

# ISRAELI LAND GRAB AND FORCED POPULATION TRANSFER OF PALESTINIANS

---

*A Handbook for*

---

*Vulnerable Individuals and Communities*

**Researchers:** Amjad Alqasis and Nidal al Azza

**Research Team:** Thayer Hastings, Manar Makhoul, Brona Higgins and Amaia Elorza

**Field Research Team:** Wassim Ghantous, Halimeh al-Ubeidiya, Dr. Bassam Abu Hashish and Ala' Hilu

**Design and Layout:** Atallah Salem

**Printing:** Al-Ayyam Printing, Press, Publishing & Distribution Company

152 p. 24cm

ISBN 978-9950-339-39-5

**ISRAELI LAND GRAB AND FORCED POPULATION TRANSFER OF PALESTINIANS: A HANDBOOK FOR VULNERABLE INDIVIDUALS AND COMMUNITIES /**

1. Palestine 2. Israel 3. Forced Population Transfer 4. Land Confiscation 5. Restrictions on Use and Access of Land 6. Home Demolitions 7. Building Permits 8. Colonization 9. Occupied Palestinian Territory 10. Israeli Laws

DS127.96.S4I87 2013

All rights reserved

© BADIL Resource Center for Palestinian Residency & Refugee Rights

June 2013

**Credit and Notations**

Many thanks to all interview partners who provided the foundation for this publication, in particular to Suhad Bishara, Nasrat Dakwar, Manal Hazzan-Abu Sinni, Quamar Mishirqi, Ekram Nicola and Mohammad Abu Remaleh for their insightful and essential guidance in putting together this handbook. We would also like to thank Gerry Liston for his contribution in providing the legal overview presented in the introduction and Rich Wiles for his assistance throughout the editing phase.

Any quotation of up to 500 words may be used without permission provided that full attribution is given. Longer quotations, entire chapters or sections of this study may not be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, or stored in any retrieval system of any nature, without the express written permission of BADIL Resource Center for Palestinian Residency and Refugee Rights.

All legal information provided in this publication is intended as a general guide only and is not a substitute for seeking qualified legal advice from lawyers or organizations working in the field.

BADIL Resource Center for Palestinian Residency and Refugee Rights

Karkafa St. (down the street from Bethlehem Hotel)

PO Box 728, Bethlehem, West Bank; Palestine

Tel.: +970-2-277-7086; Fax: +970-2-274-7346

Website: [www.badil.org](http://www.badil.org)



BADIL is an independent, community-based non-profit human rights organization mandated to defend and promote the rights of Palestinian refugees and Internally Displaced Persons. Our vision, missions, programs and relationships are defined by our Palestinian identity and the principles of international law, in particular international human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

# CONTENTS

|                             |          |
|-----------------------------|----------|
| <b>INTRODUCTION .....</b>   | <b>1</b> |
| METHODOLOGY .....           | 4        |
| HISTORICAL BACKGROUND ..... | 5        |
| CLOSING REMARKS .....       | 20       |

## CHAPTER ONE: LAND CONFISCATION

|  |           |
|--|-----------|
| <b>WEST BANK, AREA C .....</b>         | <b>25</b> |
| CATEGORIES OF LAND .....               | 26        |
| LAND REGISTRATION .....                | 31        |
| LAND SEIZURE .....                     | 34        |
| <b>EAST JERUSALEM .....</b>            | <b>46</b> |
| MASTER PLAN .....                      | 46        |
| CONFISCATION FOR PUBLIC PURPOSES ..... | 47        |
| ABSENTEE PROPERTY LAW .....            | 50        |

## CHAPTER TWO: RESTRICTIONS ON USE AND ACCESS

|   |           |
|---|-----------|
| <b>WEST BANK, AREA C .....</b>  | <b>57</b> |
| ANNEXATION WALL .....   | 58        |
| SEAM ZONES .....  | 62        |
| JORDAN VALLEY AND DEAD SEA .....                                      | 64        |
| CLOSED MILITARY ZONES .....   | 66        |
| NATURE RESERVES AND NATIONAL PARKS .....                              | 70        |
| COLONIES AND THE 'PRIOR COORDINATION' REGIME .....                    | 73        |
| <b>EAST JERUSALEM .....</b>   | <b>74</b> |
| NATIONAL PARKS, NATURE RESERVES, NATIONAL SITES, MEMORIAL SITES ..... | 76        |
| <b>GAZA STRIP .....</b>   | <b>78</b> |
| LAND-BUFFER ZONE .....  | 79        |
| NAVAL-BUFFER ZONE .....   | 80        |

### **CHAPTER THREE: PLANNING, BUILDING PERMITS AND HOME DEMOLITIONS**

|  |                |
|--|----------------|
| <b>WEST BANK, AREA C</b> .....         | <b>86</b>      |
| PLANNING .....                         | 86             |
| BUILDING PERMITS .....                 | 88             |
| HOME DEMOLITIONS .....                 | 94             |
| <b>EAST JERUSALEM</b> .....            | <b>105</b>     |
| PLANNING.....                          | 105            |
| BUILDING PERMITS .....                 | <b>109</b>     |
| HOME DEMOLITIONS .....                 | 113            |
| <b>GAZA STRIP</b> .....                | <b>121</b>     |
| <br><b>RECOMMENDATIONS</b> .....       | <br><b>123</b> |
| <b>BIBLIOGRAPHY</b> .....              | <b>127</b>     |
| <br><b>ANNEX1: SELECTED LAWS</b> ..... | <br><b>144</b> |
| <b>ANNEX2: SELECTED CASE LAW</b> ..... | <b>146</b>     |

## INTRODUCTION

*“We are hoping that the Supreme Court won’t approve our displacement, although we know that for us Palestinians the Israeli High Court of Justice is a court of Injustice.”*

*Interview with Nasser Nawaj’a in Susya, South Hebron Hills (15 February 2013)*

Forced Population Transfer is one of the most serious and grave breaches of human rights and international humanitarian law occurring in the occupied Palestinian territory. The forcible displacement of the Palestinian people amounts to a policy and practice of forcible transfer of Palestinians ongoing since the 1948 Nakba. According to the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the former Commission on Human Rights:

The essence of population transfer remains a systematic coercive and deliberate...movement of population into or out of an area...with the effect or purpose of altering the demographic composition of a territory, particularly when that ideology or policy asserts the dominance of a certain group over another.<sup>1</sup>

Forced population transfer is illegal and has constituted an international crime since the Allied Resolution on German War Crimes was adopted in 1942. The strongest and most recent codification of the crime is found in the Rome Statute of the International Criminal Court, which clearly defines forcible transfer of population and settler-implantation as war crimes.<sup>2</sup> In order to achieve the forcible transfer of the indigenous Palestinian population many Israeli laws, policies and state practices have been developed and applied. Today, this forcible displacement is carried out by Israel in the form of a 'silent' transfer policy. The policy is silent in the sense that Israel applies it while attempting to avoid international attention and regularly displaces small numbers of people. The result is discrimination against Palestinians in areas including nationality, citizenship, residency rights and land ownership.<sup>3</sup>

Little attention is given to the forced population transfer of Palestinians from

- 
- 1 A.S. al-Khawasneh and R. Hatano, *The Human Rights Dimensions of Population Transfer Including the Implantation of Settlers, Preliminary Report Prepared for Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-fifth Session* (August 2, 1993), 27–32.
  - 2 Emily Haslam, 'Unlawful Population Transfer and the Limits of International Criminal Law', *The Cambridge Law Journal* 61, no. 1 (March 2002): 66–75.
  - 3 See Amjad Alqasis, 'The Ongoing Nakba -The Continuous Forcible Displacement Of The Palestinian People', *Al-Majdal Quarterly Magazine of BADIL*, Autumn 2012.

a legal point of view. Increased knowledge of the legal framework and possible remedies would be of high value to international and local NGOs, advocates, and the communities themselves. The Handbook is a first of its kind public research project on forced population transfer of Palestinians. In the proceeding chapters we will address the following topics: land confiscation, restrictions on access and usage of land, and planning, building permits and home demolitions.

BADIL Resource Center is known for its advocacy for the rights of Palestinian refugees. Why would we be interested in publishing a Handbook providing legal advice for Palestinians who cannot obtain building permits in the West Bank, for example? The reason for this stems from our holistic understanding of the ongoing nature of the forcible displacement of Palestinians and complementing previous publications since BADIL was founded in 1998. The ongoing Nakba requires us not only to document and analyze past displacement of Palestinians, but we believe it is also our responsibility to identify the present forms and mechanisms of displacement, and hence contribute to the strategy required for ending the ongoing displacement by offering practical ways to protect affected people in the present and in the future. The Handbook, then, serves two broad objectives:

1. First, the Handbook seeks to provide a much needed practical tool to help those facing various policies of displacement. Nonetheless, at this point we feel it is necessary to emphasize that we do not attempt to offer a comprehensive legal analysis in this Handbook. Nor could it substitute the professional legal services of a lawyer. The Handbook does hope to raise awareness towards legal procedures that could be undertaken by at-risk Palestinians. Moreover, the legal cases and examples described in the Handbook should not be considered exhaustive.

This Handbook primarily aims to educate Palestinians about their rights and the situation they are facing today. Although most people understand the problematic dimensions of the Israeli land grab, many lack basic knowledge of the institutions and legal system through which the land grab is carried out. This Handbook aims to clarify these ambiguities and assist affected Palestinians with understanding how to defend their fundamental rights and maintain residency on their lands.

In addition, the Handbook aims to help Palestinians prepare their legal cases before Israeli authorities and courts in order to increase their chances of success, although success here does not mean enjoying justice; it is only limited to postponing population transfer. In other words, by understanding the explicit and implicit legal procedures and requirements, Palestinians affected by Israeli policies may better their chances for effective resistance.

Moreover, a better understanding of legal aspects should enable Palestinians to follow and engage with the work of their lawyers.

On another target level, we intend for this Handbook to inform and support official Palestinian institutions and bodies that should be involved in preventing forced population transfer. They include Palestinian municipalities and popular committees. Ultimately, the Handbook aims to help defend Palestinian property and promote a continued Palestinian presence in their homeland. Institutions are integral for mobilizing popular visions of resistance.

2. The second objective of this Handbook falls within BADIL's most familiar work analyzing Israeli human rights violations and crimes against Palestinians from the view point of international law. Our rights-based approach is an advocacy tool for preserving the rights of affected Palestinians – primarily refugees. The Handbook exposes Israeli crimes against Palestinians simply by illustrating the Israeli legal system concerning land issues in the occupied Palestinian territory.

The objectives of this Handbook are two sides of one coin. To clarify the link between the two objectives we first need to understand the ideological history of forcible displacement of Palestinians and the legal tools utilized to achieve that result. We aim to present such a clarification in this chapter. In the first section, we will reiterate the basic facts regarding Palestinian displacement. The following section will provide a history of Israeli laws and regulations that have served to implement Palestinian displacement. The facts and understandings are foundational by laying out a legal context that should explain the ideological rationale behind the various institutions and legislations we will address in later chapters of this Handbook. After laying these foundations, we will elaborate on the Handbook and how to best utilize it.

The Handbook is one part of a larger project serving the objectives of increasing Palestinian resilience to forced population transfer through raising awareness and education, as well as generating popular initiatives. BADIL sought to achieve these objectives by addressing different audiences and tailoring our activities according to their particular needs. For example, BADIL produced brochures to be distributed in large numbers among Palestinian communities and municipalities. The brochures include succinct information and advice on various legal topics related to land grab and forced population transfer.

Moreover, BADIL provided training materials suited for the younger generations. Ten training groups were set up in the Gaza Strip, the West Bank and East Jerusalem. Groups of Palestinian youth attended each training session lasting

two days providing them with tools to understand Israeli land grab and forced population transfer policies, ways to document these practices and the means to advocate against them.

Finally, BADIL established an online information hub, titled BADIL's Ongoing Nakba Education Center, to collate testimonies and data on ongoing Israeli policies to transfer and dispossess Palestinian communities. The online information hub enables new presentation formats, in addition to the brochures, Handbook and training of a small group of youths, expanding BADIL's reach to communities and audiences worldwide. The online hub serves the dual role of education and advocacy ([ongoingnakba.org](http://ongoingnakba.org)).

## METHODOLOGY

This Handbook is the product of a multilayered effort from various sources of information. Our research methodology combined desk research, field research and interviews with practitioners. Desk researchers worked on the history of the legal system related to issues we cover in the Handbook, including research into Israeli court rulings and laws, as well as military orders.

Field researchers met Palestinian individuals who have experienced or are in the process of defending their properties in Israeli courts. More than 70 affected people were interviewed for this project. Collected data was recorded and analyzed *vis-à-vis* the theoretical background collated by desk researchers. Field researchers also interviewed representatives of Palestinian municipalities trying to better understand the bigger picture regarding Israeli policies of land grab and forced population transfer in their respective areas. Excerpts, examples and helpful advice from field interviews were integrated into the text of the Handbook in order to elaborate on some of the legal issues through case study. Our intention is to orient the material of this Handbook towards maximum accessibility to all readers, even those who have no legal education. To this end, we made an effort to simplify the language and avoid jargon wherever possible.

A third and enriching source of information for the Handbook were the consultations with lawyers and human rights organizations who generously contributed from their technical knowledge and practical knowhow. Interviewed lawyers, some of whom have many years of work experience dealing with the issues covered in the Handbook, provided explanations, advice and recommendations on the best means to address a wide spectrum of problems and scenarios. However, as we have already stated, this Handbook cannot replace the services of a professional lawyer.



## HISTORICAL BACKGROUND

The continuing Israeli colonial enterprise aims at supplanting Palestine's<sup>4</sup> indigenous inhabitants, including from areas that today lie within the borders of Israel proper. The displacement of Palestinians is paralleled by a relentless campaign of implanting Jewish-Israelis via settlements (colonies), illegal according to international law. In other words, Israel aims to colonize Palestine with Jewish immigrants (settlers/colonists) at the expense of the indigenous Palestinians, ultimately seeking to create a predominantly Jewish entity there.

Almost half a million Palestinians were displaced between December 1947 and May 1948 - following the UN Partition Plan and before the proclamation of Israel. The greatest outflow of refugees occurred in April and early May of 1948 as a result of operations by Zionist paramilitary organizations. Today, 66 percent of the Palestinian people worldwide (more than seven million) are themselves, or the descendants of, Palestinians who have been forcibly displaced by the Israeli regime. Israeli laws such as the 1954 *Prevention of Infiltration Law* and Military Orders 1649 and 1650 have prohibited Palestinians from returning to their homes in Israel or the occupied Palestinian territory, an inalienable human right according to international law. The deliberate and planned forcible displacement amounts to a policy and practice of forcible transfer of the Palestinian population. This process, which we call *Nakba*, began prior to 1948 and is still ongoing throughout Palestine today.

This Handbook will focus on contemporary mechanisms of the ongoing Nakba in three main areas: the West Bank, East Jerusalem and the Gaza Strip.

## OVERVIEW: GEOGRAPHICAL AREAS

*Military Order No. 2* of 1967<sup>5</sup> was introduced following Israel's occupation of the West Bank and the Gaza Strip. Military Order No. 2 isolated the West Bank region physically and legally by concentrating all powers and authorities belonging to the previous regime in the hands of the Israeli Military Governor<sup>6</sup> who also assumed the powers of the Egyptian military administration in Gaza. In the same year East Jerusalem was illegally annexed and Israeli civil law was applied.

---

4 'Palestine' refers to the geography of 'Historic Palestine', the area ruled by the British Mandate until its withdrawal in May 1948.

5 Portions of the law's text can be found at: <http://www.israelawresourcecenter.org/israelimilitaryorders/fulltext/mo0002.htm>.

6 ARIJ, 'Status of Palestinian Territories and Palestinian Society Under Israeli Occupation', *40 Years Of Israeli Occupation 1967-2007*, n.d.; available from <http://www.arij.org/atlas40/chapter2.2.html>; accessed 24 April 2004.

## West Bank

Following the 1995 Oslo Accord, the West Bank was divided into Areas A, B and C. The three administrative areas correlate to about 17 percent, 23 percent and 60 percent of West Bank territory and reflect tiers of civil and security control allocated to Israel and the Palestinian National Authority. In theory, the Oslo Agreements endowed the Palestinian National Authority (PNA; commonly known as Palestinian Authority [PA]) with full control over civil and security matters in Area A, while Israel was awarded control of movement across Area A's borders. Nonetheless, Area A, consisting of the most populous Palestinian cities and towns, falls short of sovereignty and is subject to frequent Israeli military raids. In Area B, which consists of inhabited but rural regions, the Palestinian Authority is responsible for civil matters and public order, but military functions remain under the control of the Israeli military. Areas A and B are divided into 227 non-contiguous areas separated by Israeli military checkpoints and barriers. Area C, which is under full Israeli military and administrative control and accounts for the majority of West Bank land, consists of Israeli colonies, roads for colonies, military zones, strategic areas, water reservoirs and almost all of the Jordan Valley.<sup>7</sup> Israel operates a discriminatory legal system within Area C of the West Bank whereby Israeli colonists are given the full protections of Israeli civil law while Palestinians are subject to a military legal rule allowing for a widespread abuse of rights.

**Table 1: Areas and Population Rates in the West Bank.**

| West Bank Area | Control (as stipulated in the Oslo Accords) | Land area in percent | Palestinian population in percent |
|----------------|---|----------------------|-----------------------------------|
| 'A'            | Palestinian                                 | 15%                  | 55%                               |
| 'B'            | Israeli/Palestinian                         | 25%                  | 39%                               |
| 'C'            | Israeli                                     | 60%                  | 6% <sup>8</sup>                   |

7 Diakonia, 'The Oslo Agreements', *Easy Guide to International Humanitarian Law in the Occupied Palestinian Territory (oPt)*, June 21, 2007; available from <http://www.diakonia.se/sa/node.asp?node=1125>; accessed 14 May 2013.

8 OCHA, *Area C Humanitarian Response Plan Fact Sheet* (August 2010), 1–2; available from [http://www.ochaopt.org/documents/ocha\\_opt\\_area\\_c\\_humanitarian\\_response\\_plan\\_fact\\_sheet\\_2010\\_09\\_03\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_area_c_humanitarian_response_plan_fact_sheet_2010_09_03_english.pdf); accessed 22 April 2013.

## East Jerusalem

In 1967, Israel annexed 70.5 km<sup>2</sup> of East Jerusalem (the West Bank) and imposed Israeli law contrary to international law.<sup>9</sup> 35 percent of annexed East Jerusalem was confiscated for establishing Israeli colonies and, today, 87 percent of East Jerusalem is planned to prohibit Palestinian residency. A 1967 census estimated that 70,000 Palestinians lived in East Jerusalem and no Israelis.<sup>10</sup> In 2012, 270,000 Palestinians and an estimated 200,000 Israeli colonists reside in East Jerusalem.<sup>11</sup> Since annexation, Israel has implemented policies designed to reduce the number of Palestinians in the city. Planning, development and legislation are tools used to fulfill that ideology among which is the principal of ‘demographic balance’.<sup>12</sup>

While East Jerusalem is the internationally recognized capital of Palestine, it does not fall under the military legal systems applied to the remainder of the West Bank. Rather, subsequent to annexation, Israel applied its civil legal code to East Jerusalem by virtue of two laws.<sup>13</sup> Owing to spatial constraints a full outline of Israeli law will not be presented in this publication, but rather only those laws most pertinent to forced population transfer in East Jerusalem.

## Gaza Strip

The Gaza Strip, a narrow piece of land on the Mediterranean coast, is home to a population of more than 1.5 million Palestinians. Gaza covers an area of just 360 square kilometers and is considered one of the most densely populated areas in the world. In 2005, Israel withdrew its military and colonists from inside the Gaza Strip, however it remains in control of the borders, including the entry and exit of people and goods, as well as the air space and access to the sea. The humanitarian situation in Gaza is marked by extreme poverty and unemployment with severe shortages in

9 In 1968, the UN Security Council declared the annexation decree illegal and in flagrant violation of international law. See UN Security Council resolution 252.

10 BADIL and COHRE, *Ruling Palestine – A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine* (Geneva, Switzerland; Bethlehem, Palestine, 2005), 125.

11 OCHA, *Settlements in Palestinian Residential Areas in East Jerusalem* (April 2012); available from [http://www.ochaopt.org/documents/ocha\\_opt\\_ej\\_settlements\\_factSheet\\_april\\_2012\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_ej_settlements_factSheet_april_2012_english.pdf); accessed 26 April 2013.

12 According to the former advisor on Arab Affairs to the Mayor of Jerusalem, Amir Chesin: ‘Israel’s leaders adopted two basic principles in their rule of east Jerusalem. The first was to rapidly increase the Jewish population in east Jerusalem. The second was to hinder growth of the Arab population and to force Arab residents to make their homes elsewhere.’ From Human Rights Watch, *Separate and Unequal: Israel’s Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories* (Israel/Occupied Palestinian Territories, December 2010), 31–32; available from [http://www.hrw.org/sites/default/files/reports/iotp1210webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/iotp1210webwcover_0.pdf); accessed 2 May 2013.

13 *Law and Administration Ordinance 5727-1967*, 1967 Amendment No. 11, Vol. 21, P. 75.

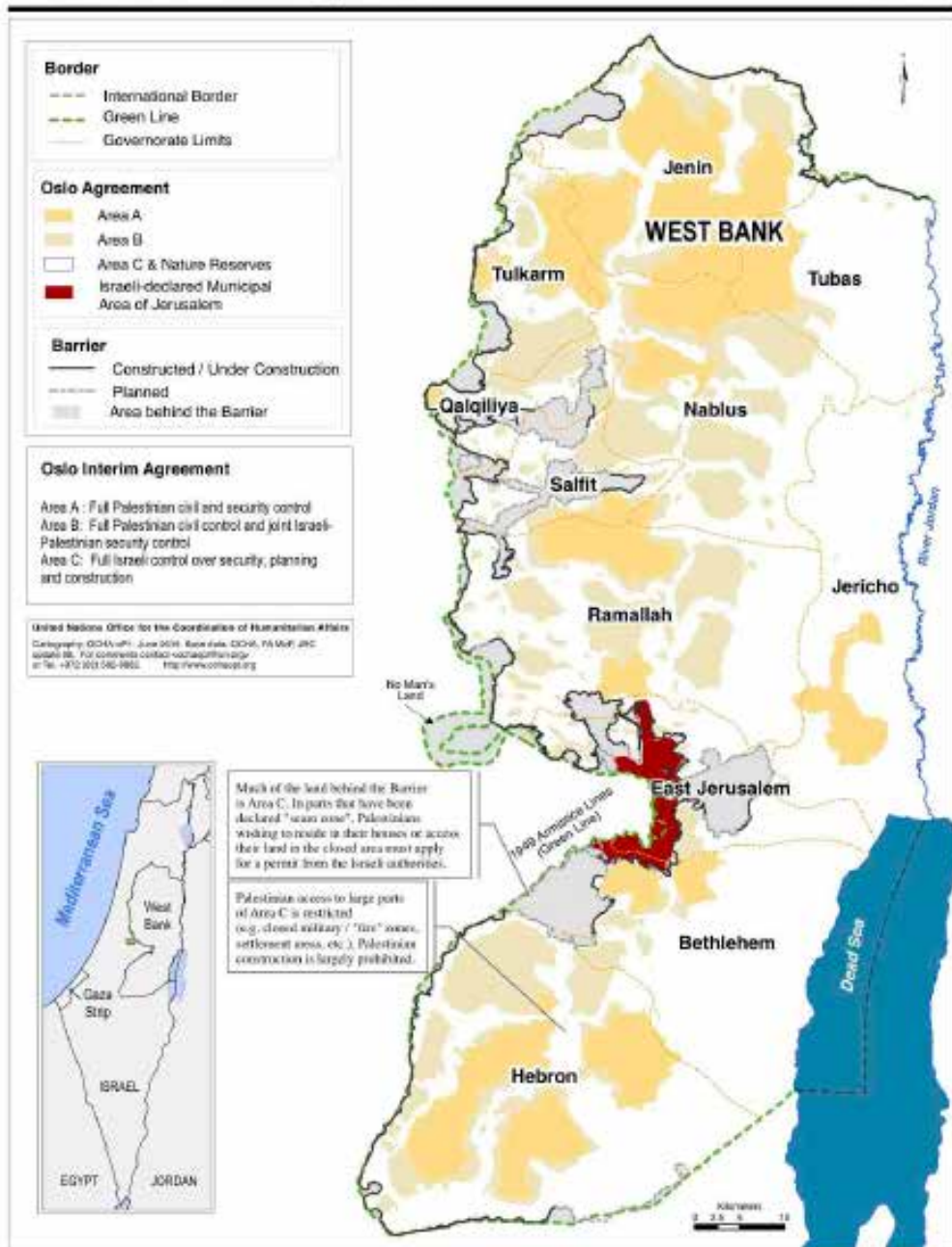


United Nations Office for the Coordination of Humanitarian Affairs

**Restrictions on Palestinian Access in the West Bank**

CAP 2010 - Consolidated Appeal Process

June 2010



medicine, food and housing as a result of the siege imposed by Israel on the area, consolidated in June 2007.

## **LEGAL HISTORY OF ISRAELI LAND GRAB IN PALESTINE**

The clear imbalance of power between Israel and the Palestinians facilitated the almost-successful implementation of the ideal vision of emptying the territory from its indigenous population. The Palestinian endeavor is to achieve and retain their rights as the victims of this Israeli policy. Thus, it is important to seek solutions rooted in a strict rights-based approach, rather than keep handling the features and outcomes of the illegal Israeli regime through a humanitarian emergency aid approach. A human rights-based approach that can lead to a sustainable and just peace for Palestinians should be based upon international law, the key principles of justice and equality for all. Therefore it necessarily should include:

1. Recognition of rights, in particular the Palestinian people's right to self determination, the right of refugees and internally displaced persons to reparation (voluntary return, property restitution and/or compensations), the right of development (to freely dispose and enjoy the natural wealth and resources and cultural heritage) and the right to peace.
2. Addressing the root causes of the conflict: namely colonialism, institutionalized discrimination and occupation. These are the driving factors underpinning a range of human rights violations, such as the denial of displaced people's right of return, illegal land confiscation, colonization and colony expansion<sup>14</sup>, home demolitions, ongoing forcible displacement, restrictions on freedoms of movement and so forth.
3. Ensuring rights for all parties and victims without discrimination and without causing injustice or mass displacement/elimination of the other while enabling rights-holders to exercise their legitimate and legal rights.
4. Setting the foundations for peaceful and cooperative relations between people, groups, individuals and states. This will be an intrinsic component of a just peace and is essential for reconciliation, which in turn will be achieved through implementing transitional justice (both judicial and non-judicial) mechanisms and tools, including criminal prosecution, reparations, institutional reform and truth commissions.

In both the State of Israel and in the occupied Palestinian territory, land and planning laws and military orders as well as emergency regulations have played a central role

---

<sup>14</sup> Colonies refer to the illegally-built Israeli settlements throughout the occupied Palestinian territory.

in the confiscation and colonization of Palestinian-owned land. Such legislations have also been fundamental to the corresponding concentration of the Palestinian population into ever decreasing pockets of land.

It was war that set in motion a more extensive process of Israeli land acquisition in both (what are today) the State of Israel and the occupied Palestinian territory. The 1948 War caused the displacement of between 750,000 and 900,000 Palestinians – 55 to 66 percent of the total population at the time.<sup>15</sup> Up to 531 Palestinian localities were destroyed or depopulated<sup>16</sup> leaving vacant 20,350 km<sup>2</sup> of land.<sup>17</sup> Military Rule, based on Mandatory emergency regulations, was immediately introduced to facilitate the confiscation of this land. The most important legislation introduced to deal with refugee property was the *Emergency Regulations (Absentee Property) Law*, 1948.

The Absentee Property Law gave control over ‘absentee’ property to a Custodian of Absentee Property. The term ‘absentee’ was defined so broadly as to include not only Palestinians who had fled the newly established state of Israel but also those who had fled their homes but remained within its borders.<sup>18</sup> In fact, the term even included many Jewish colonists. However, an ostensibly race-neutral provision exempted absentees who left their home because of, among other things, “fear of Israel’s enemies” - thereby effectively excluding the Jewish population from the application of the law.<sup>19</sup>

The Israeli authorities also made immediate use of emergency legislation to confiscate land from Palestinians who had not fled the terror of the 1948 War. Among the laws used for this purpose were the Defense Regulations that were introduced during the British Mandate. According to Bisharat, these regulations “were neutral on their face,” however, the military governors, who ultimately retained discretion as to how they were to be enforced, “rarely invoked them against Jews”.<sup>20</sup>

*The Land Acquisition (Validation of Acts and Compensation) Law*, 1953 was enacted in order to complete the transfer to the State of confiscated Palestinian land not abandoned during the 1948 War. In the words of Israeli Finance Minister Eliezer

---

15 BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons, 2008-2009* (Bethlehem, Palestine, 2009), 10.

16 BADIL and COHRE, *Ruling Palestine*, 33; See also: Salman Abu Sitta, *From Refugees to Citizens at Home* (London, 2001).

17 BADIL and COHRE, *Ruling Palestine*, 34.

18 Jeremy Forman and Alexandre (Sandy) Kedar, ‘From Arab Land to “Israel Lands”: The Legal Dispossession of the Palestinians Displaced by Israel in the Wake of 1948’, *Environment and Planning D: Society and Space* 22, no. 6 (2004): 814.

19 Forman and Kedar, ‘From Arab Land to “Israel Lands”’, 814.

20 George Emile Bisharat, ‘Land, Law and Legitimacy in Israel and the Occupied Territories’, *American University Law Review* 43, no. 2 (Winter 1994): 515–516.

Kaplan, the purpose of the law “was to instill legality in some acts undertaken during and following the war.”<sup>21</sup> This law did not, in fact, distinguish between ‘absentee’ and ‘non-absentee’ land. Thus in the year following its enactment, it was used to appropriate 1.2 million dunums of land (1,200 km<sup>2</sup>), of which 704,000 (704 km<sup>2</sup>) was absentee land. Of the 311,000 (311 km<sup>2</sup>) dunums of private land which were expropriated that year, 304,700 (304.7 km<sup>2</sup>) dunums were Palestinian owned.<sup>22</sup>

An almost identical process took place in the occupied Palestinian territory in the aftermath of the 1967 War. As it was the practice within Israel-proper, “the acquisition of Palestinian lands in the West Bank and Gaza Strip proceed[ed] along several lines simultaneously.”<sup>23</sup> In relation to refugee property, Israel quickly introduced several ‘Absentee Property Law’-type orders.<sup>24</sup> Again, the Israeli government expanded its policy of land confiscation far beyond the land of refugees, exploiting (and, where necessary, amending) the laws of Jordan, Palestine and the Ottoman Empire “to advance its program of land acquisition.”<sup>25</sup> For example, the government “wielded Article 125 of the *Defense (Emergency) Regulations* as a tool for land acquisition in the occupied Palestinian territory, just as it had done within Israel itself.”<sup>26</sup> Using this law alone, it converted “an estimated 1.11 million dunums of land in the West Bank into restricted military areas.”<sup>27</sup>

Minister of Religious Affairs Zerah Wahrhaftig, also the chairman of the Constitution, Law and Justice Committee described how ‘Israel lands’ - which according to the 1960 *Basic Law* are defined as lands of the State, the Development Authority and the Jewish National Fund<sup>28</sup> and which could not be sold – would be designated for the exclusive use of the Jewish people: “We want to make it clear that the land of Israel belongs to the people of Israel. The ‘people of Israel’ is a concept broader than the ‘people resident in Zion,’ because the people of Israel live throughout the world. On the other hand, every law that is passed is for the benefit of all the residents of the state, and all the residents of the state include also people who do not belong to the

---

21 See Forman and Kedar, ‘From Arab Land to “Israel Lands”’, 820.

22 Forman and Kedar, ‘From Arab Land to “Israel Lands”’, 821.

23 BADIL and COHRE, *Ruling Palestine*, 78.

24 BADIL and COHRE, *Ruling Palestine*, 85.

25 Bisharat, ‘Land, Law and Legitimacy in Israel and the Occupied Territories’, 533.

26 Bisharat, ‘Land, Law and Legitimacy in Israel and the Occupied Territories’, 534.

27 Bisharat, ‘Land, Law and Legitimacy in Israel and the Occupied Territories’, 534.

28 The Jewish National Fund was created in 1901 to acquire land and property rights in Palestine and beyond for exclusive Jewish settlement. While indigenous Palestinians are barred from leasing, building on, managing or working their own land, the Jewish National Fund holds the land in trust for “those of Jewish race or descendency” living anywhere in the world to “promote the interests of Jews in the prescribed region.” The Jewish National Fund has been a key pillar of the colonization of Palestine - from the founding of the State of Israel to the present. For more information see: <http://www.stopthejnf.org/>.



people of Israel, the worldwide people of Israel”.<sup>29</sup> When asked why this was not stated explicitly in the law, Wahrhaftig responded, “[w]e cannot express this.” He further explained, “[t]here is [in the law] a very significant legal innovation: we are giving legal garb to the Memorandum of Association of the [Jewish National Fund]”.<sup>30</sup>

In 1960, the *Israel Lands Administration Law* established both the Israel Lands Administration and the Israel Lands Council. Under this law the Israel Lands Council was designated as the body responsible for laying down land policy in accordance with which the Israel Lands Administration was to act. Pursuant to a covenant signed between the government and the Jewish National Fund in 1961, land owned by the Jewish National Fund was to “be administered [by the Israel Lands Administration] subject to the Memorandum and Articles of Association of the [Jewish National Fund]”.<sup>31</sup> The Jewish National Fund only owns approximately 13 percent of all land within the state of Israel. The rest of ‘Israel Lands’ (which, including Jewish National Fund-owned land, make up approximately 90 percent of the land within Israel’s pre-1967 borders<sup>32</sup>) are not subject to this explicit requirement. Nevertheless, intentions such as those expressed by Zerah Wahrhaftig were given effect in large part by a provision in the Covenant stipulating that the Jewish National Fund is entitled to just under half of the seats on the Israel Lands Council. In practice, the Jewish National Fund has had even greater representation on the Israel Lands Council. A report by the Israeli State Comptroller in 1993 revealed that in reality, participation of government representatives at Israel Lands Council board meetings was minimal compared to that of the Jewish National Fund representatives.<sup>33</sup>

It is hardly surprising, therefore, that the Israel Lands Administration acts in a manner that furthers Jewish possession of the land. This is well illustrated by its leasing practices in respect of agricultural land (which makes up 85 percent of ‘Israel Lands’<sup>34</sup>). There are two types of lease for agricultural land – long and short. Long leases are normally only granted to agricultural colonies (as opposed to individual farmers). According to the *Candidates for Agricultural Settlement Law* of 1953, ‘Settlement Institutions’ are the bodies responsible for establishing agricultural settlements.<sup>35</sup> No Palestinian

29 Bisharat, ‘Land, Law and Legitimacy in Israel and the Occupied Territories’, 534.

30 Bisharat, ‘Land, Law and Legitimacy in Israel and the Occupied Territories’, 534.

31 ‘The Covenant Between the State of Israel and Keren Kayemeth Lelsrael’, n.d.; available from <http://www.kkl.org.il/eng/about-kkl-jnf/kkl-jnf-id/kkl-jnf-israeli-government-covenant/>.

32 Alexandre (Sandy) Kedar and Oren Yiftachel, ‘Land Regime and Social Relations in Israel’, in *Realizing Property Rights: Swiss Human Rights Book* (Zurich, 2006), 139; available from [http://www.geog.bgu.ac.il/members/yiftachel/new\\_papers\\_eng/Kedar%20and%20Yiftachel.pdf](http://www.geog.bgu.ac.il/members/yiftachel/new_papers_eng/Kedar%20and%20Yiftachel.pdf); accessed 22 April 2013.

33 Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Land Rights in Israel* (London ; New York, 2003), 177.

34 Abu Hussein and McKay, *Access Denied*, 182.

35 Abu Hussein and McKay, *Access Denied*, 190, f. 55.



organization is currently recognized as a settlement institution.<sup>36</sup> Thus, Hussein and McKay found that “of the 2.8 million dunums leased [under a long lease], none at all are leased to Palestinian citizens”.<sup>37</sup> A similar policy exists in respect of short-term leases.<sup>38</sup>

The Israel Lands Administration is not the only obstacle to Palestinians who wish to lease agricultural land. In practice, ‘admissions committees’ also prevent them from living on such land. Admissions committees operate in 695 agricultural and community towns, which together account for 68.5 percent of all towns in Israel and around 85 percent of all villages.<sup>39</sup> While originally introduced by the Israel Lands Administration, the institution has recently been enshrined into Israeli law with the passage by the Knesset in March 2011 of the *Admissions Committee Law*. This law requires anyone seeking to move to any community with fewer than 400 families in the Naqab (Negev) and Galilee regions (both of which are home to relatively high proportions of Palestinians) to obtain approval from such a committee.<sup>40</sup> Under the law, these committees can reject candidates who, among other things, “are ill-suited to the community’s way of life” or “might harm the community’s fabric”.<sup>41</sup> Another obstacle of similar effect is the *Agricultural Settlement (Restrictions on the Use of Land and Water) Law* of 1967 which, among other things, prohibits ‘non-conforming use’ of agricultural land leased from the Israel Lands Administration. According to Hussein and McKay, “the vast majority of cases” taken against lessors in violation of this law “involved subleasing of land to Arabs”.<sup>42</sup> As a result of these factors combined, 99.6 percent of the population living in rural localities of Israel are Jewish citizens.<sup>43</sup>

## Israeli Control of the Land in the 1967 Occupied Palestinian Territory

The same ideology evidently directs or stimulates the land allocation policy employed in the occupied Palestinian territory. The 1967 occupation paved the way for the extension of the process of Palestinian displacement to the West Bank and to that part of Jerusalem which fell outside Israeli territory under the 1949 Armistice Agreements.<sup>44</sup>

---

36 Abu Hussein and McKay, *Access Denied*, 191.

37 Abu Hussein and McKay, *Access Denied*, 183.

38 Abu Hussein and McKay, *Access Denied*, 183.

39 Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel* (Haifa, Israel, 2011), 32; available from [http://www.adalah.org/upfiles/Christian%20Aid%20Report%20December%202010%20FINAL\(1\).pdf](http://www.adalah.org/upfiles/Christian%20Aid%20Report%20December%202010%20FINAL(1).pdf); accessed 18 April 2013.

40 Human Rights Watch, ‘Israel: New Laws Marginalize Palestinian Arab Citizens’ (March 30, 2011); available from <http://www.hrw.org/news/2011/03/30/israel-new-laws-marginalize-palestinian-arab-citizens>; accessed 22 April 2013.

41 Human Rights Watch, ‘Israel: New Laws Marginalize Palestinian Arab Citizens’.

42 Abu Hussein and McKay, *Access Denied*, 184.

43 Adalah, *The Inequality Report: The Palestinian Arab Minority in Israel*.

44 The 1949 Armistice Agreements between Israel, Egypt, Lebanon, Jordan and Syria, ended the official hostilities of the 1948 War and established Armistice Demarcation Lines between Israel and the West Bank, also known as the Green Line.

By 1967, land and planning related laws had played, and were continuing (as they do today) to play, a central role in Israel in both cementing and continuing the mass-displacement which took place during the *Nakba*. It is hardly surprising therefore that “the process of land acquisition and colonization in the Occupied Territories closely mirrors strategies adopted” in Israel.<sup>45</sup>

In the West Bank, this process commenced with the introduction on 7 June 1967 by the Israeli Military of the *Proclamation on Law and Administration (Proclamation No. 2)*.<sup>46</sup> This proclamation vested all powers of “government, legislation, appointment, or administration with respect to the Region or its inhabitants” in the hands of the Commander of the Israeli Military and provided that the prior existing law governing the region would remain in force, subject to its compliance with any order issued by the military government.<sup>47</sup>

Just as in the aftermath of 1948, a measure to deal with “Absentee Property” – Military Order 58 – was among the first introduced by the military administration. Similar to the corresponding Israeli law, it provided for the transfer of property “whose legal owner ... left the area”.<sup>48</sup>

A further means by which Israel confiscated vast swathes of Palestinian-owned land in the occupied Palestinian territory was by drastically redefining the concept of ‘State Land’.<sup>49</sup> Reviewing the jurisprudence of the Israeli Supreme Court which developed around this process, Kedar found that “[l]ike courts in other settler societies, the Israeli Court applied the law in ways that restricted the scope of legal recognition of ‘borderline’ land possessed by [Palestinian] Arabs”.<sup>50</sup>

Prior to the Israeli occupation of the West Bank, 13 percent of the land in that area was registered as State Land a land registration process initiated under Jordanian rule.<sup>51</sup> That process, which had been completed in only 37.5 percent of West Bank land by June 1967, was frozen by Military Order 291, introduced in December 1968.<sup>52</sup> Those Palestinians whose land the registration process had not yet reached were therefore denied the opportunity to have their land-ownership formally recognized.<sup>53</sup>

---

45 BADIL and COHRE, *Ruling Palestine*, 72.

46 BADIL and COHRE, *Ruling Palestine*, 79.

47 Bisharat, ‘Land, Law and Legitimacy in Israel and the Occupied Territories’, 527–528.

48 BADIL and COHRE, *Ruling Palestine*, 85.

49 BADIL and COHRE, *Ruling Palestine*, 85.

50 BADIL and COHRE, *Ruling Palestine*, 85.

51 BADIL and COHRE, *Ruling Palestine*, 89.

52 Bisharat, ‘Land, Law and Legitimacy in Israel and the Occupied Territories’, 539.

53 Raja Shehadeh, ‘The Land Law of Palestine: An Analysis of the Definition of State Lands’, *Journal of Palestine Studies* 11, no. 2 (January 1982): 97.

Military Order 418, adopted in 1971, transferred the powers of the Ministry of Interior, which included powers of appointment to the relevant bodies, to the Commander of the Israeli Military. The same order removed the planning functions from village councils, transferring these functions to a Central Planning Bureau.<sup>54</sup> Through this highly centralized planning system the Israeli authorities inhibited the growth of Palestinian population centers in the occupied Palestinian territory.

