

DENIAL OF PALESTINIAN USE AND ACCESS TO LAND

SUMMARY OF ISRAELI LAW AND POLICIES



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Denial of Palestinian Use and Access to Land: Summary of Israeli Law and Policies

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Introduction

At the beginning of the 20th century, most Palestinians lived inside the borders of Mandatory Palestine, which is now divided into the land colonized by Israel since 1948 (Palestine 1948 hereafter), and the occupied Palestinian territory, namely the West Bank, Gaza Strip, and east Jerusalem. However, the ongoing forcible displacement policies following the establishment of the British Mandate for Palestine in 1919 and the Israeli enterprise in 1948 has made Palestinians the largest and longest-standing unresolved refugee case in the world today. As of 2021, an estimated 66.4 percent of the global Palestinian population of 12.1 million are forcibly displaced persons.¹

Importantly, the forcible displacement of the Palestinian people is not an end in and of itself, *per se*. It is rather utilized by the Israeli regime to further its Zionist colonial enterprise, aimed at acquiring the maximum amount of land with the minimum number of Palestinians. As such, land continues to constitute a central element of Israel's ongoing Nakba against the Palestinian people. This has manifested in two complementary mechanisms: *de facto* and *de jure* land confiscation. While *de facto* confiscation does not immediately change the ownership status but rather reflects the situation on the ground, *de jure* confiscation constitutes the official transfer of ownership. In most cases, *de facto* confiscation is utilized as an intermediary step that eventually leads to *de jure* confiscation, when the transfer of ownership then occurs.

Israel thus deploys a two-fold strategy that seeks to seize land through manipulative categorizations on the one hand and denial of access to and use of land on the other, in order to free up more land for future seizure. So far, this policy has resulted in 85 percent of Mandatory Palestine dedicated for the exclusive benefit of Israeli-Jews. Palestinians with Israeli citizenship, who constitute almost 20 percent of the population, are confined to less than 4 percent of the land. As for

1 BADIL, *Nakba Statement: 73 years of Nakba and 73 years of resistance*, press release, 15 May 2021, Accessed 1 November 2021, Available at: <https://www.badil.org/press-releases/8864.htm>

the West Bank, Israel has confiscated or *de facto* annexed more than 70 percent of the West Bank (including east Jerusalem) for the exclusive benefit of Israeli-Jewish settlers.²

Confiscation of land and denial of use and access in Mandatory Palestine have taken place in various stages and through various mechanisms. The paper aims to provide an overview of these mechanisms and their respective evolution in the three areas of Mandatory Palestine: Palestine 1948, the West Bank, and east Jerusalem.³ To do so, the paper will (1) discuss the first stage of this process carried out in Palestine 1948 through use of force and Israeli legislation either utilized to confiscate land or to deny access to it, (2) examine the second stage which took place in 1967 following Israel's occupation of the West Bank through not only legislation, but also denial of use, and (3) analyze how this policy has manifested in east Jerusalem in form of a discriminatory zoning and planning system, which result in demolitions and forcible transfer of the residents.

2 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians: A Handbook for Vulnerable Individuals and Communities*, 2013, 34, Available at: http://www.badil.org/phocadownload/Badil_docs/publications/handbook2013eng.pdf [hereinafter BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*]

3 The paper does not discuss the Gaza Strip because it is under a full military blockade.

Chapter One

Land Confiscation and Israeli Legislation in Palestine 1948

The policy of land confiscation and denial of use in Palestine 1948 has manifested in two primary ways: use of force and Israeli legislation. The process began with (A) the use of force initiated by Zionist militias, and (B) was then consolidated through different Israeli legislation, but also through (C) restrictions on the use and access to land.

A. USE OF FORCE

Land confiscation through acts of violence started before the creation of Israel (1) and peaked with the Nakba in 1948 (2).

1. Organized Violence Pre-Creation of Israel

The Zionist-Israeli weaponization of land confiscation through use of force already began in the late 1940s,⁴ within the boundaries of what would become the State of Israel. It peaked following United Nations General Assembly Resolution 181(II), which recommended the partition of Mandatory Palestine into two states, one Palestinian and one Jewish, with the latter allotted 56 percent of the land, despite having a population of less than one third of all those in Palestine at the time, and owning no more than seven percent of the land. Ahead of the withdrawal of Great Britain from Palestine, Zionist militias developed and implemented a number of military plans, such as Plans Aleph to Dalet (1945-1948),⁵ which utilized

4 BADIL, *Land Confiscation and Denial of Use: Working Paper 21*, 2017, 12, Available at https://www.badil.org/cached_uploads/view/2021/04/19/wp21-lc-1618823891.pdf [hereinafter BADIL, *Land Confiscation and Denial of Use*].

5 Simha Flapan, *The Palestinian Exodus*, *Journal of Palestine Studies*, 1978, 7, Available at <https://www.palestine-studies.org/sites/default/files/attachments/jps-articles/exodus.pdf>

violent tactics and strategic massacres to ethnically cleanse Palestine of its population and confiscate lands and properties.

2. THE 1948 NAKBA

The Nakba is a prime example of the use of force to grab land and *de facto* confiscate it. Zionist militias, which later became the Israeli army, forcibly displaced over 750,000 Palestinians to gain control of their lands.⁶ Israel immediately expropriated an estimated 17,178,000 dunums (17,178 km²) of land in 1948 from Palestinian refugees and afterwards continued to expropriate an additional 700,000 dunums (700 km²) from internally displaced Palestinians (IDPs).⁷ The use of force has thus historically played a significant role in denying Palestinians in Palestine 1948 the use of their lands. Once the land was taken coercively, Israel began bridging the gap between effective control and legal titles to these lands, which were still legally held by Palestinians.

B. ISRAELI LEGISLATION: FROM MANIPULATED PREVIOUS LEGISLATIONS TO NEW LAND LAWS

In addition to selectively appropriating and discarding pre-existing laws to assist its policy of land confiscation (1), Israel developed and ratified new laws to consolidate its grip on the land (2).

1. Manipulation of Previous Legislations

Over the years, Mandatory Palestine experienced several occupations and administrations: Ottoman, British, Jordanian and Egyptian. During the British Mandate, it was suggested that all uncultivable land be registered in the name of the High Commissioner of Palestine, providing that it would be used for the good of the community.⁸ Israel, as the successor sovereign, ‘inherited’ all

6 Jad Isaac, *The Israel-Palestine conflict: Parallel Discourses*, (University of California Los Angeles Center for Middle East Development Series 1st ed.) 2011, 68.

7 BADIL, *Land Confiscation and Denial of Use*, 12.

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

that land that was registered in the High Commissioner's name from the British government, which became "Israeli state land". Invoking the 1943 Ordinance dating from the British era, Israel expropriated at least 1.85 million dunums, 92 percent of which were privately owned by Palestinians.⁹

To further expand its application to other categories of Palestinian land, Israel changed the definition of State Land so to encompass public lands, uncultivated lands as well as private but unregistered lands.¹⁰ In 1980, another modification of the law transformed all unregistered and uncultivated lands for 10 years into "State land." As a result of these many different legislations enacted since the 1950s, 93 percent of the land in Israel was apportioned to be under governmental control,¹¹ either directly owned by the government (67 percent), or indirectly by the Development Authority (13 percent)¹² and the Jewish National Fund (13 percent).¹³

2. The Absentee Property Law and Subsequent Legislation

Based on (British) Mandatory emergency regulations, military rule was immediately introduced after the war to further facilitate confiscation of the land. The Absentee Property Law of 1948 is one the most important legislation enacted to do so. Such law gave control over the property of an 'absentee' to a Custodian supposed to protect it until their return, which has been forbidden by

9 ADALAH, Land Acquisition Law (Actions and Compensation), accessed 15 February 2022, available at <https://www.adalah.org/en/law/view/533>

10 Lorenzo Kamel, "Israeli concept of 'State Land' Needs Another Look", *al-Monitor*, 6 May 2013, Accessed 15 February 2022, Available at: <https://www.al-monitor.com/originals/2013/05/settlements-land-ownership-palestine-israel.html>

11 Knesset, "*The State of Israel as a Jewish State*," n.d., Accessed 15 February 2022, Available at: <http://knesset.gov.il/constitution/ConstMJewishState.htm>

12 The Development Authority is a body that was set up by the Israeli government in 1952 to administer the lands of Palestinian refugees and making them available to the state for its development plans.

