



State of Palestine
Ministry of Local Government

THE HUMAN RIGHTS IMPACT ASSESSMENT MECHANISM AND LOCAL OUTLINE PLANS IN THE SO-CALLED "AREA C", WEST BANK, PALESTINE

Guidelines for Implementation for Planners



This project is funded by:



APRIL 2020



**THE HUMAN RIGHTS IMPACT ASSESSMENT
MECHANISM AND LOCAL OUTLINE PLANS
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Disclaimer

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Forward

Local Government Units (LGU), and particularly those whose village lands extend to the Oslo-designated Area C, have a key role to play in Palestine's development. By working with planners, they can make a significant contribution in breaking the current development impasse. A rights-based approach to spatial planning sees this as a key tool to protect Palestinians as civilians living under military occupation and ensure adherence to human rights including collective rights, such as the right to self-determination and development. Spatial planning schemes, which adequately utilize the villages' lands – both private and publicly shared (Masha' - may alleviate housing shortage, facilitate the construction of infrastructure and access to essential public services). A regional and national perspective ensures that the right to self-determination is grounded in actual spatial policies.

Under the prolonged military occupation, spatial planning is challenged by ongoing land confiscation, settlement expansion, the Separation Wall, forcible displacement, the closure policy, planning, zoning and building restrictions, and house demolition policy. These find LGUs and planners facing a dilemma – either plan according to Israeli settlements' territorial interests at the expense of basic needs which necessitate spatial expansion; or potentially put beneficiaries at risk of demolition and displacement if occupation policies are ignored.

To overcome this dilemma a Human Rights Impact Assessment Mechanism (HRIAM) for planning in Area C was prepared in 2016 by UN-Habitat with financial support from the European Union. The mechanism was endorsed by the Ministry of Local Government with the aim to assist planners in "planning under fire". As a monitoring tool for spatial planning, the mechanism introduces a methodology which maximizes the advantages of spatial planning for ensuring human and humanitarian rights through communal organization and steadfastness; planning coherence at the local, regional and national levels; encouraging land rehabilitation land rights; delaying the execution of demolition orders; and reinforcement of Bedouin-landowners mutual commitment. On the other hand, it ensures that the implementation of collective rights in the long run are not undermined by short-term advantages.

These guidelines are divided into two sections: (1) introducing the HRIAM; and (2) guidelines for the implementation of the HRIAM through lessons learned in the Barta'a - Jenin pilot cluster plan.

The Human Rights Impact Assessment Mechanism (HRIAM)

The HRIAM is a tool which translates the rights of Palestinians and the duties of Israel as the primary duty-bearer as well as Palestine as the territorial sovereign state that is a secondary duty-bearer, into spatial formulations. Considering Israel's planning regime, under international law, the HRIAM promotes the transfer of planning powers back to Palestinian communities and ensures local ownership.

The HRIAM was designed (a) to introduce a rights-based monitoring and assessment tool for current spatial planning policies and practices and (b) to limit the potential harm of the institutional and operational engagement with the Israeli Civil Administration (ICA) particularly in relation to Area C communities.

The HRIAM is expected to contribute to: (a) the selection criteria and prioritization of Palestinian communities eligible for spatial planning; (b) the selection of the least harmful planning alternative; (c) a long-term and integrated perspective to local, regional and national planning; (d) increasing the participation of all groups and communities in all planning phases; (e) considering the upcoming obstacles introduced by ICA; (f) ensuring that humanitarian and development projects are coherently designed; (g) supporting a coordinated messaging and advocacy on spatial planning in the West Bank; and (h) the formulation of a unified national approach and standardization of policies and practices, decision making processes and mitigation strategies.

Conceptually the HRIAM is based on three factors: (a) the spatial factors: the local, regional/sub-regional and national spheres; (b) the temporal factor: looking at the entire planning process in the short, medium and long-term; and (c) and the protection factor: calculating the impact of planning as protection alongside other protection measures including: legal and humanitarian.