Military authorities made extensive use of the mechanism of declaring land as 'State Land' following the decision in 1979 of the Israeli Supreme Court in the *Elon Moreh* case.<sup>55</sup> In that case the court held that settlements/colonies could only be built on land that had been confiscated for specific purposes insofar as construction was consistent with those purposes. Concerned by the restrictions imposed by this decision, the Israeli authorities sought an alternative means by which to acquire land for the purpose of colony-building. This they found in a provision of the Order-in-Council enacted under the British Mandate which defined "public lands" as "all lands in Palestine subject to the control of the government" and those "which are or shall be acquired for the public service or otherwise".<sup>56</sup> Taking advantage of the suspension of the land registration process imposed some eleven years earlier, Israeli authorities began to declare vast swathes of land, as 'State Land'.<sup>57</sup>

An array of military orders other than those concerned with the process of declaring State Land were also promulgated by the military authorities to facilitate the confiscation, and *de facto* confiscation, of land. Many military orders have been, and continue to be, issued thus authorizing the confiscation of privately owned land on such purported grounds as military and public needs. It should be emphasized, in this regard, that the *Elon Moreh* case referred to above involved an unusual degree of conclusive evidence that the purpose for building the colony was inconsistent with the grounds on which the relevant land had been confiscated. In other cases, such as the *Beit El-Tubas* case,<sup>58</sup> the court has shown great deference towards the authorities as regards, for example, what constitutes 'military necessity'.<sup>59</sup> Thus many colonies have been built on lands confiscated for reasons other than the fact that they are declared to be 'State Lands'.<sup>60</sup> Indeed, the vast majority of Israeli colonies in the West Bank

54 B'Tselem, *Land Grab: Israel's Settlement Policy in the West Bank*, trans. Yael Stein (Jerusalem, May 2002), 86; available from [http://www.btselem.org/download/200205\\_land\\_grab\\_eng.pdf](http://www.btselem.org/download/200205_land_grab_eng.pdf); accessed 24 April 2013.

55 *Dweikat Et Al. V. Government of Israel Et Al.*, 34(1) 1 Piskei Din (HCJ 1979).

56 Bisharat, 'Land, Law and Legitimacy in Israel and the Occupied Territories', 539.

57 Shehadeh, 'The Land Law of Palestine', 95.

58 *Izzat Muhammad Mustafa Duweikat Et 16 Al. V. Government of Israel* (n.d.).

59 Bisharat, 'Land, Law and Legitimacy in Israel and the Occupied Territories', 537.

60 B'Tselem, *Land Grab*, chap. 3.

have been built on lands seized by Israel through various means.<sup>61</sup> The colonies themselves occupy only approximately 7 percent of West Bank land. However, in addition to this figure, land held in reserve Jewish regional councils amounts to approximately 35 percent of West Bank land.<sup>62</sup>

Many more military orders affect the use, by Palestinians, of their land. Among the most impactful of these orders are those relating to the use of water. Pursuant to Military Order 158, Palestinians are required to obtain permits from the Israeli authorities to dig or to expand wells on their land.<sup>63</sup> The routine denial of such permits is central to the fact that average per capita Palestinian water consumption is about 30 percent lower than the amount recommended by the World Health Organization and less than a quarter of that in Israel.<sup>64</sup>

### After the Oslo Agreement

In the West Bank, the current land-ownership structure was created by the process of land acquisition and subsequent allocation (primarily for colonies), which “formed the basis of the administrative division” of that region under the Oslo Agreement<sup>65</sup> of 1995.<sup>66</sup> According to that arrangement, as seen above, the West Bank is divided into Areas A, B and C.

Some 149 mainly small villages, home to 47,000 Palestinians, are entirely located in Area C itself. Another 100,000 Palestinians live in Area C, in villages that have part of their built-up area within Areas A or B.<sup>67</sup> Planning in Area C is governed by the same Mandatory regional outline plans that largely determined what land became Areas A and B, as well as by a number of ‘special’ outline plans drawn up by the Israeli authorities. The Mandatory Plans have been interpreted in such a way as to render it almost completely impossible to obtain a building permit.<sup>68</sup> As regards the special outline plans, “their primary goal is to define a limited area outside which Palestinian construction is almost totally prohibited”.<sup>69</sup>

---

61 B’Tselem, *Land Grab*, 21.

62 BADIL and COHRE, *Ruling Palestine*, 114.

63 BADIL and COHRE, *Ruling Palestine*, 91.

64 Thirsting for Justice, ‘Thirsting for Justice FAQ’, *Thirsting for Justice: Palestinian Rights to Water and Sanitation*, n.d.; available from [http://www.thirstingforjustice.org/?page\\_id=1303](http://www.thirstingforjustice.org/?page_id=1303); accessed 22 April 2013.

65 The full name of the agreement is “The Interim Agreement on the West Bank and the Gaza Strip” (1995), also known as Oslo II or Taba.

66 Bimkom, *The Prohibited Zone: The Israeli Planning Policy in the Palestinian Villages in Area C* (Jerusalem, June 2008), 34.

67 Bimkom, *The Prohibited Zone: The Israeli Planning Policy in the Palestinian Villages in Area C*, 16.

68 Bimkom, *The Prohibited Zone: The Israeli Planning Policy in the Palestinian Villages in Area C*, 38.

69 Bimkom, *The Prohibited Zone: The Israeli Planning Policy in the Palestinian Villages in Area C*, 90.

These policies have been hugely detrimental to the Palestinian population in the West Bank. Since the occupation began in 1967, “Israel has not permitted the establishment of any new Palestinian municipalities. Instead, Israel has used its authority under military orders to confine the boundaries of existing municipalities to geographical areas delineated by the British in the 1940s”.<sup>70</sup> This is “[d]espite the enormous growth of the Palestinian population since 1967”.<sup>71</sup> Military Order 418 created a planning regime that affords “maximum control [to] the Israeli government...over all aspects of planning and development in the Palestinian communities”.<sup>72</sup> For example, “[i]n the 1990s, Israel drew up detailed perimeter plans for some 400 Palestinian villages in the West Bank...essentially limiting [them] to their existing boundaries and prohibiting any development beyond them”.<sup>73</sup> As a result of these combined policies, Areas A and B are “drastically fragmented and interspersed with, and encircled on all side by, vast areas of Israeli control[led]” Area C.<sup>74</sup>

Finally, the transfer of planning functions to the Palestinian National Authority under the Interim Agreement in Areas A and B has done nothing to mitigate the containment and concentration of the Palestinian population in the West Bank. This is because the perimeters of the Israeli controlled Area C have been in large part determined by reference to the boundaries which exist under the various outline plans described above i.e. those boundaries which have been in large part responsible for this process in the first place.

The Gaza Strip provides the starkest illustration of Israel’s policy of concentrating and containing the Palestinian population. Despite its ‘disengagement’ from Gaza in 2005, Israel’s policy of further restricting Palestinian land-use continues. This is accomplished by enforcing a ‘buffer zone’ inside of Gaza’s border with Israel. A recent report highlights that this buffer zone “extends over approximately 17 percent of the territory of the Gaza Strip”.<sup>75</sup> This necessarily means that the population density figures for the Gaza Strip are in fact far higher than those reported. The report notes that, “depending on the specific area, farmers are effectively prevented from accessing land located up to 1,000-1,500 meters from the fence”,<sup>76</sup> no small distance relative to the width of Gaza itself. Furthermore, “since it is estimated that approximately 95 percent of the restricted area is arable land, the buffer zone... extends over 30 percent of the Gaza Strip’s agricultural land.”<sup>77</sup>

---

70 BADIL and COHRE, *Ruling Palestine*, 97.

71 BADIL and COHRE, *Ruling Palestine*, 97.

72 Bimkom, *The Prohibited Zone: The Israeli Planning Policy in the Palestinian Villages in Area C*, 39.

73 BADIL and COHRE, *Ruling Palestine*, 99.

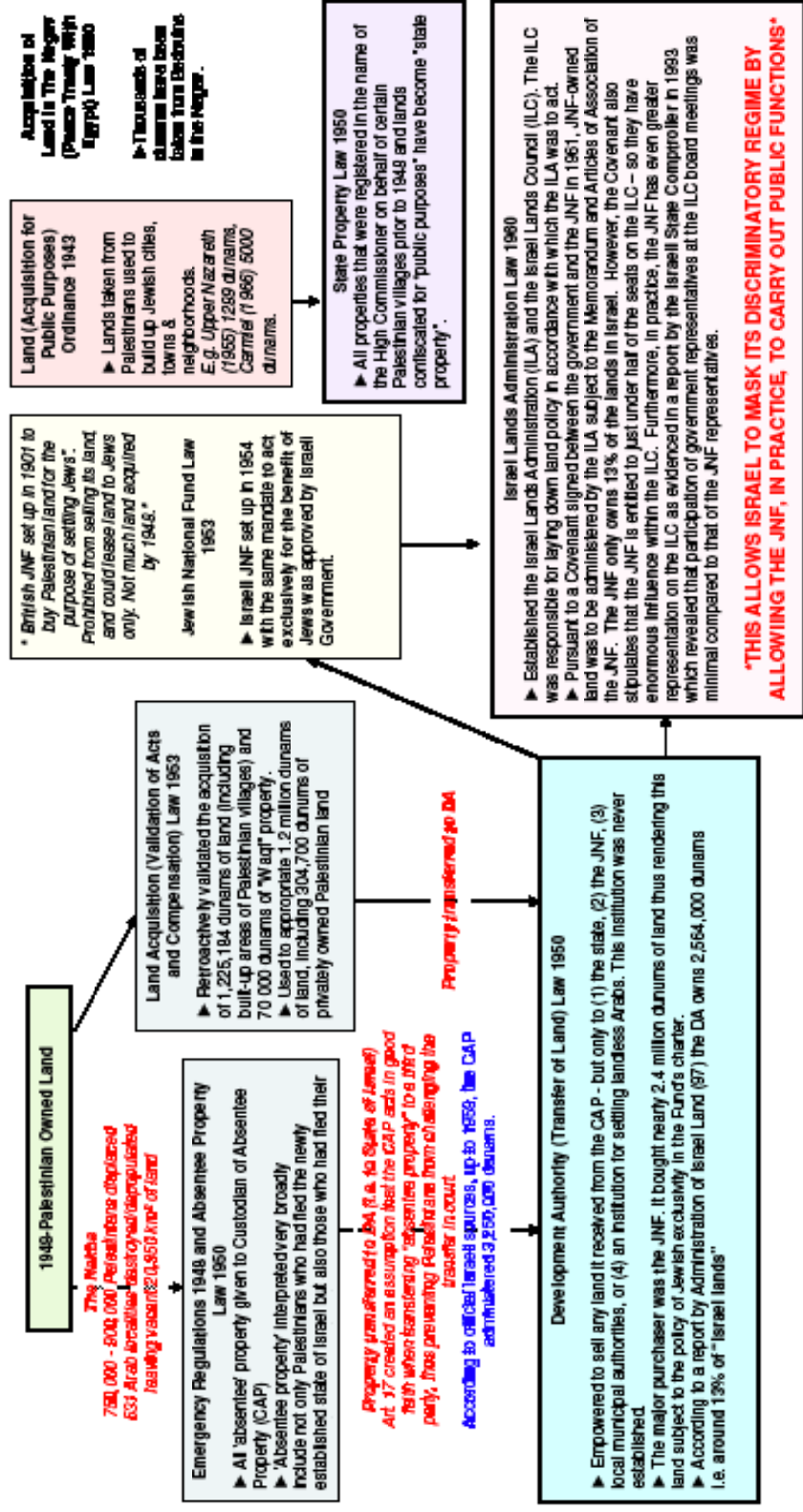
74 BADIL and COHRE, *Ruling Palestine*, 121.

75 Al-Haq, *Shifting Paradigms: Israel’s Enforcement of the Buffer Zone in the Gaza Strip* (Ramallah, 2011), 7.

76 Al-Haq, *Shifting Paradigms*, 6.

77 Al-Haq, *Shifting Paradigms*, 6.

Diagram: Land Transfer Laws



#### "Israel Lands Reserved"

- ▶ By 1961 92% of the land within Israel was state owned. Estimated two-thirds of West Bank land had been appropriated by the Israeli authorities as of the early 1980s.
- ▶ Now 82%-93% of the lands in Israel are under Jewish ownership.
- ▶ Basic Law: Israel Lands 1980 defined 'Israel Lands' as State property, JNF lands and DA lands, and prevented the transfer of land ownership except in limited cases listed in Israel Lands Law 1980 - thus ensuring that the land cannot ever be transferred or returned to Palestinians.



Deserving as the Gazan situation is of great concern and attention, it would be incorrect to view it outside of the wider context of Israeli concentration and containment of Palestinians generally. Land and planning laws have played a critical role in this process.

It is important to emphasize that the concentration and containment of the Palestinian population by a process of fragmentation is exactly what is *intended* by Israeli policy-makers. For example, the Drobless Plan, stated that “[t]he disposition of the settlements must be carried out not only *around* the settlements of the minorities, but also *in between them*, this in accordance with the settlement policy adopted in the Galilee and other parts of the country”.<sup>78</sup> Thus Dajani notes that, “Oslo institutionalized into permanent form the territorial fragmentation of the Palestinian community in the Occupied Territories as envisaged in the Drobless Plan of the early 1980s”.<sup>79</sup>

As the Drobless Plan indicates, the policies employed by Israel in the occupied Palestinian territory are very similar to those employed within the State of Israel itself. One obvious parallel is that since its foundation, no new Palestinian communities have been established in Israel, other than a number of ‘townships’ established for the Palestinian Bedouin community in the south.<sup>80</sup> This is in stark contrast to the situation for the Jewish population living within its 1967 borders, for whom 700 new communities have been established.<sup>81</sup> It also runs counter to the six-fold increase in the number of Palestinian citizens of Israel since 1948.<sup>82</sup>

An estimated two-thirds of West Bank land was appropriated by the Israeli authorities by the early 1990s<sup>83</sup> and over 30 percent of the land area of the Gaza Strip was similarly confiscated prior to the ‘Gaza Disengagement’ in 2005. These appropriations continue today. The Absentee Property Law was employed by Israel in Jerusalem as late as 2005.<sup>84</sup> Israel set about turning these lands over to the exclusive use of the Israeli Jewish population.

78 Emphasis in original, BADIL and COHRE, *Ruling Palestine*, 75.

79 BADIL and COHRE, *Ruling Palestine*, 120.

80 Abu Hussein and McKay, *Access Denied*, 199.

81 Abu Hussein and McKay, *Access Denied*, 199.

82 *After the Rift: New Directions for Government Policy Towards the Arab Population in Israel*, an emergency report by an inter-university research team submitted to Mr Ehud Barak, Prime Minister of Israel (Hamachpil, Beer-Sheva, November 2000), 17; available from [http://www.dirasat-acip.org/files/After\\_the\\_Rift-English.pdf](http://www.dirasat-acip.org/files/After_the_Rift-English.pdf); accessed 23 April 2013.

83 Bisharat, ‘Land, Law and Legitimacy in Israel and the Occupied Territories’, 526.

84 Ir Amim, *Absentees Against Their Will - Property Expropriation in East Jerusalem Under the Absentee Property Law* (July 2010); available from [http://eng.ir-amim.org.il/\\_Uploads/dbsAttachedFiles/Absenteesagainsttheirwill.pdf](http://eng.ir-amim.org.il/_Uploads/dbsAttachedFiles/Absenteesagainsttheirwill.pdf); accessed 23 April 2013.

## CLOSING REMARKS

In addition to the actual confiscation of land (*de jure*), Israel employs alternative means to restrict or completely deny the use and access of land – effectively taking over them (or *de facto* confiscation of the land since the owners are unable to use them freely, if at all). These means vary, from declaring an area as an “environmentally protected area”, a “national park”, or the creation of “seam zones”.<sup>85</sup> Another important method that Israel uses is declaring land as a “firing zone”. Firing Zones are one of the most effective means, from an Israeli point of view, to appropriate large tracts of remaining Palestinian lands.

The Handbook’s focus on privately owned land reflects the large impact Israel is able to achieve by restricting land rights and, ultimately, forcibly transferring Palestinians through land-related tactics. This should not be taken to mean that confiscation of what is categorized as State Land is to be deemed legitimate. Israeli confiscation of Palestinian lands, both private and public, is illegal. It is due to the limited scope of this research that we cannot provide further elaboration on confiscation of Palestinian State Lands, or any other non-private property.

This Handbook focuses on processes that are occurring primarily in the West Bank and East Jerusalem, and the Gaza Strip – giving varying levels of attention to each of these areas. However, as we have indicated elsewhere, this Handbook is not intended to provide a comprehensive legal survey of all issues and problems, but rather as a preliminary endeavor requiring further research and development.

In addition to the objectives stated earlier in this Introduction, there are a few points that should be addressed regarding the Handbook. Firstly, it is important to emphasize that although we quote and present Israeli laws and institutions, as we have already and will continue to do throughout the coming chapters, this should not be considered an endorsement of Israel’s legal and judicial systems. On the contrary, it is our conviction that Israeli land grab laws that serve the displacement of Palestinians are unethical and illegal according to international law. This Handbook project is purposed with exposing such crimes and helping to protect Palestinians, as we indicated from the outset.

The rationale behind producing this Handbook lies in our understanding of the importance of both individual and collective rights. Palestinian individuals and families who live in their ancestral land face, first and foremost, potential displacement from their own homes and farms. For those people this is a real danger, one which

---

85 Seam Zones are areas that fall between the Green Line (1949 Armistice Line) and the Israeli Annexation Wall, in itself held by the International Court of Justice to be illegal.



threatens the most fundamental aspects of their wellbeing. These people deserve and have the right to be defended – even if this entails the utilization of the unethical legal system of the occupier. For victims of home demolition, uprooted farmland and shattered lives, international law violations mean little.

Nevertheless, it would be self-deceptive to expect that the procedures in this Handbook could provide remedies to the Israeli land grab in Palestine. In most cases, the Handbook could assist affected people in ‘buying time’ to delay the bitter fate of their displacement and/or dispossession. We do not believe that the Israeli legal system, including the judiciary, can be just with regards to issues of land and property – this, in spite of a few and limited ‘success stories’ mentioned within the text. Stories of ‘successful’ legal cases are displayed as learning examples for people in similar situations. These, nonetheless, are an exception to the unjust norm of the Israeli legal and judicial systems.

Lastly, and with regards to the layout of the Handbook, we chose to arrange the chapters thematically rather than geographically. There are arguments for and against either design. Structuring the chapters according to geographical area (West Bank, East Jerusalem and Gaza Strip) correlates to the distinct Israeli regulations for each area. However, in many cases laws and regulations overlap across divides – especially when people live in one area while their lands are in another. Our primary objective, from a thematically organized point of view, was to produce a user-friendly and accessible resource.

### *Language Barrier*

In January 2013, the Jerusalem Administrative Court denied a petition filed by The Jerusalem Legal Aid and Human Rights Center demanding that the Israeli planning authorities translate planning documents for the Mount Scopus Slopes National Park into Arabic so that Palestinians could have the opportunity to understand and then object to the plans. And, in another case in February 2013, the Supreme Court denied a petition to delay the advancement of the plan until after it hears the appeal on the Administrative Court’s ruling on the translation case.<sup>86</sup>

United Nations Office for the Coordination of Humanitarian Affairs has said: “Both court decisions may have an impact on the status of Arabic in official state documents. The lack of translation of plans from Hebrew to Arabic hinders the ability of Palestinian communities to effectively object to plans that will be implemented in their vicinity.”<sup>87</sup>

86 *The Jerusalem Legal Aid and Human Rights Center V. District Planning Committee* (Jerusalem District Court 2012).

87 OCHA-chaired Protection Cluster, ‘Legal Taskforce Weekly Media Report’, March 29, 2013.



Chapter

Land Confiscation



*"[As farmers,] with our land lost; we lost our source of income and livelihood".*

*Interview with Awwad Abu-Qalbayn in Silwan, East Jerusalem (11 February 2013)*

The system of land confiscation encompasses an array of methods designed to transfer Palestinian possession of land to Israeli bodies and authorities. These differ from *Prevention of Use and Access* (discussed in Chapter II) methods in that confiscation is ultimately implemented as permanent and irreversible measure of land expropriation, whereas prevention of access affects situations temporarily in 'adherence' to the law of occupation. This is so, regardless of the fact that the Israeli occupation has not been a temporary one, as is required under international law. Whether or not confiscation is said, from a legal point of view, to be temporary or reversible initially, for the most part, confiscation predominantly concludes as a permanent act that amounts to colonization. For instance, when property is confiscated under the auspices of 'absentee property', it is expected to be held in trust by the Custodian for the 'absentee' owner. However, these properties are usually sold by the Custodian to third parties (exclusively Jewish-Israeli) after which the option of retrieving the property vanishes. This chapter will examine the legal mechanisms and case law pertaining to the issue of land confiscation.

## WEST BANK, AREA C

Land confiscation is pursued by manipulating relevant land laws that existed throughout Palestinian history. In order to fully comprehend how the methods of confiscation are executed, it is necessary to examine the various legal strata and their relevant provisions concerning land issues. Especially relevant are pre-1948 categories of land and the implication of categorization on ownership rights. Needless to say, the issue of land ownership rights is closely linked to the issue of land confiscation. For example, the declaration of 'vacant' land as 'State Land' is a prime method of land confiscation.

As briefly described in the Introduction, the binding local legislation applied in the West Bank is derived from Jordanian land laws, which were applied between 1949 and 1967. However the earlier laws of the Ottoman Land Code (1274 H, 1858) and the legislation of the British Mandate were incorporated into the Jordanian laws and as such, constitute the majority of the current laws in place.<sup>88</sup> The Jordanian legislator made minimal changes to the Ottoman Land Code and so, its provisions

<sup>88</sup> B'Tselem, *Under the Guise of Legality Israel's Declarations of State Land in the West Bank* (February 2012), 19; available from [http://www.btselem.org/download/201203\\_under\\_the\\_guise\\_of\\_legality\\_eng.pdf](http://www.btselem.org/download/201203_under_the_guise_of_legality_eng.pdf).

are still applicable in the West Bank to the extent that they have not been annulled or amended by Israeli military orders or regulations. For this reason, we must focus on the relevant provisions enshrined in the Ottoman Land Code with respect to land categorization and ownership in order to approach the issue of land confiscations. The relevant amendments to these laws will also be noted to ascertain the pertinent and applicable legal provisions.

There are many types of land ownership including private ownership, public land, *waqf* land and lands owned by authorities.<sup>89</sup> The ownership of the land is dependent on the category of land to which it belongs. As such, the categories, and their attached ownership details are interconnected and will be dealt with simultaneously below.

## CATEGORIES OF LAND

The Ottoman Land Code classified lands into five categories but conceives of land as falling into three main classes. The five categories are: *waqf*, *mulk*, *miri*, *matrouk* and *mewat*.<sup>90</sup> The three classes refer to three classes of ownership: God, the State and the individual. The ownership of the *waqf* (generally but not unreservedly) rests with God, while the ultimate ownership, or *raqaba*, of *miri*, *matrouk* and *mewat*, rests with the State. The ownership of the *mulk* rests with the individual.

While the *raqaba* entails ultimate possessory ownership, another land right exists in the form of usage rights known as *tassaruf*.<sup>91</sup> *Tassaruf* allows an individual to use certain categories of land in specified ways while ultimate ownership rests with another body.

### Waqf

*Waqf* is land ‘dedicated to a pious purpose’ and controlled by the Supreme Muslim Council.<sup>92</sup> Its use is “applied for the benefit of human beings, and the subject of the dedication becomes inalienable and non-heritable in perpetuity”.<sup>93</sup> As such, there existed a great incentive for individuals to convert their lands to *waqf* as it provided themselves and their descendants the strongest legal and religious sanctions against

89 Bakir Abu Abu Kishk, ‘Arab Land and Israeli Policy’, *Journal of Palestine Studies* 11, no. 1 (October 1981): 124.

90 Shehadeh, ‘*The Land Law of Palestine*’, 86.

91 Avraham Suchovolsky, Eliyahu Kohen, and Avi Erlikh, *Land Law in Judea and Samaria* (Israel, 1986), 23.

92 Doreen Warriner, *Land Reform and Development in the Middle East: A Study of Egypt, Syria, and Iraq*, 2d ed. (Westport, Conn, 1975), 67.

93 Shehadeh, ‘*The Land Law of Palestine*’, 86..

State seizure.<sup>94</sup> Thus, much land in Palestine was converted to *waqf*. Later laws, however, loosened the prohibition against seizures of *waqf*.

Article 4 of the Ottoman Land Code<sup>95</sup> defines *waqf land* as:

- (I) That which having been true *mulk* originally...The legal ownership and all the rights of possession over this land belong to the Ministry of *Evqaf*.

## Mulk

The Ottoman Land Code defines *mulk* land as plots in cities and villages, which are considered to be connected to homes.<sup>96</sup> It is the only category of land where both the *raqaba* and the *tassaruf* rights rested with an individual.

Article 2 of the Ottoman Land Code specifies four kinds of *mulk*:

- (I) Sites (for houses) within towns or villages;
- (II) Land separated from State Land and made *mulk* in a valid way;
- (III) Tithe-paying land, which was distributed at the time of conquest;
- (IV) Tribute-paying land.<sup>97</sup>

## Quasi Mulk

*Quasi mulk* is land (*miri* or *mulk*) that had 'certain accretions' put on it by the land possessor. Such accretions included 'wells', 'water courses', 'buildings' or 'plantations of trees or vines'. Accretions solidified the quasi *mulk* nature of the land. Should the accretions remain, the land devolves under *mulk* inheritance and is acquisitionable after a period of 15 years prescribed in *mulk*.<sup>98</sup>

## Miri

*Miri* land is agricultural land. For the most part, rural land in Palestine belonged to the *miri* category.<sup>99</sup> In the case of *miri* lands, the *raqaba*, or ultimate ownership,

94 Richard Clifford Tute, *The Ottoman Land Laws with a Commentary on the Ottoman Land Code of the 7th Ramadan 1274* (Jerusalem, 1927), 2; available from <http://weblaw.haifa.ac.il/he/Faculty/Kedar/lecdb/bedouins/900.pdf>; accessed 23 April 2013.

95 *The Ottoman Land Code of 7th Ramadan 1274 (1858)*, 1858 Article 4.

96 *The Ottoman Land Code of 7th Ramadan 1274 (1858)* Article 1.

97 *The Ottoman Land Code of 7th Ramadan 1274 (1858)* Article 2.

98 Tute, *The Ottoman Land Code*, 7.

99 Bisharat, 'Land, Law and Legitimacy in Israel and the Occupied Territories', 492.

rested with the State. An individual could, however, gain a right of use, or *tassaruf*, providing that they cultivated the land and paid a tithe.<sup>100</sup>

Article 3 of the Ottoman Land Code provides:

... Possession of this kind of immovable property will henceforward be acquired by leave of and grant by the agent of the Government appointed for the purpose. Those who acquire possession will receive a title-deed...

The sum paid in advance (*muajele*) for the right or possession which is paid to the proper Official for the account of the State, is called the *tabou* fee.

The prescription period for *miri* land is 10 years between individuals and between the individual and the State. In the creation of new *mulk* land (not quasi *mulk*) the prescription period is 36 years.<sup>101</sup>

Article 68 of the Ottoman Land Code provided that continuous agricultural cultivation of *miri* land was necessary to retain *tassaruf* rights to the land. Should cessation of cultivation amount to three years or more, the rights would be extinguished. However, the Provisional Law regulating the Right to Dispose of Immovable Property of 1913, annulled this 'continuous cultivation' requirement by stipulating that:

[W]hoever owns by virtue of a formal title deed [*tabou/kushan*] *miri* land... may transfer it absolutely... he is also entitled to cultivate the fields... He may erect on the land houses or shops or any buildings for industrial or agricultural use.<sup>102</sup>

These changes allowed those title-deed holders of *miri* land the right to make uses of the land other than agriculture. Therefore, ownership rights of the land were *de facto* transferred from the State to the individual who may do whatever he chooses with the land.

The State of Israel may also recognize the owner of *miri* land (through title-deed) as the true owner who need not cultivate the land alone.<sup>103</sup> Nevertheless, in the absence of a title-deed or registration in the Land Registry, the continuous

100 Frederic Maurice Goadby and Moses J. Doukhan, *The Land Law of Palestine* (Tel Aviv, 1935), 7.

101 Under the *Mulk Tithes Act* of 1874, the only ways that *miri* land could be converted into *mulk* land is (a) by...the relevant authority and (b) by prescription (36 years). This act also required registration of *mulk* land.

102 Provisional Law regulating the Right to Dispose of Immovable Property, 1913, Article 5; Tute, *The Ottoman Land Code*, 169–170.

103 Plia Albeck and Ran Fleischer, *Land Law in Israel* (Jerusalem, 2005), 50.



cultivation requirement still exists and should a cessation of cultivation for three or more years occur, the individual rights are negated and the rights are bestowed upon the State.<sup>104</sup>

Article 78 of the Ottoman Land Code provides:

Every one who has possessed and cultivated State or *waqf* land for ten years without dispute acquires a right by prescription... and he shall be given a new title-deed gratuitously.

However, Article 8 of the Regulations as to Title Deeds 1860 amended the allowance under Article 78, in addition to 10 years of cultivation, a legal source of possession such as inheritance was also required.

## Matrouk

*Matrouk* owned by the State but preserved for public communal use, such as roads and pastures.<sup>105</sup> Article 5 of the Ottoman Land Code states:

Land left for the use of public is of two kinds:

- (I) That which is left for the general public use, like a public high-way for example;
- (II) That which is assigned for the inhabitants generally of a village or town, or of several villages or towns grouped together, as for example pastures.

## Mewat

As a category *mewat* refers to barren, uncultivated areas lying outside the boundaries of existing villages. *Mewat* land is owned by the State in every respect (*raqaba* and *tassaruf*) but possession rights to this land can be acquired through cultivation.

Article 6 of the Ottoman Land Code states:

Dead land [*mewat*] is land which is occupied by no one, and has not been left for the use of the public.<sup>106</sup>

As noted, individuals could acquire rights to *mewat* land if they agriculturally revived

---

<sup>104</sup> Eyal Zamir, *State Lands in Judea and Samaria: A Legal Review* (Jerusalem, 1985), 20.

<sup>105</sup> Tute, *The Ottoman Land Code*, 14.

<sup>106</sup> *The Ottoman Land Code of 7th Ramadan 1274 (1858)* Article 6.

it, fertilizing it, and thereby converting it into *miri* land.<sup>107</sup> Conversion is provided for in Article 103 of the Ottoman Land Code:

Anyone who is in need of such land can with the leave of the Official plough it up gratuitously and cultivate it on the condition that the legal ownership (*raqaba*) shall belong to the Treasury. The provisions of the law relating to other cultivated land shall be applicable to this kind of land also. Provided that if any one after getting leave to cultivate such land, and having had it granted to him leaves it as it is for three consecutive years without valid excuse, it shall be given to another. But if anyone has broken up and cultivated land of this kind without leave, there shall be exacted from him payment or the *tabou* value of the piece of land which he has cultivated and it shall be granted to him by the issue of a title-deed.<sup>108</sup>

In other words, even without the necessary ‘leave’ individuals could later pay a *tabou* fee and receive a title deed. If however, cultivation ceased for 3 years then possession rights are extinguished and the land may be available for grant to others.

Conversion was greatly restricted under the British Mandate with the enactment of the *mewat* Land Ordinance in 1921. The Ordinance eradicated the possibility to acquire *tassaruf* rights on *mewat* land as previously provided for under Article 103 of the Ottoman Land Code.<sup>109</sup> In 1933, the *Land Law Amendment Ordinance* was passed authorizing the High Commissioner of Palestine – the highest official in the Mandate administration – to declare vacant land as public land. Further, this Ordinance provided that the State did not have to put the land up for auction or to allocate it to an individual. This was since annulled by a Jordanian land law in 1958. The Land Transfer Ordinance required that a permit be obtained before land could be transferred, as a means of “land survey and settlement of dispute operations”.<sup>110</sup> Moreover, the British Mandate laws of 1943 – allowed expropriation of private land “for the good of the community”.<sup>111</sup>

The State of Israel essentially established three main categories: State Land; private land and survey land, for which the ownership is unclear or in dispute. In practice, however, the third category has been treated as State Land. Private land might be

107 *The Ottoman Land Code of 7th Ramadan 1274 (1858)* Article 3. Article 103, Ottoman Land Code; Tute, *The Ottoman Land Code*, 97.

108 Tute, *The Ottoman Land Code*, 97.

109 Norman (Compiler) Bentwich, ed., *Legislation of Palestine, 1918-1925: Including the Orders-in-Council, Ordinances, Public Notices, Proclamations, Regulation, Etc.*, vol. 1 (London, 1926), 1.

110 Shehadeh, ‘*The Land Law of Palestine*’, 88.

111 *Land (Acquisition for Public Purposes) Ordinance 1943*, 1943.

considered as such in the cases that it was registered as private land before 1967 or that it meets the Ottoman Land Code requirements among which are 10 years of continuous cultivation.

## LAND REGISTRATION

Under the Ottoman Land Code, every piece of land was to be taxed. The goal was to be implemented by registering its legal owner and establishing title to the land.<sup>112</sup> Henceforth, *miri* land was to be acquired by a government agent. Land Registries called *tabou* were established later.<sup>113</sup> The right of possession was attained by the payment of a *tabou* fee in exchange for a title deed to the land.<sup>114</sup>

Today, registration of land in the Land Registry is the highest form of proof of ownership. Ottoman title deeds are also recognized although very few Palestinians possess these documents. Likewise, the position of the Israeli Civil Administration is that *miri* land, which is recorded with the Land Registry, is the sole private property of owners regardless of whether or not the land is being cultivated. However, *miri* land that is not registered must still be cultivated in order for the individual to gain possession over it.

The term 'land registration' is used synonymously with the term 'land settlement' and is not to be confused with Israeli colonization. While the term 'land settlement' in common law refers to the legal act or process of transferring real estate from one owner to another, in countries that were ruled by the Ottoman Empire it means the technical process carried out by the government to survey and classify land in specific areas including determination of its category, size and ownership.

As noted above, certain registrations took place during the Ottoman period: "The Ottomans enacted a series of other laws to compel registration of individual titles to rights in *miri* land in newly established Land Registry offices".<sup>115</sup> The Land Register Law, introduced in 1858, was known as "*tabou*".<sup>116</sup> *Miri* land was first registered by *kushan*. However, since *kushans* did not include a surveyor's map showing the exact boundaries of the land - proof of its expanse - *kushans* proved problematic compared

112 Shehadeh, 'The Land Law of Palestine', 88.

113 Shehadeh, 'The Land Law of Palestine', 88.

114 Tute, *The Ottoman Land Code*, 8.

115 Bisharat, 'Land, Law and Legitimacy in Israel and the Occupied Territories', 494.

116 JLAC, *Concealed Intentions: Israel's Human Rights Violations Through Manipulation of Zoning and Planning Laws in 'Area C'* (March 2011), 12; available from [http://www.jlac.ps/data\\_site\\_files/file/Concealed%20Intentions-%20JLAC-.pdf](http://www.jlac.ps/data_site_files/file/Concealed%20Intentions-%20JLAC-.pdf); accessed 23 April 2013.

to registration in the Land Registry. The *Mulk Tithes Act of 1874* also introduced the obligation to register *mulk* lands.

Nevertheless, the established process of land registration began in earnest, “at the beginning of the British Mandate period (1920 -1948). Great Britain established special Land Courts to address the complex land situation. These courts maintained the effort to enforce the Ottoman Land Code, including the drive for individual registration”.<sup>117</sup> The process of land settlement involved a highly complicated and lengthy investigation into the land of entire villages and the categories of land therein. The categories and their owners were then documented. The designation of ownership was based on the Ottoman legislation relating to the use of land and which category it fell into.

This process of land registration was sustained under Jordanian rule (1949 -1967). However, in 1968 the Israeli Military Commander passed the *Order concerning Land and Water Settlement (Judea and Samaria) (No. 291)* – an order which forbade any further land settlement and put a halt to any settlements or registrations being presented at the time. Halt of land settlements was a deliberate and strategic step that paved the way to the systematic Israeli policy of land confiscation. Effectively, unsettled lands are unregistered and subjected to confiscation. Historically, land registration in the West Bank has been low for a number of reasons including: to avoid taxation and the unimportance of registration for exercising land rights. Since Israel stopped any form of registration in 1967, only 37 percent of all West Bank land has been registered.<sup>118</sup>

Land not registered with the Land Registry is usually only documented in the Jordanian Property Tax Registry. The Jordanian Property Tax Registry does not provide conclusive proof of ownership, but rather a *de facto* defence against land seizures. A major problem with property tax registrations is that they do not specify the exact size or location of the plot nor include a map, which makes it difficult for landowners to prove their ownership over a specific plot. All Land Registry registrations include a map of the plot thereby ensuring specificity. Even if land has been registered with the Land Registry, this does not guarantee an absolutely conclusive right to ownership of the land in the current Israeli legal system. As previously noted, in order to guarantee its ownership, the Ottoman legislation requires cultivation or a particular use of the land.

117 Bisharat, 'Land, Law and Legitimacy in Israel and the Occupied Territories', 495.

118 PNA and LAND, *Palestinian National Authority Land Administration Project*, Legal Report (March 2008); available from <http://www.husseini1.com/resources/file/publications/1273744294012/Legal%20Report.%20Palestinian%20National%20Authority.%20Palestinian%20Land%20Administration.%20Ministry%20of%20Planning.%202008.pdf>; accessed 26 April 2013.

## First Registration

*Military Order 291* forbade further and current land settlement processes. The only other option available to individuals wishing to register their land was through the process of ‘first registration’.<sup>119</sup> This process was similar to that of land settlement with notable differences: the registration process was to be privately funded as opposed to the previous process which was funded by the State. Also the process applied to a limited area only – individual or a few plots – whereas the previous system registered entire villages.<sup>120</sup>

Moreover, the applicant is required to prove their ownership by applying the relevant land laws. For instance, with respect to *miri* land the applicant must prove actual or effective possession, continuous cultivation of the land (Article 78 of the Ottoman Land Code), as well as a legal source of possession such as inheritance. The provision of an Ottoman title deed could also suffice.

Further, certain additional requirements must also be fulfilled:

- Essential documents to the application include an updated surveyor’s map of the plot and property tax ledgers belonging to the individual from whom the land was inherited or purchased.
- The applicant must publish a notice of application in two Arabic newspapers widely circulated in the area and on a public sign in the village where the plot is located.<sup>121</sup>

The applicant will bear all first Registration Committee costs including the applicant’s and the Civil Administration’s lawyers and will then be subject to levies of five percent

119 The process of first registration is based on the Jordanian law – “law of Registration of Immovable Property Not Previously Registered, Law No. 6, 1964” – and a series of Orders and Regulations which were issued by the Israeli Military Commander:

*Order Concerning the Amendment of the Law of Registration of Immovable Property Not Previously Registered (Judea and Samaria) 2008, 2008.;*  
*Regulations of Registration of Immovable Property Not Previously Registered (Applications for Registration) (Judea and Samaria) 2008, 2008.;*  
*Regulations of Registration of Immovable Property Not Previously Registered (Legal Procedures at Registration Committees) (Judea and Samaria) 2008, 2009.;*  
*Order Concerning the Amendment of the Law of Registration of Immovable Property Not Previously Registered (Amendment) (Judea and Samaria) 2009, 2009.;*  
*Regulations of Registration of Immovable Property Not Previously Registered (Applications for Registration) (Amendment) (Judea and Samaria) 2009, 2009.;*  
*Regulations of Registration of Immovable Property Not Previously Registered (Legal Procedures at Registration Committees) (Amendment) (Judea and Samaria) 2009, 2009.*

120 Suchovolsky, Kohen, and Erlikh, *Land Law in Judea and Samaria*, 47.

121 *Order Concerning the Amendment of the Law of Registration of Immovable Property Not Previously Registered (Judea and Samaria) 2008.*

of the total value of the land.<sup>122</sup> Generally speaking, this process is costly and risky. Most problematic is the fact that the Civil Administration might confiscate a portion of the land during the process, for example if the required documents are missing. Also, the Israeli Custodian<sup>123</sup> may become a partner if one of the owners (usually an inherited descendant) is abroad. Therefore, many Palestinians prefer not registering their properties merely to avoid the five percent levy, the Custodian's confiscation, or the costly fees.

In addition, the administrative system itself is problematic. The registration committee's decisions whether or not to award ownership can be appealed according to *Military Order 172*.<sup>124</sup> However, the decision of the Land Registry Officer to forward the application to the registration committee in the first place – the first step in the registration process – cannot be appealed. In theory, the Israeli Supreme Court could still review a petition in this matter.

## LAND SEIZURE<sup>125</sup>

By the end of 2008, Israel had confiscated or *de facto* annexed approximately 70 percent (4,102 km<sup>2</sup>) of the land in the occupied West Bank. Some 60 percent of this land was already expropriated by the mid-1980s.<sup>126</sup>

### Seizure for 'Military Needs'

Between 1968 and 1979 almost 47,000 dunums (47 km<sup>2</sup>) of privately owned land was confiscated in the West Bank based on claims that it was "required for essential and urgent military needs", which was the rationale adopted in the *Bet El* case.<sup>127</sup> The Israeli Supreme Court found that:

[T]aking possession of private property in occupied territory to build a civilian settlement does not contravene the principles of international customary law... if establishment... is required for military needs...<sup>128</sup>

122 *Regulations Concerning Land Registration Fees [Combined Version] (Judea and Samaria) 2009*.

123 See section on Absentee Land.

124 *Military Order Regarding Appeal Committees (Judea and Samaria) 1967, 1967*.

125 Israel employs international legal provisions to take possession of the land claiming military necessity. Military occupation, however, is intended to be of a temporary nature and as such the requisition of land under this mechanism must also be temporary. Therefore, the occupying power does not acquire ownership rights to confiscated land, but rather usage 'rights'.

126 BADIL, *Confiscation and Discriminatory Distribution of Land* (June 3, 2010); available from <http://www.badil.org/es/monitoreo-continuo-de-los-desplazamientos/item/1369-land-confiscation?tmpl=component&print=1>; accessed 23 April 2013.

127 B'Tselem, *Land Grab*, 48; Ayyub Et Al V. Minister of Defense Et Al, 33(2) 113 Piskei Din (HCJ 1979) (Hereafter: Bet El).

128 Sheikh Suliman Hussein 'Udah Abu Hilu Et Al. V. Government of Israel (HCJ 1972).

Petitions from affected residents filed against such land seizures were dismissed based on the Supreme Court reasoning that the seizure was legal because the colonies themselves offered important military and defense functions.<sup>129</sup> Since 1979, however, Israel has not established colonies on land that was confiscated for military needs following the judgment in the *Elon Moreh* Case.<sup>130</sup> The facts are as follows:

On June 5 1979, Brigadier General Eliezer, commander of the Judea and Samaria Area, signed *Land Seizure Order No. 16/79* which ordered that an area of some 700 dunums on a hill near the village of Rojeb, near Nablus, be ‘seized for military needs’. 17 petitioners from the village-owned lands registered in the Nablus registries after having gone through the land registration process.<sup>131</sup>

What set this case apart was the fact that in this instance a few Israeli colonists were listed as petitioners in addition to Palestinians. Colonists did not wish to categorize colonies as fulfilling a ‘temporary military need’. Rather, they saw colonies as permanent establishments.<sup>132</sup> In particular, this argument severely undermined the ‘military necessity’ pretext for establishing this colony. The Court was obliged to order the Israeli Military to dismantle the colony and return the confiscated land to its owners.