13 The Jewish National Fund (JNF) has been Israel's partner in transforming the land of displaced Palestinians into lands "legally owned" by the state and Zionist para-statal organizations. See: Alaa Mahajneh, "Situating the JNF in Israel's Land Laws." *Al-Majdal* 43, 2010, available at: https://www.badil.org/cached_uploads/view/2021/05/06/al-majdal-43-1620308721.pdf

Israel ever since.¹⁴ In practice, all the forcibly displaced Palestinians were declared ‘absentees’ and their property transferred to a Custodian.¹⁵ Indeed, the definition of absentee was so broad that not only did it include the more than 750,000 Palestinians who, pushed away by Zionist militias’ aggressions, fled the newly established state of Israel, but it also encompassed those 300,000 individuals who fled their homes while remaining within Israel’s newly created borders,¹⁶ and in many cases, within a few kilometers of their homes and land.¹⁷ These IDPs became known as “present absentees.”

To complete the transfer of Palestinian land not abandoned during 1947 – 1949, which was already confiscated through the 1948 Absentee Property Law, no distinction in practice was made between absentee and non-absentee land. This enabled Israel to appropriate 1.2 million dunums of land: 704,000 was deemed “absentee land” while the remaining 310,000 dunums was confiscated through the 1953 Land Acquisition Law.¹⁸ As confirmed by Elilezer Kaplan, Israeli Finance Minister, this legislation’s purpose was “to instill legality in some acts undertaken during and following the war.”¹⁹

The Israeli Land Laws, adopted in the 1960s, further developed this system of expropriation and privatization by establishing the Israel Lands Administration

14 Areej Sabbagh-Khoury, “The Internally Displaced Palestinians in Israel”, *Jadal: Mada Al-Carmel Arab Center for Applied Social Research*, no. 3, 2009, 35, available at: https://mada-research.org/wp-content/uploads/2009/05/Jadal_May09_Eng.pdf

15 *Absentee Property Law, 5710-1950*, 1950, Available at: https://www.knesset.gov.il/review/data/eng/law/kns1_property_eng.pdf

16 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, [Hereinafter: Forman and Kedar, “From Arab Land to “Israel Lands”].

17 For example, Palestinians from Saffuri settled in Nazareth, Palestinians from Ma’lul settled in Yafat Al-Nasira, and Palestinians from Iqrit settled in Al-Jish. These IDPs became known as the “present absentees”. See Amnesty International Report, *Israel’s Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity*, 2022, 116, Accessed 15 February 2022, Available at: <https://www.amnesty.org/en/documents/mde15/5141/2022/en/> [Hereinafter: Amnesty International Report, *Israel’s Apartheid against Palestinians*].

18 Forman and Kedar, *From Arab Land to “Israel Lands”*, 821.

19 IBID Forman and Kedar, *From Arab Land to “Israel Lands”*, 820.

(ILA) and the Israel Lands Council. It also defined “Israel Lands” as lands in the ownership of the State, the JNF, and the Development Authority. The land they manage is prohibited from being transferred, even to its rightful owner. Up until this day, laws are still enacted by the Israeli regime to forcibly transfer Palestinians and assert its grip on their lands, such as the 2009 Land Law Reform,²⁰ which prevents Palestinian refugees and IDPs from asserting any claims to land within the Israeli judicial system.

Due to the exclusionary and discriminatory policies at the hands of the State and its proxy institutions such as the JNF, Palestinian citizens of Israel are effectively blocked from leasing land on 80 percent of State land.²¹ As explained above, the land was confiscated from Palestinians, then administered for the purposes of Israeli state-building, and finally the land was and continues to be privately sold.²²

C. Restriction on Use and Access

In addition to the use of force and the enactment of different laws mentioned above, Israel restricts Palestinian use and access to their lands by refusing to recognize the villages in which Palestinian communities have been living in for centuries (1) but also by designating them as natural parks and reserves (2).

1. Unrecognized Villages in the Naqab Desert

The Naqab (Negev) desert comprises 60 percent of the total area of Israel. Palestinian Bedouin population owns 5.5 percent of it, which represents 600,000 dunums.²³ Bedouins have lived on their ancestral lands for centuries. However,

20 Enacted to facilitate the transfer of land ownership between the ILA and the JNF, the 2009 Land Law Reform grounded a transitional process of state-owned to privately-owned land by a *bona fide* buyer, making it impossible for Palestinians to claim rights on their lands. See BADIL, *Land Confiscation and Denial of Use*, 31.

21 ADALAH, *The Inequality Report: The Palestinian Arab Minority in Israel*, March 2011, 32, Available at https://www.adalah.org/uploads/oldfiles/upfiles/2011/Adalah_The_Inequality_Report_March_2011.pdf [Hereinafter: ADALAH, *The inequality Report*].

22 BADIL, *Land Confiscation and Denial of Use*, 31.

23 BADIL, *Land Confiscation and Denial of Use*, 40.

many villages in the Naqab are now “unrecognized”, even though they pre-date the creation of Israel and their property titles were recognized by both the Ottoman and the British administrations. Numerous policies were implemented to forcibly displace the Naqab’s inhabitants. Starting as early as 1953, the Land Acquisition Law was used to claim the village of Al Araqib as a military training zone for six months. The inhabitants, however, were simply never allowed back. Considering the size of the Naqab, it is highly probable that other uninhabited lands could have been chosen for such military training, especially since no actual military activity was reported throughout these 6 months, demonstrating that the stated aim of the confiscation was never realized. Yet, Israel keeps trying to push Al Araqib’s inhabitants away, the occupation armed forces having destroyed the village an astounding 196 times.²⁴

The unrecognized designation disqualifies the concerned villages from receiving any infrastructure development and service provision such as water, sanitation or electricity. As a result, since the 1970s, around 85,000 Palestinian Bedouins have been coerced into moving to townships, in search of better living conditions.²⁵ The political motivation behind land confiscation and forestation plans in the Naqab is clear, as stated by former Prime Minister Netanyahu: “allowing for a region without Jewish majority in the Naqab would pose a palpable threat to Israel.”²⁶

Since 2013, the annual number of home demolitions against Bedouin citizens in the Naqab has tripled from 697 in 2013 to 2,326 in 2018 – an increase of 333%.²⁷

24 Arab Organization for Human Rights in the UK, *For 196th time, Israeli occupation demolishes the Palestinian village of al-Araqib*, 2021, Accessed 15 February 2022, Available at: <https://bit.ly/3oPOStL>

25 BADIL, *Denial of access to natural resources and services, Working Paper no 20*, 2017, 65, Available at https://www.badil.org/cached_uploads/view/2021/04/19/wp20-danrs-1618823866.pdf

26 Nadia Ben-Youssef, Suhad Bishara, and Rina Rosenberg, “The forced displacement of Palestinians,” *Open Democracy*, 2013, Accessed 15 February 2022, Available at: <https://www.opendemocracy.net/en/forced-displacement-of-palestinians/> [Hereinafter: Ben-Youssef, Bishara, Rosenberg, “Forced Displacement”].