Furthermore, the HRIAM promotes the Sustainable Development Goals (SDGs) and the New Urban Agenda (NUA) of the United Nations (Annex 1).







Barta'a as-Sharqiya - Jenin.
Source: Palestine remembered (27 September 2007).

Implementing the HRIAM and the Barta'a, Jenin Pilot Cluster Plan

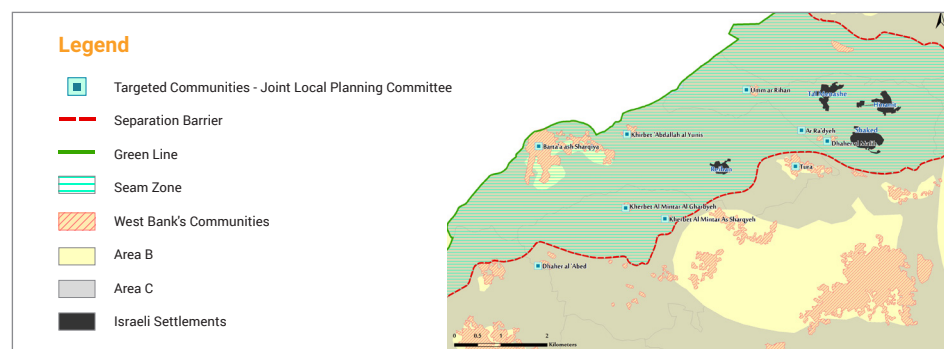
The HRIAM is composed of two Excel matrices that monitor the rights-based approach at the locality and regional/national levels, and incorporate internal risks concerning the participation of local communities in the planning process (Annex 2). The Excel sheets are composed of quantitative indicators which are complimented by qualitative data collected through semi-structured open interviews. The latter supports the integration of information on the community and its needs, and risks faced by planners and beneficiaries internally and externally from the policies of the occupation. The data gathered at the planning phase should be updated as response is received by the ICA either directly or through actions on the ground.

On the locality level it aims to measure the impact of planning on threatened population, structures and lands, access to workplaces, and distance from the service diameter. On the regional/national level it assesses the selection criteria for eligible localities, territorial contiguity throughout the West Bank, access and movement to workplaces, and distance from service centers. The HRIAM allows for disaggregated data based on private construction vis-à-vis. donor humanitarian or development projects and potentially monitors aid dependency. Lastly, it monitors current, as well as potential and realized risks and pays special attention to vulnerable communities.

The implementation of the HRIAM is divided into four phases:

-  a. Identifying the development potential vis-à-vis the main risks
-  b. Data gathering
-  c. Data processing
-  d. Analysis and conclusion

In 2019, the HRIAM was piloted in the town of Barta'a as-Sharqiya located in Jenin Governorate, part of an enclave created by the Separation Wall/Barrier. Lessons learned from this case are instrumental in identifying obstacles as well as highlighting useful practices in the implementation of the HRIAM.



Source: UN-Habitat 2020

Identifying the Development Potential vis-à-vis the Main Risks

Since 2002, the Barta'a cluster was re-shaped by the construction of the Separation Wall, which created an enclave separating families living in different villages and agricultural lands from residential areas. The Separation Wall facilitated Israeli settlement expansion and restricted access of the cluster communities to main services in the city of Jenin. While the enclave is open to Israelis, Palestinian development is severely harmed by movement, planning and building restrictions. The legalization of residential areas as well as public infrastructure and services is urgently needed. However, planning under such limitations may result in the indirect and unintended entrenchment of the fragmentation and separation of the enclave created by the Separation Wall, in the long run. Therefore, both considerations – the temporal as well as the regional – were taken into account in the Barta'a planning initiative. Lessons learned from the Barta'a case include the following:

1. Meetings with heads of LGUs and other communities in the cluster are key to accurately identify the development potential and the main risks involved.
2. The meetings held in the municipality involved the participation of women to ensure equal input in the planning process.
3. While analysis of the risks was undisputed, some local representatives voiced their wish to be included in the plan while maintaining their special local uniqueness.