Further, the Court held that:

[T]he decision to establish a permanent community which was designated, in advance, to stand permanently, even beyond the period of the military administration established in Judea and Samaria – comes up against an insurmountable legal obstacle...<sup>133</sup>

While this case signaled the end of *colony building* on lands confiscated for ‘military needs’, it did not stop the confiscation under the ‘military needs’ procedure for other purposes. One such purpose is for the building of by-pass roads.<sup>134</sup> These bypass roads allow Israeli colonists to travel through the occupied territory and between colonies and Israel, preventing Palestinian traffic from passing through the colonies, while maintaining an “internal fabric of life” within the colony blocs.<sup>135</sup> Palestinian residents have previously petitioned the Israeli Supreme Court against the confiscation of lands for these bypass roads, but, in the *Wafa et al. Case* the

129 *Salama Et Al. V. Minister of Defence Et Al.*, 34(1) Piskei Din (HCJ 1978).

130 *Dweikat Et Al. V. Government of Israel Et Al.*, 34(1) 1: (Hereafter: *Elon Moreh*).

131 *Dweikat Et Al. V. Government of Israel Et Al.*, 34(1) 1.

132 *Dweikat Et Al. V. Government of Israel Et Al.*, 34(1) 1:21–22.

133 *Dweikat Et Al. V. Government of Israel Et Al.*, 34(1) 1:22.

134 B'Tselem, *Land Grab*, 50.

135 State Comptroller, *Annual Report* (Jerusalem, 1998), 1032–1033.

Court legitimized the confiscation agreeing that the construction of these roads was necessary for “absolute security needs”.<sup>136</sup>

## State Lands

Israel ‘inherited’ all the land that was registered in the High Commissioner’s name from the British government after 1948, which thus became Israeli State Land.<sup>137</sup> After 1967, Israel also claimed all the ‘*State Land*’ that Jordan had designated as such during its rule in the West Bank. Israel achieved this through the application of a 1967-adopted military order: *Order Concerning Government Property (No. 59)*.<sup>138</sup> The Military Order defines State Land as property that, on the ‘relevant date’ (7 June 1967, the day Israel occupied the West Bank), belonged to an enemy state and/or corporation of which an enemy state had control or rights or that was registered at that time in its name.<sup>139</sup> Further, the Military Order bestows administration of State Land to the Custodian appointed by the Israeli Military Commander, who is empowered “to take possession of government property and to take any measure he deems necessary to that end”.<sup>140</sup> The Military Order also allows for the Custodian to deem any lands as State Lands, even if they are retroactively shown not to be State Land, provided he believed “in good faith” that they were State Lands.<sup>141</sup> This Order has since been amended.

In November 1979, following the verdict of the *Elon Moreh* Case, the government issued a decision “to expand the settlement in Judea, Samaria, the Jordan Valley, the Gaza Strip and the Golan Heights by adding population to the existing communities and by establishing new communities *on state-owned land*”.<sup>142</sup> The term ‘State Land’ was not defined therein; however, the colonization enterprise actually expanded following this measure with approximately 90 percent of the colonies established on land declared as State Land.<sup>143</sup> Basically, this was accomplished through a manipulation of laws already in place.

First, Israel conducted a survey to ascertain which land fell under the ‘State Land’ criteria as designated so by the Jordanian and preceding legal systems. Initial

---

136 *Wafa Et Al. V. Minister of Defence Et Al.*, 50(2) 848 Piskei Din (HCJ 1996).

137 Abu Kishk, ‘Arab Land and Israeli Policy’, 127.

138 *Order Concerning Government Property (Judea and Samaria) 1967*, 1967.

139 Definitions article in the original version of the Order concerning Government Property, as published in *Collections of Proclamations, Orders and Appointments No. 5*, 1967, 162 –165.

140 *Order Concerning Government Property (Judea and Samaria) 1967* Article 2 of original version.

141 *Order Concerning Government Property (Judea and Samaria) 1967* Article 5.

142 *Government Decision No. 145 of 1 November 1979*, 1979.

143 ‘Lands in Judea and Samaria’ (Lecture, Bet Hapraklit, May 28, 1985), 5.



investigations discovered that approximately 527,000 dunums (527 km<sup>2</sup>) of such land existed as registered by the Jordanian Government.<sup>144</sup> Following further investigation of Ottoman and British 'State Lands' it was revealed that an additional 160,000 dunums (160 km<sup>2</sup>) were eligible to be declared 'State Land'.

In 1969, a provision was added to the Order Concerning Government Property stating: "if the Custodian confirms in a written document with his signature that a given property is government property, that property will be considered government property unless proven otherwise".<sup>145</sup> The provision transferred the burden of proof from Israel to the individual Palestinians, which initially was made impossible or almost impossible in light of lacking title deeds, halted registration and complicated land settlements, as mentioned above.

Through the alternative definitions and application of previous laws, State Land was amended to encompass:

- Land that was not registered in the Land Registry (or with *kushan*);
- *Miri* land that has not been cultivated for at least three *consecutive* years;
- *Miri* land that had been cultivated for less than ten years; and,
- *Mawat* land.<sup>146</sup>

Israel also altered the definition of what constitutes 'cultivation' to: "A person who claimed rights in rocky land must prove that he cultivated at least 50 percent of the entire parcel. If the pockets of land under cultivation amounted to less than 50 percent, the entire parcel was deemed State Land, leaving the farmer with no rights whatsoever. By doing so, Israel classified as government property land that, under the local law, was private Palestinian property."<sup>147</sup>

In 1984, the Military Commander amended the Order Concerning Government Property to expand the types of land that could fall under its control. The amendment defines government property as "property that on the relevant date or thereafter belongs, is registered in the name of, or is imparted" to an enemy state or a corporation in which an enemy state has rights.<sup>148</sup> The use of the word 'thereafter' offers scope to expand upon a previously static definition of 'State Land'.

144 Meron Benvenisti and West Bank Data Base Project, *The West Bank and Gaza Atlas* (Jerusalem : Boulder, Colo, 1988), 60; B'Tselem, *Land Grab*, 52.

145 *Order Concerning Government Property (Amendment No. 4) (Judea and Samaria) (No. 364)*, n.d. Article 2(c).

146 Plia Albeck, 'The Use of Land in Judea and Samaria for the Purpose of Jewish Settlement: Legal Aspects and the Test of Reality', in *Ascending the Mountain: Renewed Jewish Settlement in Judea and Samaria* (Jerusalem, 2002), 223–234; 223–234 B'Tselem, *Land Grab*, 53.

147 B'Tselem, *Under the Guise of Legality*, 37.

148 *Order Concerning Government Property (Amendment No. 7) (Judea and Samaria) 1984*, 1984.

## Declaration Process

The declaration process is not anchored in the law or in military legislation, but rather in the procedures of the Civil Administration alone.<sup>149</sup> Among the requirements of the Civil Administration procedures is that the Custodian must sign a certificate specifying the location of the land for declaration accompanied by a map demonstrating the plot's total area. A copy of this certificate must then be sent to the local village's *mukhtar* who is then required to inform the villagers and affected parties to allow them to submit objections.<sup>150</sup> Objections must be made within 45 days.<sup>151</sup> If no objection is made within this time, the land is then considered 'State Land' which the Custodian may then take possession of.

For instance in 1990, the Custodian declared 125 dunums of the Bil'in village land near Ramallah as State Land. However, it was recently discovered that the certificate of declaration does not even carry the signature of the village *mukhtar* which would ordinarily show confirmation that the certificate was delivered to him.<sup>152</sup> As previously noted the *Order Concerning Government Property* also allows for the Custodian to deem any land as State Land even if it is retroactively shown not to be State Land provided he believed "in good faith" that they were State Lands.<sup>153</sup> This means that if an affected party fails to lodge an objection to the declaration within 45 days, even if he can prove that the land is not State Land, he cannot proceed.

Furthermore, huge legal costs and difficulties also strongly dissuade many affected individuals from submitting a complaint. Below are the requirements for filing an objection:

- Payment of an administration fee and receipt thereof;
- Authorized surveyor's map delineating the plot of land in question;
- An expert opinion on the agricultural cultivation of the land should the party be pursuing the Article 78 (Ottoman Land Code) argument.<sup>154</sup>

In practice, an objector must also call on the expertise of a lawyer who is familiar with the Civil Administration procedures. The objection is then heard by the Military Appeals Committee consisting of three members (bear in mind that the burden of

149 Michael Sfar and Emily Schaeffer, *A Guide to Housing, Land and Property Law in Area C of the West Bank*, February 2012, 46. Sfar, M., Schaeffer, E., et al., "A Guide to Housing Land and Property Law in Area C of the West Bank", February 2012, p. 46.

150 Zamir, *State Lands in Judea and Samaria: A Legal Review*, 31.

151 Article 28 (a) *Provisions Concerning Procedures at Appeals Committees (Judea and Samaria)* 1987, 1987.

152 Sfar and Schaeffer, *A Guide to Housing, Land and Property Law in Area C of the West Bank*, 46.

153 *Order Concerning Government Property (Judea and Samaria)* 1967 Article 5.

154 *Provisions Concerning Procedures at Appeals Committees (Judea and Samaria)* 1987 Article 28(b).

proof rests with the individual and that at least 50 percent of the land in question must have been cultivated for the past 10 years).<sup>155</sup>

Various petitions filed by Palestinians against the declaration (of State Land) process and against the appeals committee (whereby individuals can oppose declarations) failed before the Israeli Supreme Court. See, for example: *HJC 81/285, Fadil Muhammad a-Nazar et al v. Commander of Judea and Samaria et al.*, *Piskei Din* 36 (1) 701. In *a-Nazar et al v. Commander of Judea and Samaria et al.* where the Court upheld the legality of the declaration mechanism and rejected the petitioner's right to object because they could not prove personal injury on State Land.

See also *HCI 7530/01, 'Ali Khalil Musalem Sharitih et al. v. Civil Administration for Judea and Samaria et al.* The case of *Sharitih et al. v. Civil Administration for Judea and Samaria et al.* involved the Makhmara family who jointly held 280 dunums of lands in the Hebron District and had consistently farmed the land for years. In 1997 they discovered that the land had been declared State Land since 1982. The family, represented by the Association for Civil Rights in Israel, duly submitted an objection with the appeals committee.<sup>156</sup> The Court rejected the petition among others on the basis that the appellants missed the date for submission of an appeal (45 days).

## Absentee Land

The basis for this method of confiscation is enshrined in the *Order Regarding Abandoned Property*.<sup>157</sup> The Military Order stipulates that "any property whose owner and holder left the West Bank before, during or after the 1967 war is defined as an abandoned property and attributed to the Custodian for Abandoned Property on behalf of the commander of the Israeli Military in the region. Furthermore the Custodian is entitled to take possession and to manage the property as he sees fit".<sup>158</sup> The authority to declare land or property as 'abandoned' extends to property whose owner is 'unknown'.<sup>159</sup> The definitions and provisions of this Military Order were further expanded to include property belonging to a person who is a resident of an enemy country or a corporation controlled by residents of an enemy country.<sup>160</sup> Legally, the Custodian for Abandoned Property is purely the trustee of the property

155 *Order Concerning Appeals Committees (Judea and Samaria) 1967*, n.d. Article 3.

156 *Isma'il Alyan Et Al. V. Custodian for Government Property in Judea and Samaria* (n.d.).

157 *Order Regarding Abandoned Property (Private Property) (Judea and Samaria) 5727-1967*, 1967.

158 B'Tselem, *Land Grab*, 58; *Order Regarding Abandoned Property (Private Property) (Judea and Samaria) 5727-1967* Section 8.

159 *Order Regarding Abandoned Property (Private Property) (Judea and Samaria) 5727-1967* Section 4(c).

160 *Order Regarding Abandoned Property (Private Property) (Additional Provisions) (Judea and Samaria) 5727-1967*, 150, 1967.

on behalf of its rightful owner. On return of the owner the Custodian must return the property and the profits they derived from the property to the owner.<sup>161</sup> However, Israel refuses the return of Palestinian refugees or forcibly displaced persons, and so their claim to their property and lands. Exceptions to this rule occur when individual Palestinians are permitted to return through family unification permits.<sup>162</sup>

The function of the Custodian for Abandoned Property was combined with that of the Custodian for Government Property by the Israeli administration. The combined body is called the Custodian for Government and Abandoned Property in Judea and Samaria.<sup>163</sup> In effect the same procedures apply for both. As such, the recourse for an individual purporting to be the owner of an abandoned property is to appeal to the Military Appeals Committee with the burden of proof resting on that individual.<sup>164</sup>

Additional leeway provided for by the ‘good faith’ argument allows the Custodian to designate ‘absentee property’ even when owners can demonstrate their ownership, as was the case in *Albina v. Custodian for Government Property in Judea and Samaria*<sup>165</sup> where the concerned individual was still residing in the West Bank.

A State Comptroller Report notes that during the first few years of the Occupation, some 430,000 dunums (430 km<sup>2</sup>) of land was registered as ‘absentee property’.<sup>166</sup>

## Confiscation for Public Purpose

Expropriation of land for public use differs from expropriation for military needs in that, at least in theory, the expropriated land is ostensibly intended to benefit the entire population, including Palestinians.

The legal mechanism employed to validate the expropriation for public needs finds its basis in the *Land (Acquisition for Public Purposes) Ordinance (1943)*, originally enacted by the British.<sup>167</sup> These ostensibly ‘public purposes’ include the building of government offices, creating lands and parks, and the like.<sup>168</sup>

161 *Order Regarding Abandoned Property (Private Property) (Additional Provisions) (Judea and Samaria) 5727-1967* Sections 7 and 8.

162 State Comptroller, *Annual Report*, 1986, 1189.

163 B’Tselem, *Land Grab*, 59.

164 *Order Regarding Abandoned Property (Private Property) (Judea and Samaria) 5727-1967* Section 10 (D).

165 *Albina V. Custodian for Government Property in Judea and Samaria* (n.d.).

166 State Comptroller, *Annual Report*.

167 BADIL and COHRE, *Ruling Palestine*, 43.

168 BADIL and COHRE, *Ruling Palestine*, 43.

صحة الإسرائيل الذي شمر في حوزة القاضع الإسرائيلي

(التشريع المبرور) رقم ١١٥٦ بتاريخ ١٩٧٠/٨/٢٠

قانون الأراضي (استيلاء المصلحة العامة) لسنة ١٩٦٣

امران بوجيب الماتري الخاصة وأما بعد من القانون المذكور

لنحس معلوما ان الأراضي الموصورة في الملحق ادناه اربعة ممتدة منطقة

للقبر الدالية للامات العامة وان القبر الدالية مستند للامان شأن استيلائها .

كل من يدعي لنفسه حق او مصلحة في الأراضي المذكورة يوجب الحصول

على تصريح لقائها عليه ان يحصل الى دائرة تسجيل رصيده الأراضي - خلال شهرين

من تاريخ صدور الاعلان في الوقائع الاسرائيلية كتابا مخصصا من حق من الدولة

التي يتبع بها في الارض المذكورة ممتلكات مملوكة لغيره وعرضه على ان تتصلح خمسة

الملازم على التماس الترخيل - اذا وعدت - في سجلات الاملاك مملوكة مخصصة

بالتمديدات التي يطالب بها وحساب المبلغ المالي في كل فترة واحدة .

ولكن معلوما كذلك ان قصر الدالية يؤول ان يكتسب لغيره حق التصرف

في الأراضي المذكورة لانه لا يوجد ممتلكات الدالية التي يملكها ممتلكات

من اجلها ويصدر القبر الدالية لتلك الممتلكات التي كل شخص يملكه الاراضي الممتدة

متمتة ان يملك القبر المصروف بها .

#### الملاحق

(١) قطعة ارض مساحتها الاجمالية ٤٧٠ دونم غربيا والمجموعة بالوتسليم

في المبلغ المصروف الذي يعطى والمجاهر لها .

قطعة الارض المذكورة مؤتمرة بلان امير على غارطة رقم ١١٥٦/١٩٧٠

المنطقة بقباس ١٠٠٠٠ والمجموعة بأرضها قصر الدالية .

(٢) قطعة ارض مساحتها الاجمالية ١٠٠٠ دونم غربيا والمجموعة بالوتسليم

في المبلغ المصروف الذي يعطى والمجاهر لها .

قطعة الارض المذكورة مؤتمرة بلان امير على غارطة رقم ١١٥٦/١٩٧٠

المنطقة بقباس ١٠٠٠٠ والمجموعة بأرضها قصر الدالية .

(٢) قطعة ارض مساحتها الاجمالية ٢٢٢٠ دونم غربيا والمجموعة

في المبلغ المصروف الذي يعطى والمجاهر لها .

قطعة الارض المذكورة مؤتمرة بلان امير على غارطة رقم ١١٥٦/١٩٧٠

المنطقة بقباس ١٠٠٠٠ والمجموعة بأرضها قصر الدالية .

(٤) قطعة ارض مساحتها الاجمالية ١٠٠٠ دونم غربيا والمجموعة بالوتسليم

في المبلغ المصروف الذي يعطى والمجاهر لها .

قطعة الارض المذكورة مؤتمرة بلان امير على غارطة رقم ١١٥٦/١٩٧٠

المنطقة بقباس ١٠٠٠٠ والمجموعة بأرضها قصر الدالية .

(٦) قطعة ارض مساحتها الاجمالية ١٠٠٠ دونم غربيا والمجموعة بالوتسليم

في المبلغ المصروف الذي يعطى والمجاهر لها .

قطعة الارض المذكورة مؤتمرة بلان امير على غارطة رقم ١١٥٦/١٩٧٠

المنطقة بقباس ١٠٠٠٠ والمجموعة بأرضها قصر الدالية .

(٧) قطعة ارض مساحتها الاجمالية ١٠٠٠ دونم غربيا والمجموعة بالوتسليم

في المبلغ المصروف الذي يعطى والمجاهر لها .

قطعة الارض المذكورة مؤتمرة بلان امير على غارطة رقم ١١٥٦/١٩٧٠

المنطقة بقباس ١٠٠٠٠ والمجموعة بأرضها قصر الدالية .

(٨) قطعة ارض مساحتها الاجمالية ١٠٠٠ دونم غربيا والمجموعة بالوتسليم

في المبلغ المصروف الذي يعطى والمجاهر لها .

قطعة الارض المذكورة مؤتمرة بلان امير على غارطة رقم ١١٥٦/١٩٧٠

المنطقة بقباس ١٠٠٠٠ والمجموعة بأرضها قصر الدالية .

(٩) قطعة ارض مساحتها الاجمالية ١٠٠٠ دونم غربيا والمجموعة بالوتسليم

في المبلغ المصروف الذي يعطى والمجاهر لها .

قطعة الارض المذكورة مؤتمرة بلان امير على غارطة رقم ١١٥٦/١٩٧٠

المنطقة بقباس ١٠٠٠٠ والمجموعة بأرضها قصر الدالية .

(١٠) قطعة ارض مساحتها الاجمالية ١٠٠٠ دونم غربيا والمجموعة بالوتسليم

في المبلغ المصروف الذي يعطى والمجاهر لها .

قطعة الارض المذكورة مؤتمرة بلان امير على غارطة رقم ١١٥٦/١٩٧٠

المنطقة بقباس ١٠٠٠٠ والمجموعة بأرضها قصر الدالية .

١٩٧٠/٨/٢٠

(...)

بقباس ...

للقبر الدالية

In 1953, Israel passed the *Land Acquisition (Validation of Acts and Compensation) Law, 5713 -1953* thereby validating and facilitating the “acquisition of land for purposes of development, settlement, or security”.<sup>169</sup> A 1964 amendment to this law, *Acquisition for Public Purposes (Amendment of Provisions) Law, 5724-1964*, specifies procedures to be followed in the acquisition of lands based on this and other laws, including the original *Land (Acquisition for Public Purposes) Ordinance (1943)*, the *Town Planning Ordinance (1936)*, and the *Roads and Railways (Defence and Development) Ordinance (1943)*. The 1964 amendment also defines circumstances under which no compensation would be offered to those whose lands had been expropriated; generally, where the expropriation had occurred prior to the coming into force of this law.<sup>170</sup>

Israel used this law to extensively expropriate Palestinians lands. Many Palestinians challenged the expropriations and did not accept compensation. A 1978 amendment to the *Acquisition for Public Purposes (Amendment of Provisions) (Amendment No.3) Law, 5738-1978*, addresses this issue by decreeing that where the owner refuses compensation, or does not give consent within the time allotted, these funds would be deposited with the Administrator-General in the name of the owner. However, this provision has no bearing on the matter of the expropriation itself.

Furthermore, Israel passed the military order – *Order Regarding the Lands Law (Acquisition for Public Needs) (No. 321) 5729-1969*, which transferred authority to what later became the deputy head of the Civil Administration, abolished the previous requirement of publishing the proposed expropriation in an official gazette and deliverance to the land owner. The jurisdiction over appeals to expropriation was transferred from the local court to the Military Appeals Committee and the management and possession of the land expropriated was bestowed on the Custodian for Government and Abandoned Property in Judea and Samaria.<sup>171</sup>

A second amendment to this procedure was introduced in 1981. This *Order Regarding the Lands Law (Acquisition for Public Needs) (No. 949), 5743-1981*, amended the law to oblige the relevant authority to publish its decision in the Compilation of Proclamations and to inform the land owner, or the local *mukhtar* of the decision.

This amendment came about following a petition by Palestinians to the Israeli Supreme Court in the *Tabib Case*, who submitted that they were only made aware

---

169 *Land Acquisition (Validation of Acts and Compensation) Law 5713-1953*. See at: <http://www.israelawresourcecenter.org/israelaws/fulltext/landacquisitionlaw.htm>

170 BADIL and COHRE, *Ruling Palestine*.

171 B'Tselem, *Land Grab*, 60.

of expropriation orders on their land when tractors began work on it.<sup>172</sup> However, as noted by B'Tselem, Israel continues to expropriate land largely under Article 12 of the Jordanian law, which allows for 'urgent' expropriations and bypassing certain requirements in respect of the land-owner.<sup>173</sup>

Although Israel rarely uses this means as a way of accumulating land for the construction of colonies, it has done so in the past.<sup>174</sup> Additionally, the Israeli Supreme Court has, however, regularly allowed for the expropriation of Palestinian land in order to construct roads that serve the colonies and often bypass Palestinian villages.<sup>175</sup>

#### Nasser Nawaj'a - Susya, Hebron <sup>176</sup>

The village of Susya, near Hebron, accommodates 45 Palestinian families with a total of 339 residents among which 60 percent are children. Normally, the numbers of residents of a village increase over the years, but unfortunately in our case our number is decreasing. We are still losing pieces of land in the eastern area under the pretext that they are 'State Lands', 'archeological lands', 'national parks' or required for 'security reasons'. Further difficulties affecting daily life include: the lack of basic infrastructure, violence of colonists including the murder of three residents, prevention of access to our land, and home demolitions that have all led to the decrease in the population.

In 1983, the colony of Susya was established beside our village on our land which had been declared 'State Land' prior to that. Later on, in 1986, we were forcibly expelled from our original village of "Susya" by the Israeli military and further because of the Civil Administration's declaration that the area is a "national park" due to the discovery of an ancient synagogue in our village, as they claim. After our expulsion, most of us settled on nearby agricultural lands that we still live on until today, and on which we are facing the threat of expulsion again.

Originally, the residents of Susya used to own around 10,000 dunums (10 km<sup>2</sup>). In the 1980s we lost the first 1,000 dunums on behalf of the colony of "Susya", which was initially a military camp, and subsequently an outpost that became a colony and continued to expand. Afterwards, the military camp and

172 *Tabib Et Al. V. Minister of Defence*, 36(2) 622 Piskei Din (n.d.).

173 B'Tselem, *Land Grab*, 60–61.

174 *'Abd Al-'Aziz Muhammed 'Ayed Et Al. V. Commander of IDF Forces in Judea and Samaria* HCJ (n.d.).

175 See: *Tabib Et Al. V. Minister of Defence*, 36(2) 622.; *Jam'ayat Iskan Al-Mu'almun V. Commander of IDF Forces in Judea and Samaria*, 37 (4) Piskei Din 785 (n.d.); *Municipality of Hebron Et Al. V. Minister of Defence Et Al.*, 50(2) Piskei Din 617 (n.d.).

176 Nasser Nawaj'a, 'The Village of Susya - South Hebron Hills', interview by BADIL, February 2013.



the two colonies (the colony of Susya and the archeological site of Susya) expanded at the expense of our agricultural land. They kept putting up new borders or grabbing more hills, so we lost more and more lands. Before the year 2000, we could use around 80 percent of our lands and after the Second Intifada, under the pretexts of military zones, and prevention of contact or collision between the colonists and ourselves, we found ourselves permitted to use only 30 percent of our lands.

Often the Israeli Civil Administration military orders state that it is forbidden for both us and the colonists to enter these lands for security reasons. However, the facts on the ground are different. It's forbidden for the Palestinians to access their lands while the colonists can enter and can even plant trees. As a result, we lose lands because they use laws that deliver the lands to those who, today, benefit from it. In addition, they use Ottoman laws against us, which affirms that if you haven't used your lands for a few years - you don't cultivate or plow it - it becomes 'State Land' and the State eventually transforms it into a colony.

For instance, the Israeli Military prohibits me reaching my land. Meanwhile ,Israeli authorities take aerial photos and they state that I didn't work in my land or plant anything for a few years without mentioning the real facts that enabled me to reach or to use my land, and then they adopt the Ottoman law without questioning why I couldn't reach the land or taking into consideration that I was prevented by the military.

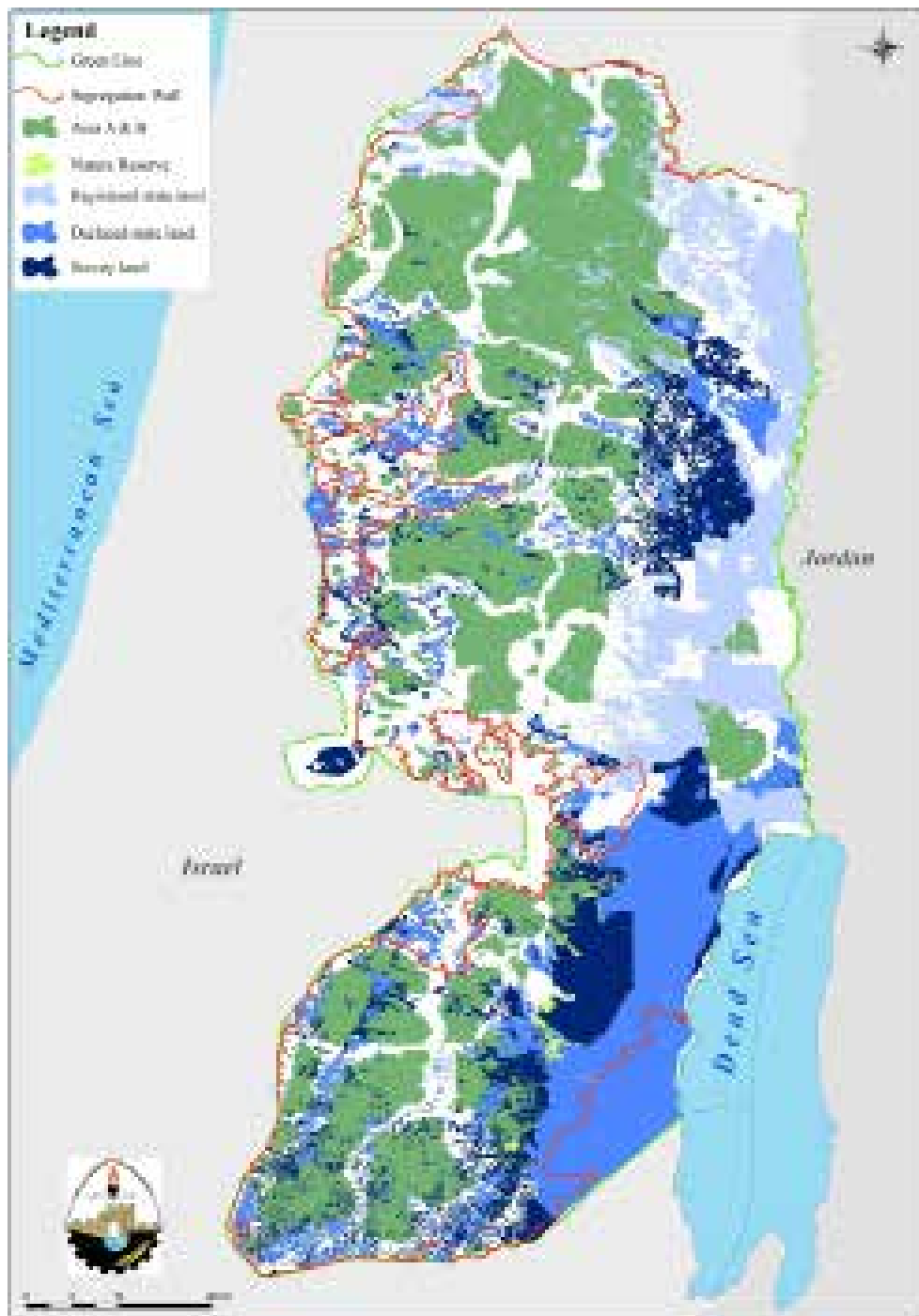
### **Land access**

From 2001, the settlers of the colony of Susya and its outpost (with the help of the Israeli Military) started to prevent us from accessing our private lands on an area of 3,000 dunums (3 km<sup>2</sup>) around the colony – an area that is 10 times bigger than the built up area of the colony itself.

The Israeli Civil Administration never gave official orders that deny our access to the lands, but what happens is that the military does not allow us to access the lands and they tell us to go to the Israeli Civil Administration. But the Israeli Civil Administration still fails to give us any explanation.

For instance, the Israeli Civil Administration gave us permission to access some of our owned lands and at the same time, totally prohibited the colonists to enter them, but unfortunately what happened on the ground was that the soldiers prohibited the Palestinians from entering, even if they didn't have a specific order to do so from the Military Commander. However, if they see colonists on the land they say nothing to them even if there is an order that forbids the colonists from entering the lands.





Source: Applied Research Institute - Jerusalem (ARIJ)

## EAST JERUSALEM

Owing to production constraints, a full outline of Israeli law will not be given here but rather the most pertinent laws to the issue of land confiscation, namely for *Public Purposes* and *Absentee Property*.

Approximately 35 percent of land in East Jerusalem was confiscated in order to build Israeli colonies.<sup>177</sup> However, even those pieces of land that remained in Palestinian hands were hindered by building restrictions of various sorts as provided for in the Master Plan.<sup>178</sup>

## MASTER PLAN

Planning in East Jerusalem is contingent on a ‘Master Plan’, the ‘*Jerusalem Master Plan 2000*’, which dictates development and laws for specific areas. The Master Plan is a comprehensive Israeli Planning Scheme that serves as the authoritative blueprint for all municipal planning within the Jerusalem Municipality.<sup>179</sup> The Master Plan zones areas intended for specific functions such as residency, urban building, transportation, etc.<sup>180</sup> All Local Town Planning Schemes developed for specific neighborhoods within the Municipality must conform to the zoning and planning provisions detailed within the Master Plan. The currently proposed Master Plan is a composition of successive Israeli Master Plans entailing both minor and major adjustments for urban planning in the Jerusalem Municipality, including both the Jerusalem Master Plan 2020 and the more recent Jerusalem Master Plan 2030.<sup>181</sup> In December 2012, the UN Special Rapporteur for Adequate Housing, Raquel Rolnik, reported that:

The Local Outline Plan–Jerusalem 2000, although not finalized or officially approved, is the master plan setting out the municipality’s strategies up to 2020. This plan is the first to include both East and West Jerusalem. While it includes questions of planning and

177 Ir Amim, ‘The Planning Policy in East Jerusalem’ (2007); available from <http://eng.ir-amim.org.il/?CategoryID=369>.

178 Ir Amim, ‘The Planning Policy in East Jerusalem’.

179 The text of the currently proposed Jerusalem Master Plan 2000 can be accessed here: <http://www.coalitionforjerusalem.org/main.php?id=30>.

180 The text of the currently proposed Jerusalem Master Plan 2000 can be accessed here: <http://www.coalitionforjerusalem.org/main.php?id=30>.

181 The Civic Coalition for Defending Palestinians’ Rights in Jerusalem, *Aggressive Urbanism- Urban Planning and the Displacement of Palestinians Within and from Occupied East Jerusalem*, December 2009; available from <http://www.civiccoalition-jerusalem.org/ccdprj.ps/new/pdfs/Aggressive%20Urbanism%20Report.pdf>; accessed 14 May 2013.

development in the Palestinian neighborhoods of the city, the Local Outline Plan does not plan for enough housing units in the Palestinian areas to sufficiently address current shortfalls or accommodate the projected growth in population. Further, the master plan identifies maintaining a solid Jewish majority in the city as one of its main aims and adds 5 square kilometers for the expansion of Israeli settlements in East Jerusalem. This policy of demographic balance, a stated aim of official municipal planning documents, is discriminatory and thus violates human rights law.<sup>182</sup>

## CONFISCATION FOR PUBLIC PURPOSES

After the annexation of East Jerusalem in 1967, Israel began to confiscate land under the pretext of using it for ‘public purposes’.<sup>183</sup> The 1943 *Land (Acquisition for Public Purposes) Ordinance* and its relevant amendments are key to this practice. This Ordinance is seen by many as “the main general land expropriation law in force in Israel today”.<sup>184</sup> BADIL and COHRE note that by 1999, approximately 24,500 dunums (24.5 km<sup>2</sup>) of land in and around Jerusalem was expropriated using the above ordinance, most of which was privately owned Palestinian lands.<sup>185</sup>

The Ordinance is a mandate-era law authorizing the Finance Minister to deem tracts of land confiscated under the guise of ‘public purpose’. A previous Supreme Court ruling had once allowed that if land, which was initially confiscated for a particular purpose was not being used for that particular purpose, the affected landowner might seek to reclaim that land. However, a 2010 amendment to the law was enacted authorizing the State not to use the land for the original purpose for a period of 17 years should they wish. Further, landowners are prevented from seeking reclamation of the land if it was passed to a third party or was confiscated for over 25 years.<sup>186</sup>

182 Raquel Rolnik, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in This Context* (December 24, 2012), 11–12; available from [http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-22-46\\_Add1\\_en.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-22-46_Add1_en.pdf).

183 Rolnik, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in This Context*, 57.

184 See for example, Alexandre Kedar, *Israeli Law and the Redemption of Arab Land, 1948-1969* (1996), 155.

185 BADIL and COHRE, *Ruling Palestine*, 132.

186 Adalah, *Inequality Report: The Palestinian Arab Minority in Israel* (February 2011), 23–24; available from [http://adalah.org/upfiles/Christian%20Aid%20Report%20December%202010%20FINAL\(1\).pdf](http://adalah.org/upfiles/Christian%20Aid%20Report%20December%202010%20FINAL(1).pdf).

### **‘Public Purposes’**

The 1943 *Land Ordinance* itself deems a public purpose as “any purpose the Finance Minister approves as a public purpose”.<sup>187</sup>

‘Public purposes’ can encompass a range of land designations, for example green areas, transport, schools and housing. As such, this Ordinance may be used, not only for the confiscation of land but also in hindering the use of and accessibility to land where the landowner is not permitted to build for instance, on land that has been designated as a green zone or national park. The intended use for a particular area is ordinarily provided for in the Master Plan. Adalah, the Legal Center for Arab Minority Rights in Israel, notes that following various Supreme Court rulings the authorities must now specify the ‘public use’ and for what reason it is deemed. The landowner should be notified and given the possibility to object. Additionally, they are entitled to compensation.<sup>188</sup>

In the *Har Homah* Case, the Israeli Supreme Court considered the issue of what constituted the ‘public’ and held that the building of a residential Jewish neighborhood on confiscated Palestinian land fulfilled a ‘public purpose’.<sup>189</sup> As this finding was clearly detrimental to the original Palestinian landowners, the verdict manifested preference towards Jewish-Israelis with respect to what is meant by ‘public’.

---

187 Allison B. Hodgkins, *The Judaization of Jerusalem: Israeli Policies Since 1967* (1996); available from [http://www.passia.org/jerusalem/publications/HODGKINS\\_Jud\\_of\\_J\\_txt.htm](http://www.passia.org/jerusalem/publications/HODGKINS_Jud_of_J_txt.htm); accessed 26 April 2013.

188 ‘Israel’s Sale of Palestinian Refugee Property Violated Israeli and International Law’ (June 22, 2009).

189 *The Jerusalem Legal Aid and Human Rights Center V. District Planning Committee*; B’Tselem, *A Policy of Discrimination, Land Expropriation, Planning and Building in East Jerusalem*, May 1995, 48–51; available from [http://www.btselem.org/publications/summaries/199505\\_policy\\_of\\_discrimination](http://www.btselem.org/publications/summaries/199505_policy_of_discrimination); accessed 23 April 2013.



**Awwad Abu Qalbayn - Silwan, East Jerusalem<sup>190</sup>**

On August 30th, 1970, the Israeli Minister of Finance declared, in accordance with the *Land (Acquisition for Public Purposes) Ordinance*, the confiscations of our lands in Al-Faruq Neighborhood of Silwan, East Jerusalem.

The announcement stated that the lands listed in the Ministry of Finance's order are absolutely required for public needs and it seeks to immediately acquire the right to the land. According to this declaration around 2,240 dunums (2.24 km<sup>2</sup>) were confiscated from Al-Faruq neighborhood in the village of Silwan.

In our case, we used to own 10 dunums of which only 3 dunums were not seized. Some of the remaining 7 dunums were confiscated and some were declared as "natural areas". We are not allowed to build in the land falling within the natural areas.

The Israeli military order from 1970 stated that the Minister of Finance intends to have immediate possession over the lands because they are urgently requested for public needs. After 40 years, we still don't know what those urgent public needs are. In some parts of the lands they planted forest trees and in other parts they kept it as it was.

In 1970, when we received the Ministry's announcement we asked them to do a second reading of the tract, but it was useless. So we held mass demonstrations to oppose the decision. We used to gather and do sit-ins on our land, but they didn't care. Personally, I sent a letter through a lawyer rejecting the confiscation and requesting my lands back, but it was denied.

With our land taken, we lost a source of income and livelihood because we used to plant different kinds of almond, peach and apricot trees and to sell our crops.

**ABSENTEE PROPERTY LAW**

Another law that is applied in order to confiscate Palestinian land is the *Absentee Property Law* of 1950.

Estimates of the total amount of 'abandoned' lands to which Israel laid claim vary between 4.2 and 5.8 million dunums (4,200-5,800 km<sup>2</sup>).<sup>191</sup> Between 1948 and 1953

190 Awwad Abu-Qalbayn, 'Al-Faruq Neighborhood, Silwan - East Jerusalem', interview by BADIL, February 2013.

191 For more information, see: Adalah, BADIL, and Habitat International Coalition (HIC), *Recurring Dispossession and Displacement of 1948 Palestinian Refugees in the Occupied Palestinian Territory*, Joint written statement to the UN Human Rights Council (August 27, 2009); available from <http://unispal.un.org/UNISPAL.NSF/0/0F9AB8AF7EE5F0A185257647006A47D0>.

alone, 350 of the 370 new Jewish colonies were created on lands confiscated through the *Absentees' Property Law*.<sup>192</sup>

In several respects, the *Absentees' Property Law* is rooted in emergency ordinances issued by the Jewish leadership soon after the 1948 *Nakba* and subsequently incorporated into the laws of Israel. Examples are the *Emergency Regulations (Absentees' Property) Law, 5709-1948*, and the *Emergency Regulations (Requisition of Property), 5709-1949*, and other related laws. Unlike laws that were designed to establish Israel's 'legal' control over lands as relate in previous sections of this Chapter, this body of law focused on formulating a 'legal' definition for the Palestinians who were forced to flee from these lands.<sup>193</sup>

### **'Absentees'**

Following the mass displacement of Palestinians from their homes and lands in 1948, Israel sought to legalize the appropriation of their lands. The *Absentee Property Law* of 1950 transfers the ownership of such lands to the State of Israel should the owner have been residing, even for a short while, in one of a list of territories outlined in the law between the 29th November 1947 and the day on which "it shall be declared that the state of emergency shall cease to exist". As the 'state of emergency' is ongoing, the law continues to apply. Further, the law even applies to persons who left their ordinary places of residence in Palestine to another place in Palestine. Such persons are referred to as '*Present Absentees*', to whom the *Absentee Law* also applies. Absentee property is any property within Israel that the 'absentee' owns or has a right to. This requirement that the property itself be located within the State of Israel applies to East Jerusalem subsequent to the 1967 annexation.

### **Custodian**

The Custodian of Absentee Property is appointed by the Israeli Minister of Finance to retain possession of 'absentee property' pursuant to a prescribed manner. He is to be distinguished from the Custodian General who manages all property in Israel when the owners cannot be located.

Ownership rights are automatically transferred to the Custodian of Absentee Property once a property fulfills the conditions outlined in the Law – i.e. the property belongs to an 'absentee' under the definition of the law. As these rights are automatically transferred no notice of this transfer is given to the owner and they may only be made aware of it when granted an eviction order, or when attempting to sell the property.

---

192 BADIL and COHRE, *Ruling Palestine*, 55.

193 BADIL and COHRE, *Ruling Palestine*, 41.

Article 17(a) outlines that, should the Custodian designate or “believe” that a certain property is owned by an absentee, then it is automatically considered so even if the rightful owner can later prove that they were not an ‘absentee’. If the property in question had already been sold to a third-party, then there is nothing the rightful owner could do to reclaim it, under the principle that the transaction was made in “good faith”.<sup>194</sup>

The Custodian is not permitted to sell or transfer ownership of property except to the Development Authority, a public body established under the *Development Authority (Transfer of Property) Law 5710-1950*, who may “develop, complete, meliorate, merge, cultivate and reclaim property”.<sup>195</sup> They may also “sell or otherwise dispose of, let, grant leases of, and mortgage property,” under the Basic Law.<sup>196</sup>

For his part, the Custodian is authorized to issue dispossession certificates, stop work orders and demolition orders to buildings considered to be ‘absentee property’.

