No. 549, February, 1937, p. 50.

<sup>24</sup> *Ibid.*, No. 588, February 16, 1938. Also published in the collection of Jordanian laws and regulations issued until 1946, part 3, p. 445. This regulation was issued pursuant to articles 31-33 of the Municipal Law of 1938.

<sup>25</sup> *Ibid.*, No. 590, March 1, 1938, p. 151.

6. Law Concerning Controlling and Preserving Roads (Amendment), Number 29, of 1957<sup>26</sup>.

This law amended article 8 of the previous Law, by classifying the roads of the Kingdom into the following three categories: (main) public roads no wider than 40 meters outside town borders and 30 meters inside town borders; (secondary) district roads no wider than 30 meters outside town borders and 20 meters inside town borders; and (agricultural) village roads no wider than 20 meters outside villages and 15 meters inside villages. This Law was amended by Israeli Military Order No. 810 of 1979 which increased the permissible width of the roads.

7. Law Concerning the Addition of an Article to the Town Planning Ordinance of 1933, Number 29, of 1952<sup>27</sup>

This Law amended the Town Planning Ordinance of 1933, and added to it article 18, which excluded all government buildings and construction from fees levied in accordance with the Ordinance.

8. Law Concerning the Addition of an Article to the Town Planning Ordinance of 1933, Number 44, of 1953<sup>28</sup>

This Law added an article to the Town Planning Ordinance of 1933, giving the Cabinet the authority to adjust fees paid to the municipality for construction permits.

9. Law Amending the Town Planning Ordinance of 1933, Number 77 of 1953<sup>29</sup>

This Law amended article 4 of the Town Planning Ordinance of 1933, to state the following: "A Central Building and Town Planning Commission shall be established in the capital, composed of employees and other persons selected by the Cabinet".

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<sup>26</sup> *Ibid.*, No. 1365, January 16, 1958, p. 24.

<sup>27</sup> *Ibid.*, No. 1132, March 21, 1953, p. 52.

<sup>28</sup> *Ibid.*, No. 1134, February 16, 1953, p. 564.

<sup>29</sup> *Ibid.*, No. 1158, September 1, 1953, p. 740.

10. Law Concerning Town, Village and Building Planning, Number 31, of 1955<sup>30</sup>

This Law repealed the Town Planning Ordinance of 1933, Town Planning Ordinance Number 28 of 1936, their amendments, and all regulations based thereon. It maintained however all schemes made, and licenses granted, in accordance with any of the repealed laws which were in practice when this Law was promulgated. These existing licenses and schemes were considered as granted or made in accordance with this new Law<sup>31</sup>. It is worth noticing that this Law addresses villages and buildings in general and is not restricted to town planning, as was the case in previous laws. It seems that this was due to the development of construction outside town peripheries and the emergence of villages, the development of which required the attention and regulation of the central authority. Further, this Law was enacted to replace all previous laws and to be implemented both in the West and East Banks, thus unifying the law pertaining to planning and construction. However, the influence of the 1936 Town Planning Ordinance was reflected in this new Law. For instance, the definition of the term "construction or building" in article 2 of this Law is identical to the definition of the term "construction" in article 2 of the 1936 Town Planning Ordinance, as amended by Ordinance Number 8 of 1938.

11. Law Concerning Town, Village, and Building Planning, Temporary Law Number 79 of 1966<sup>32</sup>.

This Law repealed the Law Concerning Town, Village, and Building Planning Number 31 of 1955 on the condition that "all schemes made, and licenses granted by its virtue, remain applicable, and subject to the provisions of this Law, and are to be treated as if they were made or granted by virtue of its provisions"<sup>33</sup>. This Law is still applicable in the West Bank, with some amendments introduced by the Israeli military orders after the Israeli occupation of 1967. We will tackle the most important elements and articles of this Law in the second chapter of this study.

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<sup>30</sup> *Ibid.*, No. 1228, June 1, 1995, p. 400.

<sup>31</sup> See article 31.

<sup>32</sup> *Jordanian Official Gazette*, No. 1952, September 25, 1966, p. 1921.

<sup>33</sup> See article 69.

### III. Laws and Regulations Issued or Applicable in Gaza Region During the Period of Egyptian Administration (1948 - 1967)

1. Town Planning Ordinance, Number 28, of 1936, and its amendments.

This Ordinance (along with its amendments by virtue of Town Planning (Amendment) Ordinance Number 8 of 1938, Town Planning (Amendment) Ordinance Number 5 of 1939, Town Planning (Amendment) Ordinance Number 31, and Municipal Law of 1934) remained applicable in Gaza after the withdrawal of British forces from Palestine. Further, it remained in force throughout the Egyptian administration, subject to some slight amendments introduced by the following administrative orders. In the next chapter we will discuss with some details some of the important articles in this Ordinance.

2. Administrative Order Number 389 of 1955.

3. Administrative Order Number 450 of 1956 Concerning the Amendment of the Town Planning Ordinance Number 28 of 1936<sup>34</sup>.

This Order repealed Order Number 389 and amended article 3(1) of the Town Planning Ordinance of 1936 to state the establishment of a Central Building and Town Planning Commission in Gaza, comprised of the director of public works as chairperson, a representative of the director of legal affairs, a representative of the director of health affairs, the chief administrative officer of the district (Qa'im Maqam), and the director of planning and surveillance.

4. Administrative Order Number 527 of 1957 Concerning the Amendment of the Town Planning Ordinance Number 28, of 1936<sup>35</sup>.

This order amended once again article number 3(1) of the Town Planning Ordinance of 1936, and changed the composition of the Central Building and Town Planning Commission to become as follows: the director of municipal and village affairs as chairperson, a representative of the director of public works, a representative of the director of legal affairs, a representative of the director of health affairs, the chief administrative officer of the district, and the director of

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<sup>34</sup> *Palestine Official Gazette* (for the Gaza Region), October 13, 1955.

<sup>35</sup> *Ibid.*, No. 78, September 18, 1957, p. 96.

town planning and surveillance. This Order repealed Administrative Order Number 450 of 1956

5. Decision concerning the delineation of Jabaliya Area by virtue of the Town Planning Ordinance of 1936<sup>36</sup>

6. Decision concerning the delineation of Gaza Town Area by virtue of the Town Planning Ordinance of 1936<sup>37</sup>.

7. Decision concerning classifying areas of construction and setbacks, 1961.

8. Decision concerning classifying areas of construction and setbacks in the new areas of Gaza, 1963.

9. Decision of the general commander, number 26, of 1966, to change the municipal borders by virtue of the Town Planning Ordinance Number 28, of 1936<sup>38</sup>.

10. Decision concerning the delineation of Gaza Town Detailed Area of 1967, by virtue of Town Planning Ordinance of 1936<sup>39</sup>

The Town Planning Ordinance of 1936, with its aforementioned amendments is still applicable in Gaza today. It has however passed through additional amendments during the period of the Israeli occupation, and after the advent of the Palestinian authority.

#### **IV. Israeli Military Orders Issued (1967 - Present)**

##### **A) The West Bank**

The Jordanian Law Concerning Town, Village and Building Planning, Number 79, of 1966, was applicable in the West Bank and East Jerusalem,

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<sup>36</sup> *Ibid.*, No. 229, November 10, 1966.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, No. 300, November 29, 1966

<sup>39</sup> *Ibid.*, No. 308, April 15, 1967.

until the Israeli occupation in 1967. In East Jerusalem, the Law was replaced by Israeli domestic planning law, after it was annexed by Israel. In the rest of the West Bank, the Law has been subjected to the following military orders introduced by the occupation authority.

1. Military Order 393 of 1970: Order Concerning Supervision of Construction Work<sup>40</sup>.

This Order authorizes the military commander to prohibit construction work, order the suspension of work, or restrict it to certain conditions "if he deems that necessary for the safety of the Israeli defense forces in the region, or to secure public order"<sup>41</sup>. The military commander is permitted to order the demolition or removal of any construction undertaken in violation to his orders<sup>42</sup>. As well, violations are punished by up to two years imprisonment or a 1000 lira fine<sup>43</sup>.

2. Military Order Number 418 of 1971: Order Concerning the Law for Town, Village, and Building Planning<sup>44</sup>.

This Order introduced the first amendment to the Jordanian Law Concerning Town, Village, and Building Planning Number 79 of 1966 (referred to hereinafter as "the Law"). This Order transferred the Minister's jurisdiction in accordance with the Law, to a "person in charge" appointed by the Israeli Military Commander in the area, namely to the officer of interior affairs. It also transferred the jurisdiction of the District Commission for Town, Village, and Building Planning to the High Planning Council, the jurisdiction of the local planning commissions to Special Planning Commissions, and the jurisdiction of the village councils to village planning commissions. According to article 4 of the order, the Area Commander appoints the High Planning Council and village planning commissions, while the High Planning Council appoints the Special Planning Commissions. The order preserved the authority of the local planning commissions in municipal areas (article 5). Article 7 of the order gave the

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<sup>40</sup> *Collection of Proclamations, Orders, and Appointments*, No. 23, August 30, 1970, p. 815.

<sup>41</sup> See article 2.

<sup>42</sup> See article 3.

<sup>43</sup> See article 4.

<sup>44</sup> *Collection of Proclamations, Orders and Appointments*, No. 27, April 2, 1972, p. 1000. This Order came into force on April 1, 1971.

High Planning Council the authority to amend, abrogate, or suspend, for a certain period of time, any scheme or license, to exercise any authority previously invested in any planning commission including the authority to issue, amend or abrogating any license which any planning commission was authorized to issue; and to exempt persons from the requirement of obtaining a license under the Law.

3. Military Order Number 465 of 1972: Order Concerning the Prohibition of Construction<sup>45</sup>

This order prohibits the construction of buildings on confiscated land, or on land where a building had been previously demolished by an order issued by virtue of Article 119 of the Emergency Defense Regulations of 1945.

4. Military Order Number 577 of 1974: Order Concerning the Law for Town, Village, and Building Planning (Amendment)<sup>46</sup>.

This order amended article 7 of Military Order Number 418, and gave the High Planning Council the authority to set the level of fees to be charged for construction licenses, or endorsements and certificates, in accordance with the Law. The High Planning Council should publish its decision regarding the imposition of fees in two daily newspapers, and deposit copies of it at the offices of the Council and the offices of local and village planning commissions.

5. Military Order Number 604 of 1975: Order Concerning the Law for Town, Village, and Building Planning (Amendment number 2)<sup>47</sup>.

This order amended Military Order Number 418 including provisions regarding the transfer of jurisdiction from the local planning commissions to a special planning commission, and the establishment of that commission. Article 2 set out the following:

a) The Area Commander can appoint, in certain areas, special planning commissions to be given the jurisdiction of a planning commission in the cases elaborated below:

(i) If an order is issued as stated in Article 9 (1) of the Law;

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<sup>45</sup> *Ibid.*, No. 29, July 12, 1972, p. 1126.

<sup>46</sup> *Ibid.*, No. 35, February 25, 1976, p. 1422.

<sup>47</sup> *Ibid.*, No. 36, April 4, 1976, p. 1494.

(ii) If the area does not include municipality or village council borders.

b) The Area Commander can grant a special planning commission the jurisdiction of a district commissions for town, village and building planning.

This article forms the legal basis for giving local and regional councils in the Jewish settlements the jurisdiction of the local planning commissions, while the secondary commission for settlement, which stems from the High Planning Council, executes the role of the district planning commissions.

This Order also added Article 7A to Military Order Number 418, authorizing the High Planning Council to appoint secondary commissions from among its members, and to transfer its authorities to them.

6. Military Order Number 1/79 of 1975: Order Concerning Restricting the Height of Buildings (Ramallah)<sup>48</sup>

7. Military Order Number 778 of 1979: Order Concerning the Law for Town, Village, and Building Planning<sup>49</sup>

This order states that there is nothing in Law Number 79 of 1966, nor in Military Order Number 418 which prevents the High Planning Council from deciding the level of fees regarding the renewal of construction licenses.

8. Military Order Number 810 of 1979: Order Concerning the Law for Controlling and Preserving Roads<sup>50</sup>.

This order amended article 8(1) of the Law which identified types of streets in the Hashemite Kingdom of Jordan and their width. The width of the (main) public roads became 50 meters (instead of 40) outside town borders and 40 meters (instead of 30) inside towns, the (secondary) district roads

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<sup>48</sup> *Ibid.*, No. 37, July 1, 1976, p. 79.

<sup>49</sup> *Ibid.*, No. 43, May 11, 1980, p. 30.

<sup>50</sup> *Ibid.*, No. 46, August 31, 1981, p. 228.

became 40 meters (instead of 30) outside of towns and 30 meters (instead of 20 meters) inside towns, and the width of (agricultural) village roads became 30 meters (instead of 20) outside the villages and 25 meters ( instead of 15 ) inside villages.

9. Military Order Number 814 of 1979: Order Concerning the Law for Town, Village, and Building Planning (Amendment No. 3)<sup>51</sup> .

This order increased the level of fines for construction violations, making most of them range between 200 and 1000 JD.

10. Military Order Number 860 of 1980: Order Concerning the Law for Town, Village, and Building Planning (Amendment Number 4)<sup>52</sup>.

This order added paragraph (C) to Article 2A of Military Order Number 418 of 1971, stating that the Area Commander has the authority to appoint a district commission for Town, Village, and Building Planning in areas where a Special Planning Commission has been appointed.

11. Military Order Number 895 of 1981: Order Concerning Law for Town, Village and Building Planning (Amendment Number 5)<sup>53</sup>

This Order added paragraph (D) to Article Number 2A of Order Number 418, giving the Special Planning Commission the authority to link the issuance of construction licenses to the establishment of a shelter in the house intended to be constructed.

12. Military Order Number 1043 of 1983: Order Concerning the Law for Town, Village, and Building Planning (Amendment number 6)<sup>54</sup>

This Order amended article 7A(1) of Military Order Number 418 of 1971 and authorized the High Planning Council to appoint members to the secondary commissions, although a majority of the members of these secondary commissions must be from the Council. It also amended article 7B of the same Order, which expanded the jurisdiction of the courts with regard to the imposition of fines and punishments.

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<sup>51</sup> *Ibid.*, No. 46, August 31, 1981, p. 246.

<sup>52</sup> *Ibid.*, No. 48, June 30, 1982, p. 719.

