

A Layman's Guide to Home Demolitions in East Jerusalem

In recent weeks there has been a great deal of news coverage regarding planned home demolitions in East Jerusalem. In response to the high volume of queries we have been receiving about the issue - focused as much on the technical aspects of Israeli home demolition policy in Jerusalem as on the demolitions themselves - we thought it would be helpful to offer this guide.

What is a demolition order?

A demolition order is a legally binding order by a municipal, governmental or judicial authority compelling the owner, the occupant, the builder and/or the municipal or governmental authorities to demolish a structure or building based on the fact that the structure was built without a building permit.

There are two categories of demolition orders: administrative and judicial.

What is an administrative demolition order?

The authority to issue an administrative demolition order is vested in either of the two most senior officials bearing responsibility for planning in Jerusalem, one a politician (the Mayor, in his capacity as Chairman of the Jerusalem Local Planning Committee) and the other a senior civil servant (the head of the Jerusalem District of the Interior Ministry in his capacity as Chairman of the Regional Planning Committee).

These orders are issued without the institution of any legal proceedings. Their applicability is limited to new construction (construction that has yet to be completed, or was completed no more than 60 days earlier, or was unoccupied no more than 30 days prior to the issuance of the order).

Anyone served an administrative demolition order may appeal to the Local Affairs Court to have it cancelled, but they can offer only two arguments in their own defense: that the building indeed has a permit (and thus the demolition order was issued in error), or that the demolition order cannot legally apply, since the construction does not fall under the mandate of such a demolition order (i.e., the structure is not incomplete, newly completed, or newly occupied). With either argument, the burden of proof is on the alleged violator.

Finally, an administrative demolition order expires if it is not carried out within 30 days of its issuance, unless extended by the court.

What is a judicial demolition order?

A judicial demolition order is issued by a Magistrate Court or Local Affairs Court, and is almost invariably issued after indictment, trial and conviction in a full-fledged criminal proceeding against someone accused of engaging in illegal construction. Such proceedings take place under the strictures of criminal procedure. In such cases, the demolition order is not considered to be a punitive measure (the punishment being steep fines, a prison sentence or a suspended sentence), but rather an administrative corrective necessary to redress the illegal construction.

In contrast to administrative demolition orders, such proceedings usually relate to construction that is not new, but was carried out within the previous five years. With construction older than 5 years a statute of limitations applies. However, when highly motivated for political or other reasons – as in the case of Bustan/Silwan – Israeli authorities use extraordinary legal measures to obtain judicial demolition orders against structures built even decades ago, thereby overcoming the statute of limitations.

In practice, what is the difference between administrative and judicial demolition orders?

There are significant differences between administrative and judicial demolitions orders.

First, there is the question of authority and motivation. Administrative orders are, by definition, political: they are issued by a politician or a senior official - individuals who are themselves often responsible for the policies that have created a situation in which the "perpetrator" cannot build legally. Moreover, it is clear that ideological motivations – either of politicians or their constituents – cannot be divorced from decisions made about demolishing Palestinian homes in East Jerusalem.

In contrast, judicial orders are the end result of a legal process – handed down by an independent representative of the Attorney General and adjudicated by a judge. In a judicial proceeding, the judge may take extenuating circumstances into account, and when demolition orders are issued, the court often delays their implementation for a year or two, allowing the violator the opportunity to seek a permit post-facto. Sometimes this allows the violator to avoid the demolition; often it does not.

Finally, administrative demolition orders expire after thirty days; judicial demolition orders never expire, remaining in effect in perpetuity.

Are there any other kinds of demolitions?

In addition to the two official categories, administrative and judicial, there is a third, unofficial category: the "voluntary" demolition.

In such cases, the authorities approach the violator and say: "Demolish your own home or we will do it for you, which will be much more damaging and much more expensive." Of the 85 demolitions carried out by the Jerusalem Municipality in 2008, 27 were "voluntary."

Is the decision to issue administrative demolition orders – or institute legal proceedings that result in judicial demolition orders – strictly a local Jerusalem decision?