## Reclaiming Property

Article 28 of the *Absentee Property Law* allows the Custodian to consider whether to release the property to its previous owner or successor, however any decision to release must be approved by a special committee appointed by the government.<sup>197</sup>

As noted above, the assumption of “good faith” on behalf of the Custodian makes it very difficult for a rightful owner to reclaim their property even with proof of ownership particularly when the property has already been transferred to a third party.

Present Absentees – ‘absentees’ residing in Israel – are entitled to claim compensation for properties seized under the *Absentee Property (Compensation) Law, 1973*. This law, however, imposes a time constraint in that compensation may only be sought up to 15 years after the enactment of the law (1 July 1973) or two years from the day that the claimant became a resident of Israel. Effectively, the law expired in 1988.

---

194 Absentees Property Law, Section 17(a) states: “Any transaction made in good faith between the Custodian and another person in respect of property which the Custodian considered, at the time of the transaction, to be vested property shall not be invalidated and shall remain in force even if is proved that the property was not at the time vested property”

195 *Development Authority (Transfer of Property) Law 5710-1950*, 1950; available from <http://www.israellawresourcecenter.org/israelaws/fulltext/devauthoritylaw.htm> Section 3(3).

196 *Development Authority (Transfer of Property) Law 5710-1950* Section 3(4).

197 *Absentees’ Property Law 5710-1950*, 1950; available from <http://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A> Sections 28-29.



## Absentee Law in East Jerusalem

Jordan controlled East Jerusalem from 1948 to 1967. Residents of East Jerusalem hold Jordanian Identity Papers and are, therefore, considered to have resided in an 'enemy territory' for the purposes of the *Absentee Law*, notwithstanding that Israel has treated East Jerusalem as Israeli territory following 1967 in all practical and legal matters. Therefore, Israel considers Palestinians residing in East Jerusalem absentees while claiming that their properties are in Israeli territory.

To counter this paradox the Knesset passed the *Law and Administration Procedures Law, 1970*, stipulating that East Jerusalem residents were not to be considered 'absentees' with respect to properties they owned within East Jerusalem. However, Palestinians residing outside the newly established municipal boundaries, while owning property within the city limits, were still subject to the *Absentee Law* as were East Jerusalem residents who owned properties within the Green Line.<sup>198</sup>

Much of the case law concerning the application of *Absentee Law* to East Jerusalem pertains to properties owned by individuals residing in the West Bank. The Israeli Supreme Court held that their properties are subject to the *Absentee Law* regardless of their owners' 'technical' residency.<sup>199</sup>

In two cases, the District Court has followed recommendations of the Israeli Attorney General to cease designating absentee properties in East Jerusalem whose owners resided in the West Bank.<sup>200</sup> However, the District Court has also issued two contradictory verdicts – the *Civil Complaint (Jerusalem) 6044/04 Hussein v. Cohen, May 9th 2006*; *Civil Complaint (Jerusalem) 6161/04 Ayad v. The Custodian of Absentee Properties, 2 October 2008*. Both these cases are currently pending adjudication before the Supreme Court<sup>201</sup> and could have huge implications on the applicability of the *Absentee Law* in East Jerusalem.

198 See: Adalah, 'Applying the Absentee Property Law on Land in East Jerusalem', January 10, 2008; available from <http://apjp.org/absentee-property-law-cannot-b/2011/11/25/applying-the-absentee-property-law-on-land-in-east-jerusalem.html>; accessed 29 April 2013.

199 See: *Edmond Levy Et Al V. Legacy of the Late Afanah Mahmoud Mahmoud (Abu Sharif) Et Al*, 40(1) 374 Peski Din (1986); 4713/93 Ze'ev Golan Et Al. V. *The Special Committee According to Article 29 of the 1950 Absentees' Property Law Et Al.* (HCJ 1994).

200 *Daqaq Nuha V. The Heirs of the Late Naame Atiya Adwi Najar* Psak Din (Jerusalem District Court 2006); *The Estate of the Late Taleb Ali Abdulla Abu Zahariya V. Berta Hamdan* (Jerusalem District Court 2007).

201 *Daqaq Nuha V. The Heirs of the Late Naame Atiya Adwi Najar*.



# Chapter

## Restrictions on Use and Access



*“The village of Ein Al-Hilwa is only 50 meters from the colony of Maskiot. The Israeli settler-colonialists did not receive an evacuation order. If the training of the Israeli military is dangerous for the Palestinian residents, aren't they for the Israeli colonists?”*

*Interview with Rasheed Sawafta, Al-Jiftlik, Jordan Valley (6 March 2013)*

Numerous measures are in place in the West Bank, East Jerusalem and Gaza Strip that seriously hinder the right of a landowner to use and access their lands while limiting their access to other resources such as water, the Dead Sea, and fisheries off the coast of Gaza. Such limitations usually come in the form of Israeli military orders that designate various parcels of land as closed military zones, nature reserves, national parks, Seam Zones, or for the building of the Annexation Wall, for instance. In designating a closed military zone, for example, the local Military Commander applies Military Order 1651 to insist on the required allocation of certain lands for ‘training’ and ‘firing’ purposes as an omnipotent ‘military necessity’. The owners are subsequently forbidden from using or accessing that land, unless they have been granted a permit, even though the ownership has not been transferred. These measures are distinct from those employed in pursuit of land confiscation where ownership *is* transferred. As such, the landowner may still retain *de jure* ownership, but with an extremely restricted possibility of using the land. Other mechanisms such as check points and roadblocks also severely restrict and hamper access and movement on roads, and between towns and villages, etc. However, this chapter will predominantly deal with restrictions on use and access of land.

This chapter will outline and discuss the various legal mechanisms facilitating restriction on use and access of land including the Annexation Wall, Seam Zones, Military Firing Zones, Nature Reserves and National Parks, Colonies, Access to the Sea and the Buffer Zone.

## **WEST BANK, AREA C**

Israel developed and implements a matrix restricting Palestinian movement and denying their use of and access to land. This matrix prevents Palestinians from obtaining access to livelihoods and basic services, including health, education and water supply. Israel’s ‘matrix of control’ exceeds the concept of restrictions to freedom of movement – a fundamental right – and instead regularly results in the complete denial of access to land, which in turn creates unlivable conditions.

## ANNEXATION WALL

With a total planned route of 708 km,<sup>202</sup> the illegal construction of the Israeli Annexation Wall began in 2002 and continues to this day. Its path is not restricted to the 1949 Green Line (internationally recognized as the border between Israel and the future Palestinian state as part of a two-state solution), but instead strays deep into the West Bank, effectively annexing Jewish-Israeli colonies while entrapping Palestinian towns.

In 2004, the International Court of Justice ruled by a majority of 14:1 that, where its path regularly strays into occupied Palestinian territory, including East Jerusalem and the surrounding area, the Wall "...and its associated regime, are contrary to international law." In addition, the ruling highlighted Israel's "...obligation to cease forthwith the works of construction of the wall...to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto."<sup>203</sup>

Almost one decade has passed since this judgment was made, yet Israel refuses to act upon any of these internationally-recognized obligations. To the contrary, Israel's construction of the Wall continues steadily, and its associated regime of discriminatory legislation and practices remain firmly in place. The path of the Wall has resulted in the *de-facto* annexation of 9.4 percent of the West Bank,<sup>204</sup> and consequently, many Palestinian farmers find themselves in the position whereby the Wall has completely separated them from their land. In theory, these farmers are permitted to access their land for the purposes of tending and harvesting crops. However, this is subject to a number of limitations.

HaMoked Center for the Defence of the Individual has observed that fewer and fewer access permits are being issued, and their validity periods are becoming progressively shorter. For example, in the period 2006-2009 there was a 59 percent decrease in the number of farmers allowed to cultivate their lands beyond the Wall.<sup>205</sup>

202 Al-Haq, *The Annexation Wall and Its Associated Regime* (Ramallah, 2012), 13; available from <http://www.alhaq.org/publications/publications-index/item/the-annexation-wall-and-its-associated-regime>; accessed 23 April 2013.

203 International Court of Justice, 'Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory (Advisory Opinion)', *International Court of Justice*, July 9, 2004; available from <http://www.icj-cij.org/doCKET/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6&ca>; accessed 23 April 2013."plainCitation": "International Court of Justice, 'Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory (Advisory Opinion

204 See: Al-Haq, *The Annexation Wall and Its Associated Regime*, 13.

205 HAMOKED- Center for the Defence of the Individual, 'The Permit Regime in the Seam Zone: HCJ 9961/ 03', n.d.; available from <http://www.hamoked.org/Case.aspx?cID=Cases0099>; accessed 23 April 2013.

In more general terms, the research of the Internal Displacement and Monitoring Centre has witnessed an 87 percent decrease in the number of permits issued overall between 2007 and 2012.<sup>206</sup>

In the *Alfei Menashe* Ruling, the Israeli Supreme Court held that:

Seizure of land to build a barrier was not expropriation in that it did not transfer ownership of the land but merely usage rights.<sup>207</sup>

And in the *Beit Sourik* case,<sup>208</sup> the Supreme Court noted that private Palestinian land may be used for the construction of the Wall according to the following protocol:

1. Order to be issued by the Commander of the Israeli Military of Judea and Samaria;
2. Every land owner will receive compensation for the use of his land;
3. The order is then brought to the attention of the public and the proper liaison body of the Palestinian Authority is contacted;
4. An announcement is relayed to the residents, and each interested party is invited to participate in a survey of the area affected by the order, so as to present the planned location of the wall;
5. A few days after the order is issued, a survey is taken of the area, with the participation of the landowners, in order to point out the land, which is about to be seized;
6. After the survey, a one week leave is granted to the landowners, so that they may submit an appeal to the Military Commander;
7. The substance of the appeals is examined;
8. If the appeal is denied, an additional one week leave is given to the landowner, so that he may petition the Israeli Supreme Court.<sup>209</sup>

---

<sup>206</sup> IDMC, *Report by the Internal Displacement Monitoring Centre to the Committee on the Elimination of Racial Discrimination on the Occasion of Israel's 14th, 15th and 16th Periodic Reports* (January 2012); available from [www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/875A7FFC20C7B21CC1257995003B7220/\\$file/CERD+Report+January+2012.docx](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/875A7FFC20C7B21CC1257995003B7220/$file/CERD+Report+January+2012.docx); accessed 23 April 2013.

<sup>207</sup> *Mara'abe V. The Prime Minister of Israel* (HCJ 2005) para 16.

<sup>208</sup> *Beit Sourik Village Council V. The Government of Israel* (HCJ 2004).

<sup>209</sup> *Beit Sourik Village Council V. The Government of Israel* para 8.

Next to this protocol, the acting Israeli authority is bound by the “Proportionality test” that considers three questions:

1. Does the route pass the “appropriate means” test (or the “rational means” test)? The question is whether there is a rational connection between the route and the goal of the construction of the wall;
2. Does it pass the test of the “least injurious” means? The question is whether, among the various routes which would achieve the objective of the wall, is the chosen one the least injurious;
3. Does it pass the test of proportionality in the narrow sense? The question is whether the route, as set out by the Military Commander, injures the local inhabitants to the extent that there is no proper proportion between this injury and the security benefit of the wall.

According to the “relative” examination of this test, the Wall will be found disproportionate if an alternate route for it is suggested that has a smaller security advantage than the route chosen by the respondent, but which will cause significantly less damage than the original route.<sup>210</sup> The Court concedes the power to designate what is military necessity to the Military Commander and where to apply this. The Court retains the authority to deem whether or not these designations are proportional.<sup>211</sup>

### **Ghassan Al-Harami - Jayyus, Qalqilya <sup>212</sup>**

Jayyus is a village composed of around 3,200 Palestinian residents, around 95 percent of them own land parcels located on the Western side of the Annexation Wall which was built there in 2002. The main source of income in Jayyus comes from agriculture. In 2002 when Israel started to build the Annexation Wall, about 8,200 dunums (8.2 km<sup>2</sup>) of the total 12,500 dunums (12.5 km<sup>2</sup>) of the lands of Jayyus were kept on the Western side of the Wall. These lands constitute 80 percent of total arable land. Annually, those lands used to produce around 10,000 tons of vegetables and fruits.

#### **Access to land**

Since the building of the Annexation Wall, the farmers of Jayyus had several difficulties in accessing their lands. First of all, each farmer needs an entry

210 *Beit Sourik Village Council V. The Government of Israel* para 44.

211 *Beit Sourik Village Council V. The Government of Israel* para 48.

212 Ghassan Al-Harami, ‘The Village of Jayyous, District of Qalqilya’, interview by BADIL, March 2013.



permit issued by the Israeli Civil Administration for crossing the gate to his land on the Western side of the Wall, which is a bureaucratically exhausting procedure. However, the permits have different expiry dates: some of them expire within one month, others within 3 or 6 months, and, rarely, after 1 to 2 years. Secondly, land owners are made to adhere to certain entry hours in which the gates are open and they are not allowed to bring workers with them. Only the landowners holding an entry permit are permitted access. This has a negative impact on the harvest and production.

### ***Municipal support***

In 2003, the village was involved in a series of demonstrations against the Wall. In parallel to the demonstrations, the village council undertook a legal action and filed a petition addressed to the Israeli Supreme Court, which in 2009 ruled that the path of the wall must be changed. Accordingly, 2,400 dunums (2.4 km<sup>2</sup>) of Jayyus lands would be rerouted to the Eastern side of the Wall. Until now the people of Jayyus are afraid that those facts on the ground, such as the Wall, will serve as a permanent demarcation line for their lands and property.

In early November 2012, the council carried out an important project to rehabilitate agricultural roads and we managed to improve 9 km length of road located on the Western side of the Wall. This was achieved with the support of Palestinian non-governmental and governmental bodies, as well as one international organization. Through this project we will be able to facilitate farmers' movement and transportation has become easier and faster. Our transport time has drastically decreased.

In order to fulfill the project we faced several obstacles such as restrictions of access on working machines, on building materials as well as for the workers themselves. But, we managed to solve the problems by coordinating with the Palestinian Civil Liaison and the Ministry of Public Works and Housing. Finally, the Israeli authorities allowed us to work, but without any written permission. This was a huge risk that we took. Hopefully, at the end, we will be able to accomplish this project and ease the farmers' movement.

Our next step is to provide farmers with metallic pools, which can contain up to 1,000 gallons (3.785 Cubic Meters) of water and, at the same time, the project does not require a permit from the Israeli authorities. The pools will enable farmers to store water and irrigate their fields whenever they want. Our main aim is to provide infrastructures and services that will encourage farmers to cultivate their lands so that they remain connected to it."

## SEAM ZONES

In 2003, the Military Commander proclaimed the “Seam Zone” a closed military zone that may be entered by permit only. Seam Zones are sections of Palestinian land within the occupied Palestinian territory isolated as a result of the erection of the Annexation Wall – falling between the Wall and the 1949 Armistice Line (the Green Line). As a result, Palestinian access to these isolated areas is severely restricted and subjected to an Israeli-controlled permit regime.<sup>213</sup> Internationally, these people are defined as Internally Stuck Persons.<sup>214</sup>

Based on the Israeli *Declaration Concerning the Closure of Area Number S/2/03 (Seam Zone)* “no person will enter the Seam Zone and no one will remain there. A person found in the Seam Zone will be required to evacuate it immediately.”<sup>215</sup>

In June 2006, pursuant to the request of the Supreme Court, HaMoked filed an amended petition concerning the permit regime Israel had instituted in the Seam Zones.<sup>216</sup> In January 2004, the Association for Civil Rights in Israel filed a similar petition<sup>217</sup> and both petitions were consolidated for a single hearing.

In its response to their petition in November 2006, the State of Israel claimed, *inter alia*, that the permit regime was a corollary of the proclamation of the Seam Zone as a closed zone and that the regime provides an adequate solution for movement into and out of the Seam Zone. On 5 April 2011, the Court dismissed the petitions and kept the permit regime intact.<sup>218</sup>

To obtain an access permit, Palestinians are required to meet at least one of the Civil Administration’s qualifying criteria. Permits are, in theory, to be granted to:

1. Those able to prove ownership of a residential property within the Seam Zone.

213 OCHA, *Three Years Later: The Humanitarian Impact of the Barrier Since the International Court of Justice Opinion* (Jerusalem, July 9, 2007); available from [http://www.ochaopt.org/documents/ICJ4\\_Special\\_Focus\\_July2007.pdf](http://www.ochaopt.org/documents/ICJ4_Special_Focus_July2007.pdf); accessed 23 April 2013.

214 PLO Negotiations Office, ‘Injustice Can Be Dismantled’ (July 7, 2011), 3; available from <http://www.nad-plo.org/userfiles/file/media%20brief/ICJ%20Anniversary%20-%20%E2%80%9CINJUSTICE%20CAN%20BE%20DISMANTLED%E2%80%9D.pdf>; accessed 23 April 2013.

215 OCHA, ‘UNSCO-OCHA Discussion Paper – “Seam Zone” Military Order’ (November 3, 2003), 1; available from [http://www.ochaopt.org/documents/OCHA\\_UNSCO\\_MOSZ1103.pdf](http://www.ochaopt.org/documents/OCHA_UNSCO_MOSZ1103.pdf); accessed 23 April 2013.

216 See: *Center for the Defence of the Individual V. Government of Israel Et Al. Supplemental Response on Behalf of the Respondents* (HCJ 2009).

217 See: *The Association for Civil Rights in Israel V. IDF Commander in the Judea and Samaria Area Et Al* (n.d.).

218 Permit regime in the seam zone: *Center for the Defence of the Individual V. Government of Israel Et Al. Supplemental Response on Behalf of the Respondents*.

2. Those who live within the West Bank but own agricultural land within the Seam Zone, or have a 'linkage' to the land.
3. Those who have businesses located within the Seam Zone.

Applications for a permit can take weeks to process whilst Palestinians who fail to meet the criteria above are not legally entitled to access Seam Zone land for any reason. Even in the event of an individual meeting one or more of the above criteria, there is no guarantee of success.<sup>219</sup>

**Shareef Khaled - Jayyus, Qalqilya<sup>220</sup>**

I am a 70 year old farmer, I have lived with my family in Jayyus since 1967. Before that I used to live in Jordan and I moved back to help my father in cultivating our land. Jayyus is located in the Qalqilya district and has around 3,200 inhabitants. Its economy is based on agriculture. The built-up area of the village is in Area B, but most of its agricultural land is in Area C.

I own six plots of lands covering an area of 175 dunums, where I plant different kinds of vegetables and fruits. After the building of the Annexation Wall in 2002, I started to face different obstacles in accessing my land and I have been required to apply for a permit from the Israeli authorities to enter through the gate in the Wall because it's not allowed for anyone to enter without a permit. In addition, the Zufin military camp is situated near one of my land parcels and the colony of Zufin next to another parcel. Lately, Israeli colonists have placed caravans 500 meters from my land.

In September 2003, the Israeli authorities handed the local council a limited and random number of permits to cross the gate of the Wall which also included names of babies and dead people! The people who didn't receive permits, including me, used to enter our lands through an opening in the fence, but we couldn't bring our tractors or horses. After a while it became impossible to pass like that any longer.

From 2004 to 2007, the administration of the Occupation sometimes renewed the permission and sometimes they did not. In the latter cases I had to contact my attorney or human rights organizations that help with such problems. Usually, after contacting them I used to get a permit within a week or two. However, each time I was participating in conferences abroad speaking about the effects of the Wall on our livelihood I used to get banned when I came back home. In 2007, after my participation in a conference in the UK, I was denied entry to my land for seven months and 18 days. It was the worst period of my

219 PLO Negotiations Affairs Department, *Barrier to Peace: The Impact of Israel's Wall Five Years After The ICJ Ruling* (July 2009); available from <http://www.nad-plo.org/userfiles/file/fact%20sheet/FINAL%2520Anniversary%2520of%2520ICJ%2520ruling%2520on%2520the%2520Wall%2520FINAL%2520June09.pdf>; accessed 23 April 2013.

220 Shareef Omar Khaled (Abu Azzam), 'Jayyous, Qalqilya', interview by BADIL, March 2013.

life. So in September 2007, I appealed to the Israeli Supreme Court asking for renewal of my permit. In 2008 the Court came out with a positive ruling permitting my entrance to my own land. It was for 28 days only, but later on I was given a three-month permit each time.

#### **Gate**

- The gates open three times daily, in the morning from 05:00 to 6:00, then from 13:00 to 14:00, and the third time from 16:00 to 17:00. Even if someone was hurt or injured, he would have to wait until the next opening.
- You cannot pass through the gate without being checked, not just when you enter but also when you are leaving.
- Lately, the soldiers oblige us to unload the whole cargo, and we are speaking about tons of fruits.
- Sometimes, it happens that they don't open the gate - without giving any explanation - and consequently we cannot go to work.
- Villagers wanting to go to their land sometimes have to wait hours until soldiers come and open the gate because they are patrolling the area."

## **JORDAN VALLEY AND DEAD SEA**

Based on "Closed Military Zones" and "Nature Reserves" or allocation for Israeli colonies, some 94 percent of the Jordan Valley and Dead Sea area have remained off limits for Palestinian use.<sup>221</sup>

According to a report by the UN Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territory (OCHA), "[t]he area has been one of the most severely affected by access restrictions imposed since the beginning of the second Intifada. These restrictions have rendered the main roads and the bulk of the natural resources available, almost exclusively, to Israeli settlers and the Israeli military."<sup>222</sup> According to the same report, "[a]pproximately 87 percent of the Jordan Valley and Dead Sea area are designated as Area C, of which virtually all is prohibited for Palestinian use. An additional seven percent is formally classified as Area B, but is unavailable for development, as it was designated a nature reserve under the 1998 Wye River Memorandum."<sup>223</sup>

221 OCHA, *Special Focus: West Bank Movement and Access Update* (East Jerusalem, September 2012), 2; available from [http://www.alzaytouna.net/english/selections/2012/WB\\_Movement\\_Access\\_10-12.pdf](http://www.alzaytouna.net/english/selections/2012/WB_Movement_Access_10-12.pdf); accessed 23 April 2013.

222 OCHA, *Special Focus: West Bank Movement and Access Update*, 23.

223 OCHA, *Special Focus: West Bank Movement and Access Update*, 24.

### **Fathy Khdeirat - Tubas, Tubas<sup>224</sup>**

I was born in Bardala, a small village in the north of the Jordan Valley. I have been politically active for around 17 years in the Jordan Valley.

Since 1967 the Jordan Valley suffers a very high level of oppression due to various Israeli occupation policies. This area has a strategic importance for any future independent Palestinian state. It is considered the 'vegetable basket' of Palestine and it contains the most important sources of water springs, not only from an agricultural level, but also from a touristic angle. Further, the Jordan Valley has a unique environment and climate. Here we have the Dead Sea, the holy Jordan River and, above all, it is the eastern gate for Jerusalem. There will not be any chance for East Jerusalem to become our capital if it can't expand to the east, towards the Jordan Valley. It is also our only gate to the outside world through Jordan. Obviously, Israel is aware of the economical, political and geographical importance of the valley. This is why it has never stopped trying to suffocate the lives of the Palestinian residents of these areas.

#### ***Lack of infrastructure***

Some communities received basic infrastructure only after 1995. But most of the villages in the Jordan Valley do not receive any kind of services such as schools, electricity or water. The only policies that the Israeli occupation carries out in this area are ones of ongoing forced displacement: taking over lands of Palestinians and home demolitions of the remaining communities. Moreover, people are obliged to buy water from the Israeli water company "Mekorot". This company pumps the water from Palestinian springs and wells and sells it to Palestinians at a high price. This is the same water that we used to have naturally. This policy led to the drying of the Jordan Valley and the ruining of its unique environment, negatively affecting the agricultural production.

Furthermore, it is forbidden to build any constructions or infrastructures meaning that the people aren't allowed to build schools, clinics, barracks, houses, etc. Nothing can be built in Area C without Israel's authorization and permission, which it never gives. So we find ourselves building our own infrastructure without permission even if we know that we might pay a high price including fines, demolitions and even imprisonment.

Today, the remaining Palestinian communities of the Jordan Valley are isolated from one another. They have become open-air prisons surrounded by gates, barbed wires, check-points, colonies, trenches and surveillance cameras.

224 Fathy Khdeirat, 'The City of Tubas, District of Tubas', interview by BADIL, March 2013.

**Rasheed Sawafta - Al-Jiftlik, Jordan Valley<sup>225</sup>**

I have been a volunteer in the Jordan Valley Solidarity Campaign for 6 years. The Jordan Valley Solidarity Campaign is a Palestinian movement that was established in 2004 and developed to become a joint Palestinian and international movement in which many volunteers, partners and friends from more than ten European countries are involved. We work exclusively in Area C of the Jordan Valley, which constitutes around 90 percent of it.

In recent years, the Israeli occupation adopted a new land exploitation strategy by declaring huge tracts as closed military training areas, enabling them to expel people from their own homes and lands. Sometimes soldiers come and ask people to leave their houses for one day because of military trainings and in some areas the Military Commander imposed a status of "Firing Zones" under which people are under permanent risk of expulsion. For example, two months ago [January 2013], the residents of the communities Humsa, Al-Hadidiya, Al-Hamra and Ein Al-Hilwa were forcibly expelled from their homes from 06:00 to 06:00 the next day. Consequently, the residents had to sleep in the street in the night - I saw 4 year old children sleeping in cars. It's important to note that the village of Ein Al-Hilwa is only 50 meters away from the colony of Maskiot and that the residents of this colony did not receive any evacuation order. If the trainings are dangerous for the Palestinian residents, aren't they for the Israeli settlers as well?!

**CLOSED MILITARY ZONES**

Beginning in the 1970s, Firing Zones, a form of closed military zones, have been extensively designated throughout the West Bank as one of many means of land appropriation or *de facto* confiscation of land. The majority of these closed zones are located in the Jordan Valley and the South Hebron Hills. The Israeli military employs Military Order 1651 to designate large swathes of land as closed zones under auspices such as 'military training' justifying this 'necessary' requisition of land.

Under Article 318 of Military Order 1651:

"A military commander is empowered to declare that an area or place are closed."<sup>226</sup>

225 Rashid Khaled Sawafta, 'The Village of Al-Jiftlik, Jordan Valley', interview by BADIL, March 2013.

226 *Order Concerning Security Provision (Judea and Samaria) 2009*, 2009 This order is based on (No. 378), 1970, Article 90.





Furthermore, Military Order 845 stipulates that the penalties for persons entering these zones unauthorized or without special permits issued by the Military Commander is a maximum of 5 years in prison or, otherwise, a maximum fine of 202,000 ILS (\$55,000 USD).<sup>227</sup> Since 1967, this system has allowed for the extensive requisition of approximately 18 percent of West Bank land for 'closed military zone' training or 'firing zones.'<sup>228</sup>

## Firing Zone 918

Firing Zone 918<sup>229</sup> is located in the Masafer-Yatta area of the South Hebron Hills where the Israeli military designated about 30,000 dunums (30 km<sup>2</sup>), engulfing 12 Palestinian villages, as a Firing Zone in the 1980s.<sup>230</sup> In November 1999 the Israeli military expelled over 700 villagers, confiscated their cisterns and destroyed their property.<sup>231</sup> Following the expulsion, residents petitioned the Israeli Supreme Court<sup>232</sup> after which the Court issued an interim order allowing the residents to return to their homes pending a final ruling. As of January 2013, 1,300 Palestinians had been living in these villages for several decades.<sup>233</sup>

Parallel to the Supreme Court proceedings 1199/99 and 517/00, another petition was made on behalf of Palestinian residents of Sfai, Jinba and Majaz in the Hebron governorate in 2005 (HCJ 805/05) against the demolition of 15 cisterns and a series of 19 restrooms, which included cesspools. These structures served 18 families (approximately 320 persons), the majority of whom resided in Sfai.<sup>234</sup>

The State of Israel, in its response dated 19 July 2012, asserted that the establishment

227 *Order Concerning Raising Fines Set Forth by the Law of Military Legislation (Judea and Samaria) 1980*, 1980 Article 1(4).

228 OCHA, *Khirbat Tana: Large-scale Demolitions For The Third Time In Just Over A Year* (February 2011); available from [http://www.ochaopt.org/documents/ocha\\_opt\\_khirbet\\_tana\\_fact\\_sheet\\_20110210\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_khirbet_tana_fact_sheet_20110210_english.pdf); accessed 23 April 2013.

229 Firing Zone 918: *Ahmad 'Issa Abu 'Aram Et Al V. Commander of IDF Forces in Judea and Samaria* (HCJ Pending).

230 RHR and Breaking The Silence, *Info-sheet: The 12 Villages of Firing Zone 918 in the South Hebron Hills* (November 7, 2012); available from <http://www.acri.org.il/en/2012/11/07/firing-zone-918-infosheet/>; accessed 23 April 2013.

231 B'Tselem, *State's Response Re Firing Zone 918 Ignores the Laws of Occupation* (August 27, 2012); available from [http://www.btselem.org/south\\_hebron\\_hills/20120827\\_firing\\_zone\\_918\\_state\\_response](http://www.btselem.org/south_hebron_hills/20120827_firing_zone_918_state_response); accessed 23 April 2013.

232 *Ahmad 'Issa Abu 'Aram Et Al V. Commander of IDF Forces in Judea and Samaria*.

233 ACRI, *Files New Petition Against Expulsion of 1,000 Palestinians from Area C* (January 16, 2013); available from <http://www.acri.org.il/en/2013/01/16/new-petition-firing-zone-918/>; accessed 24 April 2013.

234 Al-Harami, 'The Village of Jayyous, District of Qalqilya'.



of these cisterns and cesspools were “all in violation of the status quo”<sup>235</sup> and a violation of the Court’s order of 29 March 2000 (HCJ 1199/99 and 517/00). In essence, the Israeli Supreme Court froze the status quo. On 16 January 2013, the petitioners filed their renewed petition.<sup>236</sup> The recent petitions and responses are currently awaiting the adjudication of the Israeli Supreme Court.

In addition to this, Palestinian owners of property located in the vicinity of Israeli colonies are restricted in accessing their property. Human Rights Watch provides that “...the Israeli military requires many Palestinians to obtain military ‘coordination’ in order to access their olive groves and other agricultural lands where those lands are located near settlements.”<sup>237</sup>

Especially blatant in this context is the “special security area” plan, under whose framework Israel has surrounded 12 colonies east of the Annexation Wall with rings of land that are closed to Palestinian entry. Palestinian farmers seeking access to these lands must cope with a complex bureaucracy and meet a number of conditions. The conditions are as follows:

1. Civil Administration recognition of ownership of the land (one-time condition);
2. Obtaining a set date for entry dictated by the Civil Administration;
3. Consent of settlers to enter the land.<sup>238</sup>

In addition to that, after signing the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II). September 1995, the Israeli Military issued an order declaring the municipal areas of the various colonies as closed military zones for Palestinians prohibiting entry without a permit.<sup>239</sup>

---

235 *Ahmad 'Issa Abu 'Aram Et Al V. Commander of IDF Forces in Judea and Samaria* para 6.

236 OCHA, ‘UNSCO-OCHA Discussion Paper – “Seam Zone” Military Order’.

237 Human Rights Watch, *Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories*, 5.

238 B'Tselem, *Access Denied Israeli Measures to Deny Palestinians Access to Land Around Settlements* (September 2008), 7, 47; available from [http://www.btselem.org/publications/summaries/200809\\_access\\_denied](http://www.btselem.org/publications/summaries/200809_access_denied); accessed 24 April 2013.

239 Bimkom, *The Prohibited Zone: The Israeli Planning Policy in the Palestinian Villages in Area C*, 17; B'Tselem, *Land Grab*, 70; OCHA, *Displacement And Insecurity In Area C Of The West Bank* (E, August 2011), 13; available from [http://www.ochaopt.org/documents/ocha\\_opt\\_area\\_c\\_report\\_august\\_2011\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_area_c_report_august_2011_english.pdf); accessed 24 April 2013.

## NATURE RESERVES AND NATIONAL PARKS

To date, there are 114 areas designated as ‘nature reserves’ and ‘national parks’ in the occupied Palestinian territory.<sup>240</sup> The Nature Reserves and National Parks are run by the Israel Nature and Parks Authority,<sup>241</sup> established under the Israeli Civil Administration and deriving its authority from Military Orders Numbers 363<sup>242</sup> and 373,<sup>243</sup> respectively. Neither order stipulates any criteria for required land specifications in their designation as reserves or parks.

### Nature Reserves

The designation of land as ‘nature reserves’ is stipulated under Military Orders No. 166<sup>244</sup> and subsequent amendment under No. 363. As noted by the Applied Research Institute-Jerusalem, during the 1980s, authorities designated “at least 340,000 dunums (340 km<sup>2</sup>) of land as ‘natural reserves’”.<sup>245</sup>

Land falling within the boundaries of nature reserves will be “protected” from harm. Military Order 363 stipulates the concept of ‘harm’ in relation to nature reserves as “decimation, destruction, breakage, vandalism, picking, taking, changing the form or natural position, or artificial disturbance of the natural developmental course.” This has the effect of forbidding construction and development within the boundaries of nature reserves, except for erecting buildings that serve the reserve itself.

This Order further allocates power to the Regional Commander of the Israeli Military<sup>246</sup>

---

240 See: [www.inature.info](http://www.inature.info)

241 The Israel Nature and Parks Authority (INPA) was established as two separate entities (which were merged in 1998), by a law passed by the Knesset in 1963, to meet the goals of the National Parks, Nature Reserves and Commemoration Sites Law and the Law for the Protection of Wild Animals”, at: <http://www.parks.org.il/parks/Pages/WhoWeAre.aspx>

242 *Order Concerning the Protection of Nature (Judea and Samaria)* 1969, n.d.; available from [http://www.antiquities.org.il/article\\_Item\\_eng.asp?sec\\_id=42&autotitle=true&subj\\_id=228&id=453&module\\_id=6#as](http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=453&module_id=6#as); accessed 24 April 2013.

243 *Order Concerning Parks (Judea and Samaria)* 1970, n.d.; available from [http://www.antiquities.org.il/article\\_Item\\_eng.asp?sec\\_id=42&autotitle=true&subj\\_id=228&id=453&module\\_id=6#as](http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=453&module_id=6#as); accessed 24 April 2013.

244 *Order Concerning the Protection of Nature Reserves (the West Bank Area)* 1967, n.d.; available from: [http://www.antiquities.org.il/article\\_Item\\_eng.asp?sec\\_id=42&autotitle=true&subj\\_id=228&id=453&module\\_id=6#as](http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=453&module_id=6#as); accessed 24 April 2013.

245 ARIJ, ‘Status of Palestinian Territories and Palestinian Society Under Israeli Occupation’.

246 The ‘Regional Commander’ is defined as ‘the commander of forces of the Israel Defense Force in the region’ The ‘region’ is defined as ‘Judea and Samaria and the Gaza Strip’: *Nationality and Entry into Israel Law (Temporary Order)*, 5763-2003, n.d.; available from [http://www.antiquities.org.il/article\\_Item\\_eng.asp?sec\\_id=42&autotitle=true&subj\\_id=228&id=453&module\\_id=6#as](http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=453&module_id=6#as); accessed 24 April 2013 As amended in 2005, Article 1.

with respect to ‘determining the rates of fees for natural reserves’ and to the competent authority with respect to ‘building roads’ and ‘establishing structures and services’. The penalty for disobeying this order is six months imprisonment or a fine.

### Wadi Qana Nature Reserve Case

Wadi Qana<sup>247</sup> is a fertile valley that includes privately owned Palestinian farmland and has been worked for generations. This area was designated a ‘nature reserve’ in 1983, however under bylaws of the reserve the Israel Nature and Parks Authority are obliged to allow the continuation of all farming that was practiced on the site before it was declared a nature reserve in 1983.<sup>248</sup>

Deir Istya, a major olive-producing village, is located in Wadi Qana where olive trees have been growing for thousands of years.<sup>249</sup> However, the Israeli Civil Administration have been issuing orders to farmers to uproot their olive trees in the area by virtue of its status as a Nature Reserve<sup>250</sup> notwithstanding the fact that those same olive trees contribute to the inherent ‘nature’ of the place.

Between 25 and 27 April 2012, ten Deir Istya farmers received orders from the Israel Nature and Parks Authority and the Civil Administration to uproot 2,000 trees by 1 May 2012. On the 27 April 2012, another farmer received orders to uproot a further 600 trees.<sup>251</sup> In case the farmers did not comply, they were to receive punishment in the form of fines or imprisonment. In June 2012, Deir Istya residents petitioned the Israeli Supreme Court to halt the uprooting. This occurred alongside coordinated local and international pressure on the Israeli government resulting in the Court lifting the order to uproot pending further discussion of the issue.<sup>252</sup>

Despite this Court-ordered stay, Israeli officials once again returned in 28 August 2012 with further orders: this time to ‘evacuate’ the lands from any planted olive tree by the 15 September 2012 after which time the military would uproot them by force with the farmers paying the bulldozer work fees.<sup>253</sup>

The response of the acting Israeli authority argument to the petition of the village was that the villagers had planted additional olive trees and terraced irrigation systems causing damage to the area but failed to provide factual evidence to support this claim.<sup>254</sup>

247 Wadi Qana Nature Reserve is located in Deir Istya Village.

248 OCHA, ‘UNSCO-OCHA Discussion Paper – “Seam Zone” Military Order’.

249 IWPS, *Wadi Qana Case Study: Two Thousand Olive Trees Under Threat* (January 9, 2013); available from [http://iwps.info/?page\\_id=1768](http://iwps.info/?page_id=1768); accessed 24 April 2013.

250 IWPS, *Wadi Qana Case Study: Two Thousand Olive Trees Under Threat*.

251 IWPS, *Wadi Qana Case Study: Two Thousand Olive Trees Under Threat*.

252 OCHA, ‘UNSCO-OCHA Discussion Paper – “Seam Zone” Military Order’.

253 *Center for the Defence of the Individual V. Government of Israel Et Al. Supplemental Response on Behalf of the Respondents*.

254 OCHA, ‘UNSCO-OCHA Discussion Paper – “Seam Zone” Military Order’.

## National Parks

The designation of 'National Parks' is stipulated in Military Order No. 89<sup>255</sup> and subsequently amended by Military Order No. 373. According to recent figures there are approximately 18 designated National Parks in the occupied Palestinian territory.<sup>256</sup>

Military Order 373 sets forth no criteria regarding what land characteristics warrant designation as National Parks. Power is vested in the 'Local Commander' to designate such parks and in the 'Competent Authority' to control these areas. Additionally, the Order places power in the 'authority' to build roads and establish structures as they see fit and further, to set and impose park fees on anyone entering the area. As with Nature Reserves, these fees also apply to Palestinians who own land in those areas.<sup>257</sup>

### Khirbat Susiya Case

Khirbat Susiya, South Hebron Hills, is a village of 45 families comprising around 400 people<sup>258</sup> who subsist on shepherding and olive cultivation. Khirbat Susiya was declared a "national park" in 1986 by virtue of a nearby-located archaeological site which archaeologists have claimed is the remains of an ancient synagogue.<sup>259</sup> Consequently, the Palestinian residents of the village were forcibly displaced to land a few hundred meters southeast of their original village.<sup>260</sup> Of particular concern is the fact that an Israeli colony, 'Susya', was established near the original village, on Palestinian land declared 'State Land' some three years prior, despite the area's forecasted designation as a "national park". The 'National Park' was subsequently declared part of that Israeli colony.<sup>261</sup> Furthermore, the displaced villagers were refused entry to this 'National Park' despite its location on their own lands.

In 2001, villagers petitioned the Israeli Supreme Court who granted an interim injunction allowing residents to return to their lands, but prohibiting

255 *Order Concerning Parks (West Bank Area)* 1967, n.d.

256 *Beit Sourik Village Council V. The Government of Israel*.

257 B'Tselem, *South Hebron Hills: Khirbet Susiya* (January 1, 2013); available from [http://www.btselem.org/south\\_hebron\\_hills/susiya](http://www.btselem.org/south_hebron_hills/susiya); accessed 24 April 2013.

258 OCHA, *Susya: At Imminent Risk Of Forced Displacement* (March 2012); available from [http://www.ochaopt.org/documents/ocha\\_opt\\_susiya\\_factSheet\\_march\\_2012\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_susiya_factSheet_march_2012_english.pdf); accessed 24 April 2013.

259 B'Tselem, *South Hebron Hills: Khirbet Susiya*.

260 OCHA, *Susya: At Imminent Risk Of Forced Displacement*.

261 Yonatan Mizrahi, *Israel's 'National Heritage Sites' Project in the West Bank: Archaeological Importance and Political Significance* (June 2012); available from <http://www.alt-arch.org/docs/national%20heritage%20sites%20beyond%20the%20green%20line.pdf>; accessed 24 April 2013.

any construction. Following this, some villagers applied to the Israeli Civil Administration for building permits but all applications were rejected. In 2007, the Supreme Court rejected the villagers' petition for building permits.<sup>262</sup>

In August 2010, Rabbis for Human Rights petitioned the Supreme Court on behalf of the villagers to overturn orders prohibiting access to their land.<sup>263</sup> However, in 2011, during four separate waves of demolitions, 41 structures were targeted including 31 residential tents and two water cisterns displacing 37 people (including 20 children) and affecting another 70.<sup>264</sup>

On 12 June 2012, the Israeli Civil Administration served further demolition orders, which they claimed were renewals of orders from the 1990s, on the residents of Susiya allowing only a limited opportunity to a number of residents to appeal to the Civil Administration Supreme Planning Council within three days.<sup>265</sup> An appeal was duly submitted, but the Council still has not handed down a decision on the matter. Moreover, on 31 January 2013, the Israeli Supreme Court postponed hearing an appeal by the villagers against demolition orders upon their homes.<sup>266</sup>

## COLONIES AND THE 'PRIOR COORDINATION' REGIME

Colonies are illegal under international law as they violate Article 49 of the Fourth Geneva Convention, which prohibits the transfer of the civilian population of the occupying power into the occupied territory. This illegality has been confirmed by the International Court of Justice, the High Contracting Parties to the Fourth Geneva Convention and the United Nations Security Council.