<sup>53</sup> *Ibid.*, No. 48, June 30, 1982, p. 873.

<sup>54</sup> *Ibid.*, No. 57, July 21, 1982, p. 51.

13. Military Order Number 1196 of 1987: Order Concerning the Prohibition of Construction<sup>55</sup>.

This was an amendment to the aforementioned Military Order Number 465 of 1972. This amendment prohibited reopening the doors of a building which was closed by the Area Commander by virtue of Article 119 of the Emergency Regulations of 1945.

14. Military Order Number 1100 of 1984: Order Concerning the Law for Town, Village, and Building Planning (amendment number 7)<sup>56</sup>.

This Order amended article 38(1) of the Law. It granted a person appointed by the relevant planning commission the authority to issue a warning to stop work before discussing the warning with the commission. The warning remains in effect for 30 days and is renewable.

15. Military Order Number 1227 of 1988: Order Concerning the Law for Town, Village, and Building Planning (amendment 8)<sup>57</sup>

This Order amended the aforementioned Law and added a new article 34A, which authorizes the Local Planning Commission, after receiving the consent of the District Planning Commission, to issue a construction license in accordance with a submitted planning scheme, even if the scheme has subsequently been changed, on the conditions that the scheme was approved before June 1967, and no objections to the scheme were made before the end of the period set for objections.

16. Military Order Number 1314 of 1990: Order Concerning Construction and Fencing (temporary instructions)<sup>58</sup>

This Order gives the military commander the authority to order an owner, administrator, warrantor or renter of a land or real estate to undertake construction or fencing for the interests of the public order and the security of the region. In the event of non-compliance, the Israeli military forces may execute the order.

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<sup>55</sup> *Ibid.*, No. 76, September 12, 1990, p. 73.

<sup>56</sup> *Ibid.*, No. 66, September 17, 1984, p. 30.

<sup>57</sup> *Ibid.*, No. 76, September 12, 1990, p. 165.

<sup>58</sup> *Ibid.*, No. 100, November 1990, p. 13.

17. Military Order Number 1340 of 1991: Order Concerning the Supervision of Construction Work (amendment)<sup>59</sup>

This Order amended article 3 of the above Military Order Number 393 Concerning the Supervision of Construction Work, and deleted the phrase "who was given the same order".

18. Military Order Number 1340 of 1991: Order Concerning the Law for Town, Village, and Building Planning (amendment number 9)<sup>60</sup>

This Order amended article 3 of Military Order Number 418 of 1971 by granting the head of any planning commission one additional vote, if the votes of the commission members regarding a certain decision are even.

19. Military Order Number 1385 of 1993: Order Concerning Law for Town, Village, and Building Planning (temporary instructions)<sup>61</sup>

This Order ceased detailed procedures relating to plans within the borders of local and regional Jewish councils, which were not endorsed before the issuance of the Order. These procedures were subsequently governed by an exceptional commission which hears and rules on the objections of affected parties. This Order came with a change in government in Israeli and reflected its willingness to supervise and control the expansion of settlements.

20. Military Order Number 1403 of 1993: Order Concerning the Law for Town, Village and Building Planning (amendment number 10)<sup>62</sup>

This Order amended article 7B of Military Order Number 418 and permitted a licensed engineer to regulate an application to obtain a license for a "simple building". Such applications for any kind of building were only regulated by engineers.

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<sup>59</sup> *Ibid.*, No. 120, July 1991, p. 345.

<sup>60</sup> *Ibid.*, No. 130, September 1992, p. 570.

<sup>61</sup> *Ibid.*, No. 144, January 1993, p. 1073.

<sup>62</sup> *Ibid.*, No. 151, November 1993, p. 1421.

21. Appointment Number 37 and Transfer of Jurisdiction Number 77 of 1991 (consolidated text) pursuant to Military Order Number 418 of 1971: Order Concerning the Law for Town, Village, and Building Planning<sup>63</sup>  
This appointed members of a secondary commission for settlement and transferred to them certain jurisdictions.

22. Appointment Number 38 and Transfer of Jurisdiction Number 78 of 1991 (consolidated text) pursuant to Military Order Number 418 of 1971: Order Concerning the Law for Town, Village, and Building Planning<sup>64</sup>  
This appointed members of the secondary commission for local planning, and gave it some of the jurisdiction of the High Planning Council. This commission looks into objections and issues decisions relating to planning schemes for Palestinian villages. It also looks into appeals against the decisions of the secondary commission of supervision (inspection) to reject applications for construction licenses and ordering the demolition of unlicensed buildings.

23. Appointment Number 39 and Transfer of Jurisdiction Number 79 of 1991 (consolidated text) pursuant to Military Order Number 418 of 1971: Order Concerning the Law for Town, Village, and Building Planning<sup>65</sup> .  
This appointed members of the secondary commission of objections and gave it the jurisdiction of the High Planning Council to look into the objections made against the decisions of the Special Planning Commissions over planning issues.

24. Appointment Number 40 and Transfer of Jurisdiction Number 80 of 1991 (consolidated text) pursuant to Military Order Number 418 of 1971: Order Concerning the Law for Town, Village, and Building Planning<sup>66</sup> .

This appointed members to the secondary commission of supervision (inspection), and gave it some of the jurisdictions of the High Planning Council. This commission supervises unlicensed buildings and looks into

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<sup>63</sup> *Ibid.*, No. 126, September 5, 1991, p. 539.

<sup>64</sup> *Ibid.*, No. 126, September 5, 1991, p. 539.

<sup>65</sup> *Ibid.*, p. 540.

<sup>66</sup> *Ibid.*, p. 541.

applications for construction licenses, issues decisions to stop construction work and to demolish buildings already constructed without licenses.

25. Appointment Number 41 and Transfer of Jurisdiction Number 81 of 1991 (consolidated text) pursuant to Military Order Number 418 of 1971: Order Concerning the Law for Town, Village, and Building Planning<sup>67</sup>.

This appointed members to the secondary commission for mining and quarries and transferred to it the authority of the High Planning Council to issue licenses for mining and quarries in accordance with Jordanian Planning Law Number 79 of 1966.

26. Appointment Number 42 of and Transfer of Jurisdiction Number 82 of 1991 (consolidated text) pursuant to Military Order Number 418 of 1971: Order Concerning the Law for Town, Village, and Building Planning<sup>68</sup>.

This appointed members to the secondary commission for natural protectorates and transferred to it the jurisdiction of the High Planning Council to issue permits for general and detailed plans for natural protectorates, and for construction work and development inside natural protectorates and parks, and it hears appeals against the decisions of the responsible authority made in accordance with Military Order Number 363 of 1969: Order Concerning the Defense of Nature

27. Appointment Number 43 and Transfer of Jurisdiction Number 83 of 1991 (consolidated text) pursuant to Military Order 418 of 1971: Order Concerning the Law for Town, Village and Building Planning<sup>69</sup>.

This appointed members of the secondary commission for roads and railways, and transferred to it the jurisdiction of the High Planning Council to issue permits for projects developing roads and railways.

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<sup>67</sup> *Ibid.*, p. 541.

<sup>68</sup> *Ibid.*, p. 542.

<sup>69</sup> *Ibid.*, p. 543.

28. Appointment Number 44 and Transfer of Jurisdiction Number 84 of 1991 (consolidated text) pursuant to Military Order Number 418 of 1971: Order Concerning the Law for Town, Village, and Building Planning<sup>70</sup>.

This appointed members of the secondary commission for construction licenses and transferred to it the jurisdiction of the High Planning Council to issue construction licenses pursuant to the Jordanian Planning Law and Israeli security instructions.

29. Appointment Number 45 and Transfer of Jurisdiction Number 85 of 1991 (consolidated text) pursuant to Military Order number 418 of 1971: Order Concerning the Law for Town, Village, and Building Planning<sup>71</sup>.

This appointed members of the secondary commission for sewage and garbage and transferred to it the jurisdiction of the High Planning Council to issue permits pursuant to general and detailed plans of cleaning and garbage collection, as well as authorizing sewage collection plans.

30. Appointment of Members and Transfer of Jurisdiction to Secondary Commission for Settlements pursuant to Military Order Number 418 of 1971: Order Concerning the Law for Town, Village, and Building Planning<sup>72</sup>

This appointed members to the secondary commission for settlement which is comprised of ten members headed by the officer of internal affairs, and includes a representative from the construction and housing ministry, a representative from the police, a representative of the International Zionist Histadrut, and a representative of the relevant special local commission. The jurisdictions of this commission include the approval of detailed planning schemes which are not within the jurisdiction of the other secondary commissions of the High Planning Council. This commission was also given the jurisdiction of a district commission as stated in the Law of Town, Village, and Building Planning Number 97 of 1966, within the borders of the regional and local councils of the Jewish settlements. This appointment and transfer of jurisdiction effectively annulled the aforementioned Appointment Number 37 and Transfer of Jurisdiction Number 77 of 1991.

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<sup>70</sup> *Ibid.*, p. 544.

<sup>71</sup> *Ibid.*, p. 544.

<sup>72</sup> *Collection of Proclamations, Orders and Appointments*, No. 144, September 1993, p. 1398.

31. Appointment of Members and Transfer of Jurisdiction to the Secondary Commission for Mining and Quarries pursuant to Military Order 418 of 1971: Order Concerning the Law for Town, Village, and Building Planning<sup>73</sup>.

This replaced the aforementioned Appointment Number 41 and Transfer of Jurisdiction Number 81 of 1991.

#### B) Gaza Region

##### *Military Orders Amending the Town Planning Ordinance of 1936*

1. Military Order Number 125 of 1967: Order Concerning the Town Planning Ordinance<sup>74</sup>. This order repealed the Egyptian Administrative Order Number 527 of 1957, and replaced article 3 of the Town Planning Ordinance so that all the members of the District Commissions for Town and Building Planning came from the Israeli occupation authority, including the department of internal affairs, public works, health affairs, and surveillance, as well as representatives of the legal advisor and the military commander of Gaza.

The commissions were also renamed the District Commissions.

2. Military Order Number 268 of 1969: Order Concerning the Town Planning Ordinance (Amendment number 1)<sup>75</sup>

This Order amended article 2 of the Military Order Number 125 of 1967 by adding the finance officer as a member of the District Commission.

3. Military Order Number 288 of 1969: Order Concerning the Town Planning Ordinance (amendment number 2)<sup>76</sup>

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<sup>73</sup> *Ibid.*, p. 1399.

<sup>74</sup> *Collection of Proclamations, Orders and Appointments for the Gaza Region*, Vol. 6, p. page 407.

<sup>75</sup> *Ibid.*, Vol. 14, p. 1045.

<sup>76</sup> *Ibid.*, Vol. 16, p. 1135.

4. Military Order Number 347 of 1970: Order Concerning Supervision of Construction<sup>77</sup>

This Order added article 3A to Military Order Number 125 of 1967 which had the result of amending article 7(1) of the Town Planning Ordinance so that it became possible to appoint a local commission for a town planning area not including a municipality without having at least two of the commission members not be from the government.

Article number 2 of this Order states that the military commander can prohibit, suspend or restrict construction, if convinced that it is necessary to ensure the security of the Israeli army or to maintain public order. In the event of non-compliance with his order, he can order that all or part of a building be demolished or removed. The military commander of the Gaza Region issued several such orders preventing construction, including Order Number 19 of 1980 Concerning Supervision of Construction along Deir Al-Balah-Kisofin Road<sup>78</sup> which prohibited construction within 30 meters from the center of that road, and Order Number 20 of 1980 Concerning the Supervision of Construction Along the Green Line and Sea Shore<sup>79</sup> which prohibited construction without license within a distance of 1000 meters from the green line, and 500 meters from the sea shore.

5. Military Order Number 366 of 1970: Order Concerning the Town Planning Ordinance (Amendment No. 3)<sup>80</sup>.

This Order replaced article 2 of Military Order Number 125 of 1967 which had the effect of amending article 3 of the Ordinance to state as follows:

"3-(1) A commission for building and town planning in each district shall be established in accordance with the structure defined by the area commander;  
(2) The boundaries of the town planning areas shall be determined by the area commander".

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<sup>77</sup> *Ibid.*, Vol. 21, p. 1479.

<sup>78</sup> *Ibid.*, Vol. 70, p. 7431.

<sup>79</sup> *Ibid.*, Vol. 70, p. 7433.

<sup>80</sup> *Ibid.*, Vol. 23, p. 1887.

Article 7 of the Ordinance was amended to read as follows:

"(1) The District Commission for Building and Town Planning shall function as a Local Commission for Building and Town Planning in every area which does not include a municipality".

It also repealed article 7(2) of the Ordinance and article 3a of Military Order Number 125.

6. Military Order Number 420 of 1972: Order Concerning Prohibition on Construction<sup>81</sup>

This Order prohibited construction on land which had been expropriated and authorized the demolition of any building erected on such lands, pursuant to article 119 of the Defense (Emergency) Regulations of 1945.

7. Military Order Number 420 of 1974: Order Concerning the Town Planning Ordinance (Amendment No. 4)<sup>82</sup>

This Order replaced article 3 of the Ordinance which pertained to the formation of district commissions with a new article granting the area commander the authority to establish district commissions in a manner he deems necessary. The quorum for the meetings of the district commissions is the majority of their members. If there is an even vote, the chairperson's vote prevails. This amendment also stipulated that the area commander had the authority to define the borders of town planning areas.

8. Military Order Number 506 of 1975: Order Concerning the Town Planning Ordinance<sup>83</sup>

This Order repealed Article 3 of Military Order 125 of 1967 and reinstated Article 7 of the Ordinance.

9. Military Order Number 506 of 1975: Order Concerning the Town Planning Ordinance<sup>84</sup>

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<sup>81</sup> *Ibid.*, Vol. 32, p. 2545.

<sup>82</sup> *Ibid.*, Vol. 38, p. 3189.

<sup>83</sup> *Ibid.*, Vol. 39, p. 3281.

<sup>84</sup> *Ibid.*, Vol. 39, p. 3397.