No. With respect to demolition orders, East Jerusalem is unique, in that it is the only place in Israel where overlapping authorities for home demolitions are vested in – and exercised by – both the Jerusalem Municipality and in the Ministry of Interior. Everywhere else in Israel the Ministry of Interior uses its powers in this regard only outside the municipal boundaries of towns and cities (where municipal authorities do not reach).

Why is there this overlapping municipal and national authority in East Jerusalem with respect to home demolitions?

In the early 1990's, then-Jerusalem Mayor Teddy Kollek announced that he would refrain from most demolitions in East Jerusalem, saying in effect that it was not right to punish people for building illegally when they were not permitted to build legally.

In response, the Ministry of Interior – then under the sway of a right-wing government – set up a special enforcement unit in East Jerusalem, with the explicit goal of keeping up home demolitions. That unit remains active today and operates only in the Palestinian sector of East Jerusalem. No similar unit exists anywhere else in Israel.

With this anomalous situation, it is clear that the national government and its policies have a central role in home demolitions in Jerusalem. Indeed, even if the Jerusalem Municipality decided to freeze or limit demolitions carried out under its authority, demolitions would still continue unless the Ministry of Interior made a parallel decision to stop.

Why can't Palestinians get permits and build legally?

Palestinians build illegally in Jerusalem for a variety of reasons, primary among them the fact that the ability to build legally is reserved to the few Palestinians fortunate enough to be able to receive a permit.

How are Jerusalem's Palestinian residents stopped from getting permits?

Since 1967, the main tool for blocking legal Palestinian construction in East Jerusalem has been planning. Israeli planning in East Jerusalem has almost invariably been driven by the calculus of national struggle, the goal of which is to maintain a large Israeli majority in the city. One way Israel has tried to achieve this is by artificially putting a cap on Palestinian development.

Since 1967, Israel has expropriated 35% of the land of East Jerusalem – upwards of 24 sq. km. – for the purposes of constructing new Israeli neighborhoods/settlements. On these lands the government sponsored the construction of almost 50,000 residential units for Israelis only – and none for Palestinians. In contrast, since 1967, less than 600 government-sponsored residential units have been built in the Palestinian sector, the last of which was built more than 30 years ago.

Most of the land that remains in Palestinian hands subsequent to these expropriations – approximately 45 sq. km. – cannot be built on, either because Israeli authorities have approved no town plans at all (and no permits can be issued without a valid town plan), or because large swathes of these lands have been designated “open spaces” where no legal construction can take place. Thus, only a fraction of the land of East Jerusalem is even theoretically available for construction, and even this theoretically available space is largely limited to the existing built-up areas of Palestinian neighborhoods, where the construction potential has been virtually exhausted.

Over the past forty-two years, the Palestinian population of East Jerusalem has almost quadrupled, rising from 69,000 in 1967 to approximately 270,000 today. The existing town plans that have been approved throughout the years subsequent to 1967 accommodate only a small fraction of the housing needs of this additional

population.

For those few Palestinians who are lucky enough to own land in Jerusalem that is located in an area that does have an approved town plan and where the land is zoned for construction, a building permit is still a remote possibility at best. If these Palestinians do apply, they encounter a process geared to accommodate the Israeli sector, meaning extraordinary legal, financial and bureaucratic obstacles for a Palestinian applicant. In sum, today there is little incentive for Palestinians to even begin the costly, time-consuming process of applying for a permit, when they know in advance they will have rather questionable chances of success.

Why aren't there efforts to get town plans approved for East Jerusalem, so that building permits will be more easily available?

With respect to planning, East Jerusalem is once again unique. Everywhere else in Israel, statutory planning is a responsibility of the government – something that the government does for the benefit of its citizens. Everywhere else in Israel, receipt of a building permit is an entitlement of the citizen/end-customer after meeting required conditions and following required bureaucratic procedures.

In East Jerusalem, precisely the opposite is the case. In East Jerusalem, with the government unwilling or uninterested in carrying out planning for the benefit of the area's residents, the onus for statutory planning has fallen squarely on the shoulders of the individuals. In East Jerusalem, the receipt of a building permit is a (rare) privilege rather than a basic right.