27 NCF and Adalah, *NGO Report to the UN Human Right Committee*, 9 April 2018, 4, Accessed 18 February 2022, Available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_ICR_ISR_31486_E.pdf

In total, between 2013 and 2018, there were 7,298 demolitions in the Palestinian Bedouin communities over lack of permits, notwithstanding the fact that the 35 unrecognized villages are home to 100,000 Palestinians with Israeli citizenship.²⁸ In 2019 alone, 2,241 structures were demolished either by state forces or by the owners after they received a demolition order or a warning. This represented an increase of 146% compared to the previous year, and a 221% increase compared to 2013.²⁹

2. Designation of Land as Nature Reserves, Parks, or Sites

The allocation of national parks in the territory Israel controls since 1948 is permitted under a legislation originating from 1963,³⁰ amended many times over the years and culminating in the current version: National Parks, National Sites and Memorial Sites Law of 1998. Under this law, the Israeli Minister of Interior has full discretion to declare areas as “national parks,” “national sites” and “memorial sites.”³¹ No compensation is offered for the land, even though private use and access to the land are prohibited, as it has become “public land.”³² Along with the Israel Nature and Parks Authority, the JNF is a major pillar of the Israeli settler colonialism project. Founded in 1901 in Switzerland during the Fifth Zionist Congress, the JNF was set up as a non-governmental organization, although its special relationship with the government makes it arguable that the JNF is a quasi-governmental agency.³³ The main development carried out in

28 Middle East Eye, *Negev: Israeli forces destroy sit-in tents in Palestinian villages, carry out demolitions*, 2022, Accessed 15 February 2022, Available at: <https://www.middleeasteye.net/news/israel-palestine-negev-villages-tents-destroyed-demolitions>

29 NCF, *On (In)Equality and Demolition of Homes and Structures in Arab Bedouin Communities in the Negev/Naqab*, June 2020, 23, Available at: <https://dukium.org/wp-content/uploads/2020/07/HDR-2020-Datat-on-2019-Eng.pdf>

30 *National Parks and Nature Reserve Law 5723-1963*, 1963, Available at: <http://extwprlegs1.fao.org/docs/pdf/isr7843.pdf>

31 *National Parks, Nature Reserves, Memorial Sites and National Sites Law 1992*, 1998, Accessed 15 February 2022, Available at: <https://mfa.gov.il/mfa/pressroom/1998/pages/national%20parks-%20nature%20reserves-%20memorial%20sites%20an.aspx>

32 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 78.

33 BADIL, *Land Confiscation and Denial of Use*, 42.

these lands by the JNF has been forestation, mostly to hide Palestinian villages that were destroyed by Israel. Indeed, one staff member even admitted that the JNF's forest planted on lands "that *were* Arab villages" [emphasis added], aimed at such cover up.³⁴ Out of the 93 percent of Israel-controlled land, the JNF currently holds title to about 13 percent, which cannot ever be sold as the JNF holds them "on behalf of the Jewish People in perpetuity."³⁵ However, the land it controls can be leased, but only to Israeli-Jews.³⁶

In the territory of Palestine 1948, the use of force (A) as well as discriminatory legislations (B) and restrictions (C), has enabled Israel to deny Palestinian access to their lands, leading to both *de jure* or *de facto* confiscation of Palestinian lands.

34 Eitan Bronstein Aparicio, "Most JNF - KKL forests and sites are located on the ruins of Palestinian villages," *Zochrot*, April 2014, Accessed 15 February 2022, Available at: <https://www.zochrot.org/en/article/55963>

35 Palestine Land Society, "Jewish National Fund's Violation of International and Domestic Law", *Palestine Remembered*, 2005, Accessed 15 February 2022, Available at: <https://www.palestineremembered.com/Articles/JNF/Story1513.html>

36 *Ibid.*

Chapter Two

The West Bank

Similar to Palestine 1948, land in the West Bank was first confiscated by force during the Six Day War in 1967. During the 1967 Six Day War, Israeli forces invaded the Gaza Strip and the West Bank, including East Jerusalem, forcing approximately 200,000 Palestinians to flee their homes in search for refuge in neighboring countries. Such recourse to violence has continued afterwards through the installation of a coercive environment, aimed at pushing Palestinians out of their lands, and thus easing the process of land confiscation (A). To consolidate the confiscation process, Israel has manipulated land designation laws, thereby enabling it to categorize most of Palestinian land as either state land or nature reserves (B). Further, Israel restricts Palestinian access and use of their lands in the Jordan Valley, considered the “vegetable basket” of Palestine (C).³⁷ For the purposes of this chapter, the West Bank will be analyzed excluding Jerusalem, which will be the exclusive focus of Chapter Three.

A. USE OF FORCE: FROM ARMED CONFLICT TO PROTRACTED MILITARY OCCUPATION AND THE INSTALLATION OF A COERCIVE ENVIRONMENT

Israel’s recourse to violence in order to confiscate land is not limited to the armed conflict of 1967; it can be seen in the overall military occupation systems and structures that the Israeli colonial-apartheid has imposed over the Palestinian people in the West Bank. This includes the installation of military checkpoints guarded by armed forces responsible for forced evictions and demolitions of Palestinian structures; all carried out as part of the process of *de facto* and/or *de jure* land confiscation (1). Further, Israel utilizes use of force in its creation of a coercive environment that it maintains to push Palestinian owners out of their land and confiscate it (2).

37 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 65.

1. 1967 Six Day War and Military Occupation

Following the Israeli invasion of the West Bank in 1967, Israel transitioned into a deeply entrenched military occupation, where the Israeli army controls the territory and applies martial rule on the Palestinian population. The deployment of checkpoints is characteristic of Israel's use of force to isolate the Palestinian people and fragment their territory to better control and confiscate it. According to OCHA, a total of 140³⁸ checkpoints within the West Bank prevent Palestinians from accessing their own land, including 64 of which are permanently staffed with armed occupation forces. To this day, military assaults continue to target Palestinian properties in the West Bank. During Operation Defensive Shield in 2002, 878 refugee homes were demolished and 2800 others were damaged, leaving more than 17,000 individuals homeless.³⁹

2. Imposition of a Coercive Environment: Forced Evictions and Settler Violence

Forced evictions and home demolitions are also a clear illustration of Israeli use of force to displace Palestinians and confiscate their lands. Carried out by demolition crews accompanied by security officials, they may occur at any time in Area C of the West Bank, giving families very little notice or opportunity to remove their possessions. Justifying the demolitions by a lack of construction permits, which are virtually impossible to obtain for Palestinians, the Israeli Civil Administration has enforced sanctions against construction without permits in a discriminatory manner: between 1988 and 2014, 14,087 demolition orders were approved against Palestinian structures in Area C while only 6,948 targeted structures in Israeli settlements.⁴⁰ Those demolition orders are carried out

38 OCHA oPt, "Over 700 road obstacles control Palestinian movement within the West Bank", Accessed 15 February 2022, Available at: <https://www.ochaopt.org/content/over-700-road-obstacles-control-palestinian-movement-within-west-bank>

39 United Nations, "*Report of [the UN] Secretary-General on Recent Events in Jenin, Other Palestinian Cities*", August 2002, Accessed 15 February 2022, Available at: <https://www.un.org/press/en/2002/SG2077.doc.htm>

40 Amnesty International, "Israeli authorities must transfer planning powers to Palestinians in Area C of the occupied West Bank", 2015, Accessed 15 February 2022, Available at: [amnesty.org/en/documents/mde15/1430/2015/en](https://www.amnesty.org/en/documents/mde15/1430/2015/en)

with physical violence against Palestinian communities and sometimes against solidarity activists trying to prevent the forcible eviction of Palestinian residents.⁴¹