This added article 3 to Military Order Number 125 of 1967 which had the effect of adding two new articles to the Town Planning Ordinance. Those were article 7a, which authorized the area commander to establish a Special Planning Commission with the same jurisdiction as a Local Commission for Building and Town Planning, and article 7b, which authorized him to establish an Objections Commission to hear appeals from the decisions of the Special Planning Commission. The Objections Commission was given the jurisdiction of a district commission with respect to articles 17, 22, and 23 of the Ordinance, and the jurisdiction of the area commander with respect to article 18 of the Ordinance. This amendment was similar to the one introduced to the Jordanian Law for Towns, Villages and Building Planning, which transferred to the Special Planning Commission the jurisdiction of a district commission with respect to Israeli settlements in the West Bank, and granted the secondary commission for settlements the authority to hear appeals from the decisions of the Special Planning Commission.

10. Military Order Number 653 of 1980: Order Concerning the Town Planning Ordinance (Amendment No. 7)<sup>85</sup>.

This Order added article 3a to Military Order Number 125 of 1967 which had the effect of adding article 7c to the Town Planning Ordinance, stating that the issuance of a building permit is conditional on the presence of a shelter in the proposed house or building.

11. Military Order Number 777 of 1982: Order Concerning the Town Planning Ordinance<sup>86</sup>

This Order added article 3d to the Town Planning Ordinance which stipulated that all regulations, schemes or permits issued by a district or local commission prior to the appointment of the Special Planning Commission, remained in force pending their annulment or amendment by the Commission.

12. Military Order of 1984 Concerning Marking Buildings<sup>87</sup>

This Order was issued pursuant to article 91(a) of the Military Order Concerning Security Instructions of 1970, and compels the owners of

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<sup>85</sup> *Ibid.*, Vol. 43, p. 4047.

<sup>86</sup> *Ibid.*, Vol. 57, p. 6345.

<sup>87</sup> *Ibid.*, Vol. 74, p.7941.

buildings located in the aramat area (any area located outside the jurisdiction of the local authority) to post in a visible place a sign issued by the military commander or his representative.

13. Military Order No. 912 of 1986: Order Concerning the Town Planning Ordinance (Amendment No. 9)<sup>88</sup>

This Order introduced numerous amendments to the Town Planning Ordinance. Article 5(a) was added giving the district commissions the right to establish permanent secondary commissions, provided that a majority of the members of these secondary commissions came from the district commission. Article 7(a)c was added which granted the chair of the Special Planning Commission the same authorities as the chairs of the local and district planning commissions. Article 9(a) imposed a penalty on a member of any planning commission who grants a permit or authorizes as project knowing that it contravenes a planning scheme. Article 34(a) provided new definitions, and increased fines and prison sentences. Article 35(a) permitted the chair of a district or local planning commission to register a document in the registry office against any violator of the Ordinance. Article 36 was replaced by a new article which authorized the chair of a district or local planning commission (or an engineer appointed by the head of the Israeli civil administration) to halt the construction of a building which is being built without a license or in contravention to a license or planning scheme, where the matter is not yet before a court.

Articles 36(a) to 36(j) were added and most were taken from Israeli building and planning law. Article 36(a) authorized police officers of rank inspector or higher to issue an administrative order to cease building where there is a reasonable basis to believe that the building is being constructed without a license. This administrative order lapses after 30 days unless approved and renewed by the appropriate authority (objection commission or district court, depending on the situation). Before the end of this 30 day period, the person affected may apply to a court to have the order canceled.

Article 36(f) authorized the chairs of the district and local planning commissions to issue demolition orders if the building activity continued in contravention to the administrative order. Also, the district planning commission chair was authorized, on the advice of the chair of the relevant local planning commission, to order the demolition of a building constructed without or in contravention of a license, or in contravention of a planning

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<sup>88</sup> *Ibid.*

scheme. after receiving a report from an engineer confirming the contravention. The parties affected have the right to appeal the demolition order to the authority which issued it but the order will not be canceled unless it is proven that the construction was conducted in accordance with the Ordinance or that the order is not necessary to preserve the status quo (article 36(l)). It is also permissible for a court to issue a demolition order (article 36(j)) after hearing from all the parties concerned (36(k)). If an administrative or judicial demolition order is not carried out, another penalty may be imposed.

#### Military Order Number 919 of 1987: Order Concerning Prohibiting Construction\*

This Order amended Military Order Number 420 of 1971 and prohibited the reopening of a building which had been closed in accordance with article 119 of the Defence (Emergency) Regulations of 1945.

#### *New Regulations and Amendments Issued Pursuant to the Town Planning Ordinance*

##### 1. Town Planning Regulation Concerning Building (1971)<sup>89</sup>

This was issued by the District Commission for Building and Town Planning pursuant to article 4 of the Town Planning Ordinance. This regulation prohibits building without written authorization by the district commission in areas fifty or 75 meters from the town center as stated in the regulation. This Regulation is not valid in previously built-up areas.

##### 2. Town Planning Regulation Concerning Building Fees (1972)<sup>90</sup>

This defines the building fees as set out the regulation's schedule.

##### 3. Town Planning Regulation Concerning Construction Licenses (1974)<sup>91</sup>

This was issued by the District Commission for Building and Town Planning ("District Commission") pursuant to article 4 of the Town Planning Ordinance. It amended article 2 of the Town Planning (Licenses) Regulation and added new definitions. An individual submitting an application for a construction license was required to deposit five Lira for

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<sup>89</sup> *Ibid.*, Vol. 27, p.2267.

<sup>90</sup> *Ibid.*, Vol. 36, p.2953.

<sup>91</sup> *Ibid.*, Vol. 70, p.7415.

every square meter which the District Commission could take if the applicant violated the terms of the license (article 14(a)). Article 15 stipulated that a certificate of good construction had to be presented in accordance with a form attached in the regulation's schedule.

4. The Town Planning Regulation (1974)<sup>92</sup> (Amendment Number 2)

This canceled Town Planning Regulation Concerning Building fees (1972) and the schedule attached to the Town Planning (Licenses) Regulation (1923), as well as establishing a new method and venue for collecting fees.

5. Regulation Concerning Electricity and Communications (1977)<sup>93</sup>

Article 2 of this regulation, which was issued by the District Planning Commission, stated that for any building project submitted to the local commissions which are adjacent to a public road, prior authorization is required from both the official in charge of communications and in charge of electricity.

6. Regulation Amending the Schedule to the Town Planning (Licenses) Regulation(1981)<sup>94</sup>

This was issued by the District Commission for Town Planning in accordance with article 4 of the Town Planning Ordinance. It replaced the schedule to the Town Planning (Licenses) Regulation of 1941 with a new schedule which established the method for counting the building areas and the amounts of the license fees.

7. Regulation Concerning Licensing the Construction of Public Buildings (No.2) (1981)<sup>95</sup>

This was issued by the District Planning Commission pursuant to article 4 of the Town Planning Ordinance, and it repealed the Regulation Concerning Licensing the Construction of Public Buildings of 1981. Article 2 of this regulation stipulated that the local commissions could not issue licenses to build public buildings prior to having the written approval from the district commission. A public building was defined as any building which is used or prepared for "public meetings for the purpose of contributing to

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<sup>92</sup> *Ibid.*, Vol. 70, p.7421.

<sup>93</sup> *Ibid.*, Vol. 49, p.5117

<sup>94</sup> *Ibid.*, Vol. 55, p.6001.

<sup>95</sup> *Ibid.*, Vol. 55, p.6097.

educational, social, sport, religious, cultural, or scientific activities, or for the purpose of providing a service which is provided by one of the governing or local authorities”.

8. Regulation Concerning Building Lines (1984)<sup>96</sup>

This amended the schedule to the Regulation Concerning Building Lines of 1971, prohibiting construction within 75 meters from the center of a new road, "Road 2400".

9. Secondary Regulation Concerning Construction Licenses for Public Buildings (1985)

This was issued by the civil administration legal affairs' officer and the chairman of the District Planning Commission, and amended the Secondary Regulation Concerning Construction Licenses for Public Buildings of 1981 by redefining public buildings to become similar to the definition used in the Regulation Concerning Licensing the Construction of Public Buildings referred to above.

10. Regulation Concerning Maps (1987)

This was issued by the District Commission for Town Planning pursuant to article 5 of the Town Planning Ordinance. This redefined the method of map preparation, content, required scale, goal specifications, goal indicating colors, and the number of copies required of an abbreviated scheme (7 copies) and a detailed scheme (6 copies).

*Orders Concerning the Establishment of Town Planning Areas Pursuant to the Town Planning Ordinance (Article 10)*

1. Military Order (1979)<sup>97</sup>: Order Concerning the Establishment of a Town Planning Area (Al-Zweideh)

2. Military Order (1983)<sup>98</sup>: Order Concerning the Establishment of a Town Planning Area (Jabaliah al-Nazleh)

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<sup>96</sup> *Ibid.*, Vol. 74, p.7935.

<sup>97</sup> *Ibid.*, Vol. 51, p.5371.

<sup>98</sup> *Ibid.*, Vol. 72, p.7701.

3. Military Order (1983)<sup>99</sup>: Order Concerning the Establishment of a Town Planning Area (Beit Hanoun).

*Authorization of Schemes Pursuant to the Town Planning Ordinance (Article 18)*

Pursuant to article 18 of the Town Planning Ordinance, the Gaza Region area commander approved an abbreviated scheme for the Town of Rafah on 1 September 1977.

## **V. Legislation Promulgated by the Palestinian National Authority**

Order Concerning Multi-Storey Buildings in the Gaza Region (1994)<sup>100</sup>

This was issued by the head of the Palestinian National Authority and deals with the construction of multi-storey buildings in the Gaza Region in accordance with the stipulated conditions and specifications.

Article 2 of the regulation defines a multi-story building as "a building whose height exceeds fifteen meters calculated from street level to the floor of its highest story, provided that the number of floors exceeds four in addition to the ground floor. Floors erected below street level, on which the building is erected, are not to be included".

Article 36 stipulates that the provisions of the Town Planning Ordinance Number 28 of 1936, its amendments and the regulations issued concerning buildings, shall remain in force unless provided for in a special clause of the regulation.

## **VI. Palestinian-Israeli Agreements:**

The Cairo Agreement signed between the Israeli Government and the Palestine Liberation Organization on 4 May 1994 stipulates the transfer of jurisdiction in the areas of planning and construction in the Gaza Region and Jericho to the Palestinian National Authority, with the exception of issues pertaining to settlements and military installations. The agreement also

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<sup>99</sup> *Ibid.*, Vol. 72, p.7705.

<sup>100</sup> *Palestine Official Gazette*, No. 2, December 1994, p.13.

stipulates that projects and regulations valid in the Gaza Region and the Jericho area prior to the signing of the agreement shall remain in force unless amended or repealed pursuant to the agreement. It is permissible for the Palestinian National Authority to amend, repeal or issue planning schemes and building permits as well as exemptions within the areas falling under its jurisdiction, provided that such activities do not contravene the provisions of the agreement. Planning schemes shall be in the form of laws published by the Palestinian National Authority, a copy of which is given to the Civil Affairs Department. If Israel believes that a scheme or project does not comply with the provisions of the agreement, it is permitted, within thirty days of its reception at the Civil Affairs Department, to present it before a special sub-commission for its consideration. The Palestinian National Authority has to respect the recommendations of this sub-commission.<sup>101</sup>

This agreement imposes restrictions on the Palestinian National Authority in all matters pertaining to planning and construction in areas close to the demarcation line and inside "yellow areas." While buildings, installations and natural and artificial nurseries in the Gaza Region located within 100 meters of the demarcation line shall remain as they are, it is not permissible to erect new buildings within 500 meters of the security perimeter or inside the yellow area with the exception of the following:

It is permissible to build one single building or installation on a piece of land which is not less than 25 dunums.

The height of the building or installation must not exceed two stories.

The area of each story must not exceed 180 square meters.

The Palestinian Authority must also preserve the agricultural nature dominant in the remaining areas of the security perimeter.<sup>102</sup>

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<sup>101</sup> Cairo Agreement, attached annexes and maps issued by the forty ninth General Assembly and the Security Council (Arabic Text), p.79.

<sup>102</sup> *Ibid.*, p.37

## CHAPTER TWO

### PLANNING AND CONSTRUCTION LAWS AND REGULATIONS IN FORCE IN THE WEST BANK AND THE GAZA REGION:

A review and analysis of their significant elements

After reviewing the laws and regulations issued in Palestine since 1921, we will discuss those which are still in force today in the West Bank and Gaza Region. The emphasis will be on the following topics:

- the administrative structure of the planning authorities and their responsibilities;
- the different planning schemes and rules regarding their preparation, amendment and revocation;
- public participation in the planning process;
- construction licenses (conditions for application, acceptance or refusal, and the appeal process).

#### A) The West Bank

When Israel occupied the West Bank in June 1967, Jordanian Law for Town, Village and Building Planning Number 79 of 1966<sup>103</sup> (referred to hereinafter as the "Planning Law") constituted the legal framework for construction and planning in the West Bank. This Law, amended by Israeli military orders as discussed in the previous chapter, is still in effect in the West Bank.

#### **I. The Administrative Structure of the Planning Authorities and their Jurisdiction Pursuant to the Planning Law**

##### 1. The Minister: Article 4 of the Planning Law

If the planning system as described in the Planning Law is portrayed as a pyramid, then the Minister (the prime Minister in the case of the capital and the Minister of the Interior in other municipalities and village councils) stands at the top of this pyramid. Article 4 of the Planning Law discusses the Minister's duties which include the following:

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<sup>103</sup> *Jordanian Official Gazette*, No. 1952, September 25, 1966, p. 1921.

- Organizing land planning in the manner best serving the public interest;
- Ensuring that town and village planning are in compliance with government policy and progress community;
- Supervising within the local, district and joint planning commissions, ensuring that their work and decisions comply with the law;
- Declaring planning areas for towns and villages, and with a recommendation by the High Planning Council, declaring the expansion or cancellation of these areas.

After the Israeli occupation the authority of the Minister went to the officer of interior affairs who is appointed by the area commander pursuant to Military Order No. 418.

## 2. The High Planning Council: Article 5 of the Planning Law

The High Planning Council is composed of the Minister as chair, the capital's mayor, the under secretary of the Ministry of Public Works, the general secretary of the Jordanian Building Council, the director of the Housing Association, the planning director for towns and villages, the attorney general, the chief architect, and the under secretary of the Ministry of Health. The Council's quorum is five members and the chair has the casting vote. Article 6 of the Planning Law specifies the duties of the High Planning Council as follows:

- Declaring, amending and expanding planning locations in towns;
- Approving regional and outline planning schemes;
- Amending or canceling any license issued pursuant to the Planning Law within the conditions stipulated by the Law;
- Hearing appeals from the decisions of the district planning commission;
- Appointing a secretary.