According to a report of the UN Office for the Coordination of Humanitarian Affairs occupied Palestinian territory, "[f]or the last few years, access to Palestinian private land within the settlements' outer limits has been subjected to 'prior coordination' with the Israeli authorities. If approved, farmers will be granted a limited number of days during which they can access their land within, or next to, a colony's outer limits. To that effect, farmers must submit a request to the District Civil Liaison Office in their area, including documents proving their ownership over a relevant parcel of land, which is then transferred to the Israeli District Civil Liaison Office

262 B'Tselem, *South Hebron Hills: Khirbet Susiya*.

263 B'Tselem, *South Hebron Hills: Khirbet Susiya*.

264 OCHA, *Susya: At Imminent Risk Of Forced Displacement*.

265 B'Tselem, *South Hebron Hills: Khirbet Susiya*.

266 Ma'an, 'Israeli Court Postpones Hearing on Hebron Village Susiya', *Ma'an News Agency* (Hebron, February 1, 2013); available from <http://www.maannews.net/eng/ViewDetails.aspx?ID=561125>; accessed 24 April 2013.

for consideration. This regime is implemented irrespective of the fact that, in some cases, the fencing of the Palestinian private land was performed by Israeli settlers without any kind of permit or authorization by the Israeli authorities.”<sup>267</sup>

After the *Rashad Murad and others v. IDF Commander in Judea and Samaria Case* from 2006, the Israeli authorities began to increasingly widen the ‘prior coordination’ regime to agricultural areas where colonist attacks on Palestinians were recurrent. “Access to private agricultural land in the vicinity of Israeli colonies has remained significantly constrained due to the fencing off of those areas, or due to settler violence. Palestinian farmers who own land close to 55 Israeli colonies have access only through ‘prior’ coordination with the Israeli Military. This restricted access has continued to undermine the agricultural livelihoods of farmers from some 90 Palestinian communities.”<sup>268</sup>

## EAST JERUSALEM

### ‘Alaa Salman - Beit Safafa, East Jerusalem’<sup>269</sup>

On March 1990 the people of Beit Safafa were surprised to see trucks and bulldozers of the Jerusalem Municipality plowing and clearing their lands of its trees, plants and wells, without any warning. At the time, the Municipality claimed that the lands had already been confiscated in 1977 for "Public Interests". The confiscation plan mentioned construction of a public road serving the people of Beit Safafa as well as colonists. But what appeared later on, when a new project was approved in November 1990, was that this street was designated as an extension of road No. 50 (Begin Highway), which would connect the Gush Etzion colonies with Jerusalem as a highway. The length of the section crossing Beit Safafa would be 1.5 Km, 33-78 meters wide, with three lanes in each direction. The whole project, including the road, bridges and walls will seize an estimated 234 dunums of the lands of the village.

The Municipality wants to transform the village into a pass road for the colonists, in which the settlers from Gush Etzion will be able to drive easily to the center of Jerusalem (and Tel Aviv as well). This will divide the village into four separate parts, since the construction of Dov Yosef Street had already divided Beit Safafa into two parts in the early 1990s. With this road, they will divide the village again; we will have small isolated blocks of houses separated by roads.

The consequences of the new road will affect various aspects of the residents' lives: movement to and from both sides of the village will be seriously harmed.

267 OCHA, *Special Focus: West Bank Movement and Access Update*, 27.

268 OCHA, *Special Focus: West Bank Movement and Access Update*, 2.

269 'Alaa Salman and Muhammad 'Alian, 'The Village of Beit Safafa, East Jerusalem', interview by BADIL, February 2013.

Pupils won't be able to reach their schools by foot and will be forced to use an alternative route, which is much longer and will require transportation. The same is the case for neighbors and relatives who will be divided by the new road.

### **Court Case**

Prior to the court case, there were negotiations between the Community Council of Beit Safafa and the Municipality of Jerusalem, which lasted for almost two years (2010-2012). We discussed with the Mayor, the engineers, employees from the Ministry of Transportation and the company responsible for the construction of the highway. We suggested a tunnel under the village instead, but all of the negotiations were worthless. At that point, we hired an architect who conducted three alternative detailed plans and we suggested them to the Municipality before appealing to the court. Unfortunately, all three plans were formally rejected.

We decided to issue an administrative appeal to the District Court, we demanded that the Court abort the building permissions (for the road) and we obliged the Municipality to make a detailed plan. The Court should soon decide whether to accept the appeal and freeze the construction works until having a detailed plan, or to reject the appeal. For us, if the appeal will be rejected we will appeal to the Israeli Supreme Court.<sup>270</sup>

According to our lawyers, there were illegal procedures made by the Municipality including: 1. Absence of a detailed plan and a local outline plan required by law and, which subsequently facilitated the loss of the residents' right to object, 2. Residents of Beit Safafa do not have access to the road, 3. The road will be a highway (unlike mentioned in the former plan), 4. No alternatives were offered to the residents.

In parallel action to the court case, we are carrying out diverse forms of popular resistance to the plan of road No. 50. We established a popular committee whose role is to coordinate our struggle as well to support the legal action. We conducted demonstrations in the village in front of the Municipality and at the construction site. Additionally, the Parents Committee issued a one day school strike because the movement of pupils to schools will be severely affected by the road. Moreover, we established a protest tent where people from the village, journalists, solidarity groups, politicians and representatives of organizations can come for discussing the issue of the road.

We also use social media as an instrument to advocate our struggle, but the most important issue is that we were able to raise awareness about the issue among the residents in Beit Safafa because at the beginning most of them didn't have any idea about the real consequences of the road.

<sup>270</sup> Update: The District Court rejected the people of Beit Safafa's appeal on 10 February 2013, so an appeal was issued to the High Court but on 20 March 2013 the Israeli Supreme Court rejected the administrative appeal made by them.



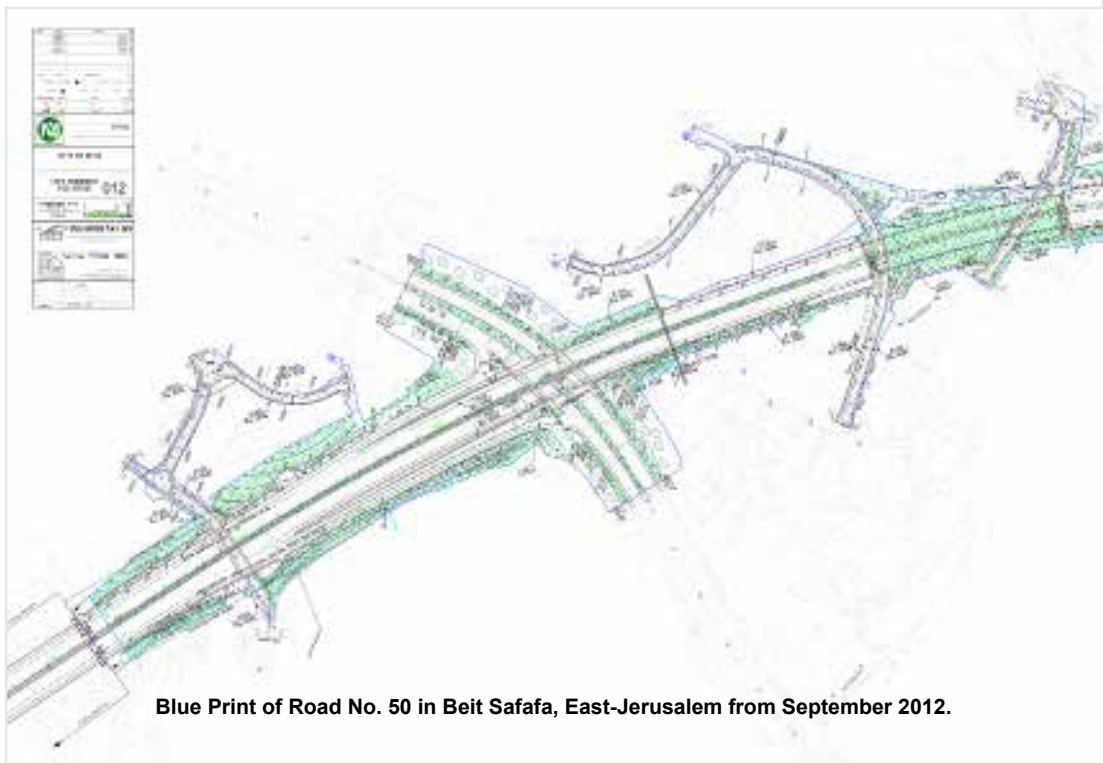
The question of land use and access is very broad in East Jerusalem. It includes the important issue of around 55,000 Palestinian residents of East Jerusalem who are physically separated from the urban center by the Israeli Annexation Wall (residing on the “other” side of the Wall) and who, “must cross crowded checkpoints to access health, education and other services to which they are entitled as residents of Jerusalem”.<sup>271</sup> Nevertheless, in this section the focus will lie on the issue of national parks and natural sites in Jerusalem since it is the most important subject concerning denial of land use and access within East Jerusalem itself.

### National Parks, Nature Reserves, National Sites, Memorial Sites

In East Jerusalem there are eight existing or planned nature reserves totaling about 35 percent of East Jerusalem.<sup>272</sup> A major tool for designating lands for ‘public purposes’ is by allocating ‘national parks’. The allocation of national parks is permitted under

271 OCHA, *East Jerusalem: Key Humanitarian Concerns* (December 2012); available from [http://www.ochaopt.org/documents/ocha\\_opt\\_Jerusalem\\_FactSheet\\_December\\_2012\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_Jerusalem_FactSheet_December_2012_english.pdf); accessed 24 April 2014.

272 Allison Deger, ‘National Park Land-grabs from Two East Jerusalem Neighbourhoods’, *MONDOWEISS*, January 6, 2012; available from <http://mondoweiss.net/2012/01/national-park-land-grabs-from-two-east-jerusalem-neighborhoods.html>; accessed 24 April 2013.



Blue Print of Road No. 50 in Beit Safafa, East-Jerusalem from September 2012.



legislation originating from 1963,<sup>273</sup> undergoing amendments and culminating in the current version: *National Parks, Nature Reserves, National Sites and Memorial Sites Law – 1998*. Under this legislation “national parks”, “nature reserves”, “national sites”, and “memorial sites” (for government and military) are areas that the Israeli Minister of the Interior declares to be so. The Municipality is also involved in the declaration of national parks. National Parks should be areas meant for "the public enjoyment of nature or for the preservation of areas of historic, archeological, or architectural importance."<sup>274</sup>

A ‘national site’ is described as a building, or group of buildings, including the surrounding areas, which are of a national, historical value and are valuable for the development of the land.<sup>275</sup> The Israel Nature and Parks Authority is charged with the ‘protection’ of the sites catered for under the law.<sup>276</sup> Ostensibly, the National

273 *National Parks and Nature Reserve Law 5723-1963*, 1963; available from <http://faolex.fao.org/docs/pdf/isr7843.pdf>; accessed 24 April 2013.

274 *National Parks, Nature Reserves, Memorial Sites and National Sites Law 1998*, 1998 Sections 1 and 22.

275 *National Parks, Nature Reserves, Memorial Sites and National Sites Law 1998*.

276 *National Parks, Nature Reserves, Memorial Sites and National Sites Law 1998*; ‘Nature and Parks Authority’, 2013; available from <http://www.parks.org.il/parks/Pages/WhoWeAre.aspx>; accessed 24 April 2013.



Source: Moriah- Jerusalem Development Company

Parks law does not allow for the confiscation of the land from its original owners, but rather offers the Israel Nature and Parks Authority a broad discretion on how to use the land. As such, no compensation is offered for the land taken, while the private use and access to the land is prohibited, as it is now ‘public land’.

*The Antiquities Law 1978* allows for the declaration of a ‘particular place to be an antiquity site’ after which, the owner of the land “shall not carry out a range of uses on the land, including: building,... ploughing, planting, etc, any alteration to the ‘antiquity’, erection of buildings or walls on adjoining property, painting, among others”.<sup>277</sup> An antiquity is deemed as “any object, whether detached or fixed, which was made by man before the year 1700 of the general era, and includes anything subsequently added thereto which forms an integral part thereof.”<sup>278</sup> The Israel Antiquities Authority and the Archaeological Council are separate entities from that of the National Parks Authority.

The Civic Coalition of Palestinian Rights in Jerusalem reported, on 18 November 2011 that, the Israeli District and Planning Committee for Zoning and Building in Jerusalem approved *Plan 11092* for the construction of a “national park” on 738 dunums of land from Al-Isawiya village and At-Tur neighborhood - the eastern slope of French Hill.<sup>279</sup> Israeli planning authorities have claimed the area to be the eastern gate to Jerusalem and as such must be maintained as an ‘open area’ due to its strategic, archaeological and natural importance.<sup>280</sup>

## GAZA STRIP

“The so-called ‘buffer zone’ is a military no-go area that extends along the entire northern and eastern perimeter of the Gaza Strip's border with Israel, inside Palestinian territory, as well as at sea. The precise areas designated by Israel as ‘buffer zone’ are unknown; changing Israeli policy is typically enforced with live fire.”<sup>281</sup>

277 *The Antiquities Law 1978*, 1978; available from [http://www.antiquities.org.il/article\\_Item\\_eng.asp?sec\\_id=42&autotitle=true&subj\\_id=228&id=453&module\\_id=6#as](http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=453&module_id=6#as); accessed 24 April 2013 Chapter 7, Sec 28-29.

278 *The Antiquities Law 1978* Chapter 1.

279 CCPRJ, *Construction of a ‘National Park’ on Confiscated Palestinian Land in Jerusalem a Clear Violation of Human Rights* (n.d.); available from <http://civiccoalition-jerusalem.org/human-rights-resources/publications/submissions/construction-national-park-confiscated-palestinian-l->; accessed 23 April 2013.

280 CCPRJ, *Construction of a ‘National Park’ on Confiscated Palestinian Land in Jerusalem a Clear Violation of Human Rights*.

281 PCHR, ‘The Buffer Zone in the Gaza Strip’ (September 2011); available from <http://www.pchrgaza.org/files/2011/factsheet-bufferzone-sept.pdf>; accessed 2 May 2013.

## LAND-BUFFER ZONE

The Buffer Zone covers 17 percent of Gaza's total area (62,616 m<sup>2</sup>) and, most significantly, 35 percent of its agricultural land.<sup>282</sup> Diakonia estimates that 113,000 people or 7.5 percent of the population have been impacted by the imposition of the Buffer Zone.<sup>283</sup> The vast majority of the inhabitants of these areas are farmers who cannot reach their lands and consequently have planted harvests that do not require daily care, especially considering the total absence of any functioning water wells since Israel destroyed them. In excess, the military prevents farmers growing any plants or trees that could reach more than 80cm with the pretense that such growth could be used as a natural hide-out. The land within the Buffer Zone contributes about 30 percent<sup>284</sup> of the total agricultural harvests produced in the Gaza Strip and about 10 percent of the exported agricultural goods. More than 16 percent of the farmers in the Gaza Strip are dependent on these lands.<sup>285</sup>

Israeli military forces violations committed in the Buffer Zone have led to many casualties among civilians as well as damage to their properties. Violations have included damage to agricultural lands, demolition of houses and the destruction of wells, in addition to preventing farmers from working in their own lands by restricting their freedom of movement and secure passage.

### Faysal Odeh - Khuza'a, Khan-Yunis<sup>286</sup>

On 5 January 2013 Israeli forces entered the Buffer Zone in the southern Gaza Strip. The forces invaded up to 100 meters on land of Khuza'a, east of Khan-Yunis where they flattened the agricultural land. The damaged land belongs to Faysal Odeh who stated:

"I own land consisting of five dunams that I planted with various trees and plants

282 OCHA, *Between the Fence and a Hardplace: Humanitarian Impact of Israeli-imposed Restrictions Access to Land and Sea in The Gaza Strip* (August 2010); available from [http://www.ochaopt.org/documents/ocha\\_opt\\_special\\_focus\\_2010\\_08\\_19\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf); accessed 2 May 2013.

283 Diakonia, *Within Range: An Analysis of the Legality of the Land 'Buffer Zone' in the Gaza Strip* (2011); available from [http://www.diakonia.se/documents/public/IHL/IHLanalysis/within\\_range\\_legal\\_analysis\\_of\\_the\\_gaza\\_buffer\\_zone\\_on\\_land\\_Diakonia\\_sept2011.pdf](http://www.diakonia.se/documents/public/IHL/IHLanalysis/within_range_legal_analysis_of_the_gaza_buffer_zone_on_land_Diakonia_sept2011.pdf); accessed 2 May 2013.

284 OCHA, *Enhancing Agricultural Land Productivity for Vulnerable Farmers in Eastern Khan Younis and Al Shoka in Rafah of the Gaza Strip*, 2009, 42; available from [http://ochadms.unog.ch/quickplace/CAP/main.nsf/0/C1256DAD0046BFC6C12575E4003675AD/\\$FILE/MYR\\_2009\\_Country\\_OPSPROJECTS\\_PRINT.pdf](http://ochadms.unog.ch/quickplace/CAP/main.nsf/0/C1256DAD0046BFC6C12575E4003675AD/$FILE/MYR_2009_Country_OPSPROJECTS_PRINT.pdf); accessed 14 May 2013.

285 PARC-Gaza, *The Agricultural Development Association: An Applied Participatory Research* (Gaza, 2009), 9; available from <http://gaza.parc.ps/Draft%20Applied%20participatory%20research-Feb.pdf>; accessed 2 May 2013..

286 Faysal Suleiman Hamad Odeh, 'The Village of Khuza'a, District of Khan-Yunis', interview by BADIL, February 2013.

like citrus and peach. In the middle of the land I had a house sheltering my family of ten. The only income I have is from working this land, but on 5 January 2013 Israeli bulldozers flattened my land causing damage estimated at 25,000 Jordanian Dinars including damages caused to the house and agricultural machines in addition to the harvest which I was about to collect. In general, I can say that sometimes we are allowed to reach our lands and at other times we are shot at, like other farmers, in order to prevent us from reaching our lands. We are confused and do not know how to deal with the Occupation since the soldiers behave irregularly and we do not receive up-to-date guidelines. Sometimes they even allow some farmers to access their lands while they shoot at others.”

**Muhammad Albarim - Abbsan, Khan-Yunis<sup>287</sup>**

On 17 January 2013 the Israeli Military invaded the land of Muhammad Albarim to the east of Abbsan in Khan-Yunis. Albarim has 4 boys and 2 girls. He and his wife own 15 dunams to the west of Abbsan in Khan-Yunis. This land provides the only source of income they live from.

“It is on a daily basis that I try hopelessly to reach the part of my land which is closer to the Green Line that divides Gaza from the land occupied in 1948. I have spent my life working very hard and confronting death every time I tried to practice the only work I am qualified to do in my own agricultural land despite endless attempts by the Israeli occupation to flatten it and to uproot my trees without any justification except their intention to intimidate me. During the last war my land was targeted by the Israeli air force. As a consequence, a great part of my house that extends over 250m was destroyed causing me a big loss. In addition, they destroyed my agricultural machines and severely damaged my trees. I tried to replant what the Occupation damaged and uprooted. I was shocked when on 17 January 2013, the Occupation forces flattened my land once again without any warning.”

## NAVAL-BUFFER ZONE

In previous agreements, the Naval-Buffer Zone was allocated 20 nautical miles westwards along the Gaza Strip beaches that stretch 40 Km from North to South.

“In 2002, Israel committed to allow fishing activities in sea areas up to 12 nautical miles from shore (‘Bertini Commitment’); however this commitment was never implemented and more severe restrictions were imposed during most of the time

287 Muhamad Abed Elrazaq Albarim, ‘The Village of Abbsan, District of Khan-Yunis’, interview by BADIL, February 2013.



subsequently.”<sup>288</sup> In 2013, fishing boats were limited to three nautical miles distance from the shore.

Since January 2009 there were more than 300 incidents where fishing boats were confiscated including all equipment on board. Due to the restrictions imposed by the Israelis, the number of fishermen shrank to a figure of 3,500 by 2010 compared to 10,000 in 2,000. In 16 cases the Navy chased and shot at fishermen resulting in 44 arrests, the confiscation of eight fishing boats and damage to fishing and other equipment.<sup>289</sup>

**Abdallah Al-Ghoul - Al-Shatee Refugee Camp, Gaza City<sup>290</sup>**

On 18 February 2013 two Israeli navy boats attacked a Palestinian fishing boat with 5 fishermen onboard at Al-Sudaniya beach off the coast north of Gaza City. The Israeli Navy soldiers opened direct fire on the boat from a distance not exceeding 10m. Two fishermen were injured including one child. Abdallah Al-Ghoul from Al-Shatee Refugee Camp stated:

”On the morning of Monday 18 February 2013 I joined a fishing boat crew. We sailed from the port and headed north from Al-Sudaniya up to three nautical miles where we began fishing. At about 10:30 am, while we had our breakfast, we realized that two military boats were heading towards us at high speed. We immediately switched on the boat in an attempt to flee, but unfortunately one of the military boats reached us and encircled us. It was very fast in comparison with our boat. The soldier then shot at us while one of them asked us via a megaphone to take off our clothes and jump into the water. We declined and they intensified their shooting. Many bullets hit the boat. I was hit by shrapnel in my left foot and another sailor was also hit by shrapnel in his foot. When the soldiers were certain that they had injured us, they stopped shooting and we headed back to the port where we were transferred to Al-Shifaa Hospital”.

288 OCHA, *Between the Fence and a Hardplace*, 10.

289 Oxfam, *The ADCR 2011: Human Deprivation Under Occupation* (2012), 8; available from [http://www.undp.org/content/rbas/en/home/library/poverty\\_reduction/the-adcr-2011--human-deprivation-under-occupation.html](http://www.undp.org/content/rbas/en/home/library/poverty_reduction/the-adcr-2011--human-deprivation-under-occupation.html); accessed 2 May 2013.

290 Abdallah Masoud Eid Al-Ghoul, 'Al-Shatee Refugee Camp, District of Gaza City', interview by BADIL, February 2013.

# Chapter III

## Planning, Building Permits and Home Demolitions





*“When a house is demolished it does not only mean razing a wall, but it means destroying a family, a home and the future.”*

*Interview with Fakhri Abu Diab in Al-Bustan, Silwan, East Jerusalem (6 March 2013)*

Home demolitions as policy largely originated in the 1980s, following the establishment of the Israeli Civil Administration in 1981.<sup>291</sup> Following the 1967 War, 6,000 Palestinian homes were immediately demolished, such as the entire villages of the Latrun area (now ‘Canada Park’) and the ancient Mughrabi Quarter of the Old City of Jerusalem. Unlike in 1948, forcible displacement and property destruction after the 1967 war was concentrated mostly in border areas: along the Green Line and near the external borders of the West Bank and Gaza Strip. Since the Oslo Accords, operations of forcible displacement continue to be conducted in all areas of the West Bank and the Gaza Strip although to a lesser extent in Area A and in the non-buffer zones of Gaza since the 2005 withdrawal. According to the Israeli Committee Against House Demolitions, approximately 28,000 Palestinian homes were demolished in the occupied Palestinian territory since 1967.<sup>292</sup>

Between 1987 and 2002, at least 16,000 Palestinians in the West Bank (including East Jerusalem) were displaced by home demolitions due to a ‘lack of permits’. At least 2,000 houses in the occupied Palestinian territory were destroyed in the course of the First Intifada (late 1980s-1990s). Almost 1,700 Palestinian homes were demolished by the Israeli Civil Administration during the Oslo Accords (1993-2000). During the Second Intifada (2000-2004), between 4,000 and 5,000 Palestinian homes were destroyed in military operations, including more than 2,500 in Gaza alone. About 8,000 homes were demolished in the three-week assault on Gaza between December 2008 and January 2009.<sup>293</sup> In East Jerusalem, 5,000 Palestinians including 2,586 children and 1,311 women were forcibly displaced between 2000 and 2012 through the demolition of 1,124 buildings.<sup>294</sup> In 2012 alone, 800 Palestinians were forcibly displaced from their homes through demolitions. 90 percent of the cases occurred in Area C while the rest occurred in East Jerusalem.<sup>295</sup>

291 On the 8th of November the Israeli Military Commander of the West Bank issued Military Order 947 officially announcing a ‘Civil Administration’ for the occupied territory. From: Jonathan Kuttab and Raja Shehadeh, *Civilian Administration in the Occupied West Bank: Analysis of Israeli Military Government Order No.947* (1987).

292 ICAHD, ‘Israel’s Policy of Demolishing Palestinian Homes Must End’ (March 2013); available from <http://www.icahd.org/node/478>.

293 Jeff Halper, ‘House Demolitions and Israel’s Policy of Hafrada’, *Al-Majdal*, no. Autumn 2011 (2011); available from <http://www.badil.org/en/al-majdal/item/1697-art8>; accessed 2 May 2013.

294 Pliia Albeck, ‘Press Release by PCBS on the Occasion of Land Day, March 2013’, *Palestine Central Bureau of Statistics*, March 30, 2013; available from [http://www.pcbs.gov.ps/portals/\\_pcbs/PressRelease/Press\\_En\\_LandDay2013E.pdf](http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_LandDay2013E.pdf); accessed 19 April 2013.

295 This statistic does not include forced ‘self-demolitions’ nor does it include forced displacement due to evictions, settler violence or military training. See: ICAHD, *Israel’s Policy of Demolishing Palestinian Homes Must End*.

Jeff Halper, director of the Israeli Committee Against House Demolitions, writes that he is not aware of a single house demolition that has been successfully overturned by an appeal in Israeli courts, adding: “Once [a home demolition] is affirmed, the bulldozers may arrive at any time – the same day, weeks or years later, or never.”<sup>296</sup>

This chapter will illustrate the role of planning, building permits and home demolitions in forced population transfer and the most common legal mechanisms behind the acts.

## WEST BANK, AREA C

### PLANNING

Area C of the West Bank is divided into different zones designated as colonies, State Land, firing zones or military areas, and nature parks and reserves, etc., where Palestinian construction is effectively prohibited. These areas cover 70 percent of Area C and, within their boundaries, any building or repairs to existing constructions are considered illegal by the Israeli authorities.

Generally, Israeli authorities deny Palestinian construction in lands belonging to the following categories:

- **State Lands:** even when these lands are registered in the property tax records in the name of the Palestinian owners;
- **Closed Military Areas;**
- **Areas under jurisdiction of the colonies:** in most cases these areas are much larger than the built-up area of the colonies;
- **Existing and planned ways/roads:** the Civil Administration prohibits the construction not only along the road itself, but also tens of meters away from the route, even in cases when the road is not yet paved;
- **The Annexation Wall:** the Israeli authority prohibits Palestinians from building in areas that are with 200 meters from the route of the Annexation Wall;
- **Nature reserves and archaeological sites.**

Planning and construction in the remaining 30 percent of Area C is governed by the *Jordanian Towns, Villages, and Building Planning Law* of 1966, which was modified by the *Israeli Military Order Concerning Towns, Villages and Buildings Planning Law (Judea & Samaria) No. 418 of 1971*. The Law describes the preparation of regional

---

296 Jeff Halper, ‘House Demolitions and Israel’s Policy of Hafrada’.

plans and master plans for cities and villages including construction according to those plans.<sup>297</sup> Section 34(1) of the Law requires a detailed planning scheme in order to permit building. *Military Order 418* annulled Local Planning Committees that had allowed for community participation in the zoning process of Palestinian villages in favor of a more centralized system that removed Palestinian representation in the decision-making bodies.<sup>298</sup> Instead, the Civil Administration's Local Planning and Licensing Sub-Committee performs these functions.<sup>299</sup> Furthermore, *Military Order 418* divided residential spaces into two categories depending on the relevant planning scheme: villages with detailed planning schemes (Special Partial Outline Plans) and areas where the general mandate plans apply (Regional Outline Plans).

## Special Partial Outline Plans

In the 1990s the Civil Administration devised Special Partial Outline Plans for nearly 400 villages in the West Bank.<sup>300</sup> Special Plans were invented by the Israeli Civil Administration and advanced as appropriate planning in Area C.<sup>301</sup> In practice, the Special Plans restrict the zoning and planning rights of Palestinians to less than one percent of Area C: the only part of Area C where the Israeli Civil Administration permits Palestinian construction.<sup>302</sup> Special Plans for Palestinian villages in Area C are inappropriately restricted, have not adapted to population growth and, in many cases, exclude some of a community's pre-existing houses.

Special Plans consist of an aerial map of the village issued by the Israeli Planning Authority demarcating the boundaries of the plan and usually constricting the main built-up area of each community.<sup>303</sup> Within the boundaries of the Special Plans,

---

297 Municipal boundaries or 'zones' within which building by Palestinians is permissible were frozen to those demarcated as such under the British Mandate in the 1940s: RJ/5 is the regional plan for Jerusalem and the southern West Bank, and S/15 for the northern West Bank. Natural growth surpassed these Mandate-era boundaries long ago. See: BADIL and COHRE, *Ruling Palestine*.

298 OCHA, *Displacement And Insecurity In Area C Of The West Bank*.

299 OCHA, *Displacement And Insecurity In Area C Of The West Bank*.

300 JLAC, *Concealed Intentions: Israel's Human Rights Violations Through the Manipulation of Zoning and Planning Laws in 'Area C'* (Jerusalem, May 2011), 19.

301 Nothing similar exists in Jordanian Planning Law. OCHA, *Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank* (December 2009); available from [http://archive.ochaopt.org/documents/special\\_focus\\_area\\_c\\_demolitions\\_december\\_2009.pdf](http://archive.ochaopt.org/documents/special_focus_area_c_demolitions_december_2009.pdf); accessed 23 April 2013.

302 The Israeli Civil Administration prepared Special Plans for only a small minority, 16, of Palestinian villages now located completely in Area C. Another, some 80, Special Plans were prepared for communities partially in Area C. In total, Special Plans cover less than one percent of Area C in which 56,000 Palestinians currently reside (down from 200,000 to 320,000 prior to 1967). See: OCHA, *Restricting Space*.

303 JLAC, *Concealed Intentions: Israel's Human Rights Violations Through the Manipulation of Zoning and Planning Laws in 'Area C'*, 19.

building regulations are rarely enforced and construction can be legitimized through permits although in practice the majority of planned areas are already built-up. Outside of the Special Plan's demarcation lines in Area C it is theoretically possible to apply for a building permit, although the majority of Palestinian applications to build on privately-owned land are rejected by the Civil Administration on the grounds that, either they are inconsistent with the outline plan or are not permitted according to the Mandate-era plans.<sup>304</sup> Prohibition is enforced through the threat and practice of demolition. This restrictive planning system has the dual result of preventing urban growth in Palestinian areas while reserving territory for the expansion of nearby Israeli colonies.

## Regional Outline Plans

Every village or area that is outside of a Special Partial Outline Plan is regulated according to Regional Outline Plans created during the British Mandate in the 1940s. These plans divide the West Bank into three main areas:

1. RJ/5 Plan: From the southern border of the West Bank to the north of Ramallah;
2. S/15 Plan: From Salfit area to the northern border of the West Bank;
3. R/6 Plan: applies to several villages in the west of the West Bank, from Bil'in in the south to Rantis in the north.<sup>305</sup>

Regional Plans administer land according to five categories: roads, development areas, agricultural zones, beaches, and nature and forest reserves.<sup>306</sup> Most of the construction during the first years of the Occupation took place according to these plans. However, since the late 1970s and parallel to the expansion of Israeli colonies, the Israeli planning authorities have restricted their interpretation of these plans. Nowadays, most building permit applications are rejected on the basis of non-compliance with Regional Plans.<sup>307</sup>

## BUILDING PERMITS

West Bank house construction, permit issuing and demolition in Area C fall under the jurisdiction of the Secondary Planning Committee. This Committee is part of the Israeli Civil Administration. The Secondary Planning Committee is based

---

304 OCHA, *Restricting Space*, 9.

305 See: JLAC, *Concealed Intentions: Israel's Human Rights Violations Through the Manipulation of Zoning and Planning Laws in 'Area C'*.

306 Bimkom, *The Prohibited Zone: The Israeli Planning Policy in the Palestinian Villages in Area C*, 60.

307 OCHA, *Restricting Space*.

at the settlement of Bet El and consists of three members including a military officer. In order to apply for a building permit, the Planning Committee generally requires documents including ownership evidence, land registration certificates, land surveys, constructions plans, etc.<sup>308</sup> In considering applications, the Secondary Planning Committee often refers to the restrictive Special Partial Outline Plans and the antiquated RJ/5 and S/15 Regional Outline Plans.<sup>309</sup>

Section 34(1) of the Jordanian *Towns, Villages, and Building Planning Law* of 1966 requires a building permit for all new residential buildings, reparations, rehabilitation of buildings in rural areas, storage facilities, digging and paving of new roads, bathtubs and even air conditioning systems.<sup>310</sup> The Law also requires a detailed planning scheme in order to grant building permits.

Land registration is the key to legitimizing access to zoning and building permits. However, as explained in Chapter I, it is nearly impossible to register Palestinian-owned land.

Applications of registered land are more likely to succeed than an application for building permits with non-registered land. However, even if registered, the process is often cost-prohibitive and is still unlikely to succeed. Between 2000 and 2007, 94 percent of building permit applications in Area C were rejected by Israeli authorities.<sup>311</sup>

### How to apply for a building permit

The applicant should submit the application for a permit to the following Local Planning Offices, depending on the location of the structure:

- Ramallah District: the Civil Administration in Bet El.
- Hebron and Bethlehem Districts: the Civil Administration in Gush Etzion.
- Tulkarm and Salfit Districts: the Civil Administration in Tulkarm.
- Nablus District: the Civil Administration in Huwwara.
- Jenin and Tubas Districts: the Civil Administration in Salem.
- Jericho District: the Civil Administration in Bet El.

308 JLAC, *Concealed Intentions: Israel's Human Rights Violations Through the Manipulation of Zoning and Planning Laws in 'Area C'*, 20.

309 Society of St. Yves, 'The Legal Framework - Westbank', *Society of St. Yves, Catholic Center for Human Rights*, n.d.; available from [http://saintyves.org.il/index.php?option=com\\_content&view=article&id=91%3Ademolition-legal&catid=44%3Ahouse-demolitions&Itemid=59&lang=en](http://saintyves.org.il/index.php?option=com_content&view=article&id=91%3Ademolition-legal&catid=44%3Ahouse-demolitions&Itemid=59&lang=en); accessed 23 April 2013.

310 World Bank, *The Economic Effects of Restricted Access to Land in the West Bank* (2008), chap. 2; available from <http://unispal.un.org/UNISPAL.NSF/0/5FB13FCB4C7724AD852574EB0056BEAA>; accessed 2 May 2013.

311 ARIJ, *The Israeli policies in area (C): "Silent transfer of the Palestinian Population*, October 2008; available from [http://www.poica.org/editor/case\\_studies/view.php?recordID=1592](http://www.poica.org/editor/case_studies/view.php?recordID=1592).

According to the current planning and building scheme in Area C, there are two main requirements that Palestinians must meet in order to get a building permit:

- 1- An applicant must be able to prove ownership or the right to use the land in question;
- 2- The proposed construction must conform to an approved planning scheme detailed enough to enable issuing a building permit.<sup>312</sup>

## Proof of ownership

For registered property, the required submission to the Israeli Civil Administration is the *tabou* or the Land Registrar extract. In the case of unregistered land, the applicant has to prove legitimate possession of land by submitting property tax documents. If these documents are not registered in the name of the applicant, then inheritance documents are necessary. If there are multiple heirs, the Civil Administration requires signatures on the application from all heirs even if they are living abroad, or are 'absentees' and risk dispossession by documenting with the authorities.<sup>313</sup> Moreover, the applicant is required to provide three types of maps at different scales and three copies of documents such as the applicant's identity card. The landowner must also open a file, hire private surveyors recognized by the Civil Administration, and pay a registration fee.<sup>314</sup>

## Compliance with existing planning schemes

Besides demonstrating ownership of the land, it is essential that the building plan complies with applicable planning schemes in the area where construction is intended. In the case of villages with Special Partial Outline Plans, regulations are rarely enforced within the demarcation lines and houses are very rarely demolished. Therefore, an area where compliance is most relevant is where the Regional Outline Plans apply and the Special Plans do not. Due to the contemporary planning approach, the Regional Plan is restrictively interpreted and most building permits are rejected.<sup>315</sup>

---

312 Diakonia, *Expert Opinion of International Humanitarian Law Requiring of the Occupying Power to Transfer Back Planning Authority to Protected Persons Regarding Area C of the West Bank* (February 1, 2011); available from <http://rhr.org.il/heb/wp-content/uploads/62394311-Expert-Opinion-FINAL-1-February-2011.pdf>. 2011

313 Please see Chapter I (Section on *Absentees*) for more details.

314 JLAC, *Concealed Intentions: Israel's Human Rights Violations Through the Manipulation of Zoning and Planning Laws in 'Area C'*, 20.

315 World Bank, *The Economic Effects of Restricted Access to Land in the West Bank*, 8.

In theory, once a request for a building permit is submitted with proof of ownership to the Planning Bureau at the Israeli Civil Administration headquarters, the application will be discussed at the Planning and Licensing Sub-Committee where changes to the plan may be requested. If the application is accepted, and after the required changes are introduced, copies of the revised request must be submitted and the building permit fee paid. The fee correlates to the size and type of construction. If approved, the Planning Bureau will sign the plan and issue the building permit. Before beginning construction, the Regional District Coordination Liaison Office requires notification about the start of work.<sup>316</sup>

### Non-compliance with existing planning schemes

Applying for a permit in an area where construction is not zoned for residential purposes begins with a building permit application following the proof of ownership procedure and submitted to the Planning Bureau at the Israeli Civil Administration headquarters. Israeli authorities require a "change in land use" plan to be discussed by the Planning & Licensing Subcommittee. Upon receipt of the plan, the Planning Subcommittee will either refuse the plans, require corrections before making their decision, or conditionally approve the plan.<sup>317</sup>

According to the Israeli Civil Administration regulations, if the plan is approved it must go through a period of public review followed by a final review by the Planning Bureau and a final public announcement of the plan.<sup>318</sup> The plan will officially alter land use delineations and enable building permit applications in accordance with the procedures described in "*compliance with existing planning schemes*" (above).<sup>319</sup>

---

316 Israeli Civil Administration, 'Israeli Civil Administration Guideline to Receiving a Building Permit' (n.d.).

317 Israeli Civil Administration, 'Israeli Civil Administration Guideline to Receiving a Building Permit'.

318 Copies of the 'change in land use' plan must be submitted to the Planning Bureau for its signature. The plan must be published in two Hebrew language newspapers and two Arabic language newspapers, and it will be available for public inspection at the Planning Bureau for 60 days. After the 60 days the Planning Bureau will gather the objections for discussion and then it will be decided whether to accept any objections or to reject them (request the plan to be changed in accordance with the objections). A final discussion will take place to validate the plan and it is required to be published again in four newspapers, two in Hebrew and two in Arabic. The plan will go into effect 15 days after publication. Israeli Civil Administration, 'Israeli Civil Administration Guideline to Receiving a Building Permit'.

319 Israeli Civil Administration, 'Israeli Civil Administration Guideline to Receiving a Building Permit'.

**Jam'iyat Iskan Case<sup>320</sup>**

In 1978 a Group of Palestinians from Qalandya (between Jerusalem and Ramallah) received permits to build 24 residential buildings from the Higher Planning Council. In 1979, after the construction of the buildings had already begun, the Council decided to void all the permits retroactively declaring that they did not comply with the relevant Regional Outline Plan (RJ/5). This was the first occasion in which the Israeli authorities used a regional plan to impede construction in the West Bank. The decision was appealed, but the Israeli Supreme Court rejected the petition.

This case set the foundation for extensively using regional outline plans to limit Palestinian construction.

**Appeals procedure**

In the case of a building permit application's rejection, one may appeal to the Higher Planning Committee although appeals to the Committee are frequently declined. If the Committee refuses, one has two alternatives: writing to the head of the Planning Committee requesting an exemption from the building permit requirement, or, on the other hand, requesting rezoning of land use from agricultural to residential use, for example. Again, these appeals are usually rejected.<sup>321</sup>

Upon receipt of the final rejection, it is possible to petition the Israeli Supreme Court against the rejection of the permit application and receipt of the demolition order. As part of the petition, one may request that the Court issues a temporary injunction maintaining the status quo of the building in question until the Supreme Court reaches its decision.<sup>322</sup>

**"Stop work" orders**

Due to the difficulties with procuring a building permit, most Palestinians in Area C construct without a permit living with the threat of receiving a demolition order.<sup>323</sup>

320 *Jam'iyat Iskan Al-Mu'allimun Al-Ta'auniya et al. v Minister of Defense et al (HCJ 1980)*.

321 Society of St. Yves, 'The Legal Framework - Westbank'.

322 Society of St. Yves, 'The Legal Framework - Westbank'.

323 In the Saier village near Hebron, the Israeli authorities issued stop work orders against the installation of an electricity network on 13 August 2009 built in Area C where no electricity services had been provided. However, the construction had already been completed and the community was using the network by the time the orders were delivered. The Society of St. Yves defended the village in court and their case is still pending. For more details, see: Society of St. Yves, 'Success Case Westbank', *Success Case Westbank*, n.d.; available from [http://www.saintyves.org.il/index.php?option=com\\_content&view=article&id=90%3Ademolition-case2&catid=44%3Ahouse-demolitions&Itemid=59&lang=en](http://www.saintyves.org.il/index.php?option=com_content&view=article&id=90%3Ademolition-case2&catid=44%3Ahouse-demolitions&Itemid=59&lang=en); accessed 2 May 2013.



If the Israeli Civil Administration Inspection Subcommittee identifies construction in-progress without a permit, they issue a "stop work" order for that construction. A "stop work" order paves the way for the Inspection Subcommittee to decide upon the destruction of the structure. The landowner is expected to present a license, apply for a building permit, or file a complaint within 30 days of the order's delivery. Otherwise, the home (in whole or part) may be demolished any time after 30 days.<sup>324</sup> Usually, the Israeli Civil Administration issues an informal additional warning before performing the demolition.<sup>325</sup>

### **Nasser Nawaj'a - Susya, Hebron (Part II)<sup>326</sup>**

#### ***Home demolitions***

We are subjected to repeated risks of displacement and the demolition of our houses. We now live in tents made of plastic or cloth due to the lack of building permits. Since the early 90s we began receiving demolition orders regarding our tents and facilities and in 2001, following the death of a settler in the area, we were expelled from our lands for the second time and our properties were destroyed by the military. So we appealed to the Israeli Supreme Court which issued an interim order permitting us to return to our lands, but still, it prohibited any new buildings in the village. In 2004 we applied for building permits to the Israeli Civil Administration but, unfortunately, all of them were denied.

