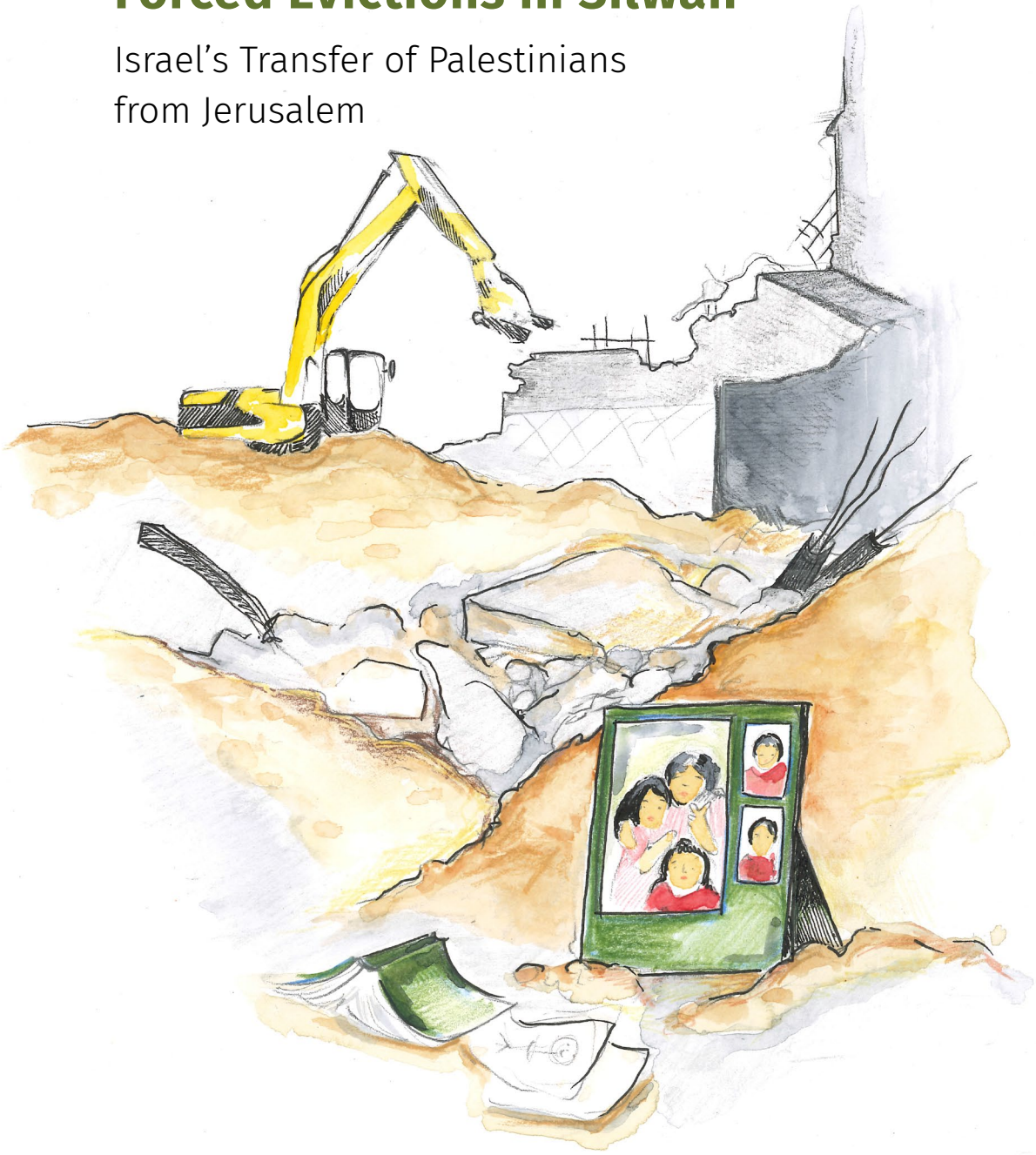
AL-HAQ

House Demolitions and Forced Evictions in Silwan

Israel's Transfer of Palestinians from Jerusalem



Al-Haq - 54 Main Street 1st & 2nd Fl. - Opp. Latin Patriarchate
Saint Andrew's Evangelical Church - (Protestant Hall)
P.O.Box: 1413 - Ramallah - West Bank - Palestine
Tel: +970 2 2954646/7/9
Fax: +970 2 2954903
www.alhaq.org

Author *Antoine Frère*

Editor *Rania Muhareb*

Legal Review *Suha Jarrar*

Cover Art *Natacha Borgogno*

Graphic Design *Hamza Dado*

ISBN *978-9950-327-63-4*

AL-HAQ

2020

ACKNOWLEDGEMENTS

The author would like to thank all the people who contributed to the preparation of this report, whether by sharing their testimonies, time, collaboration, advice or encouragement.

The author would particularly like to thank Omran Risheq, Asala Abu Khdeir, Dr. Susan Power, Dalia Qumsieh, Anna Fischer, Anna Khdair, Suha Jarrar, Hamza Dado, and Natacha Borgogno for their involvement and their invaluable contributions to the preparation of this report, as well as Shawan Jabarin for his serene confidence and support of this work.

Finally, the author would like to thank Sahar Abbasi, Susan Greene, and the whole team of the Madaa Creative Center in Silwan, for their incredible daily work with Silwan's children and their tremendous contribution to this report by providing a unique perspective on the daily lives of Silwan's children.