While the Israelis kept the High Planning Council, its structure was altered in such a way that its members are now representatives of different civil administration departments as seen appropriate by the West Bank military governor (referred to hereinafter as the "area commander").<sup>104</sup> The area commander also appoints commissions for developing rural areas. By means of Military Order No. 418, art. 7 the Israelis added special jurisdictions to the Council which include:

- The power to amend, repeal or cancel any scheme or license;

<sup>104</sup> Israeli Military Order No. 418, (1971), art. 4.

- The power to take over the jurisdiction of all planning commissions;
- The right to issue, repeal or amend any license issued by any planning commission;
- The right to exempt any person from the requirement of acquiring a license;

The Israelis also transferred the jurisdiction of the district planning commission to the Council, as will be discussed later. Article 7(a) of Military Order 418 also authorized the High Planning Council to exercise its jurisdiction through appointed secondary commissions although a majority of the members of these secondary commissions must be from the High Planning Council. Amongst these secondary commissions are the Secondary Commission for Local Planning and the Secondary Commission for Settlements.

The Secondary Commission for Local Planning investigates objections to outline schemes regarding Palestinian villages, either approving or amending them. It also hears the appeals from decisions made by the Secondary Commission for Inspection where it has refused to issue construction licenses, or order the demolition of unlicensed buildings or those not built in compliance with their construction licenses or the rules of the Planning Law. The Commission is composed of the head of the Planning Department or representative as chair, the director of the Central Planning Department or representative (who acts as chair in the absence of the head and representative), the legal advisor or representative, the Survey Department officer or representative, the Health Department officer or representative and the representative of the relevant local planning commission.

The Secondary Commission for Settlements initiates and approves detailed schemes and parcellation schemes that do not fall within the jurisdiction of the other secondary commissions. It was also given the jurisdiction of the district planning commissions for areas within the borders of regional and local Jewish settlement councils. It is composed of the Interior Affairs officer or representative (and in their absence the head of the Central Planning Department) as chair, the head of the Planning Department or representative, the legal advisor or representative, the environmental affairs officer or representative, the traffic inspector or representative, a representative of the Ministry of Defense, a representative of the Israeli Defense Force, a representative of the World Zionist Labor Union, a

representative of the Ministry of Housing and Construction, and a representative of the concerned local planning commission.

### 3. The Central Department for Town and Village Planning

The Planning Law states that a Central Department of Planning should be formed within the framework of the Ministry of the Interior with a specialist in planning as its director. The director should act as a consultant for the Ministry of Interior and consult with the Minister regarding the appointment of planning specialists or consultant institutions to the Department. The Department has jurisdiction over the following:

- Conducting land and social surveys necessary to accomplish planning goals for towns and villages;
- Preparing regional planning schemes, and outline schemes for towns with no such schemes;
- Advising local planning commissions;
- Providing technical expertise regarding planning schemes and construction to joint district commissions;
- Preparing regulations regarding the various aspects of planning.

Israel maintained the Central Planning Department, and used it to prepare outline schemes for Palestinian villages, which focused on the existing land and building use rather than developing plans for the future. The outline schemes for the Jewish settlements were prepared by the World Zionist Labour Union or by Israeli town planners who were hired specifically for this purpose.

### 4. District Planning Commission

Pursuant to the Planning Law, a district planning commission should be formed in each district, and be composed of the district governor as chair, the attorney generals of Amman and Jerusalem, the general prosecutor of the district centers, a representative of the Ministry of Public Works in the district, a representative of the Central Planning Department, the district health director and a representative of the local planning commission when dealing with matters related to it.

The commission's functions include:

- Approving outline and detailed planning schemes;
- Investigating objections to regional, outline and detailed planning schemes;

- Making recommendations to the High Planning Council
- Hearing appeals from the decisions of the local planning commissions. In cases of dispute between local and district commissions, the local planning commission has the right to take the matter to the High Planning Council for a final resolution;
- Exercising the jurisdiction of local planning commissions in regard to regional planning areas and villages within its district.

After June 1967, the Israeli area commander transferred the jurisdiction of the district planning commission to the High Planning Council, dissolving one of the planning commissions established by the Planning Law.<sup>105</sup> At the present time, the Secondary Commission for Local Planning plays the role of the dissolved district commissions in regards to Palestinian residential areas, and the Secondary Commission for Settlement in regards to Jewish settlements.

#### 5. Local Planning Commissions: Article 9 of the Planning Law

The Planning Law authorizes the Minister, upon a recommendation from the High Planning Council and a referral by the director of the Central Department of Planning, to declare any district center, or any municipal areas or part thereof, or any village or part thereof, as a planning area. When such a declaration is made, the town or village council in that area becomes the local planning commission, unless the Minister instructs that a separate local planning commission be established in which case it will be composed of the area's administrative governor as chair, the mayor or head of the village council, a person named by the municipal or village council, a person named by the district planning commission, a representative of the Ministry of Health, and an architect from the municipality or Central Planning Department. In all cases the municipal or village council architect is the secretary. The quorum is half of the members plus one with the chairman having the casting vote. In villages without village councils, the Minister has the authority to take the necessary steps for planning upon recommendations by the High Planning Council.

The local planning commissions have jurisdiction over the following areas:

- Preparation of outline and detailed planning schemes;

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<sup>105</sup> *Ibid.*, art. 2(2)

- Approval of land parcellation schemes, ensuring that they comply with detailed planning schemes;
- Issuing construction licenses and building permits according to the Law;
- Inspecting construction and building activities to ensure that they comply with the license and the requirements of the Law;
- Issuance of enforcement notices and ensuring adherence to them;
- Supervising building construction and demolition;
- Supervising the widening of roads;
- Collection of fees and payments necessary to carry out its jurisdiction.

Pursuant to Article 40 of the Planning Law both local and district commissions may issue decrees to preserve trees and flowers planted at the side of roads or in parks and gardens (in coordination with the Ministry of Agriculture)

The role of the local commissions was terminated by Israeli amendments introduced by military orders which transferred their jurisdiction to "village planning commissions". The members of these village planning commissions are appointed by the area commander and do not include any village representatives<sup>106</sup>. At the same time, the elected Jewish local and regional councils are considered special planning commissions with the jurisdiction of the local planning commission and the possibility of being granted that of the district commission as well<sup>107</sup>. Israel maintained those local commissions situated within the town boundaries.

#### 6. Joint Planning Commissions: Article 10 of the Planning Law

If an area includes two local planning commissions then the Minister is authorized to order the formation of a Joint Local Planning Commission composed of at least one member of each local planning commission present in that area, in addition to any person or persons who have the necessary specialization and expertise. A joint district planning commission is formed on the same basis. The Minister appoints the chair for both joint

<sup>106</sup> *Ibid.*, articles 2(4) and 4(a).

<sup>107</sup> *Ibid.*, 2A, added in accordance with Military Order No. 604.

commissions. The joint local planning commission is given the same jurisdiction as a local planning commission, and a joint district planning commission is given the same jurisdiction as a district planning commission. No joint planning commissions were established during the period of Jordanian rule nor the Israeli occupation of the West Bank.

## II. Planning Schemes

Chapter 3 of the Planning Law deals with the different planning schemes: regional, outline, detailed, and land parcellation. Before any planning scheme is prepared, article 14 requires that a planning survey be undertaken which must include details of the area's: topography, geology, climate, history of its development, land usage (housing, agriculture, etc.), land ownership, land value, presence of general services (water, electricity, sewage, etc.), means of transport and amount of traffic, means of communication (telex, post, telephones, etc.), population (age distribution, income distribution, type of work, etc.) and the availability of natural resources.

### 1. Regional Planning Schemes: Articles 15-18 of the Planning Law

The Central Planning Department prepares regional planning schemes which serve as the foundation for outline planning schemes. According to article 15, these regional planning schemes should deal with the following subjects (which are also required in outline planning schemes):

- Location of new towns and villages;
- Expansion or restriction of expansion of existing towns and villages;
- Industry (factories, workshops, warehouses, and garages);
- Residential areas (land area, housing density, distance between buildings, ventilation, lighting and location in respect to surroundings);
- Public utilities (schools, markets, places of worship, cinemas, theaters and public halls);
- Other buildings (land area, elevation, dimensions, construction lines, distance between buildings, purpose and nature of use, design, color, building sections, work requiring licenses, number of apartments, number of rooms, provision of water tanks or wells for collecting rain water, shelters, and car parks);
- Public parks;
- Forests;

- Cemeteries;
- Quarries and mines;
- Preservation of historical antiquities;
- Means of transport;
- Roads (general traffic rights, construction of new roads, closure and detours);
- Communications (telegraph, telephone and wireless);
- Services (water, electricity and sewage).

A regional planning scheme must be prepared in the two years following the Minister's order that an area be considered a regional planning area. After consultation with the area's district and local commissions, the director of the Central Planning Department must submit the completed regional planning scheme to the district planning commission's offices. The scheme's submission is then advertised in the Official Gazette and two local newspapers, and the scheme is displayed at the offices of the district and local commissions for a period of two months (article 16). Within that period, any person may submit their objections to the scheme to the district planning commission. After investigating objections the district planning commission makes recommendations to the High Planning Council which has the right to approve a scheme with or without amendments and to put it forward for implementation (article 17). Its decisions are final. If the scheme is approved, an advertisement is placed in the Official Gazette and two local newspapers and the scheme is displayed in the district planning commission's and local commission's offices. If no date is specified for implementation, it will take place within fifteen days of advertisement in the Official Gazette. If the Higher Planning Council amends the planning scheme, it must be advertised again and displayed for one month to allow time for objections, after which there is a repetition of the procedures mentioned above (article 18).

During the period of Jordanian rule no regional planning schemes were prepared for the West Bank. The regional scheme for the Jerusalem district, known as RJ5 and the regional scheme for the Nablus district, known as S15, which were prepared in 1942 pursuant to Town Planning Ordinance No. 28 (1936), were the only regional schemes in the West Bank until the 1980s, and reflected realities and priorities which were much different than today. Nonetheless, they continued to be used as the basis for accepting or refusing to grant construction licenses in areas outside the boundaries of outline planning schemes.

In 1982 the Central Planning Department prepared Partial Regional Planning Scheme (Amendment) No. 1/82 (known as the "Project of the Center") for the Jerusalem RJ5 regional scheme. This scheme, which included parts of the Ramallah district, Bethlehem district and Jerusalem, was aimed at restricting the progress of Palestinian construction, particularly around Jerusalem, while allocating land for the establishment of Jewish settlements. The Project for the Center allocated 58,941 dunums for Arab construction, which represented 13% of the total area of the planning scheme and included 49 Palestinian towns and villages and 7 refugee camps with a total population of 213,937 people. On the other hand, 76,707 dunums were allocated for Jewish settlements, representing 17% of the total area.<sup>108</sup>

The second regional scheme prepared by the Israeli occupation authorities was the Partial Regional Road Scheme Number 50 of 1983, which came into force on May 29<sup>th</sup>, 1991. This dealt with existing and proposed roads in the West Bank and was an extension of the Israeli National Road Plan (National Plan No. 3). One of its aims appears to be to connect Israeli settlements in the West Bank with each other and with Israel, thus bypassing Palestinian population centers<sup>109</sup>. This road scheme introduced serious changes, the legality of which is doubted, dealing with the width of roads and their type.

Jordanian Law No. 29 of 1957, as amended by Military Order No. 810 of 1979, specified road type and width as follows:

- General state roads (main): width of 50 meters outside towns and 40 meters inside;
- District roads (secondary): width of 40 meters outside towns and 30 meters inside;
- Village roads (agricultural): width of 30 meters outside villages and 25 meters inside.

The Partial Regional Road Plan specifies road type and width as follows:

- Highways: width of 120 meters and a setback (no-building-zone) from center on both sides of 150 meters;

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<sup>108</sup> For an analysis of the project's goals, dimensions and negative impact on Arab citizens see Khamayseh, p. 18, and 20-25.

<sup>109</sup> Statement made by Officer in Charge of Infrastructure in Israeli Civil Administration in response to a petition by this author: High Court 3578/95, Abdul Fattah Salameh against the Military Commander of the West Bank, et al.

- Main roads: width of 100 meters and a setback from center on both sides of 120 meters;
- Regional roads: width of 60 meters and a setback from center on both sides of 100 meters;
- Local main roads: width of 40 meters and a setback from center on both sides 70 meters - Local main roads: width of 40 meters and a setback from center on both sides 70 meters

These amendments, implemented through a regional scheme prepared according to the Planning Law, contradict Law No. 29 (1957) and are therefore illegal. To legally achieve these amendments the occupation authorities could have amended the Law with a military order as they did in 1979, and not through a planning scheme. The restrictions introduced by this scheme, namely the status of the setbacks from the center of the roads as a no-building-zones lead the Israeli occupation authorities to issue many house demolition orders for houses built within these setbacks, including in the village of Housan where the local main No. 375 passes, and in the village of Jamma'in<sup>110</sup>.

## 2. Outline Planning Schemes: Articles 19-22 of the Planning Law

As mentioned previously, the subjects dealt with by outline planning schemes are similar to those of regional planning schemes, with one difference being that the outline scheme is limited to one town or village. According to article 19, outline planning schemes deal with the following:

- Existing and new roads (location, alteration, width specification);
- Land use (residential, agricultural, industrial, cultural, forestry, etc.);
- Land allocation for public utilities (schools, hospitals, railway stations, buses, airports, markets, places of worship, etc.);
- Construction (conditions and restrictions regarding the area of the land on which building is permitted, obligatory setbacks around buildings, building height and type);
- Granting the right to the local authorities or neighbors to pass sewage, drainage, or water pipes, hanging roads or tunnels across land or property belonging to someone else;
- Archeological and historical sites which should be preserved.

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<sup>110</sup> This author has dealt with various issues pertaining to the restriction on building and to decisions regarding house demolitions in these villages.