Part of the Israeli strategy to confiscate more and more West Bank land also lies in violence that is not directly attributable to the state but at the hands of its citizens, the settler population implanted in the West Bank.⁴² By fully supporting and assisting these brutal acts, settler violence has become a form of government policy, where its agents sometimes participate. Acts of violence go from beating, throwing stones, issuing threats, torching fields, destroying trees and crops, stealing crops, damaging homes and cars, blocking roads, using live fire, and, to, in some cases, killing. Instead of protecting the victims, the occupation forces prefer to remove Palestinians from their own farmland rather than confront settlers, using various tactics such as declaring the area a closed military zone (which applies to Palestinians only) or firing tear gas, stun grenades, rubber-coated metal bullets and even live rounds. Israel's refusal to investigate and condemn these violent demonstrates its support. According to Yesh Din, which monitored settler violence for 15 years, 91% of the files were closed without an indictment.⁴³

B. ISRAELI LEGISLATION: MILITARY ORDERS CEMENTING CONFISCATION

Forced to flee because of the Six Day War, Palestinian owners saw their lands transferred to a Custodian, right when the occupation began, through the Absentee Property Military Order (1) directly mirroring the 1948 Absentee Property Law. Afterwards, using State and designation and the interdiction of land registration, Israel continued its process of confiscation of Palestinian lands in the West Bank (2).

41 Amnesty International Report, *Israel's Apartheid against Palestinians*, 235.

42 BADIL, *Coercive environments: Israel's Forcible Transfer of Palestinians in the Occupied Territory*, 2017, viii, Available at: <https://badil.org/phocadownloadpap/badil-new/publications/research/working-papers/FT-Coercive-Environments.pdf>

43 Yesh-Din, *Data Sheet, December 2019: Law enforcement on Israeli civilians in the West Bank*, 2019, Accessed 15 February 2022, Available at: <https://www.yesh-din.org/en/data-sheet-december-2019-law-enforcement-on-israeli-civilians-in-the-west-bank/>

1. Absentee Property Military Order

Similar to the Absentee Property Law enacted in Palestine 1948, Military Order 58 *Regarding Abandoned Property* (1967) provided for the transfer of properties whose owners had fled because of the 1967 War to the “Custodian for Abandoned Property,”⁴⁴ who is entitled to take possession of it and manage it as he pleases.⁴⁵ Further, (Military) Order no. 150 expanded the definition of “abandoned property” to include property belonging to a person “resident of an enemy country.”⁴⁶ In theory, the Custodian is supposed to protect the property until the owner’s return, who is entitled to restitution of his property as well as to the profits derived therefrom. Conveniently, Israel has forbidden the return of Palestinian refugees, thereby blocking any claim for restitution of “abandoned property.”⁴⁷ Israeli officials even admitted in 2006 that a list of “absentee” land owners was established in order to prevent their return and any potential property claim.⁴⁸

2. Manipulative Land Designation as State Land and Nature Reserves

During its administration of the West Bank between 1949 and 1967, Jordan had designated parts of the land as State Land. When the Israeli occupation began in 1967, Israel claimed these lands as “State Lands” in a similar process as in 1948, though using military legislation. Military Order 59 “Concerning Government Property (Judea and Samaria)” allowed for a Custodian appointed

44 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), 85.

45 B’Tselem, *Land Grab Israel’s Settlement Policy in the West Bank*, trans. Yael Stein (Jerusalem, May 2002), 58, Available at: http://www.btselem.org/download/200205_land_grab_eng.pdf. [Hereinafter: B’Tselem, *Land Grab Israel’s Settlement Policy in the West Bank*].

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

47 B’Tselem, *Land Grab Israel’s Settlement Policy in the West Bank*, 58.

48 Haaretz, “Ministry Admits ‘Blacklist’ of Palestinians who left W. Bank”, 2006, Accessed 15 February 2022, Available at: <https://www.haaretz.com/1.4855904>

by the Israeli Military Commander to deem any land as State lands.⁴⁹ Additionally, the registration process, which started under the Jordanian Administration and enabled Palestinian owners to have their land ownership recognized,⁵⁰ was frozen by Israeli Military Order 291(1968).⁵¹ As a result, only 35 percent of the land of the West Bank could be registered by the end of the 1960s⁵². In the rare case where Palestinian residents manage to prove their ownership⁵³ (the burden of proof unsurprisingly rests on Palestinian residents) and even if they do so on time (often enough, it is too late to appeal when they realize it), Article 5 of Military Order 59 states that the land may remain registered in the name of the State and in the hands of the new buyer, under the pretext that the transaction was authorized by the Custodian and done in “good faith.”⁵⁴

Established under the Israeli Civil Administration, the Israel Nature and Parks authority derives its authority from Military Orders no. 363 and 373. It is responsible for running the Nature Reserves and National Parks.⁵⁵ Although neither of these military orders contain a single criteria for a land to be categorized as reserves or parks,⁵⁶ the Applied Research Institute of Jerusalem counted at least 340,000 dunums of land designated as natural reserves in 1980.⁵⁷ As of 2004, 18 areas were categorized as National Parks in the oPt.⁵⁸

49 BADIL, *Land Confiscation and Denial of Use*, 14.

50 Raja Shehadeh, “The Land Law of Palestine: An Analysis of the Definition of State Lands”, *Journal of Palestine Studies* 11, no. 2, 1982, 97.

51 George Emile Bisharat, ‘Land, Law and Legitimacy in Israel and the Occupied Territories’, *American University Law Review* 43, no. 2 (Winter 1994), 539 [Hereinafter: Bisharat, “Land, Law and Legitimacy”]

52 Aryeh Shalev, *The Autonomy – Problems and Possible Solutions*, Jaffe Center for Strategic Studies, Tel Aviv University, 1980, 105.

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

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

55 *Order Concerning the Protection of Nature (Judea and Samaria) 1969*, n.d.; Accessed 15 February 2022, Available at: http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&cid=453&module_id=6#as

56 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 70.

57 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 6.

58 *Beit Sourik Village Council V. The Government of Israel* (HCJ 2004)

The most recent figures published in 2018 estimate that around 500,000 dunums (equivalent to 14.5 percent of Area C) is covered with nature reserve and parks.⁵⁹ In Wadi Qana, for instance, a fertile valley East of Qalqiliya, more than 14,000 dunums were designated in 1983 as Israeli nature reserve. The designation means that Palestinian owners are no longer permitted to freely farm their own lands,⁶⁰ even though the reserve's by-laws oblige the Israel Nature and Parks Authority to allow for the continuation of all farming that was practiced on the site before it was declared a nature reserve. Instead, the Israel Civil Administration has issued orders for farmers to uproot their olive trees, notwithstanding the fact that those same olive trees contributed to the inherent "nature" of the area in the first place. As of 2017, some 20 percent of the Jordan Valley was allocated to nature reserves.⁶¹

3. Closed Military Zones: Pretext for Accelerated Colonization of the Lands

Since 1967, approximately 18 percent of the West Bank has been declared "closed military zones" or "firing zones" and confiscated. Based on manipulative application of Ottoman Laws of 1858, a military commander can declare any area or place closed for military purposes,⁶² which has allowed Israel to convert 1.11 million dunums of land in the West Bank into restricted military areas.⁶³ As of 2017, 46 percent of the Jordan valley was declared "closed military areas,"⁶⁴

59 Emek Shaveh, "On which side the grass is greener? National parks in Israel and the West Bank", 2017, 3, Available at <https://emekshaveh.org/en/wp-content/uploads/2018/04/On-which-side-is-the-Grass-Greener.pdf>

60 B'Tselem, "Wadi Qana – From Palestinian agricultural valley to settlements' tourism park," 23 April 2015, Accessed 16 February 2022, Available at: http://www.btselem.org/area_c/wadi_qana

61 B'Tselem, "The Jordan Valley", updated on 11 November 2017, Accessed 15 February 2022, Available at https://www.btselem.org/jordan_valley [Hereinafter B'Tselem, "The Jordan Valley"]

62 Article 125 of the Defense (*Emergency*) Regulations and Article 318 of Military Order 1651.

63 Bisharat, "Land, Law and Legitimacy", 534. See also: *Order Concerning Security Provision (Judea and Samaria)* 2009, 2009. This order is based on (No.378), 1970, Article 90.