TABLE OF CONTENTS

Table of Abbreviations 6

1. Overview 7

1.1 East Jerusalem 8

1.2 Silwan 10

1.3 Applicable Legal Framework 12

2 Planning Silwan 14

2.1 How Israel Applies Domestic Planning Laws to Occupied Silwan 14

2.2 A Prohibitive Construction Policy for Silwan 19

2.3 The Occupier's Duty Towards Protected Persons 25

3 House Demolitions 28

3.1 Serving Demolition Orders 29

3.1.1 Administrative Demolition Orders 29

3.1.2 Judicial Demolition Orders 32

3.1.3 Demolitions without Conviction 32

3.1.4 Imposing Unbearable Financial Penalties to Encourage Self-Demolitions 33

3.2 Legal Analysis 40

3.2.1 Legal Consequences of House Demolitions under International Humanitarian Law 40

3.2.2 The Right to Adequate Housing and to an Adequate Standard of Living 41

4 Settling Silwan: The Eviction Process 43

4.1 Mechanisms of Dispossession 46

4.1.1 Declaring "Absentee" Property 46

4.1.2 Claiming Pre-1948 "Absentee" Property 47

4.1.3 Confiscation for "Public Needs" 49

TABLE OF CONTENTS

4.1.4 Private Purchase 50

4.1.5 Intimidation 51

4.2 Legal Analysis 53

4.2.1 The International Protection against Forced Evictions 53

4.2.2 Occupation and Private Property 55

4.2.3 The Prohibition on Population Transfer in Occupied Territory 57

4.2.4 Forced Displacement and Demographic Manipulation 58

5. Violence, Harassment, and Arbitrary Detention: Children's Routine in Silwan .. 60

5.1 House Demolitions and Forced Evictions 60

5.2 Violence, Harassment, and Intimidation by the Israeli Occupying Forces 63

5.3 Arbitrary Detention 66

6 Conclusions 70

7 Recommendations 73

TABLE OF ABBREVIATIONS

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CRPD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICC	International Criminal Court
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for the former Yugoslavia
ICRC	International Committee of the Red Cross
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPT	Occupied Palestinian Territory
UN	United Nations

1 OVERVIEW

The city of Jerusalem enjoys a special protected status under international law.[1] Yet, in 1948, during the Nakba, Israel illegally annexed West Jerusalem, forcibly displacing and dispossessing around 60,000 Palestinians from the western part of the city and its neighbouring villages.[2] In 1967, Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip, further illegally annexing occupied East Jerusalem and the occupied Syrian Golan. Ever since, Israeli policies governing Jerusalem have sought to achieve one main goal: alteration of the character, status, and composition of Jerusalem in favour of an Israeli-Jewish demographic majority, through the forcible transfer of Palestinian residents from the city.

Located some 300 metres from the southern wall of Al-Aqsa Mosque and the Old City of Jerusalem, Silwan, a Palestinian neighbourhood in East Jerusalem, is a clear example of how Israel's policies work towards forcibly displacing the indigenous Palestinian people from the city. It also exemplifies Israel's practice of appropriating Palestinian land, and using the natural resources and cultural property therein, to change the narrative and alter facts on the ground.

Israel, the occupying power, continues to escalate its forcible transfer measures, which affect all Palestinians in Jerusalem. The United Nations (UN) Office for the Coordination of Humanitarian Affairs (OCHA) estimates that more Palestinians were displaced in occupied East Jerusalem in the first four months of 2019, than in all of 2018.[3] In 2019, Al-Haq documented the demolition of 64 Palestinian homes in Jerusalem by Israeli occupying authorities, which resulted in the displacement of 236 Palestinians, including 122 children in the city.[4] Given the continued risk of demolitions, forced evictions, and other Israeli policies targeting East Jerusalem,

1 UN General Assembly, Resolution 181, 29 November 1947, UN Doc. A/RES/181 (II).

2 UN General Assembly, Official Records, Second Session, Supplement No. 11, UN Special Committee on Palestine, 3 September 1947, UN Doc. A/364, para. 176.

3 OCHA, "Record number of demolitions, including self-demolitions, in East Jerusalem in April 2019," 14 May 2019, available at: <https://www.ochaopt.org/content/record-number-demolitions-including-self-demolitions-east-jerusalem-april-2019>.

4 Al-Haq, "Al-Haq Field Report on Human Rights Violations in 2019," 4 February 2020, available at: <http://www.alhaq.org/monitoring-documentation/16346.html>. *See also* Al-Haq, "Al-Haq Field Report on Human Rights Violations in 2018," 21 January 2019, available at: <http://www.alhaq.org/ar/monitoring-documentation/2211.html>.

including Silwan, hundreds of Palestinian families face an imminent threat of forcible transfer.

This report examines the impact of Israel's policies and practices of forced displacement in Silwan, including the framework Israel applies to govern planning and zoning in Jerusalem. In doing so, the report examines Israel's house demolition policy as a tool of forcible transfer, the different types of demolition orders, including incidents of 'self-demolition' as well as forced evictions. These policies are then considered in light of Israel's obligations, as occupying power, under international law. Finally, the report highlights the impact of Israel's policies and practices on the rights of Palestinian children in Silwan and the Israeli-instigated climate of violence, harassment, and arrests imposed on Palestinian children as a result of such policies. The report concludes with recommendations.

1.1 East Jerusalem

Following the 1967 War, Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip, constituting the occupied Palestinian territory (OPT), in addition to occupying the Syrian Golan. Immediately thereafter, the Israeli Government unilaterally annexed some 135 square kilometres of the occupied West Bank, including the Old City of Jerusalem and lands belonging to 28 Palestinian villages, illegally absorbing them into the municipal boundaries of the city of Jerusalem.[5] Since then, Israel has continued to systematically impose Israeli sovereignty and control over the entirety of the city of Jerusalem, including through the extension of Israeli law and jurisdiction to occupied East Jerusalem, thereby entrenching a situation of *de jure* annexation of occupied territory.[6]

For example, in 1980, the Israeli Parliament (the 'Knesset') adopted "Basic Law: Jerusalem, Capital of Israel," declaring that "Jerusalem, complete and united, is the capital of Israel."[7] The international community continues to firmly reject Israel's 'Basic Law,' with the UN Security Council in particular having determined, in Resolution 478 of 1980 that:

5 B'Tselem, "East Jerusalem," 11 November 2017, last updated 27 January 2019, available at: <https://www.btselem.org/jerusalem>.

6 *See* Lisa Monaghan and Grazia Careccia, *The Annexation Wall and its Associated Regime* (Al-Haq, 2nd ed, 2012).

7 Article 1, Basic Law: Jerusalem, Capital of Israel (1980) [Hebrew], unofficial English translation available at: <https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm>.