An outline planning scheme is proposed by a district planning commission upon a recommendation by the local planning commission. The scheme is advertised in the Official Gazette and two local newspapers and is displayed in the local planning commission's offices for a period of two months (article 20). Within that period or within a period of time specified in the advertisement, any person may submit objections to the scheme to the local commission. The local commission will then look into any objections and make recommendations to the district commission, which in turn investigates the objections sending a report to the High Planning Council which investigates each objection separately, informing those who submitted objections of its decision through the local commission. The High Planning Council has the right to approve a scheme with or without amendments and to put it forward for implementation. The Council also has the right after the scheme has been amended, to advertise it for a period of one month to allow for further objections. The decision of the Council regarding a scheme is final and will be valid fifteen days after advertisement in the Official Gazette (article 21).

Article 20 of the Planning Law allows the High Planning Council to temporarily approve an outline planning scheme either totally or partially on the condition that the scheme is submitted within one year of its temporary approval.

Procedures relating to the submission of objections, their investigation and the scheme's implementation are as specified in article 21 of the Planning Law.

During the period of Jordanian rule, outline planning schemes were prepared and approved for fifteen of the twenty five towns, while only one outline plan was approved for a village, that of Taybeh in the Ramallah district.<sup>111</sup>

During the Israeli occupation, outline planning schemes were prepared and approved for many towns, amongst them Beit Jala, Salfit, Bani Zeid and Halhoul.<sup>112</sup> Outline planning schemes were also prepared and approved for most of the Palestinian villages in the West Bank. These schemes were prepared in three main stages. The first began in 1982 when town planner Shamshony prepared approximately 283 schemes. The second began in 1985 when Palestinian planners prepared approximately 120 schemes. By 1987, 55 of these 120 schemes had been discussed by the Central Planning Department and 23 had been submitted, through village councils, to the

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<sup>111</sup> Coon, p. 85.

<sup>112</sup> Khamayseh, p. 19.

High Planning Council. The third stage began in 1989 when the Central Planning Department started preparing outline schemes for all Palestinian villages.<sup>113</sup> Schemes prepared by the Central Planning Department were distinguished by the fact that they only specify the areas in which building is permitted and do not take into consideration the matters that a outline planning scheme should, pursuant to Article 19 of the Planning Law. These schemes are called partial outline plans and consist of an aerial photograph of the village with the scheme's boundaries marked in blue. These boundaries often excluded many of the village's houses. The concerned authorities did not conduct surveys or research as required by the law in order to prepare these schemes and they did not take into consideration the real present and future needs of the population. These outline planning schemes both fail to fit within the proper and developed basis of planning and also are violation of the terms of the Planning Law.

### 3. Detailed Planning Schemes: Articles 23-24 of the Planning Law

After approval of a outline planning scheme, a detailed planning scheme is undertaken for each of the various elements of that outline scheme (article 23(1)). A local commission may at any time prepare a detailed scheme for any land lying within its planning area, or approve a detailed planning scheme submitted by a land owner. Such a scheme becomes valid after the approval of the district commission. In the case of a dispute between the two commissions, the matter is referred to the High Planning Council. A detailed planning scheme is prepared for small towns and villages (article 23(2)).

Procedures concerning the submission of detailed planning schemes are similar to those for outline planning schemes pursuant to Article 20 of the Planning Law. Within two months from date of advertisement of the scheme's submission, any person with an interest in the land or buildings included in the scheme may submit an objection to the local commission. The local commission will then forward those objections, along with its report regarding them, to the district commission which then investigates each one separately, replying to those who submitted objections through the local commission. An official advertisement of the scheme's submission is placed in the Official Gazette and two local newspapers and the scheme is displayed in the local commission's offices. The planning scheme will then be put forward for implementation within the period specified by the district

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<sup>113</sup> Coon, p. 66-67, and p. 85-90.

commission or if unspecified, within fifteen days of the date of advertisement in the Official Gazette (article 24).

4. **Amendment of Planning Schemes:** Article 25 of the Planning Law  
The district planning commission may, with a recommendation by the local commission, ask the director of the Central Planning Department to amend any approved outline scheme at least once every 10 years. After undertaking the necessary surveys, the director submits a report to the district commission regarding the proposed amendments. Copies of the proposed scheme are sent to the local commission and it is referred to the High Planning Council which has the authority to approve or refuse the amendment of the scheme. Submission, approval and implementation are subject to the procedures set out in article 24 of the Planning Law regarding detailed planning schemes.

5. **Laws and Conditions of Planning:** Article 27 of the Planning Law  
The Planning Law states that every planning scheme must be accompanied by a list of the conditions and rules essential to the accomplishment of its goals, such as those concerning:

- Management and procedures for monitoring planning;
- Classification of land use, roads and building lines, building height, number of stories, area of stories in relation to the land area, population density, division and sorting.

6. **Land Parcellation Schemes:** Articles 28-30 of the Planning Law  
Article 28 of the Planning Law states that no person is allowed to divide or register a division of any piece of land less than ten metric dunums, without a parcellation scheme approved by the local commission. A parcellation scheme should indicate:

- Land borders;
- Approved and proposed roads;
- Any other matter necessary for the parcellation scheme to correspond with the relevant detailed planning scheme.

### **III. Construction Licenses and Building Permits**

1. **The Necessity to Acquire a Construction License:** Articles 34-35 of the Planning Law

The Planning Law states that no work with the purpose of planning or construction may be undertaken on any land without first acquiring a license for that purpose.

Article 34 of the Planning Law provides an extended meaning of the word *construction* which includes:

- Construction of any building;
- Making changes to an existing building (expansion, adjustment or demolition);
- Use of any land or building for a purpose other than that specified in the planning scheme or license issued for that particular land or building;
- Construction of sewage and drainage systems;
- Construction of excavations and landfills;
- Construction of roads and terracing.
- Construction and work related to the external appearance of a building (applying paint, whitewash, etc.);
- Installation of electric elevators;
- Construction of a bath, toilet or sink in an existing building.

The word *construction* does not include:

- Non-constructional internal maintenance and renovation ;
- Road maintenance and improvement by the authority;
- Sewage pipe renovation;
- Underground installation of pipes or wires (including those crossing a road or land);
- Use of land for agriculture in an area so specified.

Anyone wishing to undertake construction which requires a license, should submit an application to the local planning commission or to the concerned planning commission in accordance with the rules and regulations specified by Article 35 of the Planning Law. The local planning commission studies the application and then informs the applicant of its decision.

## 2. The Right to Appeal: Article 36 of the Planning Law

Any person whose application has been refused or any person who will be negatively affected by an issued license may, within a month of receiving the local planning commission's decision, request that the local commission refer the application to the district commission. If the decision of the district commission is the same as that of the local commission, it is final. If the decision of the district commission is different from that of the local commission, the local commission may, within one month of receiving

notice from the district commission, ask to refer the matter to the High Planning Council whose decision is final. If an application to the district commission for a permit is refused there is the right, within a month of notification, to request that the district commission refer the application to the High Planning Council whose decision is final.

### 3. Procedures for Construction and Building Monitoring and the Implementation of Warnings: Article 38 of the Planning Law

If it becomes evident to a local or district commission that construction has taken place without a license or in contravention of the terms of an issued license, the commission has the right to issue a warning to the land owner, occupant, contractor and building expert. The warning may demand:

- The return of the land to its state prior to the start of construction within a period that does not exceed 15 days from the date of the warning ;
- The removal, demolition or alteration of the building or the termination of its construction.

If, after the period specified in the warning, the concerned person has not complied with the demands, the relevant planning commission may order steps to be taken to remove the violation at the owner's expense. A construction license issued based on false information may be revoked by the commission which issued it. Any construction already undertaken will be considered as having been built without a license and the procedures stated above will be applicable to it.

### 4. Changes Introduced by Israel

Palestinian residents of the West Bank face great difficulties in acquiring construction licenses, especially in the villages and areas outside municipalities. These difficulties arise from long and arduous bureaucratic procedures, most of which were not published. Applications must be made through a registered architect recognized by the Planning Department. The architect prepares a survey, and attaches a certificate from the *Mukhtar* (village head) and the neighboring land owners stating that the applicant is the owner of the land and that the neighbors have no objections to the proposal. The application is then submitted to the local branch of the Central Planning Department. There the application is inspected by the "Information Commission" which ensures that it conforms with regional and outline planning schemes and that the site is not within a "National Development Area". If rejected, the survey and application are returned to their owner. If accepted, the application is referred to the archeological affairs officer, the

administrator of absentee properties, the military governor, the Inspection Department and finally the Land Survey Department. If all these departments give their approval the application is returned to the Central Planning Department. After a second inspection, the Central Planning Department will decide whether or not to grant its preliminary approval. The applicant must then prepare a detailed proposal according to the instructions of the Central Planning Department, the Department of Health, the Department of Public Works, and the Department of Transportation. The application is then registered and a file is opened. The secondary commission for inspection then decides whether to issue a license, and then only after the payment of a second fee.<sup>114</sup> In light of the many steps necessary to apply for a construction license, it is not surprising that the majority of applications are unsuccessful.<sup>115</sup>

The Secondary Inspection Commission has jurisdiction over decisions on license applications. It is composed of the head of the Infrastructure Department as chair, the director of the Planning Department, and the judicial counselor. The commission was also granted the jurisdiction of the district and local planning commissions in respect to the procedures concerning the monitoring of construction and the issuance of warnings. For those whose application has been refused, or those who have received a final order to halt construction or a demolition order, there is the right to appeal to the Secondary Commission of Local Planning.

The issuance of construction licenses is controlled by the High Planning Council and the secondary commissions appointed by it. This runs contrary to the Planning Law which gives jurisdiction over issuing construction licenses to the local planning commissions which are usually the municipal or village councils, which provided (if only theoretically) an opportunity for public participation in planning.

#### **IV. Public Participation in the Planning Process and Representation in the Planning Commissions**

##### **1. Participation Through Representatives**

The participation of citizens in the decision-making process for issues affecting their lives is a fundamental right. This is of course equally true concerning planning decisions which affect the public's lives and rights

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<sup>114</sup> *Ibid.*, pp. 121-126. Khamayseh, p. 41-44.

<sup>115</sup> *Ibid.*

regarding their private property. Since personal participation is impractical in a modern country with a population of many millions, a truly democratic system achieves participation of its citizenship by means of elections providing representatives to the ruling authority. In a healthy system, the balance between central rule (the government) and local rule (the municipalities and the village and local councils) is an important factor when considering the interests of the population versus those of the state or authority (which often reflects the interest of only a few parties or groups). Naturally it is impossible for a population to participate in every decision taken by the planning authorities and while it should participate in planning decisions taken at the local level through representatives in the local authority, planning at a national level should be left to the central planning commissions (which should include representatives of the public), planning experts, and the government (which should, in a healthy democratic system, represent the interests of the public).

## 2. Public Participation and Representation Pursuant to the Planning Law

At the local planning level the population's participation in the planning process is achieved by means of municipal or village councils which form the local planning commissions. For true representation, each town should have a municipal council and each village a village council, the members of which should be elected by the population of that town or village. However this representation is adversely affected by two factors. Firstly, the Minister has the right, on recommendation by the district planning commission, to issue an order whereby a municipal or village council is not considered the local commission. A local commission is then appointed with half of its members from the central government (the governor, a representative of the Health Ministry, and a person named by the district commission).<sup>116</sup> Secondly, most villages in the West Bank do not have village councils and those that did, had them dissolved by the Israeli occupation authority after the 1976 municipal elections.

The only member of the High Planning Council who could be considered a representative of the population is the head of the Engineering Union. The rest of the council members are representatives of various government departments (article 5 of the Planning Law). In the district planning commission the population is represented by a local planning commission

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<sup>116</sup> Law for Town, Village, and Building Planning, *supra*, art. 9(1)(d).

representative who is, however, only one of six members and is only involved in issues relevant to the local commission concerned (see article 8 of the Planning Law).

### 3. Public Participation in the Planning Process and Representation in the Planning Authorities since 1967

The Israeli occupation added to the problems already present in the Planning Law and public representation in the various planning authorities decreased even further after 1967. The Israeli occupation authority first canceled the village commissions, transferring their jurisdiction to six village commissions appointed by the High Planning Council, all of whose members are representatives of the military government and the civil administration. The right of local commissions to issue construction licenses was transferred to the High Planning Council which acts through the Secondary Commission for Inspection. The district commissions were also canceled and their jurisdiction transferred to the High Planning Council which then appointed the Secondary Commission for Local Planning which has jurisdiction over Palestinian villages. All the members of the Secondary Commissions except one are representatives of the central authority. The remaining member is a representative of the village planning commission who is appointed by the High Planning Council and thus the commissions can be considered government departments, or at least commissions representing the interests of the central authority rather than the population.

While the Palestinian population has been deprived of its right to participate in the various planning bodies, the population of the Jewish settlements participates in planning decisions relevant to them through their elected representatives in local or regional councils. As special planning commissions established pursuant to a military order issued by the military governor of the West Bank, these councils were given the jurisdiction of local commissions (with the possibility of being granted that of a district commission). The Secondary Commission for Settlements plays the role of the district commission regarding Jewish settlements, representing their interests through the representative of the relevant local or regional council.

#### B) The Gaza Region

When the Gaza Region was occupied in 1967, Town Planning Ordinance No. 28 of 1936 and its amendments (hereinafter referred to as the Town

Planning Ordinance) constituted the legal framework for construction and planning. The significant elements of this law will be discussed in reference to the topics previously highlighted.

## **I. The Administrative Structure of the Planning Authorities and their Jurisdiction Pursuant to the Town Planning Ordinance**

### **1. The High Commissioner**

The high commissioner's position at the top of the administrative pyramid in Gaza involves authority over various legislative and management functions, including in the field of planning. Pursuant to the Town Planning Ordinance (itself promulgated by the high commissioner), the high commissioner has jurisdiction over the following:

- Appointing an employee from amongst those specialized in town planning in the government of Palestine as a member of the district commission for building and town planning<sup>117</sup>;
- Approving rules and by-laws passed by the district planning commissions in accordance with Articles 5 and 6 of the Town Planning Ordinance;
- Authorizing, on request by a district commission, orders to consider any area lying within the district boundaries a town planning area<sup>118</sup>;
- Ordering the implementation of any planning scheme prepared by a local commission for a town planning area (not including a municipal area which is the jurisdiction of the district commission)<sup>119</sup>;
- Authorizing a district commission to implement an outline scheme and selecting the date of implementation<sup>120</sup>;
- Authorizing a district commission to amend or cancel an outline scheme<sup>121</sup>.