The following table summarizes the potential planning risks vis-à-vis mitigating development measures:

| Potential Risk in Planning | Mitigating Measures |
|---|---|
| The Separation Wall and isolation of the enclave | Boundaries of the plan extended beyond the route of the Separation Wall, and disregarded Israeli settlements' jurisdictional area |
| Forced urbanization of Barta'a | Adherence to cluster-level planning rather than individual planning of each LGU in the cluster, to enhance urban-rural linkages |
| Demographic and geographic fragmentation | Cluster planning approach beyond the A/B/C divide |
| Infrastructure-dependency on Israeli settlements | The cluster plan incorporates new connection roads between Palestinian communities – regardless of the route of the Separation Wall |
| Participatory process | Several local meetings including women took place |
| Coherence and coordination at the regional and national level | Discussions with the presence of local and regional representatives Local planning committee was established (Annex 3) The project is supported by the Jenin Governorate and the MoLG |
| Coordination - lawyers | Lawyers working in the area participated in meetings establishing the local planning committee Discussion concerning legal aid should continue |
| Coordinated messaging and advocacy | UN-Habitat advocacy in coordination with line ministries and LGUs |



Data Gathering

Data regarding risks includes planned and actual demolitions, land expropriation, seizure of structures, and settlement and road expansion. Based on the Barta'a experience it is suggested that planners will be:

1. Given training in the legal regime of spatial planning in Area C of the West Bank.
2. Informed by different available databases beyond those available locally to improve the information flow. These include for example, GeoMoLG; OCHA Demolitions Database; and ICA-based information on land, structures, roads and settlement plans.
3. Informed by the industrial and economic sectors.
4. Complement information on existing and potential threats and strengths from active lawyers working in the cluster area.
5. Cross-check resources to assess their accuracy and relevance.

Additionally, it is suggested that the needs assessment is:

- Informed based on nationally accepted basic development standards.
- Informed by data provided by development and humanitarian local and international organizations.



Data Processing

While the HRIAM is composed of excel sheets, it is suggested that:

1. Planners process data using the format of a "threat map" for each cluster highlighting high, medium and low risk areas. This "threat map" will complement the quantitative and textual needs assessment analysis.
2. Follow-up discussions with active lawyers in the area for clarifications and decision making.







Summary of Analysis and Conclusion

In the Barta'a case the risk of demographic and geographical fragmentation and isolation by the Separation Wall was mitigated by the planners as they extended the plan's boundaries regardless of the route of the Separation Wall and settlements' jurisdictional area. In addition, to enhance a regional perspective, representatives of the Ministry of Local Government on the national and regional level in Jenin were part of the design and decision making in the planning process.

The risk of forced urbanization of Barta'a was mitigated through cluster planning which considered the agricultural needs of all LGUs and not only the city of Barta'a itself. The risk of infrastructure-dependency on Israeli settlement was mitigated through the construction of new roads connecting the villages across the route of the Separation Wall. Lastly, coordinated messaging for the cluster was led by UN-Habitat team in coordination with line ministries and LGUs.

Annex 1:

Linking Human Rights to SDGs and NUA

|  SDGs |  NEW URBAN AGENDA |  HUMAN RIGHTS |
|--|--|--|
|  <p>11 SUSTAINABLE CITIES AND COMMUNITIES</p> | <p>Ensure access for all to adequate, safe and affordable housing and basic services including health, water and sanitation, transportation in particular to health facilities, water, sanitation, public spaces, public transport, housing, education and, public information and communication through policies and programmes</p> <p>[13a, 31, 32, 33, 34, 36, 37, 100, 104, 106, 107, 108, 109]</p> <p>Participatory, integrated and sustainable human settlement planning and management in all countries</p> <p>[16, 27, 28, 29, 50, 54, 63, 65, 66, 71, 74, 76, 77]</p> | <ul style="list-style-type: none"> › UNDHR, Article 25: Right to a standard of living - including food, clothing, housing and medical care › CEDAW, Article 14.2.h: Enjoy adequate living conditions, housing, sanitation, electricity and water supply, transport and communication › CRPD, Article 9.1: Enable persons with disabilities to participate in all spheres of life through buildings, roads, transportation and other indoor and outdoor facilities including schools, housing, medical facilities and workplaces › ICRMW, Article 43: Migrant workers to have access to housing, including social housing schemes and protection against exploitation in respect of rents › UNDRIP, Article 21.1: Right to (without discrimination) improve their condition in housing, sanitation, health and security › ICESCR, Article 11: Right to an adequate standard of living including, food, clothing and housing › ICESCR, Article 12: State to improve all aspects of environmental and industrial hygiene › UDHR, Article 21: Everyone has the right to take part in government directly or indirectly through chosen representatives › ICCPR, Article 25: Right to take part in government directly or indirectly through chosen representatives › CRC, Article 12: Freedom of expression for the child and due weight to be given to the views of the child in accordance with age and maturity of the child › CRC, Article 31.2: Promote the right of the child to participate fully in cultural and artistic life › CRPD, Article 4: State parties to consult actively and meaningfully persons with disabilities in decision making processes concerning issues related to persons with disabilities <p>Article 9 -</p> <ul style="list-style-type: none"> › CEDAW, Article 7: Right of women to participate in the political and public sphere on an equal basis with men › CEDAW, Article 13.c: Equal rights of both men and women to participate in recreational activities and all aspects of cultural life › ICRMW, Article 42.2: State to facilitate the participation of migrant workers and their families in decisions concerning the life and administration of local communities |
| <p>TARGETS</p> <p>[5, 5.1.a]</p> | <p>CEDAW • Convention on the Elimination of all Forms of Discrimination Against Women</p> <p>CRPD • Convention on the Rights of persons with Disabilities</p> <p>CRD • Convention on the Rights of the Child</p> <p>ICCPR • International Covenant on Civil and Political Rights</p> | <p>ICESCR • International Covenant on Economic, Social and Cultural Rights</p> <p>ICRMW • International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families</p> <p>UDHR • Universal Declaration of Human Rights</p> <p>UNDRIP • United Nations Declaration on the Rights of Indigenous Peoples.</p> |

Source (UN-Habitat, 2017: How do human rights link to the SDGs and NUA?, pp. 7)

Annex 2:

A. HRIAM Matrix at the local level for Palestinian communities that are eligible for the planning initiative

| INDICATOR | PRIVATE CONSTRUCTION | | | | | | | | | |
|---|-----------------------------------|-----------|------------|-------------------------|--------------------------------|----------|-------|--------|---------------------|------|
| | Existing (2) | | | | | Planned | | | | |
| | Property (3) (no., km, dunams) | Right (4) | People (5) | Protective measures (6) | Cost (7) USD EURO NIS | Property | Right | People | Protective measures | Cost |
| Structures - compare the findings inside/outside the existing/planned perimeter to consider amendment of the perimeter (8) | | | | | | | | | | |
| Current threat (9) | | | | | | | | | | |
| How many residential dwellings are currently under threat out of all the buildings in the community? And what are their conditions? | | | | | | | | | | |
| Is there a school/kindergarten under threat? | | | | | | | | | | |
| Any clinics/health facility under threat? | | | | | | | | | | |
| Any women/community center under threat? | | | | | | | | | | |
| Any solar panels under threat? | | | | | | | | | | |
| Any cisterns under threat? | | | | | | | | | | |
| Potential threat (10) | | | | | | | | | | |
| How many residential dwellings are under potential threat out of all the buildings in the community? And what are their conditions? | | | | | | | | | | |
| Is there a school/kindergarten under threat? | | | | | | | | | | |
| Any clinics/health facility under threat? | | | | | | | | | | |
| Any women/community center under threat? | | | | | | | | | | |
| Any solar panels under threat? | | | | | | | | | | |
| Any cisterns under threat? | | | | | | | | | | |
| Actualized threat (11) | | | | | | | | | | |
| How many residential dwellings have been demolished/seized? And what are their conditions? | | | | | | | | | | |
| Any school/kindergarten demolished/seized? | | | | | | | | | | |
| Any clinics/health facility demolished/seized? | | | | | | | | | | |
| Any women/community center demolished/seized? | | | | | | | | | | |
| Any solar panels seized? | | | | | | | | | | |
| Any cisterns demolished? | | | | | | | | | | |
| Any land expropriated? | | | | | | | | | | |

