



# **THE STARK RISE IN HOME DEMOLITIONS IN EAST JERUSALEM IN 2019**

**ANALYSIS PAPER**

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## CONTINUED SUPPRESSION ON PLANNING COUPLED WITH HARSHER PUNITIVE MEASURES AGAINST UNLICENSED CONSTRUCTION

The year 2019 constituted one of the most severe in terms of home demolitions in East Jerusalem. Due to the municipality's longstanding policy of neglecting to approve outline plans for the city's Palestinian neighborhoods, which precludes the issuance of building permits, residents are often forced to build without permits, subjecting their homes to the risk of demolition. In addition to this discriminatory policy, the sharp rise in demolitions last year was due to the implementation of new mechanisms to increase punitive actions against unpermitted building. These mechanisms include: Amendment 116 to the Planning and Building Law; a military order targeting construction near the Separation Barrier; and the delegation of new powers to the National Unit for Enforcement of the Planning and Building Law. As detailed below, these measures are being applied in East Jerusalem in a way which makes it unique in comparison to other locations and as a result, greatly exacerbates the damage inflicted on local residents.

In 2019, 104 housing units along with 117 non-residential structures (i.e. stores, warehouses, stables, etc.), comprising a total of 221 units, were demolished in East Jerusalem. This figure does not include the 54 residential units razed on July 22, 2019 in Wadi Hummus.<sup>1</sup> While most of the units demolished in Wadi Hummus were owned by East Jerusalem residents, they were situated just outside of the Jerusalem municipal borders and the formal annexation areas of East Jerusalem, but on the Israeli side of the Separation Barrier. Due to its location in the West Bank, the demolitions in Wadi Hummus were carried out by the military rather than the Civil Planning and Construction Authorities which operate in East Jerusalem.

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<sup>1</sup> Wadi Hummus, situated in the West Bank, borders the annexed area of East Jerusalem, yet located on the Israeli side of the Separation Barrier and adjacent to the Sur Baher neighborhood in southeast Jerusalem. The area is divided into Areas A, B, and C. Due to severe obstacles in obtaining building permits within Jerusalem, East Jerusalem residents began to build in Wadi Hummus, particularly in Areas A and B, where the Palestinian Authority is responsible for issuing building permits. In 2011, the Israeli military issued an order prohibiting construction within 250 meters of the Separation Barrier. Based on this order, 54 housing units were demolished in Wadi Hummus in 2019, although they were built in Areas A and B where Israel does not possess planning authority. Nevertheless, Israel's Supreme Court rejected the petitioners' petition against this order and approved the demolitions.

Therefore, in this paper, the demolitions in Wadi Hummus are not included in the total figure of home demolitions in East Jerusalem. However, they do need to be taken into account when assessing the overall impact of demolitions on the population of East Jerusalem. As noted above, the majority of housing units demolished in Wadi Hummus belonged to East Jerusalem residents, who built homes in the Wadi Hummus area as a direct result of the discriminatory planning policy within Jerusalem's city limits. The total number of homes demolished which *belonged* to East Jerusalem residents in 2019 would be 158 housing units. Even when excluding the demolitions in Wadi Hummus, 2019 still marks the second to highest record of home demolitions in East Jerusalem in the last two decades after 2016 in which 123 housing units were demolished. 2019, however, had the highest total number (221) of structures destroyed, including residential and non-residential combined, compared to 203 in 2016.

Moreover, the substantial number of demolitions last year marks a reversal in the decline in demolitions in East Jerusalem in recent years. While in 2016 a record number of 123 housing units were demolished, that figure dropped to 86 housing units in 2017 and 72 housing units in 2018. The demolition of 104 residential units in 2019 constitutes a 44 percent increase from the previous year.

### **THE SCOPE OF “SELF-DEMOLITIONS” ROSE NEARLY THREEFOLD IN 2019**

A significant contribution to the high rate of demolitions is the rise in the number of “self-demolitions,” a harsh phenomenon in which families are driven to demolish their own homes to avoid the imposition of steep fines or other punitive measures. Comparing 2019 with 2018, the number of self-demolitions of homes nearly tripled. In 2019, 40 housing units and 14 non-residential units were self-demolished compared to 14 housing units and 9 others in 2018 and 11 housing units and 9 others in 2017. The rise in the phenomenon of self-demolitions is a direct result of the implementation of Amendment 116 to the Israel Planning and Building Law, which was passed with the intent of increasing enforcement and punitive actions against building and planning offenses particularly among the Arab population (*see details below*).