> "all legislative and administrative measures and actions taken by Israel, the Occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent 'Basic Law' on Jerusalem, are null and void and must be rescinded forthwith."[8]

Despite the clear and unequivocal stance taken by the international community, Israel has deepened its unlawful measures with regards to Jerusalem. Since 1967, Israel has appropriated 35 per cent of privately owned Palestinian land in East Jerusalem, constructing 13 settlements in the eastern part of the city, in violation of international law.[9] By 2016, some 302,188 Israeli settlers had been transferred in to colonise the East Jerusalem Governorate.[10]

Since 2000, through its construction of the Annexation Wall, Israel has isolated East Jerusalem from the rest of the OPT, effecting illegal changes to the character and status of the city and altering the demography of the city to ensure a Jewish majority. Critically, in 2004, the International Court of Justice (ICJ) called on Israel to dismantle and cease all construction work on the Annexation Wall, including in and around East Jerusalem,[11] noting:

> "...the route chosen for the wall gives expression *in loco* to the illegal measures taken by Israel with regard to Jerusalem and the settlements, as deplored by the Security Council… There is also a risk of further alterations to the demographic composition of the Occupied Palestinian Territory resulting from the construction of the wall inasmuch as it is contributing… to the departure of Palestinian populations from certain areas. That construction, along with measures taken previously, thus severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right."[12]

8 UN Security Council, Resolution 478 (1980), 20 August 1980, UN Doc. S/RES/478 (1980), para. 3. *See also* UN Security Council Resolution 252 (1968), 21 May 1968, UN Doc. S/RES/252 (1968); Resolution 267 (1969), 3 July 1969, UN Doc. S/RES/267 (1969); Resolution 298 (1971), 25 September 1971, UN Doc. S/RES/298 (1971); and Resolution 476 (1980), 30 June 1980, UN Doc. S/RES/476 (1980).

9 *See* e.g. UN Security Council, Resolution 446 (1979), 22 March 1979, UN Doc. S/RES/446 (1979). *See also Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 (hereinafter '*Wall Opinion*'), para. 120; and UN Security Council, Resolution 2334 (2016), 23 December 2016, UN Doc. S/RES/2334 (2016).

10 Palestinian Central Bureau of Statistics (PCBS), "Jerusalem Statistical Yearbook 2018," 2018, p. 76, available at: <https://www.palestine-studies.org/sites/default/files/jq-articles/Pages%20from%20JQ%2076%20-%20PCBS.pdf>.

11 *Wall Opinion*, para. 151.

12 *Wall Opinion*, para. 122.

In attempting to achieve its demographic objectives, the Israeli occupying authorities have continued to impose various coercive measures on Palestinian residents of Jerusalem, ranging from the revocation of Palestinians' permanent residency status in the city, the denial of family unification, forced evictions, house demolitions, including punitive demolitions, harassment, intimidation, and violence perpetrated by both the Israeli occupying forces and Israeli settlers, amongst other measures.[13]

1.2 Silwan

Immediately south of the Old City of Jerusalem, Silwan is spread out over some 5,640 dunums of land (approximately 1,393 acres), located within Jerusalem's municipal boundaries.[14] Silwan is made up of several different neighbourhoods, including: Ras Al-Amud, Al-Bustan, Wadi Hilweh, Wadi Al-Rababah, Wadi Qaddum, Ein Al-Lawzah, Batn Al-Hawa, Al-Harah Al-Wusta, and Wadi Yasul.

Prior to 1967, Silwan's residents owned land located in the eastern Jerusalem periphery, near Khan Al-Ahmar, in an area known as Khan Al-Salawnah or the 'Lands of the Salawnah' covering some 65,000 dunums of land (approximately 16,062 acres). This land was mostly used for agricultural purposes, before its confiscation by Israel. Today, the illegally constructed Israeli settlement of Ma'ale Adumim lies on large swathes of land belonging to Silwan's residents.[15]

Silwan grew, in part, with the arrival of Palestinian refugee families following the Nakba in 1948 and in the aftermath of the 1967 War. Current estimates of Silwan's population range between 60,000 and 65,000 Palestinians,[16] including both original Silwan families and Palestinian refugee families from other Palestinian cities and villages.

Silwan's northern boundaries lie merely 300 metres from the southern wall of Al-Aqsa Mosque, at the core of historic Jerusalem, and the neighbourhood is

13 *See* Natalie Tabar, *The Jerusalem Trap* (Al-Haq, 2010).

14 Grassroots Jerusalem, "Silwan", available at: <https://www.grassrootsalquds.net/community/silwan> (last accessed 29 March 2020).

15 Silwan Charitable Society, *Silwan and Collective Memory*, 2004.

16 These estimates were provided by Mr. Daoud Ghoul, researcher and resident of Silwan, interviewed by the author on 10 April 2019.

Photo 1: View of Silwan from Wadi Hilweh Hill - Antoine Frère © 2019.

home to several archaeological sites and the Silwan spring, the only recognized spring in Jerusalem, located in the Wadi Hilweh neighbourhood. Its proximity to the Old City, along with its historical and archaeological significance, have rendered Silwan a main target for Israeli colonisation and Judaisation.

Israel redrew the municipal boundaries and absorbed Silwan into Jerusalem Municipality in 1967, along with a number of Jerusalem neighbourhoods and surrounding villages. Since then, the area has been a frequent target of Israeli aggression, leading to a large number of arrests and detention of residents, mainly Palestinian youth and children. On 18 January 2018, the Israeli occupying forces carried out a number of pre-dawn raids in Silwan, arresting and detaining four children under the age of 15. Since 2015, Israel has nearly tripled the number of Palestinian children it places in administrative detention[17], from 156 in December 2014, to 450 in 2018, as a measure of subjugation and social control to quell any

17 Administrative detention is the procedure through which the Israeli military arrests Palestinians without charge or trial. The arrest is based on 'secret evidence' and is renewable indefinitely. *See also* Addameer, "Administrative Detention", available at: <https://www.addameer.org/israeli_military_judicial_system/administrative_detention>.

resistance to the colonisation of Silwan.[18]

Silwan serves as a dynamic example of the ongoing oppression of the Palestinian people and the confiscation of their property in occupied East Jerusalem, with almost all Israeli Government institutions actively involved in settling and altering the character of Silwan. In addition to Israel's discriminatory planning and zoning regime, which creates unbearable living conditions for Palestinians in Jerusalem, Silwan has been the site of aggressive Government-supported settlement activities carried out by private Israeli settler organisations. As a result, house demolitions and forced evictions at the hands of the Israeli occupying forces have become routine for Palestinians in Silwan.