64 B'Tselem, "The Jordan Valley".

effectively making it off-limits to Palestinians. The majority of these closed zones are located in the Jordan Valley and the South Hebron Hills. In Masafer-Yatta, the Israeli military designated in the 1980s about 30,000 dunums of lands, engulfing 12 Palestinian villages,⁶⁵ to supposedly serve as a base for Firing Zone 918.⁶⁶

Between 1968 and 1979, 47,000 dunums of private land in the West Bank seized for military needs,⁶⁷ were in fact used to implant a settler colonial population,⁶⁸ in clear violation of international humanitarian law (IHL), which prohibits all form of implantation of the occupying power's citizens into the territory it occupies.⁶⁹ To give itself a pretense of legality, Israel distinguishes between settlements and outposts, only prohibiting the latter in its domestic legislation. However, Israel then regularly regularizes such outposts, transforming them from domestically illegal settlements into legal settlements (while both remain a violation of international law). Despite being cancelled in 2020,⁷⁰ the 'Regularization Law' of 2017 retroactively legalized around 4,000 housing units in 55 colonial outposts built on private land in the West Bank, effectively allowing the illegal expropriation of Palestinian land.⁷¹ This allows Israel to actually implement Former Prime Minister Golda

65 RHR and Breaking The Silence, *Info-sheet: The 12 Villages of Firing Zone 918 in the South Hebron Hills*, 2012, Accessed 15 February 2022, Available at <https://law.acri.org.il/en/2016/02/21/firing-zone-918-infosheet/>

66 Firing Zone 918: *Ahmad 'Issa Abu 'Aram Et Al V. Commander of IDF Forces in Judea and Samaria*.

67 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 34

68 BADIL, *Israeli Annexation: The Case of Etzion Colonial Bloc*, 2019, 32, Available at https://www.badil.org/cached_uploads/view/2021/04/20/etzionbloc-israeliannexation-1618907810.pdf

69 Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Article 49.

70 The Israeli Supreme Court decided to cancel the "Settlements Regularization Law for Judea and Samaria [the West Bank]", finding that the law disproportionately violates the rights of Palestinians to property, equality and dignity. See Adalah: <https://www.adalah.org/en/content/view/10035>.

71 BADIL, "Israel's 'Regularization Law' is an act of legalization of its colonization policies", 10 February 2017, Accessed 15 February 2022, Available at: <https://www.badil.org/press-releases/817.html>.

Meir's strategy, who declared that '[t]he frontier is where Jews live, not where there is a line on the map.'⁷²

Since the Elon Moreh case before the Israeli Supreme Court in 1979, land seized to establish a colony is not to be justified under military necessity⁷³ and therefore is to be found unlawfully acquired.⁷⁴ Nevertheless, the practice did not cease entirely. In 2014 for instance, 4,000 dunums of Palestinian land was given by the Israeli Civil Administration (ICA) to Gvaot colony, located in the Etzion Colonial bloc, based on the military necessity exception, making it the largest designation of "state land" in the area since the 1980s.⁷⁵ While Israeli authorities have allocated 70 percent of the land in Area C to settlements, only 0.5 percent of Area C is allowed for Palestinian building, and most of which is already built up.⁷⁶

C. RESTRICTIONS ON USE AND ACCESS

Despite being home to 65,000 Palestinians living in over 50 communities, 90 percent of the Jordan Valley and Dead Sea area are off-limits for Palestinian use. The numerous confiscation policies explained above, supplemented by the construction of the Annexation Wall (1), the seam zones (2) and the network of bypass roads (3) have entrenched full Israeli control over the land and have effectively cut Palestinian towns and communities off from each other and from the rest of the Jordan Valley.

72 Prime Minister Golda Meir, Sept. 1972, quoted in Aronson, "Creating Facts: Israel, Palestinians and the West Bank" (Washington, D.C.: Institute for Palestine Studies), 1987, 14.

73 Customary Rule 51 of IHL allows the occupying power to seize or destroy private property only if required by military necessity. See ICRC: https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule51

74 HCJ, 390/79, Izzat Muhammad Mustafa Duweikat et al v Government of Israel et al, (1980) 34, P.D. 1 (1) [Hereinafter: Elon Moreh Case, 1979, HCJ Israel].

75 Stuart Winer, "State seizes 1,000 acres in West Bank", *The Times of Israel*, 31 August 2014, Accessed 15 February 2022, Available at: <https://www.timesofisrael.com/state-seizes-1000-acres-in-west-bank/>

76 Amnesty International Report, *Israel's Apartheid against Palestinians*, 25.

1. The Annexation and Separation Wall

The Wall illegally runs through the West Bank, appropriating private Palestinian land, and preventing Palestinian residents from building in areas 200 meters from its route.⁷⁷ If completed, the Wall will have *de facto* annexed 708 square kilometers of the West Bank,⁷⁸ while 9.4 percent of the West Bank territory has already been *de facto* annexed by means of the Wall. Farmers whose lands are now conveniently situated on the other side of the wall need a permit from the Israeli military authorities for the mere and only purpose of tending and harvesting crops. In practice, they are almost never obtained: over 98 percent of Palestinian building permit requests are rejected in West Bank's Area C, based on data collected between 2016 and 2018.⁷⁹

In 2004, the International Court of Justice ruled on the legality of the Wall and concluded that both the wall and its “associated regime” were contrary to international law. The Court also 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.”⁸⁰ Though this judgment is now almost 20 years old, Israel has not complied with any of its international obligations. It has continued the construction of the wall and maintained its associated regime of discrimination so its apartheid policies remain firmly in place, enabling for the confiscation of Palestinian lands.

77 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 86.

78 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 57.

79 Hagar Shezaf, “Israel Rejects Over 98 Percent of Palestinian Building Permit Requests in West Bank’s Area C”, *Haaretz*, 2020, Accessed 23 February 2022, Available at: <https://www.haaretz.com/israel-news/.premium-israel-rejects-98-of-palestinian-building-permit-requests-in-west-bank-s-area-c-1.8403807>

80 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, Para 163, Available at <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

2. Seam Zones

Seam zones are sections of Palestinian land within the oPt that are located between the 1949 Armistice Line (Green Line) and the illegal Annexation Wall⁸¹. In 2003, the Military Commander proclaimed the “Seam Zone” a closed military zone that may be entered by permit only. As a result, Palestinian access to these isolated areas is severely restricted and subjected to an Israeli-controlled permit regime. Approximately 50,000 Palestinians live in 57 communities within these so-called seam zones and are defined internationally as Internally Stuck Persons.⁸² In a unique set up, seam zones communities are both denied services from Israel municipalities and prevented from being accessed by the Palestinian Authority’s municipalservices.⁸³