Human Rights Impact Assessment Monitoring Mechanism
 Local level for communities eligible for planning
 Phase one: Creating a community profile - mapping threats in the pre-planning phase (1)

| HUMANITARIAN AND SMALL DEVELOPMENT PROJECTS | | | | | | | | | | | |
|---|-------|--------|---------------------|------------------------------------|------|----------|-------|--------|---------------------|------------------------------------|------|
| Existing | | | | | | Planned | | | | | |
| Property | Right | People | Protective measures | Permit requested /granted / denied | Cost | Property | Right | People | Protective measures | Permit requested /granted / denied | Cost |
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| INDICATOR | PRIVATE CONSTRUCTION | | | | | | | | | |
|---|-----------------------------------|-----------|------------|-------------------------|--------------------------------|----------|-------|--------|---------------------|------|
| | Existing (2) | | | | | Planned | | | | |
| | Property (3) (no., km, dunams) | Right (4) | People (5) | Protective measures (6) | Cost (7) USD EURO NIS | Property | Right | People | Protective measures | Cost |
| Access through physical and legal obstacles (12) to basic services (13) and livelihoods (14) compare inside/outside the existing/planned perimeter and impact on the community | | | | | | | | | | |
| Current Threat | | | | | | | | | | |
| How many agricultural lands are beyond the Separation Wall/checkpoint/bypass road? | | | | | | | | | | |
| How many water wells cannot be regularly accessed? | | | | | | | | | | |
| How many school children face access difficulties? | | | | | | | | | | |
| How many chronic diseases patients face access difficulties? | | | | | | | | | | |
| How many dunams of the community's land which are expropriated are outside/inside the perimeter? (15) | | | | | | | | | | |
| How many local residents have left the community in the past two decades? | | | | | | | | | | |
| Potential threat (16) | | | | | | | | | | |
| How many lands are beyond the Separation Wall/checkpoint/bypass road? | | | | | | | | | | |
| How many water wells cannot be regularly accessed? | | | | | | | | | | |
| How many school children face access difficulties? | | | | | | | | | | |
| How many chronic diseases patients face access difficulties? | | | | | | | | | | |
| How many dunams of the community's land which are expropriated are outside/inside the perimeter? | | | | | | | | | | |

Notes:


- The mapping exercise relates to the plan's perimeter only in case there is already an ICA-approved plan. If not, then mapping should relate to the community's boundary as per the village council.
- Each existing structure whose status changes (existing, potential or realized threat) will be marked with the same color throughout the planning phases to note relevant changes in status.
- Private or public property.
- The rights include adequate housing, education, health, culture, land, food and livelihood, water and sanitation.
- Affected persons should include monitoring of vulnerable groups such as women, children, refugee lands, herder communities.
- Other protective measures such as Legal Aid (LA); Protective Presence (PP); Advocacy (A); Direct Political Pressure (DPP).
- Actual or projected cost.
- Structures include residential, public buildings, roads, archaeological sites, natural water resources, quarries etc. they need to be monitored on the cluster/national level, separately.

| HUMANITARIAN AND SMALL DEVELOPMENT PROJECTS | | | | | | | | | | | |
|---|-------|--------|---------------------|-------------------------------------|------|----------|-------|--------|---------------------|-------------------------------------|------|
| Existing | | | | | | Planned | | | | | |
| Property | Right | People | Protective measures | Permit requested / granted / denied | Cost | Property | Right | People | Protective measures | Permit requested / granted / denied | Cost |
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- Threats to structures include Demolition Order (DO), Stop Work Orders (SWO), Order to Seize Mobile Property (SO), etc.
- Structures without a permit that did not receive, as of yet, any military orders.
- When the structure is demolished or, according to OCHA's methodology, the people are displaced (when the house was occupied prior to demolition) or affected (when the house was not occupied).
- As per OCHA monitoring system: Separation Barrier gates, checkpoints, earth mounds, unpermitted roads, etc.
- Threats to access basic services: no. of service centers denied access; no. people not accessing the necessary service.
- Threats to livelihoods include no. of dunams of land with impeded or highly limited access; no. of residents in communities suffering from lack or highly limited access.
- Expropriated lands i.e. designated 'state lands', closed military areas, settlement jurisdictional area, nature reserves, etc.
- Projected threat, obstacles include projected route of the Separation Wall/ Barrier, expected new checkpoints.