1.3 Applicable Legal Framework

The city of Jerusalem enjoys a special status under international law. Any measures, legislative or otherwise, aimed at altering the character, status, or demographic composition of the city are considered null and void with no legal validity whatsoever.[19] In addition, occupied East Jerusalem remains illegally annexed territory, with international humanitarian law relevant to occupied territories applying to the protected Palestinian people therein.

Accordingly, Israel, as occupying power, is bound to respect international humanitarian law, and the rights of protected Palestinians in East Jerusalem, including those enshrined in the 1907 Hague Regulations,[20] which are constitutive of customary international humanitarian law, and under the 1949 Fourth Geneva Convention.[21] Israel is further bound by international human rights law in the

18 Addameer, "Palestinian child prisoner population doubles over last three years," 18 January 2018, available at: <http://www.addameer.org/news/palestinian-child-prisoner-population-doubles-over-last-three-years>, (last accessed 29 March 2020).

19 *See* UN Security Council, Resolution 478 (1980), 20 August 1980, UN Doc. S/RES/478 (1980), para. 3. UN General Assembly, Resolution ES-10/19, UN Doc. A/RES/ES-10/19, para. 1.

20 *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land* (adopted 18 October 1907, entry into force 26 January 1910) (hereinafter '*Hague Regulations*').

21 *Geneva Convention relative to the protection of civilian persons in time of war* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287 (hereinafter '*Fourth Geneva Convention*'). For UN Security Council resolutions establishing the applicability of the Fourth Geneva Convention to the OPT, *see*, e.g., UN Security Council Resolutions 446 (1979), 22 March 1979, UN Doc. S/RES/446 (1979); 471 (1980), 5 June 1980, UN Doc. S/RES/471 (1980); and 607 (1988), 5 January 1988, UN Doc. S/RES/607 (1988).

OPT, by virtue of its effective control therein,[22] having ratified seven of the nine core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC) amongst others.[23]

The applicability of international humanitarian law and international human rights law to the OPT, including occupied East Jerusalem, has been affirmed by the international community and international bodies, including the UN treaty bodies,[24] the ICJ,[25] and the International Committee of the Red Cross (ICRC),[26] amongst others. In order to understand the current legal and administrative framework applicable in East Jerusalem, this report will also, to the extent necessary, examine some aspects of Israeli law applied to the city. Nevertheless, it is important to recall that, as occupied territory, the application of Israeli law and jurisdiction over East Jerusalem is *per se* in violation of international humanitarian law.[27]

22 *Wall Opinion,* paras. 106 and 114.

23 Israel ratified the following international human rights law treaties, which are applicable in the OPT: *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195 (ICERD); *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entry into force 23 March 1976) 999 UNTS 171 (ICCPR); *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (ICESCR); *Convention on the Elimination of All Forms of Discrimination against Women* (adopted 18 December 1979, entry into force 3 September 1981) 1249 UNTS 13 (CEDAW); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entry into force 26 June 1987) 1465 UNTS 85 (CAT); *Convention on the Rights of the Child* (adopted 20 November 1989, entry into force 2 September 1990) 1577 UNTS 3 (CRC); *Convention on the Rights of Persons with Disabilities* (adopted 13 December 2006, entry into force 3 May 2008) 2515 UNTS 3 (CRPD).

24 *See* Human Rights Committee, "Concluding observations on the fourth periodic report of Israel", 21 November 2014, UN Doc. CCPR/C/ISR/ CO/4, para. 5.

25 *Wall Opinion*, paras. 101 and 111-113.

26 The ICRC has affirmed the *de jure* applicability of the Fourth Geneva Convention in the OPT as occupied territory under international humanitarian law. See, e.g., ICRC, "Implementation of the Fourth Geneva Convention in the occupied Palestinian territories: history of a multilateral process (1997-2001)," 30 September 2002, *International Review of the Red Cross*, No. 847, Annex 2 – Conference of High Contracting Parties to the Fourth Geneva Convention: statement by the International Committee of the Red Cross, 5 December 2001, para. 2, available at: <https://www.icrc.org/en/doc/resources/documents/article/other/5fldpj.htm>.

27 Article 43, *Hague Regulations*.

2 PLANNING SILWAN

"Only by first projecting an idea of Jerusalem could Israel then proceed to the changes on the ground [which] would then correspond to the images and projections." – Edward Said, 1995.[28]

2.1 How Israel Applies Domestic Planning Laws to Occupied Silwan

Since 1967, Israel has applied its planning and building regime to occupied East Jerusalem. Based on Israel's Planning and Building Law 5725-1965, the Israeli planning process regulates all building and land use management in Israel and establishes a general framework for land planning. Israel operates a strictly hierarchical planning system, wherein the lower plan must follow a higher plan. For example, the Local Master Plan follows a District Master Plan (*see* **Figure 1**). However, no District Master Plan has been set for Jerusalem since 1967.

Notably, since Israel's illegal annexation of the eastern part of the city, three master plans have been drafted for Jerusalem by the Israeli occupying authorities, none of which have reached the validation process.[29] Under Israeli planning law, no building permit can be issued without the prior submission of a local planning scheme.[30] Since large parts of the master plans for Jerusalem are not detailed, Silwan's residents are responsible for creating their own planning schemes, such as the Local Outline or Detailed Plan, which must be submitted for validation before building permits can be issued.[31] At the same time, the plan's validation process is excruciatingly long and complex (*see* **Figure 2**) and is supervised by the

28 Edward Said, "Projecting Jerusalem", *Journal of Palestine Studies, vol.* 25, No. 1 (Autumn 1995), p. 7.

29 In chronological order, Israel's three master plans for Jerusalem include: the "Jerusalem 2020 Master Plan," as the first comprehensive and detailed spatial plan for both East and West Jerusalem; the "Marom Plan"; and the privately-funded "Jerusalem 5800" Master Plan.

30 B'Tselem, "A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem", May 1995, p. 52.

31 UN Habitat, "Right to Develop: Planning Palestinian Communities in East Jerusalem", 2015, p. 18, available at: <https://unhabitat.org/right-to-develop-planning-palestinian-communities-in-east-jerusalem>.