## NEW MECHANISMS AIMED AT HARSHER PENALTIES AGAINST UNPERMITTED BUILDING DISPROPORTIONATELY IMPACT EAST JERUSALEM RESIDENTS

### AMENDMENT 116 TO THE ISRAEL PLANNING AND BUILDING LAW

Also known as the Kaminitz Law, Amendment 116 to the Planning and Building Law, which was enacted in 2017, went fully into effect at the end of 2018.<sup>2</sup> Intended to increase enforcement and penalization of building violations, the amendment was initiated by right-wing factions in the Knesset in reaction to the allocation of government funds to promote outline plans for building in Arab communities within the Green Line.<sup>3</sup> Needless to say, the swift implementation of Amendment 116 outpaced the much slower progress in government allocations for planning, which have yet to overcome the long-standing and systematic discrimination in the building and planning policies applied in Arab towns.

In East Jerusalem, this amendment created an even graver situation. While the Kaminitz Law is being applied in Palestinian neighborhoods in the city, the allocation of state funding to resolve discrimination in the field of planning and building does not include East Jerusalem. In 2018, the government announced a decision to invest approximately 2 billion NIS in order to reduce socio-economic gaps and improve services for East Jerusalem residents.<sup>4</sup> However, the decision completely omits the issue of planning and building. Despite the fact that the most pressing issue and significant financial burden for East Jerusalem residents is the inability to obtain building permits, there are no budgetary allocations for the preparation of detailed outline plans, which are a prerequisite for the issuance of these permits.

The amendment, which significantly modified the Planning and Building Law, stipulates rigorous punitive measures for building violations, including an acute increase in fines and periods of imprisonment. It likewise expands administrative enforcement and imposes drastic limitations in the right to pursue legal recourse against demolition orders. Reducing legal remedies has provided an opening for the increase in demolitions, while many homeowners have demolished their own homes in order to avoid paying steep demolition fees or fines in the event the demolition is carried out by the authorities.<sup>5</sup> Therefore, the increase of enforcement mechanisms included in

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<sup>2</sup> Deputy Attorney General Erez Kaminitz headed a committee whose recommendations guided the legislation, and he led the subsequent legislative process.

<sup>3</sup> Tamar Kaplansky, [This Was Supposed to be a Law Only for Arabs](#), Ynet 11.9.2019 (Hebrew).

<sup>4</sup> [Government Decision 3790 of May 13, 2018: Narrowing Socio-economic Gaps and Promoting Economic Development in East Jerusalem](#) (Hebrew).

<sup>5</sup> For more on Amendment 116, see the joint report by Ir Amim and Bimkom – Planners for Planning Rights (Hebrew only).

Amendment 116 have been applied in East Jerusalem without promoting a parallel effort to alleviate the planning and building crisis within Palestinians neighborhoods.

### **EAST JERUSALEM RESIDENTS - THE ONLY POPULATION TARGETED BY FOUR SEPARATE ENFORCEMENT AUTHORITIES**

The first outcome of the Kaminitz Commission, which promoted Amendment 116 to the Planning and Building Law, was Government Decision No. 1559. Beginning in 2016, this decision, which preceded Amendment 116 and received far less attention, conferred special enforcement powers and budgets to the National Planning and Building Enforcement Unit to operate in Arab communities. The posited rationale behind this decision is two-pronged: on one hand, the government allocated budgets to close planning gaps in Arab towns, while on the other, Arab municipalities allegedly do not properly enforce the planning and building laws within their jurisdiction.

In East Jerusalem, neither of these assertions is relevant. As noted previously, East Jerusalem was not included in the government's decision to allocate budgets for the promotion of planning in Arab communities or towns. In addition, unlike Arab municipalities within the Green Line, the Jerusalem Local Planning Committee operates in East Jerusalem and carries out dozens of demolitions every year. Despite this fact, since 2016, the National Planning and Building Enforcement Unit has also been issuing and executing demolition orders in East Jerusalem. It should be noted that while the Ministry of Finance's website asserts that the main function of the National Unit is to act against construction offenses in open areas, in East Jerusalem, it operates within built-up residential zones.