In 2011, the Israeli authorities carried out demolitions of 14 structures (among them ten residential tents) in the village, and handed other demolition orders to additional structures, including the school and water wells. This led to the displacement of five families (around 40 residents), who moved to live in the nearby town of Yatta. A year later, the right-wing organization "Regavim" petitioned the Israeli Supreme Court demanding that the Israeli Civil Administration carry out the demolition orders issued for the buildings in the village of Susya, denouncing the Palestinian village of Susya as illegal. A few months later, the Israeli authorities issued demolition orders for 58 facilities including Susya's elementary school and the health clinic. The notifications stated that they were renewals of demolition orders originally issued in the 90s. We were given three days to appeal the orders through the Civil Administration's Supreme Planning Council. Therefore, we objected to the demolition orders and submitted a detailed master plan of the village in order to obtain official recognition of Susya as a village. Recently, in February 2013, the Supreme Court gave the authorities 90 days to discuss Susya's master plan, which was submitted to them on September 2012 and has yet to be approved or rejected.

324 JLAC, *Concealed Intentions: Israel's Human Rights Violations Through the Manipulation of Zoning and Planning Laws in 'Area C'*.

325 OCHA, *Special Focus: 'Lack of Permit' Demolitions and Resultant Displacement in Area C* (May 2008); available from [http://www.ochaopt.org/documents/Demolitions\\_in\\_Area\\_C\\_May\\_2008\\_English.pdf](http://www.ochaopt.org/documents/Demolitions_in_Area_C_May_2008_English.pdf); accessed 23 April 2013.

326 Nawaj'a, 'The Village of Susiya - South Hebron Hills'.

***Building permits***

For obtaining a building permit you need to bring ownership documents, and since all our lands are located in Area C, we had to ask the Israeli Civil Administration for the documents, which means that you have to pay around 150 NIS (\$40) for each document. It is really expensive and in addition we had to submit an aerial land map and a master plan.

Building permit applications are based on the English Mandate law, RJ/5, according to which it allows building of 150 square meters, plus 30 square meters for a building intended to house the sheep. We fulfilled and presented all requests, but our applications were refused for inauthentic reasons. For instance, they stated that the sheep's building is too close to residencies and this is not healthy at all. On this basis they refused many of our applications. They are concerned for our health, but the fact that we live without any water, which they deny us, is not an important matter to them. We applied for building permits more than once, but they always rejected our applications and so we stopped.

Today we are having a court case in the Supreme Court and we are struggling in various ways with the assistance of expert organizations and the popular struggle. We organize demonstrations on the ground using social media campaigns, etc. to halt our displacement. We hope that the Court won't enable our displacement although we know that for us Palestinians the Israeli Supreme Court is a court of injustice.

**HOME DEMOLITIONS**

The majority of demolitions in Area C of the West Bank fall within three somewhat overlapping categories of legal and rhetorical justification: security, administrative and deterrence, which correlate, in effect, to the practice of military, discriminatory and punitive demolition.<sup>327</sup>

Regulation 119 of the Defense (Emergency) Regulations empowers the Israeli military to destroy or seal private homes or destroy other private property without

327 The destruction of houses, land and other properties falls into three categories: clearing land of homes the Israeli Military claims are destroyed for 'military or security needs', discriminatory demolition of Palestinian property justified 'administratively' for having been built without a permit, and destroying or sealing structures as punishment including the destruction of the family homes of Palestinians suspected of carrying out attacks justified with 'deterrence'. 27 percent of home demolitions from 1967 to 2012 can not be classified into one of these categories are undefined as a result of the authorities' non-categorization of demolition in the early years of the Occupation. " See: ICAHD, 'Demolishing Homes, Demolishing Peace: Political and Normative Analysis of Israel's Displacement Policy in the Occupied Palestinian Territory' (April 2012); available from [http://www.icahd.org/sites/default/files/Demolishing%20Homes%20Demolishing%20Peace\\_1.pdf](http://www.icahd.org/sites/default/files/Demolishing%20Homes%20Demolishing%20Peace_1.pdf).

الإدارة المدنية يهودا  
والسامرة  
مجلس التنظيم الأعلى  
اللجنة الفرعية للتفتيش



המנהל האזרחי לאזור  
יהודה ושומרון  
מועצת התכנון העליונה  
וועדת משנה לפיקוח

צו הפסקת העבודה  
אخطר לوقف העל (بناء)

144230

לכבוד  
אלי خضرة

| שם פרטי<br>الاسم | האב<br>الاب         | הסב<br>الجد | משפחה<br>العائلة    | חזיקה לבנין<br>الصلة للعقار | ת.ז.<br>رقم الهوية |
|------------------|---------------------|-------------|---------------------|-----------------------------|--------------------|
| נמח/לוא          | כפר/ ישוב<br>القرية | נ.א. אחדות  | תאור הבניה, صف הבنا | מנהל שיכון<br>בנין 2 טר     |                    |
|                  |                     | גוש<br>חוצ  | חלקה<br>قطعه        |                             |                    |

בא אתה המالك / المتصرف / المتعهد / مدير العمل في المقار المذكور الذي به  
جرت او تجري به العمل كما هو مفصل اعلاه بدون رخصة و/أو خلافا لمضمون  
الرخصة و/أو خلافا للأنظمة والأوامر والتعليمات السارية و/أو خلافا للمخطط  
أرض البناء / ارتفاع / عدد الطوابق / الموقع / خط ارتداد / بناء محظور لذلك  
مطلوب منك حسب المادة 38 (1) ط (3) من قانون تنظيم المدن والقرى  
والأبنية رقم 79 لسنة 1966 . التوقف فوراً عن الاستمرار في البناء كما مفصل  
اعلاه .

اللجنة الفرعية للتفتيش تبحث في جلستها هدم البناء او ارجاع المكان الى حاله  
السابقه طبقاً لصلاحيتها حسب القانون اعلاه في جلستها التي تعقد في بيت ايل

بتاريخ : الساعة :

بامكانك التوجه الى دائرة التنظيم والواليه وتقديم طلب لرخصة بناء / تعمير  
اذا توجهت لدائرة النظم وقدمت طلب لرخصة او عندك رخصة سارية المفعول  
او يرغبك الادعاء بمقتك القانوني لإيجاز بامكانك التوجه الى اللجنة في الموعد  
المذكور اعلاه وإبراز وصل تقديم طلب الرخصة او الرخصة السارية لو تقديم  
ادعاءاتك . هذا التوجه لا يضمن منحك الرخصة المطلوبه من قبلك .

اسم مسلم الاخطار : توقيع :

سلم الى : \_\_\_\_\_

الاسم : رقم الهوية : الملك للعقار .

التاريخ : الساعة :

توقيع الضام :

בחיותך הבעלים/המחזיק/הקבלן/מנהל העבודה  
במקרקעין הנ"ל. שבהם התבצעה או מתבצעת העבודה  
כמפורט לעיל, ללא רשיון ו/או בניגוד לקבוע ברשיון ו/או  
בניגוד לתקנות. לצווים ולהוראות שבחוק, ו/או בניגוד  
לתכנית בקשר לשטח המבנה/גובה/מס' קומות/מיקום/קו  
בנין/בניה אסורה.

לכן הנך נדרש לפי סעיף 38(1)3 לחוק תכנון ערים  
כפרים ובנינים מס' 79 לשנת 1966 להפסיק את העבודה  
כמפורט לעיל.

וועדת המשנה לפקוח תדון בהריסה המבנה ו/או להחזיר  
המצב לקדמותו, בתוקף סמכותה לפי החוק הנ"ל

בישיבתה שתתקיים במקום : בית אל  
תאריך : 19/10/07 בשעה : 9:00

בידך האפשרות לפנות למזכירות הוועדה להגיש בקשה  
לרשיון בניה/פתוח, אם פנייתך לשלשכת התכנון והגשת  
בקשה לרשיון או שבידך רשיון בר-חוק או ברצונך לטעון  
על זכותך החוקית לביצוע העבודה, תוכל לפנות לוועדה  
במועד האמור לעיל, ולהציג אישור על הגשת הבקשה  
לרשיון. או רשיון בר-חוק ו/או לטעון טענותיך.  
אין בהפניה זו כדי להבטיח שיגנון לך חרשיון המבוקש על  
ידך.

שם מוסר החתומה : \_\_\_\_\_ חתימה

נמסר ל : \_\_\_\_\_

שם : ת.ז. : חזיקה לבנין

תאריך : שעה : חתימה המקבל

העתק.

trial or formal charges. It was enacted by the British Mandate authorities and incorporated into Israeli law in 1948 and then applied to the occupied West Bank and East Jerusalem, and the Gaza Strip in 1967. Many demolitions are based on Section 119 (1) of the Emergency Defense Regulations, which states:

*[A]ny house, structure, or land from which he has reason to suspect that any firearm has been illegally discharged,..., or of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed, or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, any offence against these Regulations involving violence or intimidation or any Military Court offence; and when any house, structure or land is forfeited as aforesaid, the Military Commander may destroy the house or the structure or anything in or on the house, the structure or the land...*<sup>328</sup>

Attempts at challenging demolitions based on Defense (Emergency) Regulation 119 tend to rely on the argument that the Regulation is illegal because it was repealed in entirety by the British Mandatory Government before it left Palestine.<sup>329</sup>

Until the onset of the Second Intifada (September 2000), the sole ground for demolitions was the Defense (Emergency) Regulations 119, but later Israeli authorities distanced themselves from explicitly invoking this legal argument.<sup>330</sup> Instead, there is ambiguity on the matter in light of an alternative – that demolitions are “based on clear military considerations.”<sup>331</sup>

A demolition order is delivered with a pathway of appeal to the Israeli Supreme Court. However, especially common since the start of the Second Intifada, the Israeli military has performed evictions and demolitions without an order thereby evading the appeal process.<sup>332</sup>

328 *Defence (Emergency) Regulations 1945*, 1945; available from <http://nolegalfrontiers.org/military-orders/mil029ed2.html?lang=en>. Section 119, Para 1.

329 *Mahmud 'Ali Nasser Et Al. V. Commander of IDF Forces* (HCJ 2005); Al-Haq, 'Israel's Punitive House Demolition Policy' (2003); available from <http://www.stanford.edu/group/scal/images/darcy.pdf>.

330 A rather direct denial has been made: '[T]he IDF does not base its decisions to demolish houses on Regulation 119, or on mere speculations that the owner of the property may perpetrate a terrorist attack'. 'IDF Spokesperson's response to the House Demolition Report', appended to B'Tselem, 'Through No Fault of Their Own: Punitive House Demolitions During the al-Aqsa Intifada' (November 2004), 54; available from [http://www.btselem.org/download/200411\\_punitive\\_house\\_demolitions\\_eng.pdf](http://www.btselem.org/download/200411_punitive_house_demolitions_eng.pdf); accessed 2 May 2013; See also: *Mahmud 'Ali Nasser et Al. V. Commander of IDF Forces* The respondent repealed his intention to use Regulation 119 in general.

331 B'Tselem, 'Through No Fault of Their Own: Punitive House Demolitions During the al-Aqsa Intifada' (November 2004), 54; available from [http://www.btselem.org/download/200411\\_punitive\\_house\\_demolitions\\_eng.pdf](http://www.btselem.org/download/200411_punitive_house_demolitions_eng.pdf).

332 See: B'Tselem, 'Punitive House Demolitions from the Perspective of International Law' (May 2010); available from <http://www.btselem.org/printpdf/51491>; accessed 2 May 2013.

**Mahmoud Bisharat - Khirbat Humsa, Jordan Valley<sup>333</sup>**

I moved from Tammun to live in Khirbat Humsa, which is located on Tammoun's land, after the death of my parents in 1982.

This old house I live in was built before 1967. Through the years, I have built 8 extra rooms for my sons on the same hill I live on so they can live nearby. But in 1994, the Israeli authorities came and demolished all the rooms. I did not despair and I rebuilt another 8 rooms. Unfortunately, in 1996 the Israeli Military came again and demolished the rooms for the second time, all the 8 rooms. This wasn't the last time in which they demolished my rooms. I slowly built the rooms again, but unfortunately they demolished them once again in 1998. Now I am building little by little because I want to bring my sons back here. I want them to live with me in our land. And, if the occupation wants to demolish them again, I will rebuild again and again and again. This is how I resist on my end.

The Israeli authorities claim that the rooms were built without building permits. This is absurd because the Israeli authorities don't give any permission for building. They don't want us to live in this area. In my specific case, the Israeli Military tried to take me out from my house because they wanted to set up a military watching point here. My house and my land have a strategic importance. They're located on top of a hill from which you can see the whole area. However, I was able to resist leaving my house.

***Home demolition***

First of all the military handed me a notification, which I immediately gave to my lawyer who was appointed to follow my case by the Palestinian Authority and he succeeded to delay the demolition orders for around two years. But after this period, the Israeli Military came and demolished the rooms. The same happened with the other two waves of demolitions. Usually the bulldozers come accompanied by soldiers and demolish everything. Despite the demolitions, we were subjected to casual harassments by the Occupation's military, raids at night and inspections. As well, two of my sons and I were arrested.

***Resisting***

We made bricks in order to build with them. I used to do it together with the Jordan Valley Solidarity Campaign activists. We used to manufacture the bricks near my house and we succeeded to restore a lot of houses in the valley that were subjected to home demolitions; many Israeli and foreign activists joined us. Without having this project we wouldn't have been able to rescue some of the families.

Electricity and water supply: those are two essential things for our survival. As well as by providing them we can prove our presence on our land by creating facts on the ground. However, it is not easy to have electricity and water supply

333 Mahmud Mohammad Bisharat, 'Khirbat Humsa, Jordan Valley', interview by BADIL, March 2013.



and it's very expensive. For 7 years, I have been trying to connect my house to the electricity company. Finally, two months ago, we succeeded to do so. In the past, I had electricity by way of a diesel generator.

Now we are trying to have direct water pipelines which we have been denied so far.

## Military ("Security") Demolitions

Military home demolitions for "security" purposes accounted for 47 percent of all the demolitions in the occupied Palestinian territory between 1967 and 2012.<sup>334</sup> In the vast majority of cases, residents were not even accused by Israel of committing any security offenses.<sup>335</sup> Demolitions may be used as a method of clearing vast tracts of land in the course of military operations, often for reasons Israel claims are 'security-related' such as expanding roads, colonies and the construction of the Annexation Wall. Israel accounts for destroyed houses as the 'collateral damage' of military activity. The category may also include demolitions in the process of capturing or killing 'wanted persons'.

*Military Order 1651* (Section 332)<sup>336</sup> provides wide latitude in prohibiting or demolishing buildings by invoking security concerns:<sup>337</sup>

*(B) A Military Commander is empowered, in an order, to prohibit construction or to order its cessation or to stipulate conditions for construction, if he believes that it is necessary for the security of the Area or to ensure public order.*

*(E) If construction is done in contravention of an order issued under Subsection (B) the Military Commander is empowered to issue an order to destroy, dismantle or remove the building or the part of it in which such construction was done.*

Additionally, the Israeli Manual on the Laws of War (1998) states that, "The only restriction is to refrain from destroying property senselessly, where there is no

334 ICAHD, 'Demolishing Homes, Demolishing Peace'.

335 ICAHD, 'Displacing - House Demolitions and Closure', *ICHD*, n.d.; available from <http://www.icahd.org/node/36>.

336 Military Order 393 (1976) served the function of enabling the prohibition or demolition of structures based on 'security' concerns until Military Order 1651 of 2009 consolidated previous military orders including Military Order 393.

337 Violators of this Order can be sentenced to prison on the basis of the text. *Order Regarding Security Provisions [Consolidated Version] (Judea and Samaria) 5770-2009*, 2009; available from <http://nolegalfrontiers.org/en/military-orders/mil01>; accessed 25 April 2013..

military justification.”<sup>338</sup> Furthermore, the Manual on the Rules of Warfare (2006) states that: “[T]here is no problem in destroying a building in which the enemy forces are hiding, or that is likely to serve as a hiding-place for the enemy’s troops.”<sup>339</sup>

## Appealing ‘security’ demolitions

In 2002 the Israeli Supreme Court, ruled that the Israeli Military must provide Palestinians with an opportunity to appeal demolitions based on “security needs”.<sup>340</sup> The ruling did not issue guidelines for deciding appeals and undermined the universality of the ruling by promoting the rhetoric of military necessity: the opportunity for appeal must be provided, “unless this would endanger the lives of Israelis or if there are combat activities in the vicinity.” Further, in the Court’s ruling it stated that advance notice did not need to be awarded if it would hinder the success of the demolition.<sup>341</sup> This caveat awards the military an avenue for refusing appeal in nearly any case. In most instances that the appeal process is initiated, the Supreme Court sides with the military’s definition of security needs.<sup>342</sup> In effect, the Israeli Military Commander acts according to his own discretion and without judicial oversight in choosing and implementing demolitions that are not subject to legal appeal or deliberation.

The case of *Adalah, et. al. v. IDF Major General, Central Command, Moshe Kaplinski, et. al*<sup>343</sup> challenged Israel’s exploitation of the term “absolute military necessity”. Petitioners argued that the military should refrain from demolishing houses in the West Bank and the Gaza Strip on the grounds of military needs because, alone, it is an insufficient basis for demolitions of protected persons’ homes. The petitioners requested an explicit definition of “military necessity”, which Israel has never specified. On 13 July 2005, the Supreme Court did not deliver such a definition and dismissed the case on the expectation that the Israeli military would refrain from a policy of home

338 State of Israel, *Laws of War in the Battlefield, Manual, Military Advocate General Headquarters, Military School* (1998), 62; available from [http://www.icrc.org/customary-ihl/eng/docs/v2\\_cou\\_il](http://www.icrc.org/customary-ihl/eng/docs/v2_cou_il).

339 State of Israel, *Israel, Rules of Warfare on the Battlefield, Military Advocate-General’s Corps Command, IDF School of Military Law*, 2006, 39.

340 David Kretzmer, ‘The Law of Belligerent Occupation in the Supreme Court of Israel’, *International Review of the Red Cross* 885 (March 31, 2012): 224.

341 Amnesty International, ‘Israel and the Occupied Territories Under the Rubble: House Demolition and Destruction of Land and Property’ (May 2004), 32; available from <http://www.amnesty.org/en/library/asset/MDE15/033/2004/en/2193fae2-d5f6-11dd-bb24-1fb85fe8fa05/mde150332004en.pdf>.

342 In HCJ 2977/02 the Israeli Supreme Court dismissed a petition to intercept the mass-scale demolition of homes in Jenin largely based on its agreement with the IDF on the military necessity justifying the military’s demolition, not providing prior notification to the residents and lack of appeal process. See: *Adalah and LAW V. Commander of the Israeli Army in the West Bank* (HCJ 2002).

343 *Adalah, Et. Al. V. IDF Major General, Central Command, Moshe Kaplinski, Et. Al* (HCJ 2005).

demolitions.<sup>344</sup> Consequently, the petitioners responded that the Court's argument redirected attention away from the question of defining "military necessity".

## Discriminatory ("Administrative") Demolitions

Home demolitions for "administrative" purposes accounted for 23 percent of all demolitions between 1967 and 2012.<sup>345</sup> A lack of building permits is the key administrative factor the Civil Administration uses to criminalize structures and slate them for demolition. The process is embedded in planning and zoning – seemingly proper administration. Both law and practice show, however, that houses are not demolished in the course of normal town planning operations, but are instead demolished in a discriminatory manner.<sup>346</sup> Zoning regulations have been prepared so as to limit Palestinian building.

## Land registration

Military Order 291,<sup>347</sup> activated in 1968, froze the legal status and registration of lands in the West Bank.<sup>348</sup> Exclusive planning schemes (as seen above) are used as a basis for refusing building permits to Palestinians in Area C. Only one percent of Area C is planned for Palestinian development and much of that area is already built up.<sup>349</sup>

Cynically, the Israeli Civil Administration justifies non-registration of lands as a mechanism to protect the rights of absentee property holding Palestinians. In a 1983 letter to Palestinian lawyer Raja Shehadeh from the Israeli Civil Administration's legal advisor, Brigadier Itzhaq Excel, he applies the distorted rhetoric:

---

344 The Court reasoned that a policy of home demolitions in Gaza would cease because of the 2005 "pullout" and the Sharm el-Sheikh summits (February 2005) at which Prime Minister Ariel Sharon stated that, "Israel will cease its military operations against Palestinians everywhere." Two of the three cases the petitioners specified in court were in Gaza, and the third regarded Jenin (April 2002 during Operation Defensive Shield).

345 ICAHD, 'Demolishing Homes, Demolishing Peace'.

346 John Dugard, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, (January 2008), para. 41; available from <http://unispal.un.org/UNISPAL.NSF/0/F71BE9FAE0ABBE1C852573EC006DDE2E>.

347 *Military Order Concerning the Settlement of Disputes over Titles in Land and the Regulation of Water 1968*, 1968; available from <http://www.israelawresourcecenter.org/israelmilitaryorders/fulltext/mo0291.htm>.

348 For further information on Registration of land in the West Bank in general see the section on Registration in the Chapter on Land Confiscation.

349 The registration process is long and costly, and primarily composed of demonstrating ownership. Proof of ownership primarily includes providing the registration papers of the land where the construction was built (*tabou*, or other Israeli-approved documents), the maps of the land and its borders (accepted by the Israeli Civil Administration), and the plan of the house, among other documents. See: ICAHD, 'Demolishing Homes, Demolishing Peace'.



The suspension of these proceedings has arisen out of the desire not to prejudice the rights of the many absentees and the ownership rights of nationals of Jordan who have land in the area but reside outside Judea and Samaria.<sup>350</sup>

## Documentation

The Israeli administration only recognizes documents issued by institutions and engineers it certifies.<sup>351</sup> Israeli authorities largely refuse to recognize other documents held by Palestinians as proof of ownership necessary for registration. Military Order 25 and later amendments, specifically Military Order 796 of 1979, made it impossible for Palestinians to enter into land and property transactions without prior authorization from the appropriate military authorities. These measures limit Palestinians' attempts to sell their land or bequeath it to their children.<sup>352</sup> Restrictions also apply to the size of houses, subdividing land and adding floors based on the archaic British Mandate laws.<sup>353</sup> The complex system of acquiring authorization may also be applied to renovations. The Israeli Civil Administration has justified demolitions of all or parts of a structure based on 'unauthorized renovations'.

## Appealing 'administrative' demolitions

The Israeli Civil Administration often issues a "stop-work order"<sup>354</sup> followed by a "demolition order". In the case of the latter, the owner of the targeted structure will find instructions to challenging the order with a specific sub-committee of the Israeli Civil Administration. Typically, an administrative demolition order allows thirty days for recourse.<sup>355</sup> If no objection is raised and the homeowner does not demolish the structure herself, the Israeli Civil Administration claims the right to demolish anytime after the thirty-day period. Demonstrating that

350 R. Shehadeh, *From Occupation to Interim Accords: Israel And the Palestinian Territories* (1997), 256.


351 Palestinian Authority documents are not recognized, but can add legitimacy to a case that is in Areas A or B.

352 BADIL and COHRE, *Ruling Palestine*, 120.

353 See: Military Order (unnumbered), Order Concerning Law of Urban and Rural Planning (Regulations Concerning Supervision Over Construction) (Restrictions on the Height of Buildings in Ramallah South) 26 January 1970, was consolidated into Military Order 1651 of 2009: *Order Regarding Security Provisions [Consolidated Version] (Judea and Samaria) 5770-2009*; Also see: *Order Concerning Supervision Over Construction (Provisional Regulations) 1985, 1985*.

354 A stop-work order paves the way for the Inspection Subcommittee to discuss in its session either the destruction of the structure or re-establishing the situation which would have existed before the construction took place.

355 JLAC, *Concealed Intentions: Israel's Human Rights Violations Through the Manipulation of Zoning and Planning Laws in 'Area C'*, 20.



07/96 ח

المنطقة المدنية  
 والسامرة  
 الأعلى  
 للفتيش

الإدارة  
 يهودا  
 مجلس التنظيم  
 اللجنة الفرعية

המנהל האזרחי לאזור  
 יהודה  
 מועצת התכנון העליונה  
 ועדת משנה לפיקוח

**הודעה על מתן זכות להגשת השגות לצו הריסה מס'**  
 إعطاء فرصة إضافية لتقديم اعتراضات على أمر الهدم رقم

לכבוד الى حضرة

| שם פרטי | האב    | הסב               | משפחה         | הזיקה לנכס            | ת.ז.       |
|---------|--------|-------------------|---------------|-----------------------|------------|
| الاسم   | الأب   | الجد              | العائلة       | الصلة للعقار          | رقم الهوية |
| נפה     | اللواء | כפר / ישוב القرية | ד.ל.א. אחדאית | תאור הבניה وصف البناء |            |
|         |        | לושח<br>חوض       | חלקה<br>قطعة  |                       |            |

بما إنك المالك / المتصرف / المتعهد / مدير العمل في العقار  
 المذكور الذي جرت به العمل خلافا لقانون التنظيم  
 المدن والقرى والأبنية رقم ٧٩ لسنة ١٩٦٦ (القانون)  
 والأوامر والمشاريع.

أعطي لك بتاريخ \_\_\_\_\_  
 العمل وللهم رقم \_\_\_\_\_ وذلك بعد أن منحت لك  
 الفرصة للحضور أمام اللجنة الفرعية للفتيش في الإدارة المدنية  
 وتقديم ادعائك.

أود أن أعلمك بأن منحت لك فرصة إضافية للإعراض  
 إذا يكون لك أي ادعاء بشأن تحول الظروف من موعد أمر  
 الهدم؛ فعليك تقديمها لسكرتيرية الوحدة المركزية للفتيش  
 للإدارة المدنية في بيت إيل ص.ب. ١٦ فكس رقم  
 ٩٩٧٧٣٤٤-٠٢ خلال ٣ أيام من موعد إعطاء هذا البلاغ.

اسم مسلم البلاغ \_\_\_\_\_ تاريخ \_\_\_\_\_  
 سلم الى \_\_\_\_\_ توقيع المسلم \_\_\_\_\_

בהיותך הבעלים/המחזיק/הקבלן/מנהל העבודה  
 במקרקעין הנ"ל שבהם התבצעה עבודה בניגוד  
 להוראות חוק תכנון, ערים, כפרים, ובנינים מס' 79  
 לשנת 1966 (להלן החוק) והתקנות שהותקנו על פיו  
 ולתכניות התכנון החלות על השטח.

נמסר לך בתאריך 26/3/96 צו סופי להפסקת  
 עבודות והריסה מס' 514 מטעם הועדה המורה לך  
 להפסיק סופית את העבודות, להרוס את הבניה  
 ולהחזיר את המצב לקדמותו וזאת לאחר שניתנה לך  
 הזדמנות להופיע בפניה ולהשמיע את טענותיך.

ניתנת לך בזאת הזדמנות נוספת להשיג, באם קיימות  
 לך טענה בדבר שינוי נסיבות ממועד הוצאת צו  
 ההריסה דלעיל, הינך נדרש להעבירה למזכירות  
 היחידה המרכזית לפיקוח של המנהל האזרחי בבית  
 אל ת.ד. 16 פקס 02-9977344 תוך 3 ימים ממועד  
 מסירת הודעה זו.

שם מוסר ההודעה: \_\_\_\_\_ תאריך: 26/6/12  
 נמסר \_\_\_\_\_ חתימת המקבל

an appellant's house is not illegal in order to receive a building permit requires showing documentation usually including: proof of ownership,<sup>356</sup> title to the plot, demonstration that the land is zoned for development and building purposes, among other conditions.

The Military Commander's common response to an appeal is insistence that the building violates zoning requirements upon which the appellant is ordered to demolish his own home or pay the cost of demolishing it.<sup>357</sup> In theory, once administrative procedures are exhausted Palestinians may appeal to the Israeli Supreme Court.

## Punitive ("Deterrent") Demolitions

Punitive home demolitions for "deterrence" purposes accounted for six percent of demolitions from 1967 to 2012.<sup>358</sup> The policy of punitive demolitions varies, but its declared objective is deterrence through harming relatives of Palestinians who carried out, are suspected to have carried out, or are expected to carry out (future-reprisal) attacks on Israeli citizens or military infrastructure.<sup>359</sup> Regulation 119 (1) of the Defense (Emergency) Regulations empowers a Military Commander to order the punitive demolition or sealing of a house. A decision of the Military Commander is sufficient to initiate a demolition.<sup>360</sup> Typically, the wrecking crew is accompanied by soldiers, police and Civil Administration officials. Present family-members are not always permitted to remove their belongings.<sup>361</sup>

During the Second Intifada, more than 628 Palestinian homes were demolished as collective punishment or "deterrence".<sup>362</sup> The Israeli Supreme Court stated that demolitions are reserved for use, "only in special circumstances,"<sup>363</sup> and that the purpose of 119 Defense (Emergency) Regulations is, "to deter potential terrorists

356 Military Order 291, issued in 1968, froze the registration of lands. The Israeli authorities largely refuse to recognize documents other than pre-1968 registrations held by Palestinians as proof of ownership.

357 BADIL and COHRE, *Ruling Palestine*, 118.

358 ICAHD, 'Demolishing Homes, Demolishing Peace'.

359 The Israeli Ministerial Committee for Matters of National Security stated in 2002 that, 'according to the evaluation of the government and security forces, destruction of the homes of attackers is a deterrent to the initiatives of potential attackers.' See: *Bahar Et Al. V. IDF Commander of the West Bank* (HCJ 2002).

360 HAMOKED- Center for the Defence of the Individual, 'House Demolitions', *House Demolitions*, n.d.; available from [http://www.hamoked.org/topic.aspx?tid=main\\_3](http://www.hamoked.org/topic.aspx?tid=main_3); accessed 2 May 2013.

361 Jeff Halper, 'House Demolitions and Israel's Policy of Hafrada'.

362 The Israeli Military publicized that it had suspended the policy of punitive demolition in February 2005 after it reached the conclusion that rather than deterring attacks, punitive demolitions provoked people and lead to more attacks. However, the suspension was canceled on 19 January 2009. See: ICAHD, *Israel's Policy of Demolishing Palestinian Homes Must End*.

363 *Hamri V. Commander of Judea and Samaria*, 132 (HCJ 1982).

from carrying out their... acts.”<sup>364</sup> However, 79 percent of the suspected offenders were either dead or in detention at the time of the demolition.<sup>365</sup>

In 2003, the Supreme Court addressed the issue of clarity when issuing punitive demolitions: “the notice [prior to the demolition] did not mention that the decision was made pursuant to Section 119... It states that the Military Commander decided to demolish the house pursuant to his authority. Only on the Court’s request, was a clarification provided by the State that the demolition had been ordered on the ground of 119 Defense (Emergency) Regulations”.<sup>366</sup> In practice, the criteria for issuing a home demolition continues to be opaque and inconsistent.

### Appealing ‘deterrent’ demolitions

No prerequisite of conviction is necessary when an Israeli Military Commander issues a deterrent demolition order and the commander is encouraged to issue the order from a source of suspicion. Since the Military Commander has absolute discretion in issuing an order, there are no procedural rules providing for judicial review and no formal appeals process. In August 2002, the Supreme Court disputed the right to judicial review in the *Amar Case*<sup>367</sup> by stating that when it comes to punitive demolitions, judicial review is “incompatible with the conditions of place and time or the nature of the circumstances.”<sup>368</sup> The only option for appealing a punitive demolition is through the Supreme Court.

More than 150 petitions against punitive demolitions have been judged in Israeli courts. Petitioners raised arguments contesting the legality of the measure, the manner in which it was implemented and its use in specific circumstances. In all but the most exceptional cases, the Supreme Court denied the petitions and accepted the State’s position that demolitions for the purpose of deterring attacks is lawful and proper punishment.<sup>369</sup> The Supreme Court has rejected the argument that the measure constitutes collective punishment.<sup>370</sup>

---

364 Nazal v. Commander of the Judea and Samaria Region, 42(3) P.D. 641 (1994), summarized in English in 19 Israel Yearbook of Human Rights 376 (1989) taken from: Harvard Program on Humanitarian Policy and Conflict Research, ‘The Legality of House Demolitions Under International Humanitarian Law’, 2004; available from <http://www.hamoked.org/Document.aspx?dID=3553>; accessed 2 May 2013.

365 Jeff Halper, ‘House Demolitions and Israel’s Policy of *Hafrada*’.

366 B’Tselem, ‘Through No Fault of Their Own: Punitive House Demolitions During the al-Aqsa Intifada’, 54.

367 *Nahil Adal Sa’ado Amar V. The IDF West Bank Military Commander* (HCJ 2002).

368 *Nahil Adal Sa’ado Amar v. The IDF West Bank Military Commander*, HCJ 6696/02, Supreme Court of Israel, Judgment of 6 August 2002. Published in 56(3) P.D. 110. See: Al-Haq, ‘Israel’s Punitive House Demolition Policy’.

369 *Janimat Et Al. V. OC Central Command Judgment* (HCJ 1997).

370 B’Tselem, ‘Punitive House Demolitions from the Perspective of International Law’.

In court, ruling in favor of a Palestinian is almost impossible unless there is a procedural flaw in the issuance or execution of the punitive demolition order.<sup>371</sup> In the majority of cases, the Court declared that the merits of the order, which are based on secret discretion and evidence, are not contestable.<sup>372</sup>

## EAST JERUSALEM

Israeli authorities defend their systematic demolition of Palestinian homes by describing the act of demolishing buildings built without a permit as common practice worldwide, law enforcement or just. In practice, however, the demolition of Palestinian homes in Jerusalem, as elsewhere in Palestine, is a political act imbedded in planning and the allocation of resources intended to reconfigure the city's demographics.

## PLANNING

Over a third of the total area of East Jerusalem was confiscated in 1967. On these lands, Israel built more than 40,000 housing units for the Jewish population and not a single unit for the Palestinian population while maintaining a vacuum in planning for Palestinians. The Jordanian planning and development schemes applicable prior to 1967 were unauthorized and no alternative plans were prepared. The first general outline plan for East Jerusalem was produced in 1977,<sup>373</sup> but until 1983, not a single local planning scheme had been produced for Palestinian communities in East Jerusalem.<sup>374</sup>

Instead, the Israeli government adopted a deliberate policy of discrimination against the Palestinian population in Jerusalem in all matters relating to land: expropriation, planning and building.<sup>375</sup> Municipal planning policy aims for the goal of demographic homogeneity in an effort to preempt any future challenge to

371 Jelena Madzarevic, 'International Legal Aspects of Punitive House Demolitions in the Occupied Palestinian Territories' (Master, University of Lund, 2005), 14–15; available from <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=1554904>; accessed 14 May 2013.

372 Madzarevic, 'International Legal Aspects of Punitive House Demolitions in the Occupied Palestinian Territories', 13.

373 The first plan for East Jerusalem (AM / 9) was approved in 1977 - 10 years after annexation – a general outline plan in which no building permits were allocated. See: ACRI, *Discrimination, Neglect and Deprivation: Planning and Construction Policy in East Jerusalem* (2008); available from <http://www.acri.org.il/en/>; accessed 23 March 2013.

374 BADIL and COHRE, *Ruling Palestine*, 127.

375 B'Tselem, *A Policy of Discrimination, Land Expropriation, Planning and Building in East Jerusalem*, 5.



Israeli sovereignty in East Jerusalem.<sup>376</sup> So-called “demographic balance” saturates planning with restrictions and burdensome bureaucratic procedures derived from political bias.<sup>377</sup> Israeli zoning policy permits Palestinians to build in only 13 percent of East Jerusalem (nine percent to build *residential* buildings) much of which is already built up.<sup>378</sup>

Israel applies the *Planning and Building Law of 1965* (Chapter Five)<sup>379</sup> to annexed East Jerusalem prohibiting authorization of building permits for areas not zoned for construction, that lack a planning scheme or that have not completed a process of reparcellation.<sup>380</sup> Zoning is, therefore, integral to delegitimizing Palestinian construction in Jerusalem.<sup>381</sup>

## Local Town Planning Schemes

Local Town Planning Schemes are the most important means for supervising planning. According to the Planning and Building Law, the purpose of a Local Town Planning Scheme is to define development, allocate territory in accordance with expected demand and population growth, and determine infrastructure such as traffic arteries. The planning authorities use three main mechanisms to achieve the goal of “demographic balance” by reducing housing options for Palestinians: not preparing a

376 In 1993 City Engineer Elinor Barzacchi expressed State policy when she described the municipality’s strategy for dealing with the “demographic threat” of the Palestinian population, particularly dangerous in Jerusalem: ‘There is a government decision to maintain the proportion between the Arab and Jewish population in the city at 28 percent Arab and 72 percent Jew. The only way to cope with that ration is through the housing potential.’ See: Eyal Weizman, ‘Demographic Architecture’, *Jerusalem Quarterly* 38 (Summer 2009): 17.

377 In 1973, the Israeli government adopted the recommendation of the Inter-ministerial Committee to Examine the Rate of Development for Jerusalem, which determined that a “demographic balance of Jews and Arabs must be maintained as it was at the end of 1972”, that is, 73.5 percent Jews, and 26.5 percent Palestinians. Current estimates place the Palestinian population at 39 percent. See: ACRI, *East Jerusalem - By the Numbers* (May 7, 2013); available from <http://www.acri.org.il/en/2013/05/07/ej-figures/>; accessed 14 May 2013.

378 OCHA, *Special Focus: The Planning Crisis in East Jerusalem: Understanding the Phenomenon of ‘illegal’ Construction* (April 2009); available from <http://unispal.un.org/UNISPAL.NSF/0/2F8FB6437DB17CA5852575A9004D7CB4>.

379 *Planning and Building Law 5725-1965*, 1965; available from <http://www.israelawresourcecenter.org/israelaws/fulltext/planningbuildinglaw.htm>; accessed 22 April 2013.

380 The Civic Coalition for Defending Palestinian Rights in Jerusalem, *Aggressive Urbanism: Urban Planning and the Displacement of Palestinians Within and from Occupied East Jerusalem* (Jerusalem, December 2009), 17; available from <http://www.civicoalition-jerusalem.org/ccdprj.ps/new/pdfs/Aggressive%20Urbanism%20Report.pdf>; accessed 23 April 2013.

381 For example, land planned as Open Landscape Areas or ‘green areas’ (22 percent of planned Palestinian neighbourhoods in East Jerusalem) prohibits building. 30 percent of East Jerusalem is unplanned. See: Bimkom and Ir Amim, *The Planning Deadlock: Planning Policy, Land Regularization, Building Permits and House Demolitions in East Jerusalem* (April 2005).

Local Town Planning Scheme, delaying its preparation and preparing plans that limit the Palestinians' building possibilities.<sup>382</sup>

Building has been barred in most Palestinian areas of East Jerusalem on the grounds that a Local Town Planning Scheme has not yet been approved. To date, no comprehensive Local Town Planning Schemes have been approved by planning authorities.<sup>383</sup> In the absence of an approved plan, it is impossible to obtain a building permit. As a result, tens of thousands of people have no legal building option and 28 percent of Palestinian homes in East Jerusalem are built without a permit.<sup>384</sup>

## Submitting Plans

An approved planning scheme may be used to legitimize future building. In order to enter a planning scheme, a Local Commission is required to submit a plan to the District Commission according to paragraph 62(a) of the Planning and Building Law (1965).<sup>385</sup> Palestinian neighborhoods face excessive delays on submitted plans such as a 13-year process (1977-1990) for the approval of Beit Safafa's plan, or indefinite pending status of plans (such as in Beit Hanina and Shu'fat) that have detrimentally impeded construction to meet basic needs.<sup>386</sup> If a planning scheme is approved, residents may seek to alter, revise or replace the plan in order to enable housing growth and adaptation. Additionally, residents may submit alternative planning schemes in cases where a house is slated for demolition for contradicting a planning scheme, essentially seeking to legitimize an already built structure.

One has the right to access planning schemes at the planning department of the Jerusalem Municipality and also at the Ministry of Interior. Anyone may view and photocopy plans by making an appointment. If a plan has yet to be adopted and is pending, public access is refused. One may submit objections during public sessions assigned to a proposed planning scheme.

382 B'Tselem, *A Policy of Discrimination, Land Expropriation, Planning and Building in East Jerusalem*, 52.

383 On May 5, 2009, Jerusalem Mayor Nir Barkat submitted his comments on the Jerusalem Master Plan 2000 to the District Planning and Building Committee, ahead of its deposit for public review. The Plan is not yet approved by all relevant bodies, but it guides planning policy in the city.

384 By 2009, more than 60,000 Palestinians in East Jerusalem were at risk of home demolition due to unauthorized construction. Overcrowding is nearly double that of West Jerusalem. See: OCHA, *The Planning Crisis in East Jerusalem*, 12.

385 *Planning and Building Law 5725-1965*, para. 62(a) 'In the case of a local planning area for which a Local Outline Scheme does not exist, the Local Commission shall prepare such a Scheme and shall submit it to the District Commission for deposit within three years from the date of the coming into force of this Law or from the date of the coming into force of the planning order declaring the area, whichever is the later date.'

386 Plans submitted for Jewish-Israeli neighborhoods take one year for approval on average. See: The Civic Coalition for Defending Palestinian Rights in Jerusalem, *Aggressive Urbanism*, 22.

## Jerusalem Master Plan 2000

Unveiled on 13 September 2004, the Jerusalem Master Plan is a comprehensive Israeli Planning Scheme that serves as the authoritative blueprint for all municipal planning within the Jerusalem Municipality. The Master Plan zones areas intended for specific functions such as residency, urban building, transportation, etc.<sup>387</sup> All Local Town Planning Schemes developed for specific neighborhoods within the Municipality must conform to the zoning and planning provisions detailed within the Master Plan. The currently proposed Jerusalem Master Plan is a composition of successive Israeli Master Plans entailing both minor and major adjustments for urban planning in the Jerusalem Municipality, including both the Jerusalem Master Plan 2020 and the more recent Jerusalem Master Plan 2030.<sup>388</sup>

The Jerusalem Master Plan distinguishes Jerusalem as the primary Israeli national priority and cites among its goals: “maintaining the demographic balance between the city’s Jewish and Palestinian residents.”<sup>389</sup> The Plan provides a legal pretext for the appropriation of Palestinian land and the expansion of Israeli colonies.<sup>390</sup> Additionally, it includes 13,500 new housing units for the Palestinian population of East Jerusalem.

However, even if the city fully realizes the construction plans mentioned in the outline plan for East Jerusalem, there will still be a tremendous shortfall of 15,000-30,000 housing units by 2030.<sup>391</sup> The Jerusalem Master Plan imposes further restrictions by requiring landowners to prove that the area in question has no environmental protections in place or any archeological or Jewish religious significance.<sup>392</sup> In addition, the Plan strengthens the Israeli chain of colonies around the Old City and the so-called Historic Basin.<sup>393</sup> While the Jerusalem Master Plan will not

387 Coalition for Jerusalem, ‘Master Plan 2000’, August 2004; available from <http://www.coalitionforjerusalem.org/main.php?id=30>; accessed 22 April 2013.