Two recent statistics illuminate the absurdity of the current planning regime in East Jerusalem: in 2008, individual Palestinian residents initiated 190 statutory town plans, most of which never had any chance of being approved; during the same period, Palestinians residents were granted only 125 building permits. The fact that the number of privately-initiated statutory plans in 2008 exceeded the number of permits issued demonstrates the degree to which the government has abdicated its responsibilities in this arena, foisting them off on private individuals who lack the expertise, financial resources, and political clout to fulfill them, thereby turning the right to decent housing into a thinly-veiled fiction.

How vulnerable are the Palestinian residents of East Jerusalem to home demolitions?

Very. There are more than 40,000 residential units in the Palestinian sector of East Jerusalem, and only a fraction of these have been built according to legally issued building permits. Consequently, a majority of the Palestinian residents of East Jerusalem are exposed to the dangers of indictment and ultimate demolition. And, as noted above, even the statute of limitations does not provide full immunity.

Indeed, according to Jerusalem Municipality estimates, natural growth in Jerusalem's Palestinian sector requires the construction of 1,500 new residential units annually, but in 2008 only 125 building permits were issued, allowing for the construction of approximately 400 units. It is self-evident that the gap between legally sanctioned construction and the actual needs will be filled, at least in part, by illegal construction.

For many thousands, the fear of demolition is thus far from theoretical.

Are all demolition orders carried out?

No. With respect to administrative orders, some are issued but not carried out and then expire after 30 days. This is frequently no more than a temporary reprieve for Palestinian residents, since such orders can be re-issued at any time. Moreover, there are in excess of 1500 outstanding judicial demolition orders that have been issued but not yet executed – and these orders can apply to single-family homes and forty-unit complexes, and everything in between. As noted above, these orders never expire, and tens of thousands of residents in East Jerusalem live in perpetual fear that they may awake to the sound of bulldozers on any given morning. Consequently, even when the pace of demolitions is low, every demolition understandably evokes widespread fear throughout East Jerusalem.

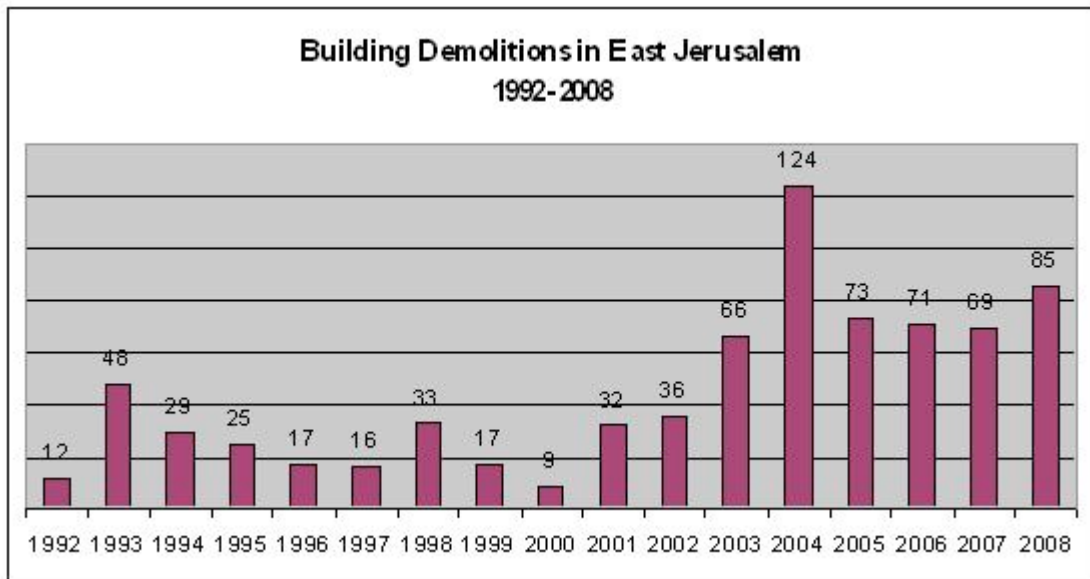
For many, this is tantamount to a “life sentence.” For the fortunate few who live in areas where there are town plans which allow them (in theory) to obtain a retroactive building permit, the task is arduous and expensive. For many others, who live in areas where no town plan exists, the process is exponentially more complex, lengthier and more expensive – and success is far from certain. For example, on February 17, 2009, the Jerusalem District Planning Board rejected two town plans – one in the Bustan/Silwan area and one in Wallajeh (in southern Jerusalem) – that would have legalized hundreds of illegally-built homes. The Planning Board based its decision, in part, on its unwillingness to legitimize, en bloc, illegal construction.