After the conclusion of the British Mandatory Government in Palestine, the Gaza Region came under Egyptian administration. The jurisdiction of the high commissioner passed into the hands of the administrative governor general of the Gaza Region, a major general appointed by Ministerial

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<sup>117</sup> Town Planning Ordinance, *supra*, art. 3(1)(5).

<sup>118</sup> *Ibid.*, art. 10(1).

<sup>119</sup> *Ibid.*, art. 7(3).

<sup>120</sup> *Ibid.*, art. 18(1) &(2) as amended by Town Planning (Amendment) Ordinance No.5, art. 6 (1939).

<sup>121</sup> *Ibid.*, art. 19 as amended by Town Planning (Amendment) Ordinance No.5, art. 7(1939).

decision. The governor general issued administrative orders to amend Article 3 of the Town Planning Ordinance, whereby the district planning commission became the Central Commission for Building and Town Planning. All of its members were representatives of the various governmental departments.

After the Israeli occupation 1967 the jurisdiction of the governor general passed to the commander of the Israeli defense forces for the Gaza Region and Northern Sinai (who had both legislative and executive powers). On 23 November 1967, the Israeli army commander repealed Administrative Order No. 527 and all appointments which had taken place in accordance with it, replacing it with Military Order No. 125. This amended the Town Planning Ordinance, replacing Article 3 so that all members of the Central Commission for Building and Town Planning were representatives of the related Israeli military authority, including Internal Affairs, Health Affairs, Surveillance, the Gaza district legal advisor and military commander. This name of the commission returned back to the District Commission. Further, the authority of the commander was used to declare the town planning areas of Alzudweidah (March 1, 1979) and Jabalia Alnazaleh and Beit Hanoun (October 13, 1983).

## 2. District Planning Commissions: Article 3 of the Town Planning Ordinance

District commissions for building and town planning (referred to hereinafter as district commissions) were formed in accordance with Article 3 (1) of the Town Planning Ordinance. They were originally made up of the district governor as chair, a representative of the attorney general, a representative of the director of Medical Services, a representative of the director of Public Works, and an officer of the government of Palestine qualified in town planning. During the period of Egyptian administration, article 3 was amended and the commission structure became as follows: the director of Village and Municipal Affairs as chair, a representative of the director of Public Works, a representative of the director of Legal Affairs, a representative of the director of Medical Services, the deputy governor and the director of Area and Town Planning.

While the Israeli occupation authority maintained the district commission, its structure was altered so that it was comprised of the official in charge of Internal Affairs as chair, a representative of the staff affairs officer for Public Works, a representative of the director of Medical Services, a representative of the director of Land Survey Affairs, a representative of the

legal advisor for the Israeli defense force commander in the area, and a representative of the army commander for the relevant district. Israeli Military Order No. 368 of 1969 added the finance officer as a member of the District Commission.

The Israeli army commander further amended Article 3 of the Town Planning Ordinance on several occasions. After the final amendment it stipulated that:

- A commission is formed in each district for the building and town planning with a structure that is decided upon by the area commander;
- The quorum for district commission meetings is the majority of its members, with the condition that the chair or the chair's permanent deputy (appointed by the area commander) be present. The chair has the casting vote.
- The area commander determines the district planning borders.

The district commission has jurisdiction over the following:

- Issuing by-laws concerning conditions for application to the local commissions for licenses ;
- Imposing special restrictions on licenses (conditions on construction or land use, imposed fees, the submission of maps, etc.).<sup>122</sup>
- Issuing regulations regarding various planning issues as specified in Article 5 of the Town Planning Ordinance. The commission used its jurisdiction and issued the Gaza Old Town Building Rules (1938) and the Town Planning (Licenses) Regulation (1941);
- Specifying the borders of a town planning area<sup>123</sup> (not including district borders which were, until the arrival of the Palestinian authority, the jurisdiction of the Israeli military governor);
- Forming a local commission of at least seven members for areas without a municipal area which are specified by the high commissioner as town planning areas<sup>124</sup>;
- Requesting that the local commission prepare and submit outline planning schemes to it within a specific period of time<sup>125</sup>;

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<sup>122</sup> *Ibid.*, art. 4 as amended by Town Planning (Amendment) Ordinance No.8 (1938), article 3.

<sup>123</sup> *Ibid.*, art. 10(2).

<sup>124</sup> *Ibid.*, art. 7(1).

<sup>125</sup> *Ibid.*, art. 12(1).

- Giving permission to the local commission to issue licenses which may contradict previously approved planning schemes;
- Approving detailed planning schemes which then become valid<sup>126</sup>;
- Preparing detailed planning schemes when the local commission's fails to do so. For the purpose of the Ordinance such schemes are then considered detailed schemes prepared by the local planning commission<sup>127</sup>;
- Investigating objections to outline and detailed schemes;
- Putting forward (with the authorization of the High Commissioner) outline schemes for implementation;
- Putting forward detailed schemes for implementation at least two months after the announcement of the scheme's submission;
- Investigating objections to parcellation projects and authorizing local commissions to put forward these schemes for implementation<sup>128</sup>;
- Hearing appeals from the decisions of local commissions to refuse construction licenses (its decisions are final)<sup>129</sup>;
- Requesting, by means of an announcement, that a local commission begin the expropriation of land and buildings in order to implement an outline or detailed scheme (after consultation with the local commission)<sup>130</sup>.

While the Egyptian administrative governor did not alter the jurisdiction of the district commission, the Israeli military governor reduced its authority in regard to issues related to the Jewish settlers. Special planning commissions were established and granted the jurisdiction of the local commissions. Appeals from their decisions are heard by the Objections Commission established pursuant to article 7(b) of the Town Planning Ordinance which was introduced by Military Order No. 506 (1975). This Commission has the authority of a district commission in respect to Articles 17, 22 and 23 of the Town Planning Ordinance and the authority of the High Commissioner pursuant to Article 18. In a later amendment, the chair of a special planning commission was granted the jurisdiction of the chair of a local or district commission.<sup>131</sup> Pursuant to an amendment introduced by Military Order

<sup>126</sup> *Ibid.*, art. 14(1).

<sup>127</sup> *Ibid.*, art. 15.

<sup>128</sup> *Ibid.*, art. 20(4)&(5).

<sup>129</sup> *Ibid.*, art. 22.

<sup>130</sup> *Ibid.*, art. 24.

<sup>131</sup> *Ibid.*, art. 7A, para. C added in accordance with Military Order No. 539 (1986).

No. 777 (1982), all regulations, schemes and permits issued by a district or local commission prior to the appointment of the special planning commissions remained in force pending their annulment or amendment by those commissions. At the same time, the Israeli military governor added new areas of jurisdiction to the district commission so that:

- The chair (or someone appointed by the chair), in cooperation with the chair of the local commission and a specialized architect appointed by the head of the civil administration can issue an administrative order stopping construction by any person violating the Town Planning Ordinance so long as they have not been charged<sup>132</sup>;

- The chair can issue an administrative demolition order in cases where construction continues despite an order to stop<sup>133</sup>;

- The chair can, after consultation with the judicial advisor of the local commission and based on a recommendation by the local commission chair, issue an administrative demolition order if a building has been constructed without a license or not according to its license specifications. However this cannot occur before a declaration by a specialized architect stating that the building has been built without a license, and that construction is not yet complete or that construction was completed less than thirty days ago and that on the date of the statement the building has not been occupied for a period exceeding two weeks;<sup>134</sup>

- A district commission can appoint permanent sub-commissions to handle specific matters, although a majority of the members on these sub-commissions must be from the district commission. The district commission may transfer its jurisdiction to these sub-commissions with the exception of issuing local and internal regulations.<sup>135</sup>

### 3. Local Planning Commissions: Articles 6 & 7 of the Town Planning Ordinance

If the High Commissioner issues an order specifying a certain area as a town planning area, and if that area includes a municipal area or a part of one, then the municipal council becomes the local planning commission (article 6). If the area does not include a municipal area, then the district commission concerned appoints a local commission composed of seven

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<sup>132</sup> *Ibid.*, art. 36 added in accordance with Military Order No. 912 (1986).

<sup>133</sup> *Ibid.*, art. 36F added in accordance with Military Order No. 912 (1986).

<sup>134</sup> *Ibid.*, art. 36JD added in accordance with Military Order No. 912 (1986).

<sup>135</sup> *Ibid.*, art. 5A added in accordance with Military Order No. 912 (1986).

members, including one appointed chair and at least two others who are not government employees (article 7). The quorum is four members and the chair has the casting vote. Israeli Military Order No. 288 (1969) added article 3(a) to Order No. 125 and by so doing deleted the phrase "(O)n the condition that they be at least two" from Article 7(1). This made it possible to appoint a local commission (for an area which does not include a municipal area) without having at least two non-government employees as members.

Prior to its amendment by the Israeli occupation authority, the Town Planning Ordinance stated the jurisdiction of the local commissions as follows :

- Preparation of plans for construction and demolition of buildings, widening and organizing roads while ensuring that the regulations of the Town Planning Ordinance and any other internal regulations are adhered to (article 9);
- Preparing detailed planning schemes either on its own initiative (article 14(1)) or by order of the district commission (article 15(1));
- Preparing, with authorization of the district commission, parcellation schemes (article 20(8));
- Issuing/refusing construction licenses (article 21);
- Receiving objections to outline, and detailed schemes and referring them to the district commission (article 17), and the same for parcellation schemes (article 20(4));
- Expropriating, by order of the district commission, land and buildings slated for expropriation at any time after submission of a planning scheme for implementation (article 25).

Similar to the case with the district commission, the Israeli military governor reduced the jurisdiction of the local commission with regard to the Jewish settlements. This jurisdiction was granted to special planning commissions<sup>136</sup> whose chair has the jurisdiction of the of local and district commission chair. At the same time the military governor increased the jurisdiction of the special planning commissions, and especially that of the chair, so that:

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<sup>136</sup> *Ibid.*, art. 7A added in accordance with Military Order No. 539.

- The chair can issue an administrative order to stop construction by any person violating the Town Planning Ordinance so long as they have not been prosecuted;<sup>137</sup>

- The chair can issue an administrative demolition order, to be carried out at the expense of the violator, in cases where the violation continues after the issuance of an order to stop construction.<sup>138</sup>

## II. Planning Schemes

The Town Planning Ordinance uses the term planning “project” and not planning “scheme” as is the case in the Jordanian Law for Town, Village and Building Planning. The planning projects are also specified as town planning projects perhaps because (as is reflected by the title of the law) the Mandate legislator saw that special attention should be given to large population centers as represented by towns. Villages as population centers are only dealt with as areas that lie within a “town planning area that does not have a municipal council”.

### 1. Outline Schemes: Article 12 of the Town Planning Ordinance

Outline schemes are prepared by the local commissions upon request by a district commission and within a period specified by the latter. In general the scheme aims to “secure the basic necessities of health, transport, picnic areas and means of comfort” in regard to lands that lie within the areas of town planning.<sup>139</sup>

A scheme, to which a map of the areas is attached<sup>140</sup> may cover the following:

- Construction of new roads and streets; as well as the paving, altering direction, widening and closing of existing roads and streets;
- Establishment of building lines and setbacks;
- Drainage pipes;
- Water sources;
- Specification for industrial, cultural and residential areas;

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<sup>137</sup> *Ibid.*, art. 7A para. C added in accordance with Military Order No. 912 (1986).

<sup>138</sup> *Ibid.*, art. 36F added in accordance with Military Order No. 912 (1986).

<sup>139</sup> *Ibid.*, art. 12(1).

<sup>140</sup> *Ibid.*, art. 21(2).

- Restrictions on space to be left between buildings and the type and height of buildings;
- Specification of public and private areas;
- Retention of land for future airports;
- Retention of land for cemeteries.

After the decision to prepare an outline scheme, the local commission advertises that the scheme is being conducted. The district commission then specifies the conditions upon which construction licenses will be issued in the area of the proposed scheme.<sup>141</sup> A copy of the scheme is displayed in the local commission's offices and its submission is advertised in the Palestinian Gazette.<sup>142</sup> Any person believing that they will be negatively affected by a scheme may submit an objection within a time specified by the district commission. The local commission forwards any objections to the district commission which investigates each one informing the person that submitted it of its decision.<sup>143</sup> Then, with the authorization of the high commissioner, the district commission puts forward the scheme for implementation. An advertisement is placed in the municipal office, or if the scheme does not include part of a municipal area, in a place for public announcements. An advertisement is also placed in the Palestinian Gazette. The project is implemented on the date specified by the high commissioner or if unspecified, within fifteen days of the advertisement in the Palestinian Gazette. The district commission may amend, halt or cancel any scheme pursuant to article 16 (project advertisement), article 17 (appeals) and article 18 (approval and implementation).

## 2. Detailed Planning Schemes: Article 14 of the Town Planning Ordinance

The local commissions prepare detailed schemes either on their own initiative or at the request of a district commission. A detailed scheme may not be implemented before it has the approval of the district commission which will put it forward for implementation not less than two months from the date of its submission at the local commission's offices (article 16). After the decision by the district commission to implement a scheme, an advertisement regarding this is placed in the municipal offices (or a place for

<sup>141</sup> *Ibid.*, art. 13(1).

<sup>142</sup> *Ibid.*, art. 16(1).

<sup>143</sup> *Ibid.*, art. 17.

public announcements) and the Palestinian Gazette. Copies of the scheme, with maps, are displayed in the local commission's offices, a fact which is also advertised in the Palestinian Gazette (article 18). If the district commission does not specify a date for implementation it will take place within fifteen days of the announcement in the Palestinian Gazette of its submission to the local commission (article 18(3)). The district commission may amend, halt or cancel any detailed scheme. Any person who is negatively affected by a detailed scheme has the right to object to it, or to its amendments, freezing or cancellation, in which case the same procedures regarding objections, amendments, freezing, or cancellation of outline schemes apply (articles 17 and 19).