Israeli Ministry of Interior, which can freeze the plans at its own discretion.[32]

Israel's official plans designate 35 per cent of the occupied East Jerusalem for the construction of illegal Israeli settlements, while 30 per cent of the land does not have a local planning scheme, and 22 per cent has been zoned as "green areas" in which construction is prohibited, thus leaving a mere 13 per cent (9.18 square kilometres) available for Palestinian construction.[33] Most of the plans submitted by Palestinian neighbourhoods are rejected on the grounds that the requested permits were either for unplanned areas, land zoned as "green areas," or on the pretext that the area requested for construction has already reached its maximum density.[34]

To date, all attempts by Silwan's residents to validate neighbourhood planning schemes in line with Israeli procedures have failed.[35] Besides the complexity and the political nature of the approval process for such local planning schemes, the heavy financial costs incurred as a result of the application process render this option largely unaffordable for residents of Silwan.[36] With an average poverty rate of 76 per cent in East Jerusalem,[37] engaging in such an expensive process, without any guarantees of obtaining approval for construction, is not feasible for Silwan's residents.

32 Terrestrial Jerusalem, "A Layman's Guide to Home Demolitions in East Jerusalem", March 2009, available at <http://www.t-j.org.il/Portals/26/pdf/A%20Layman's%20Guide%20to%20Jerusalem%20House%20Demolitions.pdf>.

33 OCHA, "The Planning Crisis in East Jerusalem: Understanding the phenomenon of "illegal" construction," Special Focus, April 2009, p. 7, available at: <https://www.ochaopt.org/sites/default/files/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf>.

34 Human Rights Watch, "Separate but unequal," December 2010, p. 132, available at: <https://www.hrw.org/sites/default/files/reports/iopt1210webwcover_0.pdf>.

35 *See* Bimkom, "Survey of Palestinian Neighbourhoods in East Jerusalem: Planning Problems and Opportunities," 2013, available at: <http://bimkom.org/eng/wp-content/uploads/survey-of-the-Palestinian-neighborhoods-of-East-Jerusalem.pdf>.

36 *See* Bimkom, "Trapped by Planning: Israeli Policy, Planning, and Development in the Palestinian Neighbourhoods of East Jerusalem," 2014, available at: <http://bimkom.org/eng/wp-content/uploads/TrappedbyPlanning.pdf>.

37 The Association for Civil Rights in Israel (ACRI), "East Jerusalem Facts and Figures 2017," updated 24 May 2017, available at: <https://law.acri.org.il/en/2017/05/24/east-jerusalem-facts-and-figures-2017/>.

Figure 1: Israel's Planning Process - Information obtained by the author.

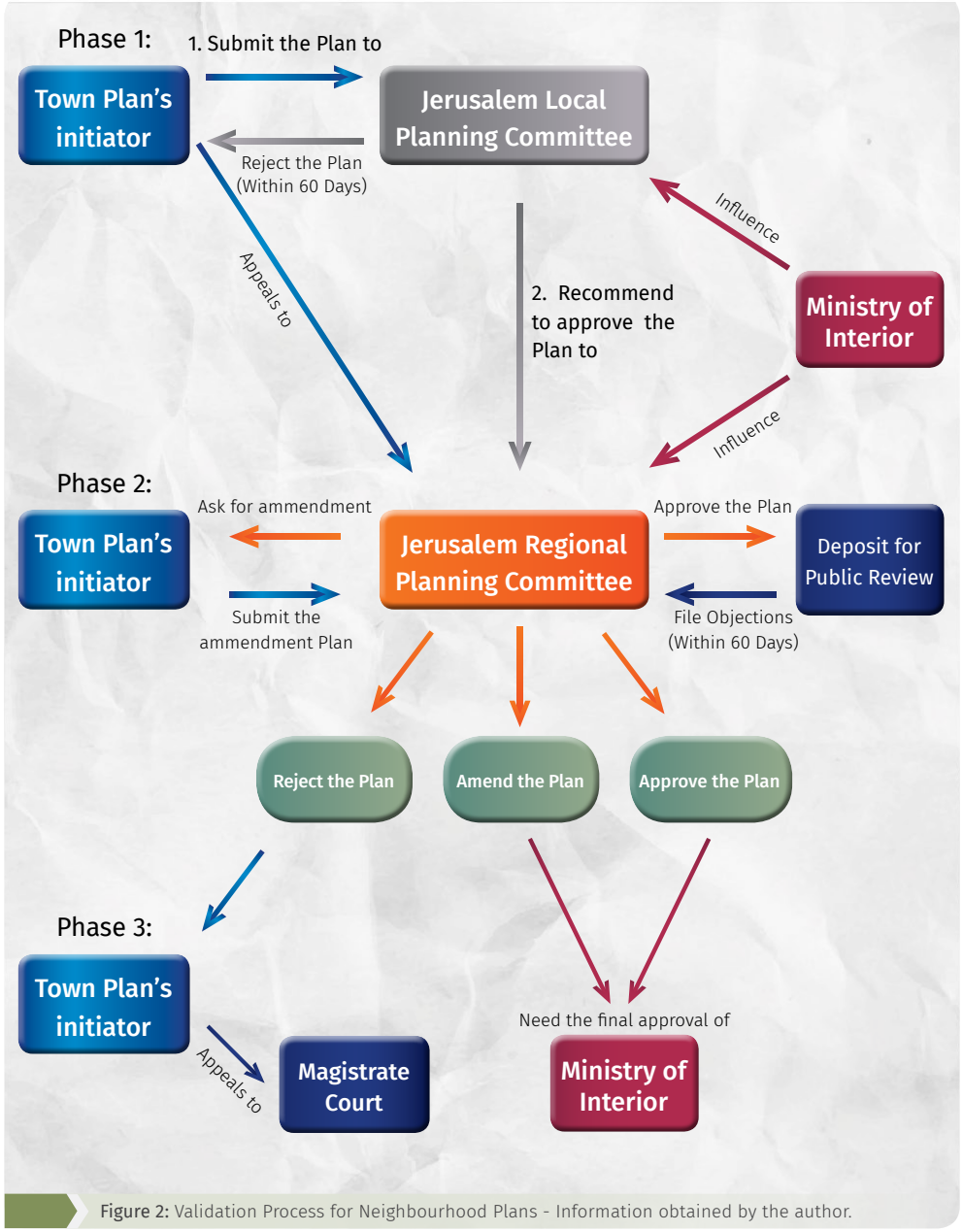


Figure 2: Validation Process for Neighbourhood Plans - Information obtained by the author.