Annex 3:

Decision to Establish Barta'a Local Planning Committee


Palestinian National Authority
Ministry of Local Government
السلطة الوطنية الفلسطينية
وزارة الحكم المحلي

Date: ٢٠١٩/٠٧/٢٤ : التاريخ No. ١٢٠٢/٩١/٨٠ : الرقم

قرار

بشأن تشكيل لجنة تنظيم محلية مشتركة للتجمعات (برطعه، عبد الله بونس، ظهير المالح، ام الریحان، طورة، ظهير العبد)

بناء على الصلاحيات المخولة لي، وبمقتضى وزيراً للحكم المحلي، ووفقاً لأحكام المادة (9) من قانون تنظيم المدن والقرى والأبنية رقم (79) لعام 1966، وبناء على مقتضيات المصلحة العامة، أفندي أقرر ما يلي:

المادة (1)

تشكل لجنة محلية مشتركة للتنظيم والبناء من الهيئات المحلية الآتية: (بلدية برطعه، مجلس قروي عبد الله بونس، مجلس قروي ظهير المالح، مجلس قروي ام الریحان، مجلس قروي طورة، مجلس قروي ظهير العبد).

المادة (2)

تتكون اللجنة من الأعضاء التالية أسمائهم:


| الرقم | الاسم | الصفة |
|-------|----------------------------|---------------------------------|
| 1 | عسان نايف قبيها | رئيس بلدية برطعه / رئيساً |
| 2 | جواد عبد حمدان قبيها | بلدية برطعه / عضواً |
| 3 | عبد الله محمد حسين خلف | بلدية برطعه / عضواً |
| 4 | احمد راتب محمد قبيها | بلدية برطعه / عضواً |
| 5 | سماح حمام عبد الله خلوف | بلدية برطعه / عضواً |
| 6 | مها عناد احمد قبيها | بلدية برطعه / عضواً |
| 7 | زياد حلمي لطف قبيها | مجلس قروي عبد الله بونس / عضواً |
| 8 | عمر خطيب | مجلس قروي ظهير المالح / عضواً |
| 9 | بالال عوض زيد | مجلس قروي ام الریحان / عضواً |
| 10 | محمود زيد | مجلس قروي طورة / عضواً |
| 11 | طارق سامي عبد اللطيف صازنه | مجلس قروي ظهير العبد / عضواً |

المادة (3)

تمارس اللجنة المحلية المشتركة كافة الصلاحيات المخولة للجنة المحلية للتنظيم والبناء بموجب أحكام المادة (9) من قانون تنظيم المدن والقرى رقم (79) لسنة 1966 وتعديلاته.

المادة (5)

يسري العمل بهذا القرار من تاريخه، ويلغى كل ما يتعارض مع هذا القرار.



- نسخة: عهدة الإقليم / المجلس محطه الله
- نسخة: الإقليم / وكالة المساعون.
- نسخة/ مديرية الحكم المحلي جنين.
- نسخة / إدارة العامة للتنظيم والتخطيط العمراني
- نسخة: وزارة الصحة لتتدون القانونية.

(٥٧٧) (٤٧٤٩)

رام الله : ٢٠١٩/٠٧/٢٤ : التاريخ
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08-2867509 : فاكس 08-2820273 : رقم الهاتف
رام الله : ٢٠١٩/٠٧/٢٤ : التاريخ
731 : ب.ب