A detailed scheme and attached map<sup>144</sup> should deal with all those matters touched on by outline schemes in addition to all or some of the following:

- Division of land into building areas and sites;
- Specification of land for public use (roads, schools, squares, places of worship, etc.);
- Organization of garbage disposal and treatment;
- Organization of lighting and electricity;
- Specification of locations for reserve power lines;
- Specification of locations for buildings with specific purposes and those subject to restricted conditions;
- Abolition and reconstruction of overcrowded and densely populated areas;
- Control of the size, height, design and external appearance of buildings;
- Tree planting and preservation;
- Reconstruction and allocation of plots of land;
- Granting special jurisdiction to the local commissions in order to execute the general aims of a scheme;
- Cost of the scheme and rules regarding collection of the betterment tax on land, the value of which will increase due to the execution of a scheme.

### 3. Parcellation Schemes: Article 20 of the Town Planning Ordinance

A property owner in an area where an outline or detailed scheme has been approved for implementation may submit a parcellation scheme regarding their property and must do so if the local commission orders this. The scheme should be attached to maps of the land with scales of 1: 1250, 1 :

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<sup>144</sup> *Ibid.*, art. 14(2).

250 and 1 : 625.<sup>145</sup> The scheme should outline its aim and state the percentage area of the land concerned in relation to the area of the scheme.<sup>146</sup> Details of land plots according to registration records<sup>147</sup> should be illustrated.

Copies of parcellation schemes are submitted to the local commission's offices and an advertisement regarding this is placed in the municipal department (or in a place for public announcements) and in the Palestinian Gazette.<sup>148</sup> An owner of other property included in an parcellation scheme may submit objections to the local commission pursuant to the form and period specified by the district commission for that purpose.<sup>149</sup> The local commission forwards objections to the district commission which investigates each one and informs the person who submitted it of its decision.<sup>150</sup> Six weeks after the announcement of the scheme's submission, the district commission may grant authorization for its implementation. This is announced in the municipal department (or a place for public announcements) and the Palestinian Gazette. If unspecified by the district commission, the scheme will be implemented fifteen days after the announcement of its submission to the local commission.<sup>151</sup> The local commission may from time to time and with authorization by the district commission, amend, freeze or cancel any parcellation scheme.<sup>152</sup>

#### 4. Summarized Schemes

- In all areas where a local commission has been appointed pursuant to Article 7 of the Town Planning Ordinance (that is, an area with no municipality), seven copies of a summarized scheme must be submitted to it with maps to the scales of 1:20,000 and 1:50,000 or as specified by the local commission. The local commission can request a report from whomever submits a summarized scheme covering all or some of the following:

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<sup>145</sup> Town Planning Regulation (maps) (1987), article 5(1)1. This Regulation repealed the Town Planning (Maps) (1927).

<sup>146</sup> *Ibid.*, art. 6.

<sup>147</sup> *Ibid.*, art. 7.

<sup>148</sup> Town Planning Ordinance, *supra*, art. 20(1)&(2).

<sup>149</sup> *Ibid.*, art. 20(3).

<sup>150</sup> *Ibid.*, art. 20(4).

<sup>151</sup> *Ibid.*, art. 20(5),(6)&(7).

<sup>152</sup> *Ibid.*, art. 20(8).

- Land ownership;
- Land type;
- Building and housing density and style;
- Land and building use;
- Public areas;
- Public institutions;
- Trade;
- Traffic;
- Cultural and industrial areas;
- Land gradient;
- Buildings and areas of historical, religious, architectural or scientific value;
- Services (electricity, water, sewage and telephones).

Using the authority of the high commissioner, the Israeli military governor for the Gaza Region authorized the implementation of the summarized scheme for the town of Rafah on 1 November 1977.<sup>153</sup>

### III. Construction Licenses and Permits

#### 1. Granting Licenses

Applications regarding construction licenses should be submitted to the local commission in the applicant's area of residence. The local commission has the authority to grant or refuse a license after deciding whether the intended construction is consistent with the regulations and outline or detailed scheme relevant to the area.<sup>154</sup> Procedures for application are stated in the Town Planning (Licenses) Regulation of 1941, which was issued pursuant to Article 4(1) of the Town Planning Ordinance, but which was subject to several amendments introduced by the Israeli occupation authority.<sup>155</sup> These amendments stipulate that:

- An individual submitting a license application must deposit five Lira for every square meter of land involved. The district commission may keep these deposits if it is proven to it that the individual possessing the permit has violated its conditions.<sup>156</sup>

<sup>153</sup> *Collection of Military Orders for the Gaza Region and Northern Sinai*, No. 49, p.5101.

<sup>154</sup> Town Planning Ordinance, art. 21.

<sup>155</sup> For example: Town Planning (License) Regulation (Amendment) (1974), Town Planning (License) Regulation (Amendment 2) (1974), Town Planning (License) Regulation (Amendment 8) (1981).

<sup>156</sup> Town Planning (License) Regulation (Amendment)(1974) para. 2A.

- A certificate of good construction must be presented<sup>157</sup>
- It is necessary to have prior authorization from the director of Communication and Electricity if a building project submitted to a local commission involves land adjacent to a public road<sup>158</sup>
- A local commission may not issue permits for the construction of public buildings without prior written approval from the district commission. A public building is one which is used or prepared for "Public meetings for the purpose of contributing to educational, social, sport, religious, cultural or scientific purposes with the purpose of providing a service provided by one of the governing or local authorities."<sup>159</sup>

## 2. Appeals

Any person whose application is refused or who is negatively affected by a refusal may request the referral of the case to the district commission, whose decision is final.<sup>160</sup>

## IV. Public Participation in the Planning Process and Representation in the Planning Authorities

Public participation and representation in the various planning authorities functioning pursuant to the Town Planning Ordinance (1936) is limited even in comparison with the Jordanian Law for Town, Village and Building Planning. There is no representation of the public in the district commission which is composed of representatives of the central authority (government departments). This is true of its composition since the Mandate period and its structure has not been altered since the Palestinian National Authority's arrival in Gaza. Public representation in the local commissions only occurs in planning areas within the boundaries of a municipality, where the municipal council is the local commission. If the municipal council was elected (which did not happen during the Israeli occupation) participation of the population was achieved through elected representatives of the municipal council. In planning areas without a municipal council such as the villages, the local commission is appointed by the district commission.

<sup>157</sup> Town Planning Permit Regulation, amend. I (1974).

<sup>158</sup> Regulation Concerning Electricity and Communications Authorization, art. 2 (1977).

<sup>159</sup> Regulation No.2 Concerning Licensing and Construction of Public Buildings, art. 2 (1981).

<sup>160</sup> Town Planning Ordinance, *supra*, art. 22.

The condition stated in the original text of the Town Planning Ordinance that at least two of the council's seven members not be employees of the Palestinian government was canceled by the Israeli military governor<sup>161</sup>. Public representation in the various planning departments and public participation in planning decisions which have a direct and significant influence on their lives and rights regarding private property are insufficient. Decision making at the various levels of the planning process is firmly in the hands of the central authority as represented by the government departments, and this is not a healthy sign and runs contrary to the principle of public participation and governing through representation.

As a final comment, it appears that the chairman of the Palestinian National Authority sees himself as the holder of the jurisdiction of both the high commissioner and the district commission pursuant to the Town Planning Ordinance. This is indicated by his issuance of the Order Concerning Multi-Storey Buildings in the Gaza Region which became in force on 17 September 1994 and was published in the Palestinian Gazette in December of the same year.<sup>162</sup> Articles 4 and 5 of the Town Planning Ordinance state that the district commission has jurisdiction over the issuance of rules which are published in the Palestinian Gazette after their approval by the high commissioner, and they shall have the name and signature of the chair of the district commission followed by the phrase "together with the approval of his excellency" and the name and the signature of the high commissioner or the general secretary. The Order Concerning Multi-Storey Buildings in the Gaza Region appeared in the Palestinian Gazette with only the signature of Yasser Arafat as chairman of the PLO Executive Commission and the head of the Palestinian National Authority. The signature was followed by a statement, "After consideration of Town Planning Ordinance No. 28 (1936) and its amendments, the Regulations Concerning Town Planning Licenses of 1941, the jurisdiction granted to us, proposals by the housing Minister, and based upon the requirements of public interest." The jurisdiction which the chairman of the Palestinian National Authority is exercising is very wide and not restricted to that of the high commissioner. This does not suggest a desire to delegate jurisdiction, to employ laws and regulations pursuant to their content or to amend them in such a way as to achieve real public representation in the various planning authorities which are themselves without a high national planning council.

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<sup>161</sup> Military Order No. 288 of 1969, *supra*, article 3(a)

<sup>162</sup> *Palèstine Official Gazette*, Vol. 2, pp. 13-32.



## CHAPTER THREE

### TOWARDS A DEVELOPED AND UNIFIED PLANNING AND CONSTRUCTION LAW: Suggested Amendments

The following remarks and suggestions are made with the aim of developing an improved and unified planning and construction law in Palestine. Such a Law must be promulgated in the West Bank and the Gaza Region and should utilize the best of both laws currently in force (The Jordanian Law for Town, Village and Building Planning, and the Town Planning Ordinance).

Major factors to be considered are:

1. A unification of terms in current usage. The terms *Detailed scheme* and *Detailed Project* should not be used interchangeably. The law's title should indicate that it does not only refer to town planning as is the case with the Town Planning Ordinance, nor be too specific as the Jordanian Law for Town, Village, and Building Planning. A suggested title is *the Law of Planning and Construction*.
2. The Law should have a coherent overall scope and direction and should include:
  - State-set *territorial planning schemes* which divide the state into districts (with priorities set between districts), including a special territorial scheme for roads;
  - *District planning schemes* for each district;
  - *Detailed planning schemes* for each district planning scheme.
3. A High Planning Council should be established with responsibilities similar to those of the High Planning Council pursuant to the Jordanian Planning Law prior to amendments introduced by the Israeli occupation authorities. The law should stipulate the number of its members and the parties they represent. Its members should include representatives of the

general public and of governmental departments. For example, membership could comprise representatives of:

- Engineers;
- Town planners;
- Municipalities & local councils;
- Environmental protection organizations;
- Womens' organizations;
- A college of planning and engineering at one of the Palestinian universities.

It is important to note that the Town Planning Ordinance lacks this vital central planning authority.

4. Public representation in the local and district planning authorities. Every elected local authority (municipality, local council and village) should be granted the jurisdiction of a local planning commission. District planning commissions should be established in each district with representatives of:

- Government departments;
- The public;
- District engineering union and /or local authority;
- The district college of planning and engineering (if in existence).

5. Continued recognition of the planning authorities as legal personalities capable of being sued and appearing before the courts in respect to the exercise of their jurisdiction in the field of planning and building as stipulated by the law. The Town Planning Ordinance, art. 39 (1936) and the Jordanian Planning Law, art. 9, are similar in this regard.

6. Establishment municipal courts authorized to deal with issues pertaining to building and planning. The Town Planning Ordinance (1936) gives jurisdiction to civil courts to consider issues pertaining to planning violations but recourse to the courts is absent from the Jordanian Planning Law.

7. The guaranteed right to appeal and object to decisions of the local planning commissions to the district commissions, and of the district commissions to the High Planning Council, while maintaining the right of citizens to approach the civil courts on matters relating to compensation for harm as a result of a decision issued by a planning authority (this

jurisdiction may be given to local or central courts, if a municipal appeals court does not exist).

8. A Minister should be appointed with the jurisdiction to promulgate regulations relating to construction and planning, after consultation with the High Planning Council (for outline planning schemes) or the district planning commissions (for district planning schemes), or the local planning commissions (for detailed planning schemes). Town Planning Ordinance (1936) gives the district commission jurisdiction to issue regulations (Articles 4 and 5) while the Jordanian Planning Law gives this jurisdiction to the cabinet on the recommendation of the High Planning Council (article 67).

The preparation of a unified Planning and Building Law will include these issues and should take into consideration the framework that was set by the Cairo Agreement of 4 May 1994 as discussed in Chapter 1. However, the formation of a Palestinian Planning Law will face Israeli opposition even if it complies with the provisions of the Cairo and Taba Agreements. Israel may agree to amend the military orders and return the jurisdiction that was taken away from the district and local commissions in the West Bank and the Gaza Region as long as these amendments do not change the jurisdiction of the special commissions which are responsible for planning and building aspects of the Jewish settlements.



## APPENDIX 1

### Author's Note

After the completion of this report, the Israeli government and the Palestine Liberation Organization signed the "Interim Agreement on the West Bank and the Gaza Region" (hereinafter referred to as the Interim Agreement). Appendix A of Annex Three (Protocol on Civil Affairs) stipulates the transfer of various jurisdiction from the Israeli military government and its civil administration to the Palestinian National Authority.

Article 27, paragraph 1 of this appendix stipulates the transfer of the jurisdiction of planning to the Palestinian side. This jurisdiction covers the preparation, amendment and abrogation of legislation pertaining to planning. However Areas C as stipulated in the Agreement will remain under Israeli control, were they retain jurisdiction regarding planning. It is important to read Article 27, paragraph 1 in light of what was stated in Article 18 of the Interim Agreement relating to the legislative jurisdiction of the Palestinian Council. Paragraph 4 of this Article states that legislation promulgated by the Palestinian Council, including the amendment and deletion of laws and military orders still in force, will be deemed null and void if it supersedes the jurisdiction of the Council or if it is in contravention with the provisions of the Declaration of Principles, the Interim Agreement, or any other agreement reached between the two parties during the Interim Period.

Article 18, paragraph 5, of the Interim Agreement stipulates the necessity to notify the Palestinian-Israeli Joint Legal Committee of all new Palestinian legislation.

Article 27, paragraph 3, of Appendix A obliges the Palestinian side to guarantee that construction adjacent to settlements will not harm or negatively effect them or the infrastructure serving them. If the Palestinian side sees that a planning scheme might lead to such an effect, it must provide the Civil Affairs Committee with a copy of the scheme prior to its implementation. At the request of the Israeli side, a sub-committee

established by the Civil Affairs Committee will discuss the scheme. No planning measures or implementation of construction activities pursuant to the scheme may take place until the sub-committee has taken its decision regarding the scheme.

Despite these restrictions imposed by the Interim Agreement on the exercising of legislative jurisdiction, it is unlikely that Israel side will object to any new legislation or amendment of current legislation in the sphere of planning and construction. This will be particularly true in Areas A (the main towns), and Areas B (the majority of Palestinian villages), if legislation is adopted on sound planning principles and if it does not cover Israeli settlements. The Israeli settlements will remain under the control of the planning apparatus established by Israel.