In Focus: Demographic Manipulation

Israel's planning and zoning activities in Jerusalem are aimed at maintaining an Israeli-Jewish demographic majority in the city. The Jerusalem 2020 Master Plan has aimed to achieve a demographic ratio of 70 per cent Israeli-Jews to 30 per cent Palestinians, while anticipating a 60 to 40 per cent balance by 2020.[38] The Master Plan has intended to address the so-called challenge of "Maintaining a Solid Jewish Majority in the City" and, for this purpose, aimed to build residential structures at reasonable prices for Israeli-Jewish neighbourhoods, while increasing the density of already overcrowded Palestinian neighbourhoods. The Master Plan also encourages racial segregation in the city, stating: "spatial segregation of the various population groups in the city is a real advantage… It is appropriate, therefore, to direct a planning policy that encourages the continuation of spatial segregation with a substantial amount of tolerance and consideration."[39]

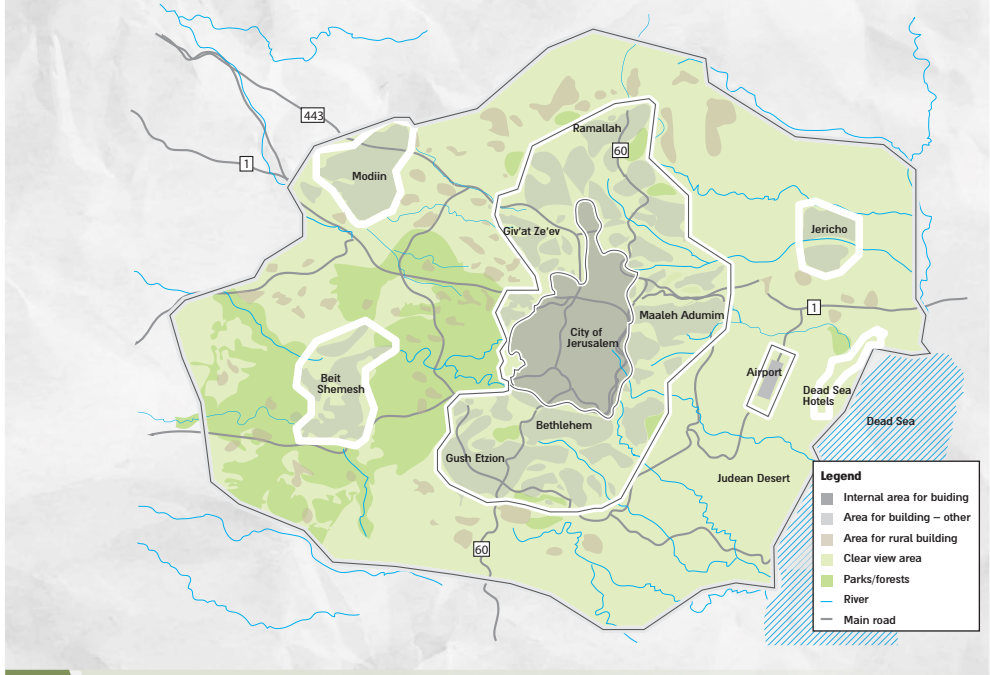


Figure 3: The 5800 Plan envisions to include Palestinian cities in the West Bank, including Ramallah and Jericho, in the metropolis of Jerusalem (Source: The Jerusalem 5800 Master Plan).

38 *See* Jerusalem 2000 Local Outline Plan. Available at: <http://www.alhaq.org/cached_uploads/download/alhaq_files/en/wp-content/uploads/2018/03/LocalOutlinePlanJerusalem2000.pdf>. The report is also located on the web-page of the Jerusalem Municipality.

39 *Ibid*.

This is part of the "separate and unequal" policy whereby Israel, the occupying power, has implemented racial segregation in Jerusalem under so-called 'security' pretexts, while encouraging the illegal transfer of Israeli settlers into the city.[40]

With a renewed concern of losing its artificially manipulated Israeli-Jewish majority in Jerusalem,[41] the Jerusalem 5800 Master Plan proposes to expand Jerusalem's municipal boundaries to annex surrounding West Bank settlements in the eastern Jerusalem periphery, in order to maintain the targeted demographic balance.[42]

Israel's discriminatory policies and municipal plans driven by demographic considerations apply to all planning activities in Jerusalem and constitute the underlying framework behind which the ongoing pressure placed by Israel's Jerusalem Municipality on Silwan's residents can be understood, with the ultimate aim of forcibly transferring Palestinians out of Jerusalem.

2.2 A Prohibitive Construction Policy for Silwan

The Local Planning Authority has approved very few planning schemes for Silwan since the annexation of East Jerusalem in 1967. In 1970, the Local Master Plan No. 6 (AM/6) was approved by Israel's Jerusalem Municipality, which declared some 1,100 dunums of land surrounding the Jerusalem Old City walls as a "national park."[43] The so-called "national park" includes the densely populated Palestinian neighbourhood of Wadi Hilweh, home to over 4,000 Palestinians, and the archaeological site of what Israel considers to be the "City of David."[44]

In the late 1970s, almost half of the neighbourhood of Silwan was included in the area of the "Visual Basin" of the Old City, which falls under the directives of the

40 Human Rights Watch, "Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories," December 2010, p. 4, available at: <https://www.hrw.org/sites/default/files/reports/iopt1210webwcover_0.pdf>.

41 "Analysis of demographic trends among Jews and Muslims in the region designated as metropolitan Jerusalem shows that if a policy is not implemented, designed to stop emigration of Jews to outside the metropolitan region - a trend which has been going on for many years – the population growth among Arabs, relative to that of Jews, will increase." *5800 Jerusalem 2050. The Metropolitan Jerusalem Master Plan* (2016), p. 22, available at: <https://www.jerusalem5800.com/download-pdf>.

42 *Ibid*.