388 The Civic Coalition for Defending Palestinian Rights in Jerusalem, *Aggressive Urbanism*.

389 Ir amim, ‘Jerusalem Master Plan 2000- General Analysis and Comments’ (June 2010); available from <http://eng.ir-amim.org.il/Uploads/dbsAttachedFiles/master.pdf>; accessed 22 April 2013.

390 A supplement to the Master Plan, the Israeli Regional Urban Plan TTMI ‘Plan No. 30’ was approved as a draft law in 2010 and legislates a process of furthering Judaization of Jerusalem by expanding the mandatory zoning and urban planning guidelines, increasing settlement construction and restricting land available for Palestinian development. The plan aims to encourage young Jew-Israelis to settle occupied Jerusalem by providing housing and financial benefits. See: CCPRJ, *Urban Planning in Jerusalem* (Jerusalem, n.d.); available from [http://www.civiccoalition-jerusalem.org/system/files/urban\\_planning\\_in\\_jerusalem\\_final.pdf](http://www.civiccoalition-jerusalem.org/system/files/urban_planning_in_jerusalem_final.pdf); accessed 22 April 2013.

391 Ir Amim, ‘Jerusalem Master Plan 2000’.

392 The Civic Coalition for Defending Palestinian Rights in Jerusalem, *Aggressive Urbanism*, 14.

393 CCPRJ, *Urban Planning in Jerusalem*.



become mandatory until final approval, the Plan constitutes guiding policy at times supplanting pre-existing and already approved plans when driven by authorities' political considerations.<sup>394</sup>

## BUILDING PERMITS

A prerequisite to the authorization of a building permit is the existence of an approved town-planning scheme as stipulated under the Israeli Planning and Building Law of 1965. Such a scheme delineates which lands may be used for residential purposes detailing number of floors, plumbing infrastructure, etc. Residents must then obtain a separate permit for the actual construction, which is issued by the Jerusalem Local Planning and Building Committee.<sup>395</sup> Lack of a building permit opens avenues for the Israeli authorities to issue a demolition order. Actions that may incur this risk include: building without a permit, using a building without a permit and building contrary to zoning (i.e. areas not allocated for residential or private building).

Acquiring a building permit entails proving ownership, filing an application form and receiving approval of the application. Considering the difficulties associated with procuring a permit, the risks to Palestinian housing rights in East Jerusalem have reached a mass scale: 20,000 buildings lack permits, home to between 180,000 and 270,000 persons.<sup>396</sup>

## Documenting Land Ownership (Land Registration)

The Israeli authorities froze land registration within the occupied Palestinian territory in 1967 and, correspondingly, a presence in the Israeli Land Registrar has become a central prerequisite for obtaining building permits.<sup>397</sup> Most of the land in East Jerusalem is not registered with the Israeli Land Registrar however, and the requirement of registration is a departure from previous arrangements which required only that residents prove legitimate possession of the land by presenting

---

394 B'Tselem, *A Policy of Discrimination, Land Expropriation, Planning and Building in East Jerusalem*.

395 BADIL and COHRE, *Ruling Palestine*, 127.

396 COHRE, *Second Quarterly Report: Violations of the Right to Adequate Housing in the Occupied Palestinian Territory* (June 2009); available from [http://www.american taskforce.org/resources/2009/06/24/1245816000\\_0](http://www.american taskforce.org/resources/2009/06/24/1245816000_0); accessed 2 May 2013.

397 OCHA, *Special Focus: East Jerusalem Key Humanitarian Concerns* (March 2011), 30; available from <http://unispal.un.org/UNISPAL.NSF/0/0D90191FBC1DDBC88525785C004DF7A5>.

deeds of inheritance or purchase in order to begin the permit application procedure.<sup>398</sup>

Additionally, Palestinians are wary of Israeli authorities who may activate the *Absentee Property Law*<sup>399</sup> as a means of further dispossessing Palestinians.

### Applying for a Building Permit

While most land in East Jerusalem is unregistered, some land is registered or “settled” and others may be “under settlement” meaning that the registration process had begun but had not been completed prior to 1967. For registered land, applicants must provide a document (*tabou*) from the Israeli Land Registry that identifies oneself as the owner. Due to the Absentee Property Law targeting Palestinians in East Jerusalem with expropriation, many landowners choose not to submit applications in order to avoid the risk of confiscation.

Applying for building permits on land “under settlement” (registration) requires:

- A deed from the Land Settlement Officer;
- Confirmation from the Ministry of Finance: this document should demonstrate registration in the files of the tax authorities and that all relevant property taxes have been paid;
- Confirmation from the Israeli Mapping Center: this document should state that the land where the applicant wishes to build has not been registered;
- Affidavit from the landlord;
- Affidavit from the local *mukhtar* specifying the individuals who hold rights to the land.

Applications for a building permit on settled land are submitted to the Licensing

398 Until 2000, in cases where the current owner of the land was not the person registered with the Israeli Land Registry/*tabou*, such as a successor or a buyer, it was sufficient to provide an inheritance deed or a purchase deed. However, under procedures in place since 2000, by seeking to register with the Israeli Land Registry/*tabou* the landowner risks having the land transferred into the hands of the Custodian of the Absentee Property. This can happen if, for instance, ownership documents indicate that one of the heirs is an “absentee” owner.

399 The Absentee Property Law authorizes state confiscation of lands without notifying the owners or awarding them compensation. Approaching the bureaucracy may put individuals at risk to triggering the Absentee Law and the threat of exposure discourages many Palestinians from attempting registration, manifesting in their inability to acquire legal building permits. See: Chapter I (Section *Absentee Property Law*) for more details.

Authority. An Israeli-certified surveyor, engineer or architect should prepare applications. Applications for permits on “settled” (registered) land should include:

- A completed “Application for a Building Permit and Use of the Property” form, which includes a detailed description of the property and the planned structure (e.g. whether it is a new building, or an addition to an existing building), the purpose of the planned structure (e.g. residential, business, etc.), and a declaration by all contractors who will be responsible for the building’s construction specifying the building materials to be used. Everyone who holds rights to the land should sign this form;
- The applicant must provide maps and charts illustrating the planned structure, the borders of the plot, the external and internal designs of the planned structure and any nearby infrastructure. An Israeli-certified surveyor should sign these documents;
- When the owner of a property dies, his heirs must apply for an inheritance deed. This certificate is issued by a religious court or the civil inheritance office and must specify the particular plot of land in question. Only the lawful successor(s) is authorized to sign the application: (a) once it is registered with the Land Registry; or (b) once it is registered with the Land Settlement Officer when the land is in the process of settlement.

Applicants for a permit to build on land that is neither registered nor “under settlement” should provide all the documents necessary for registering land “under settlement” excluding a deed from the Land Settlement Officer, but additionally:

- An affidavit from the individual registered in the files of the tax authorities, proof of identity and how they gained rights to the land (e.g. inheritance, purchase, etc.);
- A plan for Registration Purposes. This is where the approved outline scheme for the property’s area amended the borders of the plot as they were registered during the process of “land settlement”. The plan costs several thousand US dollars and there are also legal fees for the required lawyer’s registration with the Israeli Land Administration.

Additionally, the website<sup>400</sup> of the Jerusalem Municipality’s Department of Licenses provides details on applying for a building permit.

---

400 See: [www.jerusalem.muni.il/jer\\_main/defaultnew.asp?lng=2](http://www.jerusalem.muni.il/jer_main/defaultnew.asp?lng=2).

**Awwad Abu-Qalbayn - Silwan, East Jerusalem (Part II)<sup>401</sup>**

"In 30 August 1970, the Israeli Minister of Finance declared, in accordance with the *Land (Acquisition for Public Purposes) Ordinances*<sup>402</sup> the confiscations of our lands in Al-Faruq Neighborhood in Silwan, East Jerusalem.

In 1990, my son Mohammed wanted to build his own house on the land that hadn't been confiscated or declared a "green zone". He presented to the municipality his 900 meters project proposal designed by an architect who stated that the house should not exceed 50 square meters since the municipality would not give permission to build more than 6 percent of the area of the land and should not exceed one floor in height. Mohammed presented all the required documentations and paid for a water supply with checks. Sadly, the municipality informed him that for this kind of proposal, he could build a 45 meters house, otherwise, he should pay 10,000 NIS (\$2,700) for the extra 5 meter square. Then, they informed him that he should give up 300 meters (33 percent) of his land for public use according to the Israeli land law. Due to the excessive constraints, my son decided to abandon the idea of building. However, the water company sued him because he didn't finish paying the water supplies. All this shows the double face of the Israeli policies: even if they allow you to build, at the same time they obstruct you with immovable constraints.

We cannot utilize our own lands and this has caused a serious housing crisis: too few homes for too many people. For instance, I have 5 sons and 3 girls and I cannot build a house for them."

**Approving a Building Permit**

If the Licensing Authority finds the building permit application satisfactory it will enable passage to the Local Planning and Building Committee (Local Committee) for consideration. The Local Committee typically requires further documentation, including:

- Additional maps and charts;
- Approval documents from: Rear-Area Headquarters of the Israeli military, the Israeli Land Administration, the telephone company, the electric company, the fire department, the Ministry of Health, and a laboratory report from an authorized laboratory regarding the quality of the concrete, sanitation and gas system in the planned construction.

401 Abu-Qalbayn, 'Al-Faruq Neighborhood, Silwan - East Jerusalem'.

402 The 1943 Land (Acquisition for Public Purposes) Ordinance is a Mandate-era law enabling Israel's Finance Minister to confiscate private land for the perpetually vague term: "public purposes". For further elaboration, see Chapter I (Section on *Land Confiscation*)..

In addition, the applicant must pay the following fees:<sup>403</sup>

- Building fees;
- Development fees (road, sidewalks, water, sewage, etc.);
- Betterment levy;
- Surveying and registration fee of the Plan for Registration Purposes.

The accumulated cost of a building permit is largely unaffordable<sup>404</sup>, particularly considering the relatively high poverty rate of Palestinians in Jerusalem. Furthermore, the application process can take from months extending to ten years before a final answer arrives.<sup>405</sup>

If denied a building permit by the Local Committee, the applicant may appeal this decision before the District Appeal Committee within 30 days. In the event that the Local Committee fails to reach a decision on an application, the applicant may also appeal to the District Appeal Committee within three months of submission of the application. If the appeal is rejected by the District Appeal Committee, the applicant may submit a petition to the Court of Administrative Affairs. If the appeal is rejected by the Court of Administrative Affairs, the applicant may submit a petition to the Supreme Court of Israel.

## HOME DEMOLITIONS

Since 1967, the Israeli authorities have demolished thousands of Palestinian-owned structures, including what the UN Office for the Coordination of Humanitarian Affairs (OCHA) has estimated to be 2,000 houses in East Jerusalem. The average number of demolition orders per year is almost half the number of issued building permits: For every 2.3 permits issued by the Jerusalem Municipality, they issued one demolition order.<sup>406</sup> While not all unauthorized homes have been issued demolition orders, there are currently approximately 1,500 demolition orders pending enforcement in East Jerusalem.<sup>407</sup>

403 The Civic Coalition for Defending Palestinian Rights in Jerusalem, *Aggressive Urbanism*, 15.

404 For example, the fees for a permit to construct a small 100 m2 building on a 500 m2 plot of land will amount to approximately NIS 74,000 (USD 17,620). See: OCHA, *The Planning Crisis in East Jerusalem*, 8; ICAHD estimates the cost of obtaining a permit to build a 200 square meter house on a half dunum (500 square meters) of land in a Palestinian neighborhood of Jerusalem is NIS 70,730 (US \$19,930/C15,393). ICAHD, *No Home No Homeland: A New Normative Framework for Examining the Practice of Administrative Home Demolitions in East Jerusalem* (December 2011), 24; available from [http://www.icahd.org/sites/default/files/No%20Home%20No%20Homeland%20V2.0%20\(3\).pdf](http://www.icahd.org/sites/default/files/No%20Home%20No%20Homeland%20V2.0%20(3).pdf).

405 The Civic Coalition for Defending Palestinian Rights in Jerusalem, *Aggressive Urbanism*, 16.

406 OCHA, *Special Focus: East Jerusalem Key Humanitarian Concerns*, 38.

407 ICAHD, 'Israel's Policy of Demolishing Palestinian Homes Must End'.

## Inspection Committees

In East Jerusalem there are two Israeli bodies of authority with the ability to issue demolition orders: the Jerusalem Municipality (local) and the Ministry of Interior (regional). The overlapping planning units operate simultaneously with a planning committee and a corresponding inspection squad.<sup>408</sup> Outside of Jerusalem the authority of the Municipality ceases.<sup>409</sup>

Inspectors decide on the 'administration' of buildings and whether to mark an 'illegal' house for demolition. Administrative demolitions, in the bureaucratic sense of the word, are subject to two sub-categories of demolition orders: administrative and judicial procedures. The choice between these procedures largely determines whether a house will be demolished within days or subject to years of judicial proceedings that are usually resolved with a plea-bargained fine. Every year, the inspectors mark hundreds of houses in East Jerusalem as illegal.<sup>410</sup>

## Administrative Demolitions

The majority of Palestinian home demolitions in East Jerusalem are administrative. Administrative demolitions are applied to new structures: either a building that is in progress or a structure that has not been lived in for 60 days. The demolition targets the building itself, not the building owner and is, therefore, not penal. Because the method of demolition does not require a court hearing, it can be implemented very quickly. A demolition is enabled 24 hours after delivering a notification leaving owners with extremely short notice to file a legal challenge or appeal in the Jerusalem Municipal Court.<sup>411</sup>

Administrative demolitions are applied using Article 238 of the Planning and Building Law that is composed of the following relevant sub-articles (c), (f), (g), and (h):<sup>412</sup>

408 Iruv Braverman, 'Powers of Illegality: House Demolitions and Resistance in East Jerusalem', *Buffalo Legal Studies Research Paper* 32, no. 05 (2009): 354.

409 Al Maqdese for Society Development, *The Socio-economic and Demographic Effects of House Demolitions in Jerusalem* (Jerusalem, March 2011), 10; available from [http://www.al-maqdese.org/attachment/150/socio\\_economic.pdf?g\\_download=1](http://www.al-maqdese.org/attachment/150/socio_economic.pdf?g_download=1); accessed 22 April 2013.

410 Braverman, 'Powers of Illegality', 353.

411 Article 250 of the Planning and Building Law enables an appeal. See: Society of St. Yves, 'The Legal Framework - Jerusalem', *Society of St. Yves, Catholic Center for Human Rights*, n.d.; available from [http://www.saintyves.org.il/index.php?option=com\\_content&view=article&id=108%3Ademolition-legal&catid=44%3Ahouse-demolitions&Itemid=59&lang=en](http://www.saintyves.org.il/index.php?option=com_content&view=article&id=108%3Ademolition-legal&catid=44%3Ahouse-demolitions&Itemid=59&lang=en); accessed 23 April 2013.

412 See a 'Sample Administrative Demolition Order' from 20 December 2006 translated by Human Rights Watch here: Human Rights Watch, 'Sample Administrative Demolition Order', December 2006; available from <http://www.hrw.org/reports/2008/iotp0308/14.htm>; accessed 23 April 2013.

(c) *An administrative Demolition Order will also apply to any additional construction done without permit after the order was issued, and it will be unnecessary to issue another order for the aforementioned addition.*

(f) *An Administrative Demolition Order can be carried out: (1) If the structure was build without a permit – from 24 hours of being affixed [to the building]. (2) In any other circumstance – from 72 hours of being affixed.*

(g) *Anyone considering himself wronged by the Administrative Demolition Order is entitled to petition the court for its dismissal, though such a petition will not delay the validity of the order. An appeal against the decision of the court on such petitions has the same status as an order issued according to article 250 of the Planning and Building Law – 1965.*

(h) *The court will not cancel or delay an Administrative Order unless it is proved that the construction for which the order was issued had been done legally or that carrying out the order is not necessary for preventing the former from becoming an established fact.*

Administrative demolitions are issued and enforced by the Jerusalem Mayor (in his capacity as Chairman of the Jerusalem Local Planning Committee) or a senior civil servant (the head of the Jerusalem District of the Interior Ministry in his capacity as Chairman of the Regional Planning Committee).<sup>413</sup>

The procedure for recourse involves appealing the Israeli Magistrate's Court to cancel the order. Appellants generally rely on two arguments in which the burden of proof is on them: 1. The building has a permit (i.e. the demolition was issued in error), or 2. The construction falls outside the mandate of the demolition order (e.g. the structure is not in the process of construction).<sup>414</sup> The judge has little room to grant an appeal unless there is a technical fault in the issuance of an order. Finally, the cost of demolition is typically billed to the homeowner.<sup>415</sup>

Even internal construction and renovation may require a building permit and, if conducted without one, may expose residents to administrative demolition of the full structure.

413 Construction without a permit also occurs in the settlements, yet the majority of settlement buildings are issued licenses retroactively highlighting the discriminatory policies of the Israeli authorities. See: Al Maqdese for Society Development, *The Socio-economic and Demographic Effects of House Demolitions in Jerusalem*, 9.

414 Ir amim, 'A Layman's Guide to Home Demolitions in East Jerusalem', March 2009; available from <http://eng.ir-amim.org.il/?CategoryID=370>; accessed 23 April 2013.

415 Anthony Coon, 'Israel and the Occupied Territories, Demolition and Dispossession: The Destruction of Palestinian Homes' (December 1999); available from <http://www.amnesty.org/en/library/asset/MDE15/059/1999/en/2ac9a23-e065-11dd-9086-4d51a30f9335/mde150591999en.html>; accessed 23 April 2013.

## Judicial Demolitions (less than five years after construction)

Judicial demolitions less than five years after construction are used to target homes if the structure falls outside the boundaries of applying an administrative demolition such as if the home was not newly built or renovated. Judicial demolitions are issued from the District or Local Affairs Commission<sup>416</sup> usually after the trial and conviction of someone who had been engaged in illegal construction (i.e. on non-registered land or that which had been zoned for another type of construction).<sup>417</sup> Israeli authorities implement a demolition priority to homes in the Old City or in areas marked as green or public zones.<sup>418</sup>

Article 145 of the Planning and Building Law enforces the authorities' decision and states:<sup>419</sup>

*(a) A person shall not carry out or begin to carry out any of the following save after the Local Commission has granted him a permit therefore, and shall not carry them out save in accordance with the conditions of the permit:*

*(1) The laying out, construction and closing of a road;*

*(2) The erection, demolition or re-erection of the whole or part of a building, or an addition, or any repair, to an existing building (except an internal repair which is not a structural repair and which does not infringe the permit for the construction of the building);*

*(3) Any such other work on, or any such use of, any land or building as, in order to ensure the implementation of any Scheme, is designated by regulations as work or use requiring a permit.*

A judicial demolition is tried in court. The Municipality must file a charge of indictment with the Israeli Magistrate Court, but the charge is capped to five years after the structure has been built. If an indictment is filed, a fine is associated as part of the punishment. Non-payment of fines exposes residents to the risk of 3 to 6 months imprisonment.<sup>420</sup> Individuals have an opportunity to ask for an extension of

416 Article 242 of the Planning and Building Law (1965) details the responsibility for a demolition order according to the Local Commission and Court or Attorney General and chairman of the District Commission.

417 Al Maqdese for Society Development, *The Socio-economic and Demographic Effects of House Demolitions in Jerusalem*, 9.

418 Braverman, 'Powers of Illegality', 353.

419 *Planning and Building Law 5725-1965*.

420 ICAHD, *No Home No Homeland*, 38.



**עיריית ירושלים**  
**המחלקה לפיקוח על הבניה**

**עיריית ירושלים**  
**המחלקה לפיקוח על הבניה**

**بلدية اورشليم القدس**  
**قسم القطري للتفتيش على البناء**

מס' תיק פיקוח: 17, 6 / 0  
תאריך: \_\_\_\_\_  
מס' תיק פיקוח: \_\_\_\_\_  
رقم الملف: \_\_\_\_\_

**התראה אנذار**

בהתאם לחוק התכנון והבניה תשכ"ח-1965  
במوجب قانون التنظيم البناء لعام-1965

1. בבדיקה שנערכה התברר כי:  
יחד הכסף الذي جرى تبين ان:

הגך בונה / בנית ללא היתר בניה ☒  
תقوم בبناء / قامت ببناء بدون رخصة

הגך בונה / בנית בסטייה מהיתר / מתכנית ☒  
תقوم ببناء / قامت ببناء مخالفت للرخصة / الخطة

הגך משתמש במקרקעין בלא היתר / בסטייה מהיתר / מתכנית ☒  
תقوم باستعمال العقار بدون رخصة / مخالفت للرخصة / الخطة

הגך מבצע עבודה / שימוש השונים היתר / ע"פ חקנות התכנון והבניה ☒  
תقوم بتنفيذ عمل / استعمال يتوجب الحصول على رخصة (بموجب النظمة التنظيم والبناء)

1. הגך נדרש על כן להפסיק מייד את כל עבודות הבניה השימוש ולהחזיר את המצב לקדמותו.  
يتوجب عليك التوقف فورا عن جميع اعمال البناء/ الاعمال والارجاع الوضع لما كان عليه سابقا.

2. הגך נדרש להופיע מיידית בפני המפקח ע"מ לתת הבהרה על הבניה/ השימוש הנ"ל.  
يتوجب عليك المتول فورا اما المكتش وذلك لتوضيح امر عن البناء/ الاستعمال المذكور.

3. אם לא תמלא את ההתראה נשקול לנקוט נגדך צעדים משפטיים ו/ או מנהליים - **אמר هدم اداري!**  
اذا لم تنفذ هذا الانذار سوف ن فكر في اتخاذ الاجراءات القانونية/ الادارية ضداك.

שם המפקח / اسم المكتش \_\_\_\_\_  
חתימת התופע \_\_\_\_\_

1 קומה 4, ירושלים מיקוד: 91007 טלפון: 02-6297646 פקס: 02-6296039

Warning prior to administrative demolition in Beit Safafa, East-Jerusalem in June 2010.

the demolition order. If an extension is granted, the success of it tends to be based on the possibility that the appellant could acquire a building permit on the basis of humanitarian reasons.<sup>421</sup>

A judicial demolition order usually requires residents to demolish their own homes. If they do not, residents will be charged for the Israeli authorities' fees for bulldozing, hiring security and other imposed costs.<sup>422</sup> A demolition based on Article 145 is no longer applicable after the five-year time period described in the law has passed.

### **Judicial Demolitions (more than five years after construction)**

Judicial demolitions more than five years after construction are applied through Article 212 of the Planning and Building Law (1965). Article 212 is a statute that allows the State to demolish homes deemed "a public nuisance." Demolition under Article 212 does not require an indictment as it targets the structure and not the individual home owner.<sup>423</sup>

The typical procedure for activating Article 212 is that the authorities will approach the court with a declaration that demolition of the illegal structure is within the public interest. Public interest is used as the justification for a demolition along with the structure being a "public nuisance", often interpreted as synonymous with 'Jewish purpose'.<sup>424</sup> Almost any demolition can eventually be justified this way. The only way to combat the mechanism is to establish a presence in the official public record through a planning scheme. The basis for declaring a "public interest" is enshrined in the Master Plan: the State may even alter the status of an area slated for some other use (road or forest, for example) regardless of the pre-existing infrastructure.

---

421 Society of St. Yves, 'The Legal Framework - Jerusalem'.

422 ICAHD, *No Home No Homeland*, 39.

423 For example, after the seizure of East Jerusalem in June 1967, Israel demolished 135 homes in the Mughrabi Quarter of the Old City in order to expand the plaza and worship area of the Wailing Wall. The neighborhood was completely destroyed over the coming years after another 100 homes were demolished by the government who cited Article 212 as its legal basis. See: Ma'an News, Article 212: The Israeli Planning and Building Law of 1965, 13 March 2010, <http://www.maannews.net/eng/ViewDetails.aspx?ID=268387>.

424 See: BADIL and COHRE, *Ruling Palestine*, 98; Al-Maqdese for Society Development, *Home Demolitions in Jerusalem: A Means Toward Ethnic Cleansing* (2011), 25.

Article 212 states:

*Where an offence under this Chapter has been committed in respect of any building and, if any person had been convicted thereof, the Court would have been competent to order as provided in section 205, the Court may so order even without any person having been convicted as aforesaid, provided one of the following applies:*

- (1) The person who committed the offence cannot be found;*
- (2) It is impossible or impracticable to serve a summons upon him;*
- (3) The person who was the owner of the building at the time the offence was committed, and who committed it, is no longer the owner thereof;*
- (4) It cannot be proved who committed the offence;*
- (5) The person who committed the offence has died or is not punishable for reasons which do not make the act legal.*

#### **Fakhri Abu Diab - Silwan, East Jerusalem <sup>425</sup>**

Al-Bustan is a neighborhood in the village of Silwan. It covers an area of 57 dunums. There are 88 housing structures under threat of demolition in the neighborhood in which around 1000 residents are directly affected. I live in my house with my wife, my two sons and four grandchildren. The house is located in the northern area of Al-Bustan, which was built before 1962 since I was born in this house on the 8th of February 1962. In this neighborhood, all estates are private property of the residents and their ownership over the lands is registered in the Ottoman archives (*tabou*) and in the British records: in our case there is no dispute over the ownership.

The Municipality claims that it wants to qualify the neighborhood and improve our living conditions by building a garden (The Kings Garden), which means that we will have a garden instead of our houses - we will be homeless. Near Al-Bustan there is a colony called "City of David" and this area of Al-Bustan is called "The King's Garden". The Municipality wants to incorporate this area into the colony. Both of these two areas are part of the "Holy Basin" covering all the area that goes from Sheikh Jarrah neighborhood to Al-Bustan, and which the Municipality had designated, during the 1970s, as "Green Zones" or "Open Public Areas". These are areas in which Palestinians reside.

#### **Demolition orders**

On the 6 November 2005, I received from the Municipality of Jerusalem, the first

<sup>425</sup> Fakhri Abu Diab, 'Al Bustan, Silwan - East Jerusalem', interview by BADIL, March 2013.

demolition order along with all the residents of Al-Bustan, which stated that the Municipality of Jerusalem gives the order to demolish the houses in Al-Bustan neighborhood because this area has a significant historical and archeological importance for the Jewish people and internationally. Therefore, the Municipality informed us that our houses were built illegally because we built without permits and according to the outline plan (AM/9) approved by the Municipality in 1977 designating the area as an "open public area". This statement is wrong. Many houses in Al-Bustan neighborhood were built before 1962. In addition to that, many residents tried to submit local plans to register the construction of their homes, or have applied for building permits over the years, all of which were rejected by the Municipality of Jerusalem.

In 2008 I received another demolition order, which stated that the house was built illegally. Another order was distributed in 2010, but this time they stopped writing our names on the orders and in many cases we weren't aware to whom the demolition orders or court notices were addressed. Therefore we hired a lawyer who started representing us.

### ***Court Case***

In 23 December 2010 I was sued by the state of Israel for having an illegal house that was built without permits from the Local Committee for Building and Planning. The Court for Local Matters decision on 12 June 2012 was to fine me 35,000 NIS (\$9,700) and that I can be charged with the same amount of money if I commit any "violations" of the Building and Planning Law in the coming 24 months. The decision also included an order to self-demolish my house before the date of 12 June 2013 (within a year), otherwise, the municipality would demolish it and charge me the demolition costs plus penalties incurred by failing to carry out the court's order, which could include imprisonment. This was the decision of the Court for Local Matters against which I appealed to the District Court. My appeal was rejected in August 2012.

The Municipality appealed against the dates of the demolitions given by the court for me and the other residents of Al-Bustan asking to shorten the date of the house demolitions. The last court session was on 11 February 2013 in the District Court. The judge stated that she had already decided and it would be sent within two weeks to the concerned persons. No one has received a decision yet.

In 2009 and in parallel to the court cases, we, the popular committee, decided to build a protest tent, which was made for multiple purposes. First of all to have a gathering point for all the residents of Al-Bustan whose houses are under the threat of demolition. We also wanted to show that our struggle against the Municipality is a popular struggle and non-violent. Furthermore, it is made to host and be a forum for international and national organizations, media organizations and activists who are interested in our struggle.

**Demolition**

Without giving any kind of notice, the Israeli authorities closed the entire area and they gave 15 minutes to the family to pack up their stuff. Furthermore, the affected person must pay the Israeli administration for the home demolition costs. In addition to the house, they will also demolish anything else they find on that land without any considerations.

**Building permit**

It's almost impossible to get a home building permit. From 1967 until now, the Jerusalem Municipality provided the whole Silwan village area just 62 building permits only for those houses that do not exceed 150 meters square and a school. We would need hundreds of permits for building housing units each year to cover the needs of the residents and the young people and couples.

Because of this situation, we are always under threat of losing our houses. When a house is demolished it does not only mean razing a wall, but it means destroying a family, a home and the future.

**GAZA STRIP****Raquel Rolnik, United Nations General Assembly 24 December 2012**

“An almost complete physical and political isolation, combined with successive military operations, has deeply affected the housing situation in Gaza. While Israel withdrew its settlers and military from inside the Gaza Strip in 2005, it remains in control of the borders, including the entry and exit of people and goods, as well as the air space and access to the sea. Housing conditions have been significantly affected by military operations. During the Israeli offensive codenamed Cast Lead alone, more than 20,000 homes were destroyed or severely damaged. It is estimated that approximately 71,000 new housing units are required to cover current housing needs.”<sup>426</sup>

<sup>426</sup> Rolnik, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in This Context*, para. 88.



## RECOMMENDATIONS

### RECOMMENDATIONS TO PALESTINIAN INDIVIDUALS:

#### Proactive Steps

- Save all documents relevant to property ownership, possession and/or use including, but not limited to, deeds (*tabou*, *kushan*, contract, inheritance), lease and/or cultivation contracts, land registration decisions, construction permits, receipt of tax payments, services bills, maps, photographs and newspaper announcements;
- File all documents in official departments and institutions and save copies in multiple locations;
- Regularly renew official documents and inform authorities and departments of property loss or attempts of unlawful sale, transmission, imitation, or falsification of property;
- Be wary of potential fraud and forgery and do not sign documents without consulting a trusted advocate in advance;
- Do not cease accessing, using or cultivating your property;
- Devote part of your owned land (if possible) for public use such as a park, sport facility, school, or cultural venue in pursuit of enhancing peoples' presence in and regular visits to the land, as well as strengthening their ties with the habitat;
- File complaints or objections regarding actions committed by Israeli authorities or individuals. Preparations should include documenting the date and details of the incident and, ideally, photographic evidence (i.e. photographs of unlawful individuals' faces and of the scene from a distance showing the location and the context of the incident).



### **Steps for Immediate Response**

- Seek legal assistance. In the case of a violation or potential violation of your rights, immediately seek legal assistance by consulting a lawyer or specialized organization. Waiting to respond greatly reduces your chances of preventing harm;
- Provide your lawyer or legal aid organization with all necessary documents such as those proving your ownership, possession and use of property;
- Request that your lawyer explains every step she takes and to provide you with a copy of all relevant documents and decisions of the Israeli authorities including all legal correspondences and documents issued by a court, Israeli authorities, involved committees or the Israeli Civil Administration;
- Seek mobilization and solidarity. Seek popular, civil society, official and international support by ensuring consistent physical presence, residency, cultivation and construction activities on your property;
- Publicize and popularize your case. In collaboration with local and international media agencies and official institutions, publicize your case through widespread advocacy campaigning.

### **RECOMMENDATIONS TO PALESTINIAN MUNICIPALITIES, POPULAR COMMITTEES AND VILLAGE COUNCILS:**

- Monitor Israeli planning, development and construction plans. Teach Palestinian communities and individuals about Israeli planning policies and how to take measures necessary for preventing displacement through presence in the planning process as well as how to avoid missing petition periods. In particular, monitor developments with the Jerusalem Master Plan;
- Organize and implement popular initiatives and advocacy activities aimed at pressuring the Israeli High Planning Council and Jerusalem Municipality to connect all communities in Area C and Jerusalem to public services;
- Coordinate coverage of initiatives with all relevant actors and individuals including the local and international media;
- Build communal or collective residencies and developments in order to distribute the costs of construction, cultivation and/or investment permits;



- Encourage and direct construction companies and/or contractors to invest in projects, particularly those located in Area C of the West Bank, the Gaza Strip Buffer Zone and Jerusalem;
- Connect property to public services and facilities (i.e. networks of electricity, water, telephone, roads, etc.);
- Encourage and facilitate public and private investment, and seek civic assistance to cultivate and develop the at-risk property through voluntary work and popular initiatives;
- Expand infrastructure and construction, particularly to isolated communities, as a prerequisite to facilitating Palestinian access to health, education, job market and recreational facilities;
- Improve roads in order to facilitate land access and support activities in the land.

**RECOMMENDATIONS TO THE PALESTINE LIBERATION ORGANIZATION AND THE PALESTINIAN AUTHORITY:**

- Promote initiatives that hold Israel accountable to international law, including calls for criminal investigation and prosecution, reparations for Palestinian victims and rights-based durable solutions for displaced persons;
- Adopt the civil society call for boycott, divestment and sanctions of Israel. Specifically, call on states to suspend economic cooperation with and apply embargos on arms trade with Israel;
- Reject the compartmentalization of the occupied Palestinian territory and challenge its associated regime of restrictions by establishing a planning and development strategy accompanied with a cumulative implementation process. This will necessarily require:
  - Designing a Palestinian (national) master plan that will envision horizontal growth to address the residential crisis, necessarily requiring maximum land use within the shortest timeframe;
  - Devoting an adequate quota of the public budget of the Palestinian Authority to cover the costs of construction permits, legal assistance and petitions.

**RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY AND CIVIL SOCIETY**

- Study and address the root causes of the ongoing forcible displacement of Palestinians by Israel. After 65 years of a protracted Nakba, civil society and influencers continue to bear the duty of promoting awareness of and effective responses to Israel's system of occupation, apartheid and colonialism that prevents Palestinian self-determination and constitutes the root cause of Israel's policy of population transfer;
- Develop mechanisms and take effective measures to bring Israel into compliance with international law. Responsibility and accountability for injuries, loss of life and property should be pursued through investigations, ensuring reparations and prosecuting those guilty of serious international human rights and humanitarian law violations;
- Improve response mechanisms in the occupied Palestinian territory through short-term emergency aid within the framework of filling medium and long-term protection gaps, a central requirement of which is preventing institutionalized forced displacement;
- Lobby governments to cease diplomatic, military and economic support of and cooperation with the state of Israel;
- To the degree possible, reject limitations on interventions based on Israeli political and legal requirements.
- Ensure reparation and remedies for Palestinian victims. Practical measures to facilitate housing and property restitution and compensation by Israel include comprehensively documenting damages incurred by Israel's violations of international human rights and humanitarian law, and allocating compensation funds such as through activating and developing the UN Register of Damages caused by the Wall;
- Update the compilation work begun in the Handbook with changes in Israeli legislation, court decisions and state practices. Expand on the Handbook's preliminary research particularly on forcible population transfer in the Gaza Strip. Elaborate on all issues illustrated in the Handbook with further detail.

## BIBLIOGRAPHY

- 'Izzat Muhammad Mustafa Duweikat et al. v. Government of Israel (n.d.).
- 4713/93 Ze'ev Golan et al. v. The Special Committee According to Article 29 of the 1950 Absentees' Property Law et al. (HCJ 1994).
- "Abd Al-'Aziz Muhammed 'Ayed et al. v. Commander of IDF Forces in Judea and Samaria, HCJ (n.d.).
- Absentees' Property Law 5710-1950*, 1950. <http://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A>.
- Abu Diab, Fakhri. Al Bustan, Silwan - East Jerusalem. Interview by BADIL, March 2013.
- Abu Hussein, Hussein, and Fiona McKay. *Access Denied: Palestinian Land Rights in Israel*. London ; New York: Zed Books, 2003.
- Abu Kishk, Bakir Abu. "Arab Land and Israeli Policy." *Journal of Palestine Studies* 11, no. 1 (October 1981): 124–135. doi:10.2307/2536050.
- Abu-Qalbayn, Awwad. Al-Faruq neighborhood, Silwan - East Jerusalem. Interview by BADIL, February 2013.
- Abu Sitta, Salman. *From Refugees to Citizens at Home*. London: Palestine Land Society and Palestinian Return Centre, 2001.
- ACRI. *Discrimination, Neglect and Deprivation: Planning and Construction Policy in East Jerusalem*. Tel-Aviv: ACRI- The Association for Civil Rights in Israel and BIMKOM- Planners for Planning Rights, 2008. <http://www.acri.org.il/en/>.
- — —. *East Jerusalem - By the Numbers*. ACRI- The Association for Civil Rights in Israel, May 7, 2013. <http://www.acri.org.il/en/2013/05/07/ej-figures/>.
- — —. *Files New Petition Against Expulsion of 1,000 Palestinians from Area C*. Tel-Aviv: ACRI- The Association for Civil Rights in Israel and BIMKOM- Planners for Planning Rights, January 16, 2013. <http://www.acri.org.il/en/2013/01/16/new-petition-firing-zone-918/>.
- Adalah. "Applying the Absentee Property Law on Land in East Jerusalem," January 10, 2008. <http://apjp.org/absentee-property-law-cannot-b/2011/11/25/applying-the-absentee-property-law-on-land-in-east-jerusalem.html>.
- — —. *Inequality Report: The Palestinian Arab Minority in Israel*. Haifa: Adalah – The Legal Center for Arab Minority Rights in Israel, February 2011. [http://adalah.org/uploads/Christian%20Aid%20Report%20December%202010%20FINAL\(1\).pdf](http://adalah.org/uploads/Christian%20Aid%20Report%20December%202010%20FINAL(1).pdf).

— — —. *The Inequality Report: The Palestinian Arab Minority in Israel*. Haifa, Israel: Adalah – The Legal Center for Arab Minority Rights in Israel, 2011. [http://www.adalah.org/upfiles/Christian%20Aid%20Report%20December%202010%20FINAL\(1\).pdf](http://www.adalah.org/upfiles/Christian%20Aid%20Report%20December%202010%20FINAL(1).pdf).

Adalah and LAW v. Commander of the Israeli Army in the West Bank (HCJ 2002).

Adalah, BADIL, and Habitat International Coalition (HIC). *Recurring Dispossession and Displacement of 1948 Palestinian Refugees in the Occupied Palestinian Territory*. Joint written statement to the UN Human Rights Council. Adalah – The Legal Center for Arab Minority Rights in Israel, the Badil Resource Center for Palestinian Residency and Refugee Rights, the Habitat International Coalition (HIC), August 27, 2009. <http://unispal.un.org/UNISPAL.NSF/0/0F9AB8AF7EE5F0A185257647006A47D0>.

Adalah, et. al. v. IDF Major General, Central Command, Moshe Kaplinski, et. al (HCJ 2005).

*After the Rift: New Directions for Government Policy Towards the Arab Population in Israel*. Hamachpil, Beer-Sheva, November 2000. [http://www.dirasat-aclp.org/files/After\\_the\\_Rift-English.pdf](http://www.dirasat-aclp.org/files/After_the_Rift-English.pdf).

Ahmad 'Issa Abu 'Aram et al v. Commander of IDF Forces in Judea and Samaria (HCJ Pending).

Al-Ghoul, Abdallah Masoud Eid. Al-Shatee Refugee Camp, District of Gaza City. Interview by BADIL, February 2013.

Al-Haq. "Israel's Punitive House Demolition Policy." Al-Haq, 2003. <http://www.stanford.edu/group/scpi/images/darcy.pdf>.

— — —. *Shifting Paradigms: Israel's Enforcement of the Buffer Zone in the Gaza Strip*. Ramallah: Al-Haq, 2011.

— — —. *The Annexation Wall and Its Associated Regime*. Ramallah: Al-Haq, 2012. <http://www.alhaq.org/publications/publications-index/item/the-annexation-wall-and-its-associated-regime>.

Al-Harami, Ghassan. The Village of Jayyus, District of Qalqilya. Interview by BADIL, March 2013.

Al-Khawasneh, A.S., and R. Hatano. *The Human Rights Dimensions of Population Transfer Including the Implantation of Settlers, Preliminary Report Prepared for Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-fifth Session*. Bethlehem, Palestine: BADIL-Resource Center for Palestinian Residency and Refugee Rights, August 2, 1993.

Al Maqdese for Society Development. *The Socio-economic and Demographic Effects of House Demolitions in Jerusalem*. Jerusalem: Al Maqdese for Society Development, March 2011. [http://www.al-maqdese.org/attachment/150/socio-economic.pdf?g\\_download=1](http://www.al-maqdese.org/attachment/150/socio-economic.pdf?g_download=1).

Al-Maqdese for Society Development. *Home Demolitions in Jerusalem: A Means Toward Ethnic Cleansing*. Jerusalem: Al-Maqdese for Society Development, 2011.

Albarim, Muhamad Abed Elrazaq. The village of Abbsan, District of Khan-Yunis. Interview by BADIL, February 2013.

Albeck, Plia. "Press Release by PCBS on the Occasion of Land Day, March 2013." *Palestine Central Bureau of Statistics*, March 30, 2013. [http://www.pcbs.gov.ps/portals/pcbs/PressRelease/Press\\_En\\_LandDay2013E.pdf](http://www.pcbs.gov.ps/portals/pcbs/PressRelease/Press_En_LandDay2013E.pdf).

— — —. "The Use of Land in Judea and Samaria for the Purpose of Jewish Settlement: Legal Aspects and the Test of Reality." In *Ascending the Mountain: Renewed Jewish Settlement in Judea and Samaria*. Jerusalem: Beit El Library and the Judea and Samaria Academic College, 2002.

Albeck, Plia, and Ran Fleischer. *Land Law in Israel*. Jerusalem: Self-Published, 2005.

Albina v. Custodian for Government Property in Judea and Samaria (n.d.).

Alqasis, Amjad. "The Ongoing Nakba -The Continuous Forcible Displacement Of The Palestinian People." *Al-Majdal Quarterly Magazine of BADIL*, Autumn 2012.

Amnesty International. "Israel and the Occupied Territories Under the Rubble: House Demolition and Destruction of Land and Property." Amnesty International, May 2004. <http://www.amnesty.org/en/library/asset/MDE15/033/2004/en/2193fae2-d5f6-11dd-bb24-1fb85fe8fa05/mde150332004en.pdf>.

ARIJ. "Status of Palestinian Territories and Palestinian Society Under Israeli Occupation." *40 Years Of Israeli Occupation 1967-2007*. Accessed April 24, 2004. <http://www.arij.org/atlas40/chapter2.2.html>.

— — —. *The Israeli Policies in Area (C): "Silent Transfer of the Palestinian Population"*. Jerusalem: The Applied Research Institute- Jerusalem (ARIJ), October 2008. [http://www.poica.org/editor/case\\_studies/view.php?recordID=1592](http://www.poica.org/editor/case_studies/view.php?recordID=1592).