Are home demolitions applied equally against illegal construction in East and West Jerusalem?

No. While most (about 66%) of the building violations documented by Israeli authorities are located in the Israeli sector, generally 66%-70% of demolitions are in the Palestinian sector. Municipal officials will respond, with some justification, that the violations in the Israeli sector are usually “minor” (e.g. an illegal extension), while the Palestinian violations are “major” (e.g. entire buildings) and therefore cannot be overlooked. However, this argument ignores the fact that while the town plans in Israeli neighborhoods of the city are geared to accommodate or even accelerate development, the town plans in East Jerusalem (to the extent that they even exist) are geared to contain or even prevent any reasonable development. The nature and scope of violations reflects this discrepancy.

Does the pace of home demolitions correlate to the pace of illegal activity?

No. The number of home demolitions in East Jerusalem in 2008 rose by about 32% in comparison to 2007, and by about 217% in comparison to the multi-year average between 1992 and 2006 (the number of demolitions in the first two months of 2009 is 16% higher, annually, than in 2008). However, the Municipality has proudly asserted that in the last few years, the scope of building violations in East Jerusalem has dropped by as much as 70%. Thus, as illegal Palestinian construction plummets, the number of demolitions soars.



Does the drop in illegal construction prove that demolitions are an effective deterrent to Palestinian “illegal” construction in East Jerusalem?

No. The drastic drop in the level of illegal construction in East Jerusalem is consistently attributed by the Jerusalem Municipality itself not to the deterrent value of the demolitions but to a new policy which allows the Municipality to confiscate building equipment – bulldozers, cement mixers, etc. – engaged in the construction.

Broadly speaking, given the scope of “illegal” construction in East Jerusalem, there is no indication that the demolitions have been or are an effective deterrent.

Why are demolitions not an effective deterrent?

With virtually no means to build legally, there are basically only three options available to the Palestinian residents of the city: have your children sleep two or three to a bed (and severe overcrowding is endemic in East Jerusalem); build illegally; or leave the city. In the past, Palestinians have availed themselves of all three options, but in recent years they have increasingly abandoned the latter. (Palestinians cannot easily rent or buy in West Jerusalem, and the real estate market in East Jerusalem is very tight. Indeed, in recent years the major area where there has been some “softening” has been in some settlements, like Pisgat Ze'ev and French Hill, where some Palestinians are now renting).

Even before the closure of Jerusalem from the West Bank and the construction of the security barrier, it was clear that most Palestinians preferred to stay in Jerusalem and build, even with the threat of a home demolition hanging over their heads. Today, with the near hermetic closure of Jerusalem from the West Bank, and with the ongoing policy of revoking Jerusalem residency of Palestinians whose “center-of-life” is outside of the city, there is even a stronger disincentive for Jerusalem’s Palestinians to move outside the city.

In the absence of any reasonable prospect of building legally, most Palestinians are willing to “play the odds,” knowing that there is a good chance their property will never come up in the “demolition lottery.”

What is the official rationale behind Israel's policy of demolishing illegal Palestinian construction in East Jerusalem, rather than, for example, charging fines and granting post-facto permits?

There are two main rationales given, both of which are oblivious to the reality of Israel's policies in East Jerusalem and the reality on the ground.

First, there is the argument that demolishing illegal construction serves as a deterrent to further illegal construction. However, as noted above, it is clear that this policy has had no deterrent effect.