43 Bimkom, "Trapped by Planning," 2014, p. 28.

44 Bimkom, "Survey of Palestinian Neighbourhoods in East Jerusalem: Planning Problems and Opportunities," 2013, p. 27.

Eastern City Plan No. 9 (AM/9).[45] This plan is allegedly preservation-oriented and was aimed at preserving the Old City's walls and surroundings. With the entire neighbourhoods of Wadi Hilweh and Al-Bustan zoned as "special public areas" or "green areas," further severe restrictions have been placed on building and development. Since 1967, fewer than 20 construction permits have been issued to Palestinians in the Wadi Hilweh area, and even those were mainly permits for minor additions to already existing constructions.[46] In 1987, a detailed outline plan (Plan No. 2783a) zoned around 370 dunums of Silwan.[47] Most of the residential area concerned was designated for rehabilitation and preservation, with limited options for residential development and expansion.

In early 2009, the Jerusalem Municipality presented its Town Plan Scheme 11555 (TPS11555) for Silwan (*see* **Figure 3**).[48] This project was initiated by the private Israeli settler organisation El'Ad and then pursued by the Ministry of Housing and the Jerusalem Municipality. The main objective of the project was to expand the excavation in the so-called "City of David"[49] and transform the entire area into a tourist site without any regard for the rights and interests of Palestinian residents. The plan provided for the appropriation of 70 per cent of Silwan's lands, for community open areas, a cemetery, a parking lot, and a public building. Critically, the plan assigned 8.14 dunums (2 acres) of the land for grave burial sites – the surface area is equivalent to half of the land currently allocated for the use of the living population.[50] More importantly, the plan zoned the entire Al-Bustan neighbourhood as "open areas" and called for the destruction of 88 Palestinian houses, inhabited by more than 1,500 Palestinians.[51]

45 *Ibid.*

46 Ir Amim, "Shady Dealings in Silwan," 1 May 2009, p. 10, available at: <http://www.ir-amim.org.il/en/report/shady-dealings-silwan>.

47 Bimkom, "Trapped by Planning," 2014, p. 32.

48 Moaz Al-Za'tari and Jonathan Molony, "House Demolitions in Silwan: The Judaization of East Jerusalem," Al-Maqdese for Society Development, 2010, p. 27, available at: <https://www.al-maqdese.org/AR/wp-content/uploads/2014/06/demoltion-silwan_English_ayman-final.pdf>.

49 *Ibid.*, p. 32.

50 Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ), "Destruction of Palestinian Homes and Heritage in occupied East Jerusalem The case of Silwan," available at: <https://www.civiccoalition-jerusalem.org/uploads/9/3/6/8/93682182/destruction_of_palestinian_homes_and_heritage_in_occupied_east_jerusalem.pdf>.

51 Al-Haq, "88 Palestinian Houses to be demolished for Israeli Park," 11 February 2012, available at: <http://www.alhaq.org/monitoring-documentation/6931.html>.

Israel's discriminatory planning and zoning regime leaves no room for expansion in the already overcrowded area of Silwan. To make room for the ever-growing population, Palestinian residents have no choice but to build "illegally" and without obtaining building permits from the Israeli occupying authorities. In this context, building without a permit is therefore a necessity and considered by many grassroots organisations as a form of resistance to the policies of the Israeli occupation. Consequently, many of Silwan's residents have received demolition orders for their homes and property.[52] In addition to the practices of the Jerusalem Municipality, continuous efforts by Israeli settler organisations to further settle and Judaise Silwan aggravate an already coercive environment for Palestinian residents of Silwan.[53]

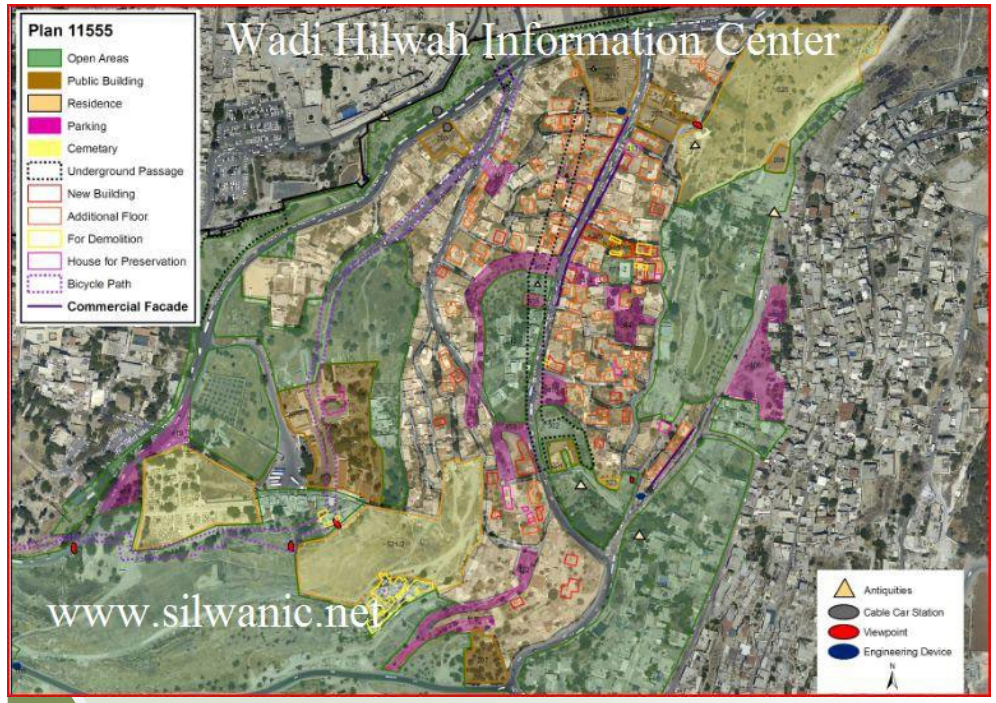


Figure 4: Israel's Town Plan Scheme 11555 (Source: Wadi Hilweh Information Center).

52 OCHA, "Wadi Yasul: a community at risk of mass displacement," 20 June 2019, available at: <https://www.ochaopt.org/content/wadi-yasul-community-risk-mass-displacement>.

53 *See* B'Tselem, "Batan al-Hawa neighborhood, Silwan," 11 December 2016, available at: <https://www.btselem.org/jerusalem/20161208_batan_al-hawa>.