As a result of the implementation of Government Decision No. 1559, since 2016, the residents of East Jerusalem have been subject to an unprecedented reality in which four different authorities are carrying out demolitions within their neighborhoods. In addition to the Jerusalem Local Planning Committee and the National Planning and Building Enforcement Unit, two other bodies likewise implement demolition orders in East Jerusalem:

- The District Planning Committee's Enforcement Unit carries out demolitions in East Jerusalem on a regular basis, despite the fact that its involvement within the jurisdiction of the local authorities would normally be the result of unique circumstances, such as inadequate functionality or conflict of interest of the local authority.

- While the Civil Administration does not necessarily operate in East Jerusalem and its powers formally limited to Area C of the West Bank, East Jerusalem residents who have been pushed to the outskirts of the city due to the planning stranglehold in East Jerusalem, find themselves subject to demolitions by the Civil Administration. This was the case in Wadi Hummus last year. The demolitions in this area were particularly egregious due to being carried out in primarily Areas A and B, where planning and building powers are ostensibly in the hands of the Palestinian Authority. The Civil Administration, however, was given special authorization to execute the demolitions based on a military order issued retroactively, which prohibits building within 250 meters from the Separation Barrier.

This provision is selectively enforced and imposed only on Palestinians and not on Israeli construction adjacent to the barrier. The 2019 demolitions in Wadi Hummus constitute the first time that the order was enforced on such an extensive scope and scale. Alongside the largescale demolitions in Wadi Hummus, the Civil Administration has also carried out demolitions in recent years, albeit to a lesser extent, in the areas between Jerusalem, Hizma and Az-Za'yim. While these demolitions are outside of the Jerusalem municipal boundary and therefore not included in the number of demolitions in the city, their impact in terms of the damage and distress to the population of East Jerusalem is no less severe.

The operation of these four enforcement bodies underscores the sheer volume of resources the State invests in demolishing homes of East Jerusalem Palestinian residents and is hence a major cause for the significant number of demolitions.

## **THE UNDERLYING SOURCE IN THE HIGH RATE OF HOME DEMOLITIONS IN EAST JERUSALEM**

Detailed outline plans for over 21,000 housing units were promoted throughout Jerusalem in 2019, yet only 7.4 percent of these plans are allocated for the development of Palestinian neighborhoods. Likewise, no significant plan was advanced in the majority of Palestinian neighborhoods in the city. The acute housing shortage among East Jerusalem residents is first and foremost the result of the planning stranglehold imposed upon them. An examination of the medium to larger scale outline plans (those that include at least 100 housing units) reveals that a total of 21,228 housing units were advanced in 2019 by the Local and District Planning Committees. While plans totaling 19,658 housing units were promoted in the Israeli neighborhoods of the city (of which 16,470 housing units are within the Green Line and 3,188 housing units beyond the Green Line), only 1,570 housing units were advanced in the Palestinian neighborhoods of Jerusalem. In other words, only 7.4 percent of all housing units promoted in Jerusalem as

a whole are designated for the Palestinian population, who constitute 38 percent of the city's residents and has been subject to long-standing discrimination in planning and building.

Among the few plans promoted in Palestinian areas, most are within the neighborhoods of Beit Hanina and Shu'afat - 798 housing units are allocated for these two areas, which constitute 51 percent of the 1570 residential units promoted in Palestinian neighborhoods. In addition, 101 housing units were advanced in one plan in the Sur Baher neighborhood, while 571 housing units were promoted in another plan in Jabal Mukabber (*see more below*). As evident, in most Palestinian neighborhoods in Jerusalem, no detailed outline plans were promoted on a significant scale, which was not only the case in the past year, but rather indicative of an longstanding reality. In the absence of detailed outline plans, building permits cannot be issued to residents seeking to construct a home. Thus, instead of advancing outline plans with the goal of reducing the phenomenon of house demolitions in Palestinian neighborhoods in East Jerusalem, Israeli policy only deepens and reinforces the issue.