3. Bypass Roads

The bypass road system is designed to connect Israeli colonies with each other and cities inside Israel, without requiring passage through Palestinian inhabited areas. The stated purpose of these roads is to connect people and places, but the majority is only accessible to Jewish Israelis. Further, most by-pass roads in the West Bank create a barrier that strangles Palestinian urban and social development and has led to both isolation and fragmentation of Palestinian communities. The actual route and structure of these by pass-roads in the West Bank are evidence of a discriminatory policy, which deepens Israeli spatial domination of the West Bank and its inhabitants. In Deir Istiya for example, the land was confiscated for the construction of by-pass roads and the installation of sewage pipelines and electricity generators for the sole benefits of illegal Israeli colonies.⁸⁴ This is in

81 For more information, see: BADIL Resource Center, Seam Zones, Available at: https://www.badil.org/phocadownloadpap/Badil_docs/bulletins-and-briefs/Bulletin-25.pdf

82 OCHA oPt, *Three Years Later: The Humanitarian Impact of the Barrier Since the International Court of Justice Opinion*, 9 July 2007, 1, Available at: <https://www.ochaopt.org/content/three-years-later-humanitarian-impact-barrier-international-court-justice-opinion>

83 Lena Odgaard, “Israeli Wall Creates Limbo for Seam Zone Palestinians”, *Al Monitor*, 2 July 2013, Available at: <https://www.al-monitor.com/originals/2013/07/west-bank-seam-zone-israel-wall.html>

84 BADIL, *Land Confiscation and Denial of Use*, 61.

clear violation of IHL which prohibits the seizure of private property in occupied territory, unless required by imperative military necessity.⁸⁵ Such confiscation by Israel of the land in Deir Istiya does not meet the criteria of imperative military necessity since it is used for the occupying power's civilians' benefits, who are illegally settled in occupied territory.

In the West Bank, the use of force, either directly by the state or indirectly by Israeli settlers (A), supplemented by discriminatory legislation in the form of military orders (B), has enabled Israel to acquire land and control Palestinian residents' movements, by restricting their access and use of the lands (C). Israel has intentionally interrupted the territorial contiguity of Palestinian villages and towns, creating enclaves in areas A and B, surrounded by area C under full Israeli control, shaping the territory in Palestinian islands or Bantustans.

85 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Article 23 (g)

Chapter Three

Jerusalem

From the onset of the occupation of Jerusalem in 1967, until the official – albeit illegal – annexation of the city in 1980, the Israeli regime has been confiscating Palestinian land in Jerusalem through a combination of force (A), enactment of discriminatory legislations (B) and installation of a complex system of zoning and planning system, all aimed at preventing Palestinian construction and eventually leading to the demolition of Palestinian homes and other structures (C).

A. USE OF FORCE

Israel resorted to violence and used force to confiscate Palestinian properties in West Jerusalem during the 1948 War (1) and implemented the same tactic for the eastern part of the city, during the Six Day War of 1967 (2).

1. 1948: Palestinian Properties in West Jerusalem

At the time of the UN Partition Plan in November 1947, 40 percent of the property in Jerusalem was owned by Palestinian individuals, 26 percent by Jewish individuals, while the rest belonged to religious institutions and the British mandate government.⁸⁶ In the course of the 1948 War, some 50,000⁸⁷ Palestinians from the western neighborhoods of Jerusalem and surrounding villages were expelled. When the war ended, the newly established State of Israel, in control of the western areas of Jerusalem, refused to allow Palestinian refugees who fled during the war to return to their homes and lands.⁸⁸ Described

86 Schedule of area ownership, reprinted by the Institute for Jerusalem Studies and Badil, 1998, 33, Available at: https://www.badil.org/phocadownload/Badil_docs/publications/Jerusalem1948-CHAP6.PDF

87 Daliah Habash and Terry Rempel, “Assessing Palestinian Property in West Jerusalem”, *BADIL*, 2002, 184, Available at: https://www.badil.org/phocadownload/Badil_docs/publications/Jerusalem1948-CHAP6.PDF

88 *Ibid.*

as one the “greatest mass robberies in the history of Palestine”,⁸⁹ Palestinian properties located in west Jerusalem were placed under the authority of the Custodian of Abandoned Property, and later of “Absentee” Property. In charge of administering the property, the Custodian in fact distributed it to any potential Jewish buyer. In total, these lands were estimated around 7,293 dunums for the city of Jerusalem only, excluding the lands in the surrounding villages such as Lifta or Deir Yassin, whose inhabitants were massacred.⁹⁰ At the end of the war, Israel occupied an estimated of 10,000 homes belonging to Palestinian residents in west Jerusalem.⁹¹

2. 1967: Six Day War and Occupation

The Six Day War, which occurred between 5 June 1967 and 10 June 1967, was immediately followed by home demolitions carried out by the Israeli forces. Indeed, between 10 and 12 June 1967, mass demolitions targeted the Mughrabi (Moroccan) Quarter of the Old City in Jerusalem in order to create the Western Wall Plaza.⁹² In this historic neighborhood home to the Moroccan community of Jerusalem as well as to 12th century-buildings,⁹³ 650 Palestinians were instructed to leave their homes immediately at the end of the War. The following day, the Israeli authorities bulldozed 138 buildings in an attempt to completely erase the Mughrabi Quarter. Later in April 1968, a total of 116 dunums from the Mughrabi Quarter, Al Sharaf neighborhood and the Jewish neighborhood, was confiscated by the Israeli government in order to expand the Jewish Quarter and

89 Henry Cattán, Palestinian lawyer from West Jerusalem, quoted in Dalia Habash and Terry Rempel, “Assessing Palestinian Property in West Jerusalem”, *BADIL*, 2002, 167, Available at: https://www.badil.org/phocadownload/Badil_docs/publications/Jerusalem1948-CHAP6.PDF

90 For more information on Deir Yassin massacre (9.04.1948) See: <https://zochrot.org/en/village/49106>

91 Nathan Krystall, “The Fall of the New City, 1947-1950”, *BADIL*, 2002, 116, Available at: https://www.badil.org/phocadownload/Badil_docs/publications/Jerusalem1948-CHAP4.PDF

92 Maryvelma Smith O’Neil, “The Mughrabi Quarter Digital Archive and the Virtual Illés Relief Initiative”, *Jerusalem Quarterly*, Issue 81, 53, n.d, Accessed 23 February 2022, Available at: [The Mughrabi Quarter Digital Archive and the Virtual Illés Relief Initiative.pdf \(palestine-studies.org\)](https://www.palestine-studies.org/jq/issue/81/53/the-mughrabi-quarter-digital-archive-and-the-virtual-ill%C3%A9s-relief-initiative.pdf)

93 *Ibid*, 52.

build the Western Wall Plaza.⁹⁴ Palestinian families were then prohibited by the Israeli authorities from buying any apartment in the newly built blocks in the Jewish Quarter.⁹⁵ Altogether, Israel has utilized use of force in all of Jerusalem to expel the Palestinian people and confiscate their properties.

B. ISRAELI LEGISLATION

1. Annexation Decree: Jerusalem Basic Law

On 28 June 1967, Israel extended the application of Israeli law, jurisdiction and administration to the area of east Jerusalem. Such decree amounted to *de facto* annexation and was immediately condemned by the Security Council in May 1968. Indeed, Resolution 252 declares all legislative and administrative measures over Jerusalem which tend to change its status as invalid, illegal and in flagrant violation of international law.⁹⁶ Nevertheless, Israel continued with impunity its land confiscation process and declared Jerusalem as “the complete and united capital of Israel” in 1980, despite the international community’s condemnations and refusal to recognize it. Adopted by the Knesset in 1980, the Jerusalem Law transformed the annexation from *de facto* to *de jure*. It declared Jerusalem “complete and united” as the “capital of Israel”, and applied to both the western and eastern parts of Jerusalem within the expanded boundaries defined in June 1967.