Ayyub et al v. Minister of Defense et al, 33(2) 113 Piskei Din (HCJ 1979).

B'Tselem. *A Policy of Discrimination, Land Expropriation, Planning and Building in East Jerusalem*. Jerusalem: B'Tselem, May 1995. [http://www.btselem.org/publications/summaries/199505\\_policy\\_of\\_discrimination](http://www.btselem.org/publications/summaries/199505_policy_of_discrimination).

— — —. *Access Denied Israeli Measures to Deny Palestinians Access to Land Around Settlements*. Jerusalem: B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, September 2008. [http://www.btselem.org/publications/summaries/200809\\_access\\_denied](http://www.btselem.org/publications/summaries/200809_access_denied).

— — —. *Land Grab: Israel's Settlement Policy in the West Bank*. Translated by Yael Stein. Jerusalem: B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, May 2002. [http://www.btselem.org/download/200205\\_land\\_grab\\_eng.pdf](http://www.btselem.org/download/200205_land_grab_eng.pdf).

— — —. "Punitive House Demolitions from the Perspective of International Law." B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, May 2010. <http://www.btselem.org/printpdf/51491>.

— — —. *South Hebron Hills: Khirbat Susiya*. Jerusalem: B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, January 1, 2013. [http://www.btselem.org/south\\_hebron\\_hills/susiya](http://www.btselem.org/south_hebron_hills/susiya).

— — —. *State's Response Re Firing Zone 918 Ignores the Laws of Occupation*. B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, August 27, 2012. [http://www.btselem.org/south\\_hebron\\_hills/20120827\\_firing\\_zone\\_918\\_state\\_response](http://www.btselem.org/south_hebron_hills/20120827_firing_zone_918_state_response).

— — —. "Through No Fault of Their Own: Punitive House Demolitions During the al-Aqsa Intifada." B'Tselem, November 2004. [http://www.btselem.org/download/200411\\_punitive\\_house\\_demolitions\\_eng.pdf](http://www.btselem.org/download/200411_punitive_house_demolitions_eng.pdf).

— — —. *Under the Guise of Legality Israel's Declarations of State Land in the West Bank*. Jerusalem: B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, February 2012. [http://www.btselem.org/download/201203\\_under\\_the\\_guise\\_of\\_legality\\_eng.pdf](http://www.btselem.org/download/201203_under_the_guise_of_legality_eng.pdf).

BADIL. *Confiscation and Discriminatory Distribution of Land*. Bethlehem, Palestine: BADIL- Resource Center for Palestinian Residency and Refugee Rights, June 3, 2010. <http://www.badil.org/es/monitoreo-continuo-de-los-desplazamientos/item/1369-land-confiscation?tmpl=component&print=1>.

— — —. *Survey of Palestinian Refugees and Internally Displaced Persons, 2008-2009*. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency & Refugee Rights, 2009.

BADIL, and COHRE. *Ruling Palestine – A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine*. Geneva, Switzerland; Bethlehem, Palestine: The Centre on Housing Rights and Evictions (COHRE); BADIL Resource Centre for Palestinian Rights and Refugee Rights, 2005.

Bahar et al. v. IDF Commander of the West Bank (HCJ 2002).

Beit Sourik Village Council v. The Government of Israel (HCJ 2004).

Bentwich, Norman (Compiler), ed. *Legislation of Palestine, 1918-1925: Including the Orders-in-Council, Ordinances, Public Notices, Proclamations, Regulation, Etc.* Vol. 1. 2 vols. London: Whitehead Morris Ltd, 1926.

Benvenisti, Meron, and West Bank Data Base Project. *The West Bank and Gaza Atlas*. Jerusalem : Boulder, Colo: West Bank Data Base Project ; distributed by Westview Press, 1988.

Bimkom. *The Prohibited Zone: The Israeli Planning Policy in the Palestinian Villages in Area C*. Jerusalem: Bimkom – Planners for Planning Rights, June 2008.

Bimkom and Ir Amim. *The Planning Deadlock: Planning Policy, Land Regularization, Building Permits and House Demolitions in East Jerusalem*. Jerusalem: Bimkom – Planners for Planning Rights and Ir Amim, April 2005.

Bisharat, George Emile. “Land, Law and Legitimacy in Israel and the Occupied Territories.” *American University Law Review* 43, no. 2 (Winter 1994): 467–561.

Bisharat, Mahmoud Mohammad. Khirbat Humsa, Jordan Valley. Interview by BADIL, March 2013.

Braverman, Irus. “Powers of Illegality: House Demolitions and Resistance in East Jerusalem.” *Buffalo Legal Studies Research Paper* 32, no. 05 (2009): 1–73.

CCPRJ. *Construction of a “National Park” on Confiscated Palestinian Land in Jerusalem a Clear Violation of Human Rights*. Jerusalem: The Civic Coalition of Palestinian Rights in Jerusalem (CCPRJ). Accessed April 23, 2013. <http://civiccoalition-jerusalem.org/human-rights-resources/publications/submissions/construction-national-park-confiscated-palestinian-l>.

— — —. *Urban Planning in Jerusalem*. Jerusalem: Civic Coalition for Palestinian Rights in Jerusalem. Accessed April 22, 2013. [http://www.civiccoalition-jerusalem.org/system/files/urban\\_planning\\_in\\_jerusalem\\_final.pdf](http://www.civiccoalition-jerusalem.org/system/files/urban_planning_in_jerusalem_final.pdf).

Center for the Defence of the Individual v. Government of Israel et al. Supplemental Response on behalf of the Respondents (HCJ 2009).

Coalition for Jerusalem. “Master Plan 2000,” August 2004. <http://www.coalitionforjerusalem.org/main.php?id=30>.

COHRE. *Second Quarterly Report: Violations of the Right to Adequate Housing in the Occupied Palestinian Territory*. Centre on Housing Rights and Evictions (COHRE), June 2009. [http://www.americantaskforce.org/resources/2009/06/24/1245816000\\_0](http://www.americantaskforce.org/resources/2009/06/24/1245816000_0).

*Collections of Proclamations, Orders and Appointments No. 5*, 1967.

Coon, Anthony. "Israel and the Occupied Territories, Demolition and Dispossession: The Destruction of Palestinian Homes." Amnesty International, December 1999. <http://www.amnesty.org/en/library/asset/MDE15/059/1999/en/2acf9a23-e065-11dd-9086-4d51a30f9335/mde150591999en.html>.

Daqaq Nuha v. The Heirs of the Late Naame Atiya Adwi Najar, Psak Din (Jerusalem District Court 2006).

*Defence (Emergency) Regulations 1945*, 1945. <http://nolegalfrontiers.org/en/military-orders/mil02>.

Deger, Allison. "National Park Land-grabs from Two East Jerusalem Neighbourhoods." *MONDOWEISS*, January 6, 2012. <http://mondoweiss.net/2012/01/national-park-land-grabs-from-two-east-jerusalem-neighborhoods.html>.

*Development Authority (Transfer of Property) Law 5710-1950*, 1950. <http://www.israelawresourcecenter.org/israelaws/fulltext/devauthoritylaw.htm>.

Diakonia. *Expert Opinion of International Humanitarian Law Requiring of the Occupying Power to Transfer Back Planning Authority to Protected Persons Regarding Area C of the West Bank*. Jerusalem: Diakonia, February 1, 2011. <http://rhr.org.il/heb/wp-content/uploads/62394311-Expert-Opinion-FINAL-1-February-2011.pdf>.

— — —. "The Oslo Agreements." *Easy Guide to International Humanitarian Law in the Occupied Palestinian Territory (oPt)*, June 21, 2007. <http://www.diakonia.se/sa/node.asp?node=1125>.

— — —. *Within Range: An Analysis of the Legality of the Land "Buffer Zone" in the Gaza Strip*. Jerusalem: Diakonia, 2011. [http://www.diakonia.se/documents/public/IHL/IHLanalysis/within\\_range\\_legal\\_analysis\\_of\\_the\\_gaza\\_buffer\\_zone\\_on\\_land\\_Diakonia\\_sept2011.pdf](http://www.diakonia.se/documents/public/IHL/IHLanalysis/within_range_legal_analysis_of_the_gaza_buffer_zone_on_land_Diakonia_sept2011.pdf).

Dweikat et al. v. Government of Israel et al., 34(1) 1 Piskei Din (HCJ 1979).

Edmond Levy et al v. Legacy of the late Afanah Mahmoud Mahmoud (Abu Sharif) et al, 40(1) 374 Peski Din (1986).

Forman, Jeremy, and Alexandre (Sandy) Kedar. "From Arab Land to 'Israel Lands': The Legal Dispossession of the Palestinians Displaced by Israel in the Wake of 1948." *Environment and Planning D: Society and Space* 22, no. 6 (2004): 809–830. doi:10.1068/d402.

Goadby, Frederic Maurice, and Moses J. Doukhan. *The Land Law of Palestine*. Tel Aviv: Shosany's Printing Company Limited, 1935.

*Government Decision No. 145 of 1 November 1979*, 1979.



HAMOKED- Center for the Defence of the Individual. "House Demolitions." *House Demolitions*. Accessed May 2, 2013. [http://www.hamoked.org/topic.aspx?tid=main\\_3](http://www.hamoked.org/topic.aspx?tid=main_3).

— — —. "The Permit Regime in the Seam Zone: HCJ 9961/ 03." Accessed April 23, 2013. <http://www.hamoked.org/Case.aspx?cID=Cases0099>.

Hamri v. Commander of Judea and Samaria (HCJ 1982).

Harvard Program on Humanitarian Policy and Conflict Research. "The Legality of House Demolitions Under International Humanitarian Law," 2004. <http://www.hamoked.org/Document.aspx?dID=3553>.

Haslam, Emily. "Unlawful Population Transfer and the Limits of International Criminal Law." *The Cambridge Law Journal* 61, no. 1 (March 2002): 66–75.

Hodgkins, Allison B. *The Judaization of Jerusalem: Israeli Policies Since 1967*. PASSIA: Palestinian Academic Society for the Study of International Affairs, 1996. [http://www.passia.org/jerusalem/publications/HODGKINS\\_Jud\\_of\\_J.txt.htm](http://www.passia.org/jerusalem/publications/HODGKINS_Jud_of_J.txt.htm).

Human Rights Watch. "Israel: New Laws Marginalize Palestinian Arab Citizens." Human Rights Watch, March 30, 2011. <http://www.hrw.org/news/2011/03/30/israel-new-laws-marginalize-palestinian-arab-citizens>.

— — —. "Sample Administrative Demolition Order," December 2006. <http://www.hrw.org/reports/2008/iopt0308/14.htm>.

— — —. *Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories*. Israel/Occupied Palestinian Territories: Human Rights Watch, December 2010. [http://www.hrw.org/sites/default/files/reports/iopt1210webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/iopt1210webwcover_0.pdf).

ICAHD. "Demolishing Homes, Demolishing Peace: Political and Normative Analysis of Israel's Displacement Policy in the Occupied Palestinian Territory." ICHAD, April 2012. [http://www.icahd.org/sites/default/files/Demolishing%20Homes%20Demolishing%20Peace\\_1.pdf](http://www.icahd.org/sites/default/files/Demolishing%20Homes%20Demolishing%20Peace_1.pdf).

— — —. "Displacing - House Demolitions and Closure." ICHAD, n.d. <http://www.icahd.org/node/36>.

— — —. *Israel's Policy of Demolishing Palestinian Homes Must End*. ICAHD, March 2013. <http://www.icahd.org/node/478>.

— — —. *No Home No Homeland: A New Normative Framework for Examining the Practice of Administrative Home Demolitions in East Jerusalem*. Jerusalem: ICAHD - The Israeli Committee Against House Demolitions, December 2011. [http://www.icahd.org/sites/default/files/No%20Home%20No%20Homeland%20V2.0%20\(3\).pdf](http://www.icahd.org/sites/default/files/No%20Home%20No%20Homeland%20V2.0%20(3).pdf).

IDMC. *Report by the Internal Displacement Monitoring Centre to the Committee on the Elimination of Racial Discrimination on the Occasion of Israel's 14th, 15th and 16th Periodic Reports*. Geneva, Switzerland: IDMC - The Internal Displacement Monitoring Centre, January 2012. [www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/875A7FFC20C7B21CC1257995003B7220/\\$file/CERD+Report+January+2012.docx](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/875A7FFC20C7B21CC1257995003B7220/$file/CERD+Report+January+2012.docx).

International Court of Justice. "Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory (Advisory Opinion)." *International Court of Justice*, July 9, 2004. <http://www.icj-cij.org/docket/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6&ca>.

Ir Amim. "A Layman's Guide to Home Demolitions in East Jerusalem," March 2009. <http://eng.ir-amim.org.il/?CategoryID=370>.

— — —. *Absentees Against Their Will - Property Expropriation in East Jerusalem Under the Absentee Property Law*. Jerusalem: Ir Amim- For an Enquitable and Stable Jerusalem with an Agreed Political Future, July 2010. <http://eng.ir-amim.org.il/Uploads/dbsAttachedFiles/Absenteesagainsttheirwill.pdf>.

— — —. "Jerusalem Master Plan 2000- General Analysis and Comments." Ir Amim, June 2010. <http://eng.ir-amim.org.il/Uploads/dbsAttachedFiles/master.pdf>.

— — —. "The Planning Policy in East Jerusalem." Ir amim, 2007. <http://eng.ir-amim.org.il/?CategoryID=369>.

Isma'il Alyan et al. v. Custodian for Government Property in Judea and Samaria (n.d.).

"Israel's Sale of Palestinian Refugee Property Violated Israeli and International Law." Adalah, June 22, 2009.

Israeli Civil Administration. "Israeli Civil Administration Guideline to Receiving a Building Permit." Israeli Civil Administration, n.d.

IWPS. *Wadi Qana Case Study: Two Thousand Olive Trees Under Threat*. Dier Istiya: International Women's Peace Service, January 9, 2013. [http://iwps.info/?page\\_id=1768](http://iwps.info/?page_id=1768).

Jam'ayat Iskan Al-Mu'alimun v. Commander of IDF Forces in Judea and Samaria, 37 (4) Piskei Din 785 (n.d.).

Jam'iyat Iskan Al-Mu'allimun Al-Ta'auniya et al. v Minister of Defense et al (HCJ 1980).

Janimat et al. v. OC Central Command Judgment (HCJ 1997).

Jeff Halper. "House Demolitions and Israel's Policy of Hafrada." *Al-Majdal* no. Autumn 2011 (2011). <http://www.badil.org/en/al-majdal/item/1697-art8>.

JLAC. *Concealed Intentions: Israel's Human Rights Violations through Manipulation of Zoning and Planning Laws in "Area C."* JLAC Jerusalem Legal and Human Rights Centre, March 2011. [http://www.jlac.ps/data\\_site\\_files/file/Concealed%20Intentions-%20JLAC-.pdf](http://www.jlac.ps/data_site_files/file/Concealed%20Intentions-%20JLAC-.pdf).

— — —. *Concealed Intentions: Israel's Human Rights Violations Through the Manipulation of Zoning and Planning Laws in "Area C."* Jerusalem: Jerusalem Legal Aid and Human Rights Center (JLAC), May 2011.

John Dugard. *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*,. New York: United Nation General Assembly, January 2008. <http://unispal.un.org/UNISPAL.NSF/0/F71BE9FAE0ABB E1C852573EC006DDE2E>.

Kedar, Alexandre. *Israeli Law and the Redemption of Arab Land, 1948-1969*. Harvard Law School, 1996.

Kedar, Alexandre (Sandy), and Oren Yiftachel. "Land Regime and Social Relations in Israel." In *Realizing Property Rights: Swiss Human Rights Book*, 129–146. Zurich: Ruffer & Rub Publishing House, 2006. [http://www.geog.bgu.ac.il/members/yiftachel/new\\_papers\\_eng/Kedar%20and%20Yiftachel.pdf](http://www.geog.bgu.ac.il/members/yiftachel/new_papers_eng/Kedar%20and%20Yiftachel.pdf).

Khdeirat, Fathy. The City of Tubas, District of Tubas. Interview by BADIL, March 2013.

Kretzmer, David. "The Law of Belligerent Occupation in the Supreme Court of Israel." *International Review of the Red Cross* 885 (March 31, 2012): 207–236.

Kuttab, Jonathan, and Raja Shehadeh. *Civilian Administration in the Occupied West Bank: Analysis of Israeli Military Government Order No.947*. Ramallah: Al Haq, 1987.

*Land (Acquisition for Public Purposes) Ordinance 1943*, 1943.

*Land Acquisition (Validation of Acts and Compensation) Law 5713-1953*, 1953. <http://www.israelawresourcecenter.org/israelilaws/fulltext/landacquisitionlaw.htm>.

"Lands in Judea and Samaria." Lecture, Bet Hapraklit, May 28, 1985.

*Law and Administration Ordinance 5727-1967*, 1967.

Ma'an. "Israeli Court Postpones Hearing on Hebron Village Susiya." *Ma'an News Agency*. February 1, 2013. <http://www.maannews.net/eng/ViewDetails.aspx?ID=561125>.

Madzarevic, Jelena. "International Legal Aspects of Punitive House Demolitions in the Occupied Palestinian Territories." Master, University of Lund, 2005. <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=1554904>.

Mahmud 'Ali Nasser et al. v. Commander of IDF Forces (HCJ 2005).

Mara'abe v. The Prime Minister of Israel (HCJ 2005).

*Military Order Concerning the Settlement of Disputes over Titles in Land and the Regulation of Water* 1968, 1968. <http://www.israellawresourcecenter.org/israelmilitaryorders/fulltext/mo0291.htm>.

*Military Order Regarding Appeal Committees (Judea and Samaria)* 1967, 1967.

Mizrahi, Yonatan. *Israel's "National Heritage Sites" Project in the West Bank: Archaeological Importance and Political Significance*. Emek Shaveh, June 2012. <http://www.alt-arch.org/docs/national%20heritage%20sites%20beyond%20the%20green%20line.pdf>.

Municipality of Hebron et al. v. Minister of Defence et al., 50(2) Piskei Din 617 (n.d.).

Nahil Adal Sa'ado Amar v. The IDF West Bank Military Commander (HCJ 2002).

*National Parks and Nature Reserve Law* 5723-1963, 1963. <http://faolex.fao.org/docs/pdf/isr7843.pdf>.

*National Parks, Nature Reserves, Memorial Sites and National Sites Law* 1998, 1998.

*Nationality and Entry into Israel Law (Temporary Order)*, 5763-2003. Accessed April 24, 2013. [http://www.antiquities.org.il/article\\_Item\\_eng.asp?sec\\_id=42&autotitle=true&subj\\_id=228&id=453&module\\_id=6#as](http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=453&module_id=6#as).

"Nature and Parks Authority," 2013. <http://www.parks.org.il/parks/Pages/WhoWeAre.aspx>.

Nawaj'a, Nasser. *The Village of Susiya - South Hebron Hills*. Interview by BADIL, February 2013.

OCHA. *Area C Humanitarian Response Plan Fact Sheet*. Jerusalem: United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), August 2010. [http://www.ochaopt.org/documents/ocha\\_opt\\_area\\_c\\_humanitarian\\_response\\_plan\\_fact\\_sheet\\_2010\\_09\\_03\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_area_c_humanitarian_response_plan_fact_sheet_2010_09_03_english.pdf).

— — —. *Between the Fence and a Hardplace: Humanitarian Impact of Israeli-imposed Restrictions Access to Land and Sea in The Gaza Strip*. Jerusalem: United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian

territory (OCHA), August 2010. [http://www.ochaopt.org/documents/ocha\\_opt\\_special\\_focus\\_2010\\_08\\_19\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf).

— — —. *Displacement And Insecurity In Area C Of The West Bank*. Jerusalem: United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), August 2011. [http://www.ochaopt.org/documents/ocha\\_opt\\_area\\_c\\_report\\_august\\_2011\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_area_c_report_august_2011_english.pdf).

— — —. *East Jerusalem: Key Humanitarian Concerns*. UNITED NATIONS Office for the Coordination of Humanitarian Affairs occupied Palestinian territory, December 2012. [http://www.ochaopt.org/documents/ocha\\_opt\\_Jerusalem\\_FactSheet\\_December\\_2012\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_Jerusalem_FactSheet_December_2012_english.pdf).

— — —. *Enhancing Agricultural Land Productivity for Vulnerable Farmers in Eastern Khan Younis and Al Shoka in Rafah of the Gaza Strip*, 2009. [http://ochadms.unog.ch/quickplace/CAP/main.nsf/0/C1256DAD0046BFC6C12575E4003675AD/\\$FILE/MYR\\_2009\\_Country\\_OPSPROJECTS\\_PRINT.pdf](http://ochadms.unog.ch/quickplace/CAP/main.nsf/0/C1256DAD0046BFC6C12575E4003675AD/$FILE/MYR_2009_Country_OPSPROJECTS_PRINT.pdf).

— — —. *Khirbat Tana: Large-scale Demolitions For The Third Time In Just Over A Year*. Jerusalem: United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), February 2011. [http://www.ochaopt.org/documents/ocha\\_opt\\_khirbet\\_tana\\_fact\\_sheet\\_20110210\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_khirbet_tana_fact_sheet_20110210_english.pdf).

— — —. *Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank*. Jerusalem: United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), December 2009. [http://archive.ochaopt.org/documents/special\\_focus\\_area\\_c\\_demolitions\\_december\\_2009.pdf](http://archive.ochaopt.org/documents/special_focus_area_c_demolitions_december_2009.pdf).

— — —. *Settlements in Palestinian Residential Areas in East Jerusalem*. Jerusalem: United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), April 2012. [http://www.ochaopt.org/documents/ocha\\_opt\\_ej\\_settlements\\_factSheet\\_april\\_2012\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_ej_settlements_factSheet_april_2012_english.pdf).

— — —. *Special Focus: East Jerusalem Key Humanitarian Concerns*. Jerusalem: United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), March 2011. <http://unispal.un.org/UNISPAL.NSF/0/0D90191FBC1DDBC88525785C004DF7A5>.

— — —. *Special Focus: "Lack of Permit" Demolitions and Resultant Displacement in Area C*. Jerusalem: United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), May 2008. [http://www.ochaopt.org/documents/Demolitions\\_in\\_Area\\_C\\_May\\_2008\\_English.pdf](http://www.ochaopt.org/documents/Demolitions_in_Area_C_May_2008_English.pdf).

— — —. *Special Focus: The Planning Crisis in East Jerusalem: Understanding the Phenomenon of "illegal" Construction*. Jerusalem: United Nations Office for the

Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), April 2009. <http://unispal.un.org/UNISPAL.NSF/0/2F8FB6437DB17CA5852575A9004D7CB4>.

— — —. *Special Focus: West Bank Movement and Access Update*. Jerusalem: United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), September 2012. [http://www.alzaytouna.net/english/selections/2012/WB\\_Movement\\_Access\\_10-12.pdf](http://www.alzaytouna.net/english/selections/2012/WB_Movement_Access_10-12.pdf).

— — —. *Susiya: At Imminent Risk Of Forced Displacement*. Jerusalem: United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), March 2012. [http://www.ochaopt.org/documents/ocha\\_opt\\_susiya\\_factSheet\\_march\\_2012\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_susiya_factSheet_march_2012_english.pdf).

— — —. *Three Years Later: The Humanitarian Impact of the Barrier Since the International Court of Justice Opinion*. Jerusalem: United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory (OCHA), July 9, 2007. [http://www.ochaopt.org/documents/ICJ4\\_Special\\_Focus\\_July2007.pdf](http://www.ochaopt.org/documents/ICJ4_Special_Focus_July2007.pdf).

— — —. “UNSCO-OCHA Discussion Paper – ‘Seam Zone’ Military Order.” United Nations, November 3, 2003. [http://www.ochaopt.org/documents/OCHA\\_UNSCO\\_MOSZ1103.pdf](http://www.ochaopt.org/documents/OCHA_UNSCO_MOSZ1103.pdf).

OCHA-chaired Protection Cluster. “Legal Taskforce Weekly Media Report,” March 29, 2013.

Odeh, Faysal Suleiman Hamad. The village of Khuza’a, District of Khan-Yunis. Interview by BADIL, February 2013.

*Order Concerning Appeals Committees (Judea and Samaria) 1967*, n.d.

*Order Concerning Government Property (Amendment No. 4) (Judea and Samaria) (No. 364)*, n.d.

*Order Concerning Government Property (Amendment No. 7) (Judea and Samaria) 1984*, 1984.

*Order Concerning Government Property (Judea and Samaria) 1967*, 1967.

*Order Concerning Parks (Judea and Samaria) 1970*. Accessed April 24, 2013. [http://www.antiquities.org.il/article\\_Item\\_eng.asp?sec\\_id=42&autotitle=true&subj\\_id=228&id=453&module\\_id=6#as](http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=453&module_id=6#as).

*Order Concerning Parks (West Bank Area) 1967*, n.d.

*Order Concerning Raising Fines Set Forth by the Law of Military Legislation (Judea and Samaria) 1980*, 1980.

*Order Concerning Security Provision (Judea and Samaria) 2009, 2009.*

*Order Concerning Supervision Over Construction (Provisional Regulations) 1985, 1985.*

*Order Concerning the Amendment of the Law of Registration of Immovable Property Not Previously Registered (Amendment) (Judea and Samaria) 2009, 2009.*

*Order Concerning the Amendment of the Law of Registration of Immovable Property Not Previously Registered (Judea and Samaria) 2008, 2008.*

*Order Concerning the Protection of Nature (Judea and Samaria) 1969.* Accessed April 24, 2013. [http://www.antiquities.org.il/article\\_Item\\_eng.asp?sec\\_id=42&autotitle=true&subj\\_id=228&id=453&module\\_id=6#as](http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=453&module_id=6#as).

*Order Concerning the Protection of Nature Reserves (the West Bank Area) 1967.* Accessed April 24, 2013. [http://www.antiquities.org.il/article\\_Item\\_eng.asp?sec\\_id=42&autotitle=true&subj\\_id=228&id=453&module\\_id=6#as](http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=453&module_id=6#as).

*Order Regarding Abandoned Property (Private Property) (Additional Provisions) (Judea and Samaria) 5727-1967. 150, 1967.*

*Order Regarding Abandoned Property (Private Property) (Judea and Samaria) 5727-1967, 1967.*

*Order Regarding Security Provisions [Consolidated Version] (Judea and Samaria) 5770-2009, 2009.* <http://nolegalfrontiers.org/en/military-orders/mil01>.

Oxfam. *The ADCR 2011: Human Deprivation Under Occupation*. Oxfam, 2012. [http://www.undp.org/content/rbas/en/home/library/poverty\\_reduction/the-adcr-2011--human-deprivation-under-occupation.html](http://www.undp.org/content/rbas/en/home/library/poverty_reduction/the-adcr-2011--human-deprivation-under-occupation.html).

PARC-Gaza. *The Agricultural Development Association: An Applied Participatory Research*. Gaza: PARC-Gaza, 2009. <http://gaza.parc.ps/Draft%20Applied%20participatory%20research-Feb.pdf>.

PCHR. "The Buffer Zone in the Gaza Strip." PCHR, September 2011. <http://www.pchrgaza.org/files/2011/factsheet-bufferzone-sept.pdf>.

*Planning and Building Law 5725-1965, 1965.* <http://www.israelawresourcecenter.org/israelaws/fulltext/planningbuildinglaw.htm>.

PLO Negotiations Affairs Department. *Barrier to Peace: The Impact of Israel's Wall Five Years After The ICJ Ruling*. PLO Negotiations Affairs Department, July 2009. <http://www.nad-plo.org/userfiles/file/fact%20sheet/FINAL%2520Anniversary%2520of%2520ICJ%2520ruling%2520on%2520the%2520Wall%2520FINAL%2520June09.pdf>.



PLO Negotiations Office. "Injustice Can Be Dismantled." PLO Negotiations Office, July 7, 2011. <http://www.nad-plo.org/userfiles/file/media%20brief/ICJ%20Anniversary%20-%20%E2%80%9CINJUSTICE%20CAN%20BE%20DISMANTLED%E2%80%9D.pdf>.

PNA and LAND. *Palestinian National Authority Land Administration Project*. Legal Report. PNA- Palestinian National Authority; LAND- Land Equity International, March 2008. <http://www.husseini1.com/resources/file/publications/1273744294012/Legal%20Report.%20Palestinian%20National%20Authority.%20Palestinian%20Land%20Administration.%20Ministry%20of%20Planning.%202008.pdf>.

*Provisions Concerning Procedures at Appeals Committees (Judea and Samaria) 1987, 1987.*

*Regulations Concerning Land Registration Fees [Combined Version] (Judea and Samaria) 2009, 2009.*

*Regulations of Registration of Immovable Property Not Previously Registered (Applications for Registration) (Amendment) (Judea and Samaria) 2009, 2009.*

*Regulations of Registration of Immovable Property Not Previously Registered (Applications for Registration) (Judea and Samaria) 2008, 2008.*

*Regulations of Registration of Immovable Property Not Previously Registered (Legal Procedures at Registration Committees) (Amendment) (Judea and Samaria) 2009, 2009.*

*Regulations of Registration of Immovable Property Not Previously Registered (Legal Procedures at Registration Committees) (Judea and Samaria) 2008, 2009.*

RHR, and Breaking The Silence. *Info-sheet: The 12 Villages of Firing Zone 918 in the South Hebron Hills*. Jerusalem; Tel-Aviv: Rabbis for Human Rights; Breaking the Silence, November 7, 2012. <http://www.acri.org.il/en/2012/11/07/firing-zone-918-infosheet/>.

Rolnik, Raquel. *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in This Context*. United Nation General Assembly, December 24, 2012. [http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-22-46\\_Add1\\_en.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-22-46_Add1_en.pdf).

Salama et al. v. Minister of Defence et al., 34(1) Piskei Din (HCJ 1978).

Salman, 'Alaa. The Village of Beit Safafa, East Jerusalem. Interview by BADIL, February 2013.



Sawafta, Rasheed Khaled. The Village of Al-Jiftlik, Jordan Valley. Interview by BADIL, March 2013.

Sfard, Michael, and Emily Schaeffer. *A Guide to Housing, Land and Property Law in Area C of the West Bank*, February 2012.

Shareef Omar Khaled (Abu Azzam). Jayyus, Qalqilya. Interview by BADIL, March 2013.

Shehadeh, R. *From Occupation to Interim Accords: Israel And the Palestinian Territories*. BRILL, 1997.

Shehadeh, Raja. "The Land Law of Palestine: An Analysis of the Definition of State Lands." *Journal of Palestine Studies* 11, no. 2 (January 1982): 82–99. doi:10.2307/2536271.

Sheikh Suliman Hussein 'Udah Abu Hilu et al. v. Government of Israel (HCJ 1972).

Society of St. Yves. "Success Case Westbank." *Success Case Westbank*. Accessed May 2, 2013. [http://www.saintyves.org.il/index.php?option=com\\_content&view=article&id=90%3Ademolition-case2&catid=44%3Ahouse-demolitions&Itemid=59&lang=en](http://www.saintyves.org.il/index.php?option=com_content&view=article&id=90%3Ademolition-case2&catid=44%3Ahouse-demolitions&Itemid=59&lang=en).

———. "The Legal Framework - Jerusalem." *Society of St. Yves, Catholic Center for Human Rights*. Accessed April 23, 2013. [http://www.saintyves.org.il/index.php?option=com\\_content&view=article&id=108%3Ademolition-legal&catid=44%3Ahouse-demolitions&Itemid=59&lang=en](http://www.saintyves.org.il/index.php?option=com_content&view=article&id=108%3Ademolition-legal&catid=44%3Ahouse-demolitions&Itemid=59&lang=en).

———. "The Legal Framework - Westbank." *Society of St. Yves, Catholic Center for Human Rights*. Accessed April 23, 2013. [http://saintyves.org.il/index.php?option=com\\_content&view=article&id=91%3Ademolition-legal&catid=44%3Ahouse-demolitions&Itemid=59&lang=en](http://saintyves.org.il/index.php?option=com_content&view=article&id=91%3Ademolition-legal&catid=44%3Ahouse-demolitions&Itemid=59&lang=en).

State Comptroller. *Annual Report*, 1986.

———. *Annual Report*. Jerusalem, 1998.

State of Israel. *Israel, Rules of Warfare on the Battlefield, Military Advocate-General's Corps Command, IDF School of Military Law*, 2006.

———. *Laws of War in the Battlefield, Manual, Military Advocate General Headquarters, Military School*. State of Israel, 1998. [http://www.icrc.org/customary-ihl/eng/docs/v2\\_cou\\_il](http://www.icrc.org/customary-ihl/eng/docs/v2_cou_il).

Suchovolsky, Avraham, Eliyahu Kohen, and Avi Erlikh. *Land Law in Judea and Samaria*. Israel: Bursi, 1986.

Tabib et al. v. Minister of Defence, 36(2) 622 Piskei Din (n.d.).

*The Antiquities Law 1978*, 1978. [http://www.antiquities.org.il/article\\_Item\\_eng.asp?sec\\_id=42&autotitle=true&subj\\_id=228&id=453&module\\_id=6#as](http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=453&module_id=6#as).

The Association for Civil Rights in Israel v. IDF Commander in the Judea and Samaria Area et al. Accessed April 23, 2013.

The Civic Coalition for Defending Palestinian Rights in Jerusalem. *Aggressive Urbanism: Urban Planning and the Displacement of Palestinians Within and from Occupied East Jerusalem*. Jerusalem: The Civic Coalition for Defending Palestinian Rights in Jerusalem, December 2009. <http://www.civiccoalition-jerusalem.org/ccdprj.ps/new/pdfs/Aggressive%20Urbanism%20Report.pdf>.

The Civic Coalition for Defending Palestinians' Rights in Jerusalem. *Aggressive Urbanism- Urban Planning and the Displacement of Palestinians Within and from Occupied East Jerusalem*, December 2009. <http://www.civiccoalition-jerusalem.org/ccdprj.ps/new/pdfs/Aggressive%20Urbanism%20Report.pdf>.

"The Covenant Between the State of Israel and Keren Kayemeth LeIsrael," n.d. <http://www.kkl.org.il/eng/about-kl-jnf/kl-jnf-id/kl-jnf-israeli-government-covenant/>.

The Estate of the Late Taleb Ali Abdulla Abu Zahariya v. Berta Hamdan (Jerusalem District Court 2007).

The Jerusalem Legal Aid and Human Rights Center v. District Planning Committee (Jerusalem District Court 2012).

*The Ottoman Land Code of 7th Ramadan 1274 (1858)*, 1858.

Thirsting for Justice. "Thirsting for Justice FAQ." *Thirsting for Justice: Palestinian Rights to Water and Sanitation*. Accessed April 22, 2013. [http://www.thirstingforjustice.org/?page\\_id=1303](http://www.thirstingforjustice.org/?page_id=1303).

Tute, Richard Clifford. *The Ottoman Land Laws with a Commentary on the Ottoman Land Code of the 7th Ramadan 1274*. Jerusalem: Greek Convent Press, 1927. <http://weblaw.haifa.ac.il/he/Faculty/Kedar/lecdp/bedouins/900.pdf>.

Wafa et al. v. Minister of Defence et al., 50(2) 848 Piskei Din (HCJ 1996).

Warriner, Doreen. *Land Reform and Development in the Middle East: A Study of Egypt, Syria, and Iraq*. 2d ed. Westport, Conn: Greenwood Press, 1975.

Weizman, Eyal. "Demographic Architecture." *Jerusalem Quarterly* 38 (Summer 2009): 17–20.

World Bank. *The Economic Effects of Restricted Access to Land in the West Bank*. World Bank, 2008. <http://unispal.un.org/UNISPAL.NSF/0/5FB13FCB4C7724AD852574EB0056BEAA>.

Zamir, Eyal. *State Lands in Judea and Samaria: A Legal Review*. Jerusalem: The Jerusalem Institute for Israel Studies, 1985.

## **ANNEX 1: SELECTED LAWS**

- Land Law, 1274 Higry
- Regulation of Land Registry, 1291 Higry
- Procedures of Transfer of Miri and Waqf Land Disposed of in the Land Registry, 1284 Higry
- Law of Transfer of Immovable Property, 1331 Higry
- Buildings Law, 1332 Higry
- Land Transfers Regulations, 1940
- Public Lands Ordinance, 1942
- Land Transfer (Amendment) Ordinance, 1947
- Registration of Land Regulations (No.1), 1953
- Registration of Land Regulations (No.2), 1953
- Registration of Unregistered Immovable Property Law (No.6), 1964
- Order concerning Abandoned Assets (Private Property) (Amendment no' 5) (West Bank) (No' 562), 1974
- Regulations Concerning Land Registration (Regulations Concerning the Registration of Unregistered Immovable Property (Amendment No. 2), 1990
- Order concerning Amendment Of The Law For Registration Of Non Movable Assets That Are Not Yet Registered (Amendment no' 4) (Judea and Samaria) (No' 1392), 1993
- Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770, 2009
- Proclamation, 5708-1948
- Law and Administration Ordinance, 5708-1948
- Area of Jurisdiction and Powers Ordinance, 5708-1948
- Abandoned Areas Ordinance, 5708-1948
- Defence (Emergency) Regulations
- Emergency Regulations (Security Zones) Law, 5709-1949
- Emergency Regulations (Cultivation of Waste [Uncultivated] Lands) Law, 5709-1949

- Emergency Land Requisition (Regulation) Law, 5710-1949
- *Jerusalem Military Government (Validation of Acts) Ordinance*, 5709-1949
- *Development Authority (Transfer of Property) Law*, 5710-1950
- *The Absentees' Property Law*, 5710- 1950
- *Land Acquisition (Validation of Acts and Compensation) Law*, 5713-1953
- *Prescription Law*, 5718-1958
- *The Absentees' Property (Amendment No.3) (Release and Use of Endowment Property) Law*, 5725-1965
- *The Absentees' Property (Compensation) Law*, 5733-1973
- The Absentee's Property Law, 5710-1950
- The Land Acquisition (Validation of Acts and Compensation) Law, 5713-1953
- Absentees' Property (Eviction) Law, 5718-1958
- Absentees' Property (Amendment No.3) (Release and Use of Endowment Property) Law, 5725-1965
- Planning and Building Law 5725-1965
- Absentees' Property (Amendment No. 4) (Release and Use of Property of Evangelical Episcopal Church) Law, 5727-1967

## ANNEX 2: SELECTED CASE LAW

### ANNEXATION WALL

- HCJ 2056/04 Beit Sourik Village Council v. The Government of Israel
- HCJ 8414/05 *Ahmed Issa Abdallah Yassin v. The Government of Israel*
- HCJ 7957/04 *Zahran Younis Mara'abe et al. v. Prime Minister of Israel et al.*
- *Settlements and settler violence*
- HCJ 8887/06 *Youssef Mousa Abedel-Raziq Al-Nabut v. Minister of Defence*
- HCJ 9060/08 – *Abel-Jani Yasin Khaled Abdallah v. Minister of Defence*
- HCJ 5624/06, *Beit Omar Municipality et al. v. The Military Commander in the West Bank et al.*
- HCJ 2657/07 *Ottman Manssur 'Ali Manssur v. Local Planning Subcommittee*, 18 January 2009
- HCJ 390/79 *Izzat Muhammad Mustafa Dweikat and 16 others v. Government of Israel et al.*,
- HCJ 606/78 *Suleiman Tawfik Ayoub and 11 others v. Minister of Defense et al.*, 33(2) PD 113
- HCJ 4481/91 *Bargil v. Government of Israel*

### LAND SEIZURES

- HCJ 2056/04 Beit Sourik Village Council v. The Government of Israel
- HCJ 258/79, *Ayyub et al v. Minister of Defense et al.*
- HCJ 258/79, *Falah Hussein Ibrahim 'Amira and 9 Others v. Minister of Defense*
- HCJ 302/72, *Sheikh Suliman Hussein Uдах Abu Hilu et al. v. Government of Israel*
- HCJ 258/79, *Amira et al. v. Minister of Defense et al.*
- HCJ 834/78, *Salama et al. v. Minister of Defense et al.*
- HCJ 390/79, *Dweikat et al. v. Government of Israel et al.*

## **FIRING ZONE AND ROAD ACCESS**

- *HCJ 517/00 & Petitioners in HCJ 1199/00 v Minister of Defense et. al.*
- *HCJ 2150/07 Abu Safiyeh v Minister of Defence, Road 443*
- *HCJ 6115/10 Numan Mustafa Nassser Drubi v Military Commander for the West Bank*
- *HCJ 3969/06 Head of Deir Samit Village Council et al. v. Commander of the IDF Forces in the West Bank et al.*

## **SEAM ZONE AND PERMIT REGIME**

- *HCJ 9961/03 HaMoked: Center for the Defence of the Individual v. The Government of Israel et al.*
- *HCJ 639/04 The Association for Civil Rights in Israel v. Commander of the IDF forces in Judea and Samaria et al.*
- *HCJ 9593/04 Rashad Murad and others v. IDF Commander in Judea and Samaria*
- *HCJ 8887/06 Youssef Mousa Abedel-Raziq Al-Nabut v. Minister of Defence*

## **HOME DEMOLITIONS**

- *HCJ 606/78 Ayoob v. Minister of Defense*
- *HCJ 401/88 Abu Rian v. Commander of the IDF Forces in the Area of Judea and Samaria*
- *HCJ 834/78 Salama v. Minister of Defense*
- *HCJ 290/89 Jora v. Commander of IDF Forces in Judea and Samaria*
- *HCJ 1987/90 Shadid v. Commander of IDF Forces in the Area of Judea and Samaria*
- *HCJ 8286/00 Association for Civil Rights in Israel v. Commander of the IDF Forces in the Area of Judea and Samaria*
- *HCJ 6288/03 Sa'ada v. GOC Home Front Command*
- *HCJ 4219/02 Joosin v. Commander of the IDF Forces in the Gaza Strip*

Forced population transfer is illegal and has constituted an international crime since the Allied Resolution on German War Crimes was adopted in 1942. The strongest and most recent codification of the crime is found in the Rome Statute of the International Criminal Court, which clearly defines forcible transfer of population and settler-implantation as war crimes. In order to achieve the forcible transfer of the indigenous Palestinian population many Israeli laws, policies and state practices have been developed and applied. Today, this forcible displacement is carried out by Israel in the form of a 'silent' transfer policy. The policy is silent in the sense that Israel applies it while attempting to avoid international attention and regularly displacing small numbers of people. The structure discriminates against Palestinians in areas such as citizenship, residency rights, land ownership as well as regional and municipal planning.