Second, there is the argument that demolishing illegal construction is necessary to protect and promote proper urban planning in the city. This argument is so specious that one may question if it can even be put forward in good faith. Both urban decay and illegal construction in East Jerusalem derive directly from the self-same source: a politically motivated and often intentionally dysfunctional planning regime whose goal is to contain and even stifle Palestinian urban development. In this context, demolitions serve to perpetuate this poor planning, rather than promote/protect good planning.

So if demolition orders don't deter, don't serve planning needs, and are often not carried out, why do the authorities indict so many Palestinians for illegal construction?

The answer is twofold: symbolic and prosaic.

On the symbolic level, with so few services provided, and with such little authority exercised by Israel in East Jerusalem, demolition orders send a clear, symbolic message: "we [Israel] are the sovereign and don't mess with us." Nowhere was this more apparent than with the five demolition orders handed down on March 3, 2009 – the very day that Secretary Clinton met with Jerusalem mayor Nir Barkat, who signed the orders. These orders, if executed, will mean the demolition of up to 50 Palestinian homes in Ras Khamis. Ras Khamis is a small, calm Palestinian neighborhood inside the Jerusalem municipal boundaries that has been cut out of Jerusalem by the separation barrier. While in the past Ras Khamis received rudimentary services from the Jerusalem municipality, with the construction of the barrier these have all but collapsed. The only genuine municipal presence is now the demolition orders themselves, representing a tangible and destructive reminder to Palestinians that Israel is still ultimately in charge.

The second consideration may be even more compelling: money. Indicting Palestinians for building violations has over the years become a "cash cow" for the Jerusalem Municipality. When someone is convicted of a violation or crime in Israel, a fine is paid to the Ministry of Finance – ranging from tens of dollars for a traffic violation to hundreds of thousands of dollars for large-scale embezzlement. But when fines are imposed for illegal construction in Jerusalem (and simultaneously, and as a matter of course, a judicial demolition order is issued) these fines – which often amount to tens and hundreds of thousands of dollars – are paid not to the Ministry of Finance but to the Jerusalem Municipality, which initiated the legal proceedings. Fines collected for illegal construction are a significant component of the municipal budget, providing an incentive for the Municipality to seek out violators and take them to court – often resulting in demolition orders – even when the violation itself is not contrary to the genuine public interest. These fines, rather than the actual demolitions orders, may be the primary goal of many legal cases against Palestinian

homebuilders (though the demolition orders are certainly a welcomed by-product by some parties).

Is there any pattern to the places and buildings targeted by demolition orders?

The patterns of home demolitions in East Jerusalem over the past twenty years are overwhelmingly random. There is no apparent correlation between the homes targeted for demolition and a coherent, articulated perception of the public interest.