Out of the 70.5 square meters of East Jerusalem unlawfully acquired in 1980, 24 were confiscated for public purposes such as the creation of national parks. As occupied territory, east Jerusalem is protected by international law. Article 23 (g) of the Hague Regulations strictly prohibits the occupying power from destroying or seizing enemy’s property unless imperatively demanded

94 B’Tselem, **נתונים על הפקעת קרקעות במזרח ירושלים והשימוש בהן** [Data on land expropriation and use in East Jerusalem], 28 August 2013, Accessed 15 February 2022, Available at: https://www.btselem.org/hebrew/jerusalem/land_expropriation_statistics (in Hebrew).

95 *Muhammad Said Burkan v. The Minister of Finance and others*, Case HCJ 114/78, judgment, 4 July 1978 (an unofficial English translation is available at https://hamoked.org/files/2010/112340_eng.pdf).

96 UN Security Council Resolution 252 (1968) of 21 May 1968.

by the necessities of war. A similar provision can be found in the Fourth Geneva Convention, where Article 53 forbids destruction of private property unless rendered absolutely necessary by military operations. Despite these provisions, 738 dunums (738,000 km²) of land in Al Issawiya village and At-Tur neighborhood were confiscated for the construction of a national park in 2011.⁹⁷ Another third of annexed east Jerusalem was used to establish Israel's illegal colonies despite IHL's absolute prohibition,⁹⁸ even under the military necessity pretext. As demonstrated in Chapter II, the implantation of settler population cannot be considered a military necessity since 1979.⁹⁹ In 1981, the Mughrabi quarter continued to be the target of home demolitions, with a further 15 Palestinian buildings bulldozed and their residents displaced to different places around the world,¹⁰⁰ demonstrating the clear aim of changing the geography and demography of the Old City in Jerusalem.

2. Hindrance of Land Registration and Absentee Property Law

As within the West Bank, the system of land registration and denying building permits has been used by the Israeli authorities as a tool to prevent Palestinian owners from asserting their rights on their land. For a building permit to be authorized, the applicant must prove that his or her land has been registered in the Israeli Land Registrar. Since 1967, the Israeli authorities froze land registration within the oPt. As a result, most of the land in east Jerusalem is not registered.¹⁰¹ The freeze on land registration continued until 2018, when the government adopted Resolution 3790 approving a five-year plan, allegedly aimed at “narrowing socioeconomic gaps and economic development in East Jerusalem.”¹⁰² In practice,

97 ADALAH, “Israel approves plan to build ‘National Park’ on lands of Palestinian villages in East Jerusalem”, 2013, Accessed 15 February 2022, Available at: <https://www.adalah.org/en/content/view/8231>

98 The interdiction of settlements in Article 49 of the Fourth Geneva Convention bears no exception.

99 Elon Moreh Case, 1979, HCJ Israel.

100 Nazmi Al-Jubeh, حارة اليهود وحارة المغاربة في القدس القديمة: التاريخ والمصير ما بين التدمير والتهود [“The Jewish Quarter and the Moroccan Quarter in the Old City of Jerusalem: History and Destiny between Destruction and Judaization”], 2019, 258-260.

101 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 109.

102 Amnesty International Report, *Israel's Apartheid against Palestinians*, 127.

however, Israeli planning authorities have only designated 15 percent of the land for Palestinian residence, with 2.6% of this land zoned for public buildings,¹⁰³ while Palestinians represent 60% of the population in East Jerusalem today.

Another tool used by Israel is the application of the Absentee Property Law to Palestinian owners who are living in the West Bank and are therefore clearly not “absent.” This law allows Israel to increase Jewish presence in east Jerusalem by placing settlers in properties belonging to “absentees”.¹⁰⁴ According to one estimate for Palestine 1948 and east Jerusalem together, 60 percent of the fertile land belonging to Palestinian refugees was confiscated under the Absentee Property Law.¹⁰⁵ The United Nations Human Rights Council, in investigating Israeli colonies in the oPt, confirmed the Klugman Report’s finding that the Custodian of Absentee Property was “an institution to dispossess Palestinians of their land and property.”¹⁰⁶ As a result of this discriminatory set of legislation, 38 percent of Palestinian land in east Jerusalem was confiscated between 1967 and 2017.¹⁰⁷

C. RESTRICTIONS ON USE AND ACCESS THROUGH URBAN PLANNING DISCRIMINATORY POLICIES

That which was not confiscated by force and by Israeli discriminatory legislation is controlled by a complex zoning and planning system (1), used as a justification for the demolition of structures (2) allegedly violating these urban policies, but

103 Ir Amim and Bimkom, *Deliberately Planned: A policy to thwart planning in the Palestinian neighborhoods of Jerusalem*, 2017, Available at: <https://ir-amim.org.il/sites/default/files/Deliberately%20Planned.pdf>

104 Ir Amim, *Absentees against their will: Property expropriation in East Jerusalem under the Absentee Property Law*, 2010, 2, Available at: https://ir-amim.org.il/sites/default/files/Absentees_against_their_will.pdf [Hereinafter: Ir Amin, *Absentees against their will*].

105 Jewish News, “Why we need to speak about the Absentee Property Law”, 2020, Accessed 15 February 2022, Available at: <https://blogs.timesofisrael.com/why-we-need-to-speak-about-the-absentee-property-law/>

106 UN Human Rights Council, *Report of the independent international fact finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*. (A/HRC/22/63), 2013, 32.

107 Amnesty International Report, *Israel’s Apartheid against Palestinians*, 131.

in reality, ultimately aiming at restricting Palestinian use and access to lands in east Jerusalem.

1. Zoning and Planning

The Planning and Building Law of 1965, which applies to east Jerusalem, prohibits building permits for areas not zoned for construction or lacking a planning scheme.¹⁰⁸ Since no Local Town Planning Scheme for Jerusalem was approved by Israel, it is impossible to obtain a permit. Consequently, tens of thousands of individuals have no legal building option: 28 percent of Palestinian homes in east Jerusalem are built without a permit,¹⁰⁹ making this part of the city twice as crowded as its Western part. Following the 1967 War, over a third of east Jerusalem's total area was confiscated and used to build 40,000 housing units for the Jewish population exclusively, while no single unit was built for the Palestinian population. The Jordanian planning schemes applicable prior 1967 were unauthorized and no alternative plans put forward until 1983.¹¹⁰ Israel's obsession with the demographic "balance" in Jerusalem led to a plethora of restrictive and burdensome planning procedures.¹¹¹ In fact, only 13 percent of east Jerusalem is allowed for building (and 9 percent for *residential* buildings) by Israeli zoning policy, most of which is already built up and even if it were not, it would not be sufficient to cover the population's housing needs.¹¹²

Unveiled in September 2004, the "Jerusalem Master Plan 2000" zoned areas intended for specific functions such as residency, urban building, transportation

108 The Civic Coalition for Defending Palestinian Rights in Jerusalem, *Aggressive Urbanism: Urban Planning and the Displacement of Palestinians Within and from Occupied East Jerusalem*, 2009, 17, Available at: <https://rete-eco.it/2012/attachments/article/38254/Aggressive%20Urbanism%20Report.pdf>

109 OCHA oPt, *The Planning Crisis in East Jerusalem: Understanding the Phenomenon of Illegal Construction*, 2009, 12, Available at: https://www.ochaopt.org/sites/default/files/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf [Hereinafter: OCHA oPt, *The Planning Crisis in East Jerusalem*].

110 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 105.

111 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 106.