**APPENDIX 2**



TABLE 7

## PLANNING AUTHORITIES UNDER JORDANIAN RULE AND UNDER ISRAELI OCCUPATION

	JORDANIAN RULE			ISRAELI OCCUPATION		
	Article of Law 79	Number	Composition	Article in Military Order 418	Number	Composition
High Planning Council (HPC)	5	1	Minister; Civil Servants; representative of mayors; heads of construction and housing councils.	4.A	1	Military officers appointed by the military commander
District Commissions	8	3	Governor; district attorney; district representatives of Ministry of Works, Health Dept. and Central Planning Dept; local representative.	2.2	0	(Powers transferred to HPC)
Local Commissions	9	25	Municipal Council (elected)	5	25	Municipal Council (appointed or elected)
— Municipal areas		87	Village Council (elected)	2.4	0	(Powers transferred to committees of HPC called "Village Planning Committees"
— Villages						

Note: This table is for the West Bank excluding East Jerusalem

## Reference:

COON A., *Town Planning Under Military Occupation, and Examination Of The Law And Practice Of Town Planning In The West Bank, Al-Haq, Ramallah, 1992, P. 43*

**TABLE 8**  
RESPONSIBILITIES OF PLANNING AUTHORITIES

	JORDANIAN RULE					ISRAELI OCCUPATION				
	Development Plans				Building Permits	Development Plans				Building Permits
	Regional	Outline	Detailed	Parcel- lation		Regional	Outline	Detailed	Parcel- lation	
High Planning Council	A	A	.	.	Appval	A	A	A	A <sup>2</sup>	(Appval) <sup>1</sup>
Central Planning Dept.	P	(P) <sup>1</sup>	.	.		P	ps	ps	.	Grant (villages)
District Commission	.	.	A	.	Appval	.	.	.	.	.
Local Commission — municipalities — villages	.	P	P	A	Grant	.	P	P	(A)	(Grant) <sup>1</sup>
Private Developers	.	.	.	P	Submit	.	.	.	P	Submit

Note: This table is for the West Bank excluding East Jerusalem. The responsibilities of Jewish planning authorities under Israeli occupation are not shown in this table.

- P: Authority preparing the plan  
 A: Authority approving the plan  
 1 Preparation of outline plans for municipalities "where no such plans exist" (Law 79, Article 7.1)  
 2 Municipalities have been directed to submit parcelation plans as "detailed plans" in HPC for their approval.  
 3 The theoretical duty of the HPC to consider appeals forwarded to them by District Commissions (which have been abolished) remains.  
 4 Municipalities have been directed to forward most applications other than those for residential development to the Central Planning Department for their decision.  
 5 Villages only

Reference:

*COON A., Town Planning Under Military Occupation, and Examination Of The Law And Practice Of Town Planning In The West Bank, Al-Haq, Ramallah, 1992, P. 44*

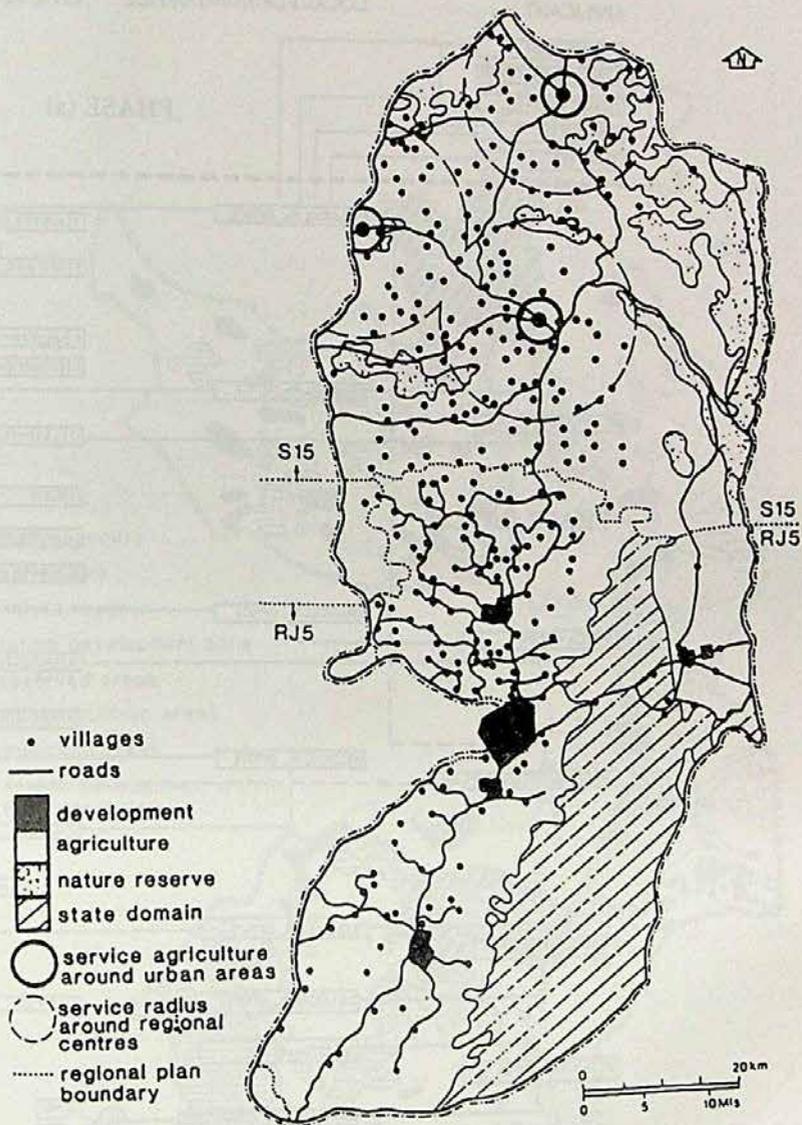


Figure 8. Mandate Regional Plans

Reference:

COON A., *Town Planning Under Military Occupation, and Examination Of The Law And Practice Of Town Planning In The West Bank, Al-Haq, Ramallah, 1992, P. 71*

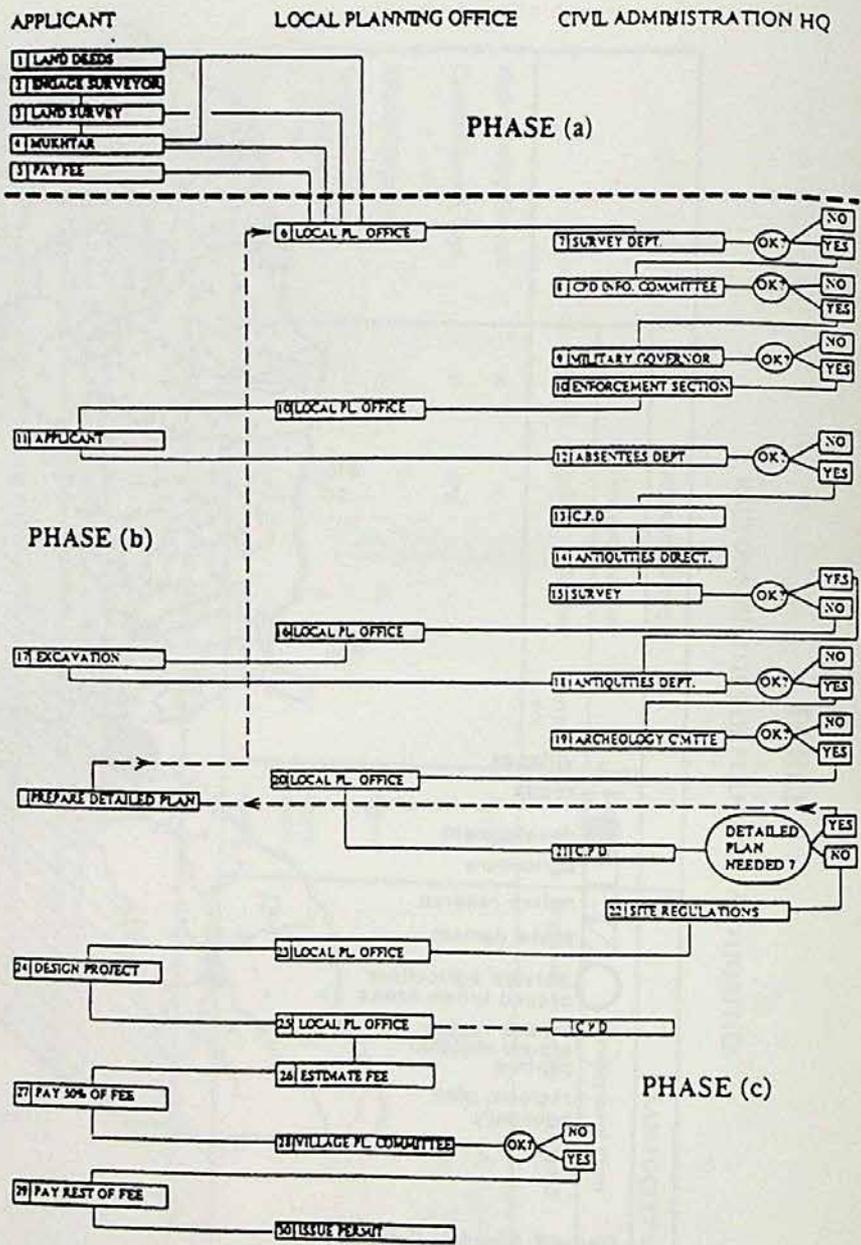


Figure 10. Procedure for Obtaining Building Permit (Outside Municipalities)

Reference:

DON A., *Town Planning Under Military Occupation, and Examination Of The Law and Practice Of Town Planning In The West Bank, Al-Haq, Ramallah, 1992, P. 122*

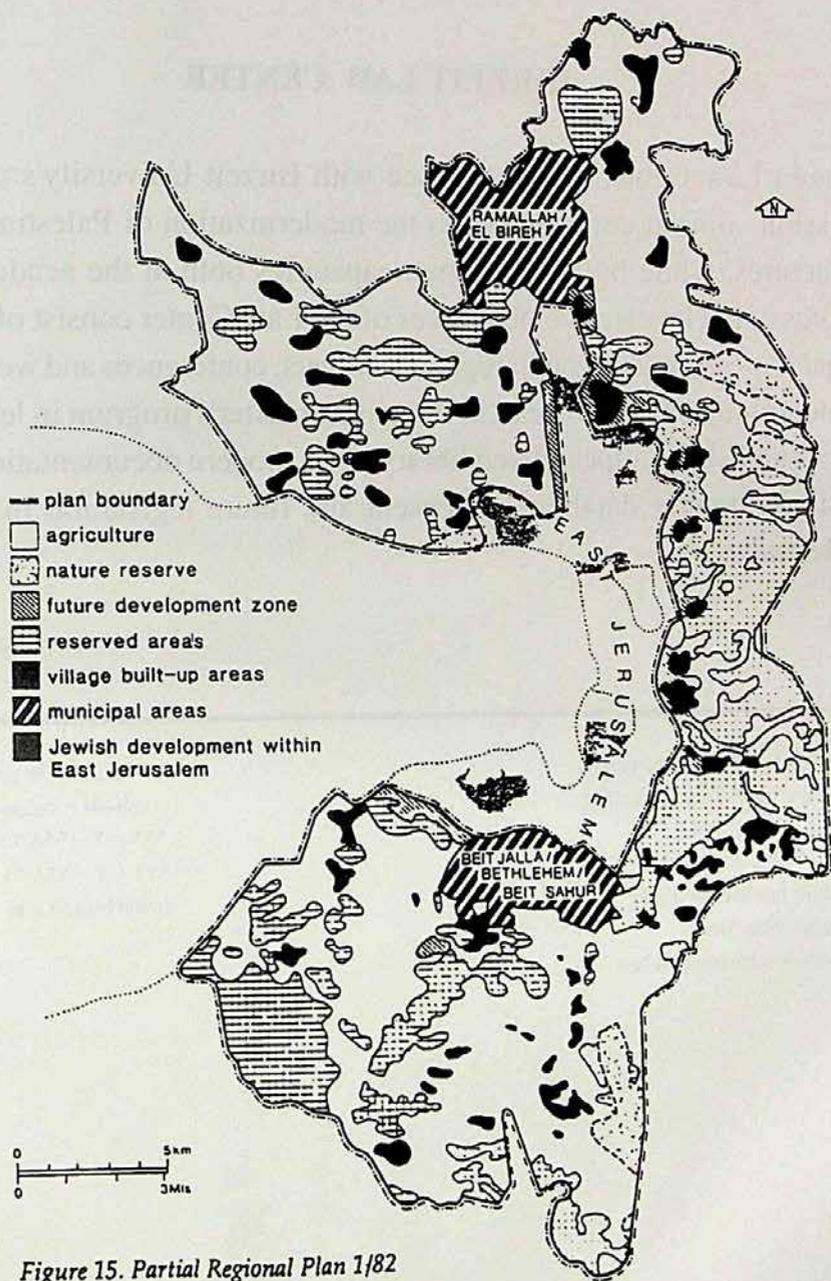


Figure 15. Partial Regional Plan 1/82

Reference:

COON A., *Town Planning Under Military Occupation, and Examination Of The Law And Practice Of Town Planning In The West Bank*, Al-Haq, Ramallah, 1992, P. 188

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Planning and construction laws and regulations affect almost every sector of Palestinian society and so it is essential that they be accessible and well understood. Further, the Palestinian Legislative Council will likely draft and adopt a new law concerning planning and construction in the years ahead and thus a thorough understanding and analysis of the laws and regulations in force is an essential prerequisite for this important task.

The Birzeit University Law Center, with the support of the Palestinian Ministry of Planning and International Cooperation, undertook this study in order to facilitate understanding of these laws and regulations as well as to assist with future developments in this area of law. This book compiles all the legislation regarding planning and construction in Palestine to date, through the British Mandate, Jordanian rule in the West Bank and Egyptian administration in Gaza, the Israeli occupation, and the Palestinian self-rule era. It then examines the planning authorities in the West Bank and Gaza, the various planning schemes in force, and the procedures regarding construction licenses and permits. Finally, it makes recommendations regarding the development of an improved and unified planning and construction law in Palestine.

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