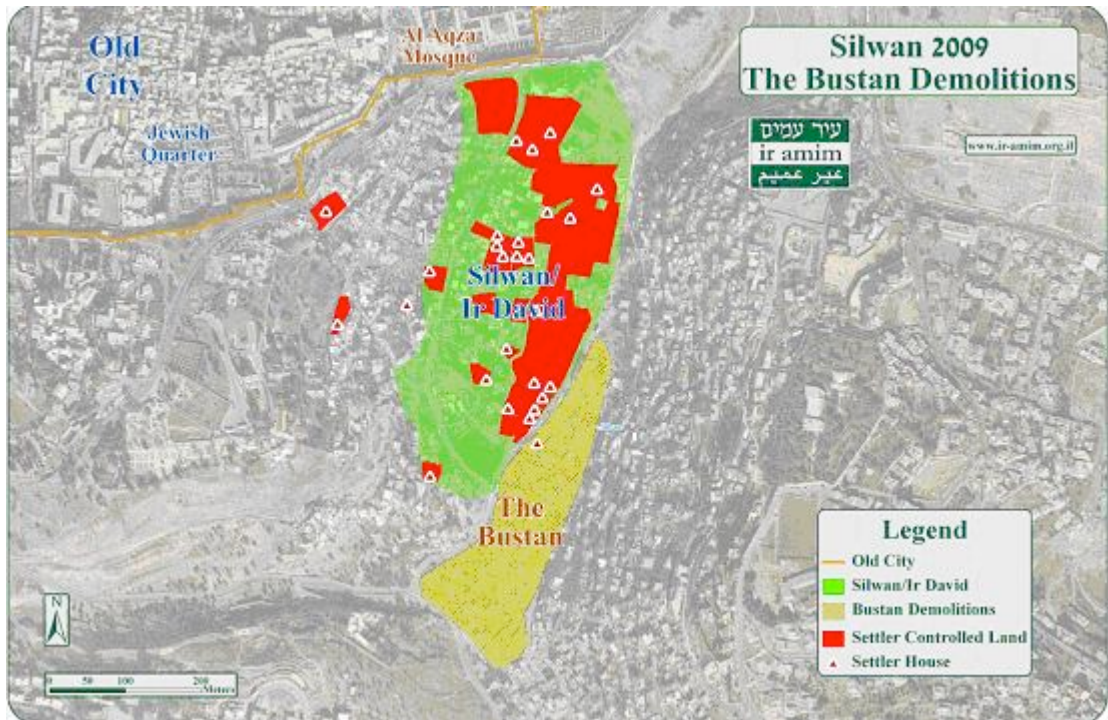
That said, there are some cases where the demolitions – or their absence – are clearly not random.

First, on rare occasions demolition orders in East Jerusalem do reflect the genuine public interest (e.g. the demolition of an illegal structure that is located on the site of a planned school), or a real law-and-order effort (e.g. demolition of illegal construction that is the result of criminal elements using strong-arm tactics to take over property belonging to innocent victims).

Second, it is clear that bribery or other illegal influence has been brought to bear to exempt some properties from demolition. In the very dysfunctional Israeli system, there have been not only recurring reports but recurring indictments of public officials (with authority related to home demolitions) for corruption. Indeed, at one point a few years back, there were more East Jerusalem building inspectors in police detention than there were on the job.

Third, the starkest exception – rare, but devastating – occurs when there is a politically motivated scheme to engage in mass demolitions. The most prominent (albeit not unique) example is that of the Bustan Quarter in Silwan. From the initial letter issued by Jerusalem's Chief Engineer in November 2004 (announcing the intention to demolish the 88 homes in Silwan) until recent events (with the resumption of large-scale demolitions today being openly discussed by Israeli authorities), it has been clear that these demolitions serve a clear, specific Government of Israel/Jerusalem Municipality plan to strengthen the settler hegemony in Silwan and to reduce the Palestinian presence there. This is not mere conjecture: the Jerusalem Old City Basin Project approved by the Israeli Cabinet in August 2005, and Town Plan 11555 approved by the Municipality in December 2007 clearly disclose this intention. The Knesset State Comptroller's Committee hearings of June 2008 regarding the Bustan demolitions – initiated and for all intents and purposes led by the settlers – provided clear evidence of the settler complicity in the demolition plans.

Fourth, the corollary to politically-motivated schemes to engage in mass demolitions is politically motivated efforts to block the demolition of illegal Jewish construction in East Jerusalem. A case in point is again Silwan, where Israeli authorities have turned a blind eye to illegal construction by settlers in the Silwan archeological park. When the legal adviser of the Municipality obtained a conviction – approved by the Israeli Supreme Court – compelling the evacuation and sealing of a seven-story building built illegally and occupied by the settlers (and located adjacent to the Bustan Quarter), the political echelons intervened and have thus far succeeded in preventing the execution of the verdict.



Do the Government of Israel and Jerusalem Municipality have the power to freeze building demolitions in East Jerusalem?

Yes. The fact that in 2000 the number of home demolitions in East Jerusalem dropped to 9 demonstrates that it can be done, if there is the political will to make and enforce such a decision. The same mechanisms and methodology that allowed the authorities to virtually suspend demolitions in 2000 – and additional methods as well – are still available to the authorities in 2009.