#### **MASTER PLANS DO NOT AUTHORIZE BUILDING PERMITS CONTRARY TO WIDESPREAD ASSUMPTION**

In this context, it should be noted that the Jerusalem Municipality publishes, once every few years, notices of plan approvals for "thousands of housing units" in Palestinian neighborhoods in the city. For example, according to the municipality, "an unprecedented plan for 4,700 housing units was approved" for the Ras al-Amud neighborhood in August 2019.<sup>6</sup> However, the plan in Ras al-Amud (*like similar plans in Beit Safafa and Arab al-Sawahra approved in previous years*) is only a master plan.

Unlike a detailed outline plan, which possesses statutory status, master plans have no statutory validity and are in fact no more than a municipal policy document. In practical terms, the approval of a master plan does not permit the issuance of building permits, which means that it does not change the reality of East Jerusalem residents being unable to procure building permits. An examination of the process over the years reveals that the Israeli planning authorities do not continue beyond the master plan phase to the development of a detailed outline plan, the most critical stage in the planning process. It should be noted that a master plan is not a prerequisite for a detailed outline plan. In other words, the very approval of a master plan does not change the status substantially and does not facilitate the preparation of detailed outline plans, which are the sole basis upon which building permits can be granted. Therefore, notices of approval of municipal

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<sup>6</sup> Netael Bandel, [New Master Plan will Allow Palestinians to Build Thousands of Apartments in East Jerusalem](#), Makor Rishon, 9.8.2019 (Hebrew).

master plans misrepresent the planning process and in fact perpetuate and further exacerbate the issue of the lack of planning in East Jerusalem.

## **THE OUTCOMES OF A LARGESCALE PLAN PROMOTED IN A PALESTINIAN NEIGHBORHOOD**

The exception that proves the rule is the detailed outline plan that the municipality prepared and is advancing in Jabal Mukabber alongside the American Road,<sup>7</sup> which includes 571 housing units. Objections to the plan submitted by Jabal Mukabbar residents along with Bimkom – Planners for Planning Rights, reveals that the amount of residential construction that the plan authorizes is far less than that established according to the criteria of the Jerusalem District Planning and Building Committee for outline plans along major traffic routes. Only 20 percent of the area earmarked for building in the plan is designated for residential construction, while the remaining areas are allocated for public, commercial and employment uses. The allocation of such a small number of housing units in such a plan is unprecedented. Similar plans in Israeli neighborhoods designated for areas along major traffic thoroughfares (such as the planned light-rail routes similar to what is intended eventually along the American Road) permit two and a half to three and half times greater residential construction than what the municipal plan offers along the American Road. It is therefore evident that in the rare case where a detailed outline plan is promoted in a Palestinian neighborhood, Israeli authorities ensure to curb residential construction.

## **CONCLUSION**

2019 was one of the most severe years in terms of the number of home demolitions in East Jerusalem. The analysis presented in this paper reveals that this is not a coincidence, but rather the result of a toughening of Israeli policy. On one hand, Israeli policymaking continues to suppress proper and equitable urban planning in Jerusalem's Palestinian neighborhoods while on the other, it significantly invests greater resources and creates new mechanisms to increase penalization against building offenses, leading to more home demolitions.

The policy of demolitions is far crueler when the longstanding planning stranglehold in East Jerusalem is taken into account. In most of the city's Palestinian neighborhoods, no detailed outline plans have been significantly promoted in approximately two decades. The State has further thwarted nearly all initiatives by East Jerusalem residents themselves to promote appropriate planning over the past ten years. In 2019, as noted above, the municipality advanced detailed outline plans in Palestinian neighborhoods where the housing units reached only 7.4 percent compared to similar plans that were

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<sup>7</sup> [TPS 379594](#)

advanced in the Israeli neighborhoods of the city. Even when the municipality initiated a decent size plan, as in Jabal Mukabber, it greatly restricted the number of residential units.

In this current reality, the demolition of homes in East Jerusalem is a particularly egregious policy. The government should not only allocate specific budgets to promote detailed outline plans in East Jerusalem neighborhoods, but also halt the demolition of homes until the rampant discrimination in this area is rectified.

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