112 OCHA oPt, *The Planning Crisis in East Jerusalem*, 18.

etc.¹¹³ The Plan officially aims at “maintaining the demographic balance between the city’s Jewish and Palestinian residents,”¹¹⁴ but actually provides the authorities with a legal pretext for the appropriation of Palestinian land and the expansion of Israeli colonies. Indeed, the “housing potential” was described by a city engineer as the only way to achieve and maintain the proportion of the Arab population in Jerusalem under 28 percent against 72 percent Jew,¹¹⁵ confirming the true aim of de-Palestinianization of Jerusalem.

The currently proposed Master Plan for Jerusalem is a composition of successive Israeli Master Plans, entailing both minor and major adjustments for urban planning in the Jerusalem Municipality. It includes the Jerusalem Master Plan 2020 and Jerusalem Master Plan 2030.¹¹⁶ Although not finalized or approved, the Special Rapporteur on Adequate Housing has already reported that this policy of demographic balance (maintaining a Jewish majority is clearly stated as the main goal) is discriminatory and violates human rights law.¹¹⁷ In 1999, only 10 percent of the Jerusalem municipal budget was allocated to Palestinian neighborhoods, even though they represent more than one third of the population.¹¹⁸

2. Home Demolitions

As everywhere else in Palestine, the demolition of Palestinian homes in Jerusalem

113 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 108.

114 Ir amim, “Jerusalem Master Plan 2000- General Analysis and Comments”, *Journal of Palestine Studies*, 2010, 194, Available at: https://oldwebsite.palestine-studies.org/sites/default/files/jps-articles/jps.2010.xl_1.193.pdf

115 Eyal Weizman, “Demographic Architecture”, *Jerusalem Quarterly* 38, 2009, 17, Available at: https://oldwebsite.palestine-studies.org/sites/default/files/jq-articles/38_Demographic_2.pdf

116 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 46.

117 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*, 2012, 11–12, Accessed 15 February 2022, Available at: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_62_ENG.doc

118 B’tselem, “Neglect of Infrastructure and Services in Palestinian Neighborhoods,” 2011, Accessed 17 February 2022, Available at: <https://www.btsalem.org/jerusalem>

is a political act, embedded in a planning and allocation of resources system intended to change the city's demographics.¹¹⁹

The majority of Palestinian home demolitions in east Jerusalem are administrative: they concern new structures, such as a building that is in progress or a structure that has not been inhabited for at least 60 days.¹²⁰ Even internal construction or renovation may require a permit and, if conducted without one, residents are exposed to administrative demolition of the whole structure.¹²¹ Because the demolition targets the building itself and not its owner, it does not require a court hearing and can be implemented very quickly. The demolition can follow 24 hours after the notification is delivered, leaving the owner extremely short notice to appeal in the Jerusalem Municipal Court.¹²² Unless there is a technical error in the issuance of the demolition order, the judge has little room to grant an appeal. Lastly, the cost of the demolition is typically billed to the homeowner.¹²³ OCHA has estimated that 2,000 houses in east Jerusalem have been demolished since 1967, as well as thousands of Palestinian-owned “structures”.¹²⁴ In 2021 alone, the number of structures demolished in East Jerusalem for lack of permits reached 177, approximately the same number for the years 2017, 2018 and 2019.¹²⁵

119 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 105.

120 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 114.

121 BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, 115.

122 Article 250 of the Planning and Building Law, 5725—1965, Available at: <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/07-National-Planning-Building-Law-1965.pdf>

123 Anthony Coon, “Israel and the Occupied Territories, Demolition and Dispossession: The Destruction

of Palestinian Homes”, 1999, 41, Available at: <https://www.amnesty.org/ar/wp-content/uploads/2021/06/mde150591999en.pdf>

124 OCHA oPt, *Special Focus: East Jerusalem Key Humanitarian Concerns*, 2017, Accessed 17 February 2022, Available at: <https://www.ochaopt.org/content/west-bank-east-jerusalem-key-humanitarian-concerns>

125 OCHA oPt, *West Bank Demolitions And Displacement: An Overview*, 2021, Available at: https://www.ochaopt.org/sites/default/files/Demolition_Monthly_report_Nov-Dec_2021.pdf

When administrative demolition is not an option (i.e. when the home is not newly built or renovated), another mechanism is used to expel Palestinians from east Jerusalem, namely judicial demolitions, targeting firstly homes in the Old City. Issued by the District or Local Affairs Commission, they usually follow the trial and conviction of someone who was engaged in illegal construction (i.e. on a non-registered land or on a land not zoned for this purpose), as long as the construction is not older than five years. If the construction is older than five years, the Planning and Building Law of 1965 allows for judicial demolitions through its Article 212, which considers such homes as “public nuisance” and hence justifies their demolition.¹²⁶ In east Jerusalem between January 2009 and August 2020, Israeli authorities demolished 1360 structures over lack of building permits, displacing 2462 people.¹²⁷ According to OCHA estimates, 877 people face eviction cases and are at risk of displacement for the year 2019 alone,¹²⁸ most of which are located in the Old City of Jerusalem and in the neighborhoods of Sheikh Jarrah and Silwan.

126 Article 212 of the Planning and Building Law, 5725—1965, Available at: <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/07-National-Planning-Building-Law-1965.pdf>

127 Amnesty International Report, *Israel's Apartheid against Palestinians*, 221.

128 OCHA oPt, “Settler organization increasing presence in Palestinian neighbourhoods”, 2019, Accessed 15 February 2022, Available at: [Palestinian family evicted from Silwan neighbourhood in East Jerusalem | United Nations Office for the Coordination of Humanitarian Affairs - occupied Palestinian territory \(ochaopt.org\)](https://www.ochaopt.org/documents/settler-organization-increasing-presence-in-palestinian-neighbourhoods).

Conclusion

As shown above, the Zionist Israeli enterprise has, since 1948, pursued a policy of establishing a Jewish demographic hegemony and maximizing its control over land, using a threefold approach to *de facto* and *de jure* confiscate lands from Palestinian owners. In Palestine 1948, this process of land grab started by resorting to force and is today primarily carried out through Israeli legislation which translates in denial of use and access. In 1967, Israeli authorities extended this policy to the West Bank, employing a similar combination of use of force, manipulation of previous legislations, and enactment of new military orders to install a coercive environment aimed at pushing Palestinians out of their lands. Finally, while Palestinian land in the western part of Jerusalem was completely taken over in the aftermath of the 1948 and 1967 wars, Palestinian land owners in east Jerusalem continue to be the target of a myriad of discriminatory laws supported by a complex system of urban planning and zoning, all set up to prevent Palestinian construction and justify their demolition.

As a result, the map of Mandatory Palestine has drastically been changed to prevent the establishment of an independent and viable Palestinian state. As stated by Israel's then Prime Minister Benjamin Netanyahu in 2019, "Israel is not a state of all its citizens... [but rather] the nation-state of the Jewish people and only them".¹²⁹ Israel's intent to create and maintain a system of oppression and domination over Palestinians is clearly an historic, yet ongoing process, achieved through territorial fragmentation, dispossession of land and property, and denial of economic and social rights. Despite numerous UN Security Council resolutions and the existence of legal remedies and actions, the international community's inaction has enabled Israel to continue dispossess, segregate, control and oppress Palestinians. Practical measures must be taken to bring Israel accountable for its forcible transfer policies and the violations they entail, as well as to ensure reparation and remedies for Palestinian victims, including property restitution and compensation.

129 Message posted online in March 2019 by Israel's then Prime Minister, Benjamin Netanyahu.

“ The international community’s inaction has enabled Israel to continue to dispossess, segregate, control, and oppress Palestinians. Practical measures must be taken to hold Israel accountable for its forcible transfer policies and practices and to ensure reparations and remedies are provided for Palestinian victims, including restitution and compensation. ”

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