In Focus: El'Ad and the City of David

Photo 2: Entrance of the El'Ad Association (Ir David) - Antoine Frère © 2019.

El'Ad Association (Ir David) was established in 1986. Its declared objective is the Judaisation of Silwan and the creation of a contiguous Israeli-Jewish presence along the southern slopes of the so-called 'Temple Mount.' Since 1991, with the seizing of the Abbasi home in Wadi Hilweh, El'Ad has used legal and administrative mechanisms to take over Palestinian homes and to force the transfer of Palestinians from Silwan (for more details *see* **Chapter 4. Settling Silwan: The Eviction Process**).

In 1992, the Klugman report denounced the collusion between El'Ad and Israeli governmental bodies in order to seize Palestinians' homes in Silwan, revealing the expenditure of public money and land transfer for the benefit of El'Ad, as well as the participation of El'Ad representatives in the planning process.[54]

54 Melanie Lidman, "State Transferred E. J'lem Buildings to Right-Wing NGOs," The Jerusalem Post, 7 November 2010, available at: <https://www.jpost.com/Israel/State-transferred-e-Jlem-buildings-to-right-wing-NGOs>.

Photo 3: El'Ad's City of David sign in Wadi Hilweh - Antoine Frère © 2019.

Despite the findings of El'Ad's corruption in the Klugman report,[55] El'Ad became responsible for the administration of the "Jerusalem Walls National Park," on appropriated Silwan lands, in 1997. In 2005, the Israel Nature and Parks Authority and El'Ad signed an agreement, handing over full management of the City of David to El'Ad. In doing so, Israel allocated a large part of the 50 million NIS (14 million USD) for the conservation and development of the Holy Basin to be carried out by El'Ad.[56]

Since then, El'Ad has developed the City of David as a tourist visitor centre, shop, amphitheatre, and underground water tunnel trek. The underwater tunnel attraction has required drillings and further excavation of tunnels underneath Silwan, which have damaged and caused flooding of rainwater into Palestinian homes above.[57]

55 "Total donations which are not fully transparent (confidential or seemingly transparent): about NIS 426.98 million, which is 100 [per cent] of the total donations received by the association in the years investigated." Ilan Sheizaf, "Funding Sources and Transparency for Nine Associations Identified with the Israeli Right Wing," September 2015, p. 22, available at: <https://peacenow.org.il/wp-content/uploads/2018/04/Right-Wing-Funding.pdf>.

56 Emek Shaveh, "Elad's Settlement in Silwan," 10 September 2013, available at: <https://alt-arch.org/en/settlers/>.

57 Al-Haq, Interviews on File, 12 March 2019; Ma'an News Agency, "Palestinians in Silwan defend their homes from on-going settler excavations," 10 April 2017; IMEC News, "Israeli Excavations In Silwan Continue To Cause Serious Damage To Palestinian Property," 2 March 2019, available at: <http://imemc.org/article/israeli-excavations-in-silwan-continue-to-cause-serious-damage-to-palestinian-property/>.

Additionally, El'Ad uses the City of David settler site as a place to promote the Israeli narrative over the area, entirely disregarding Palestinian historical presence in Silwan. From its "headquarters" in the City of David, El'Ad consistently extends its activities to Silwan, and has seized public areas that could have been used for the benefit of the indigenous Palestinian people (playgrounds, sidewalks, roads, etc.), turning them into excavation sites or touristic buildings, for commercial profit.[58]

Wadi Hilweh neighbourhood is located in an Israeli-zoned national park, where no construction or improvement of Palestinian houses is permitted. However, in 2018, El'Ad pushed for Amendment No. 17, "Planning for Housing in an Existing Neighbourhood in a National Park," to amend the National Parks Law, in order to provide for the settlement construction of residential buildings for Israeli settlers in Wadi Hilweh.[59] Meanwhile, Palestinians are systematically denied building permits, and targeted for eviction to force their transfer from Silwan. The amendment was passed by the Israeli Parliament in a preliminary vote.

58 These include the Kedem Compound and the cable car project. *See* Emek Shaveh, "The Cable Car to Jerusalem's Old City: Who Gains and Who Loses?," 17 January 2019, available at: <https://alt-arch.org/en/jm_cable_car_en/>.

59 Emek Shaveh, "Change in National Parks Law to Harm Natural and Heritage Sites, Play into Hands of Silwan Settlers, and Perpetuate Harm to Palestinians," 27 June 2018, available at: <https://alt-arch.org/en/change_national_park_law/>; Middle East Monitor, "Israel advances new law to allow residential construction in settler-run national park," 5 July 2018, available at: <https://www.middleeastmonitor.com/20180705-israel-advances-new-law-to-allow-residential-construction-in-settler-run-national-park/>.

Photo 4: Silwan Graffiti in Wadi Hilweh - Antoine Frère © 2019.

2.3 The Occupier's Duty Towards Protected Persons

The Israeli planning regime in occupied East Jerusalem is based on the application of Israeli domestic law in the occupied territory, including the implementation of institutionalised Israeli-Jewish domination and oppression over Palestinians in the area. As occupying power, Israel is under an obligation to respect the laws in force in the occupied territory and to maintain them unless alteration is absolutely necessary.[60] Article 43 of the 1907 Hague Regulations provides a mini constitution for the administration of occupied territory establishing that:

> "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

Further, Palestinian residents of Silwan are considered 'protected' persons within the meaning of Article 4 of the Fourth Geneva Convention, as they are persons

60 Article 43, *Hague Regulations*.

"who, at any given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party or Occupying Power of which they are not nationals."[61] Israel's discriminatory planning and zoning regime does not take into consideration its obligations, as occupying power, under international humanitarian law to act for the benefit of Palestinians, as protected persons. Instead, Israel has effectively changed the laws that were in place before its illegal annexation of occupied East Jerusalem, to serve its demographic goals, without even minimal regard for the interest and the needs of the protected population. Israel's planning regime is, therefore, unlawful both in its design and purpose.

Israel implements an urban planning policy that promotes racial segregation and encourages racial discrimination. In particular, Israel uses its planning laws to realise a wider strategic objective of establishing a continuous Israeli-Jewish presence and majority around the Old City of Jerusalem. Ongoing land appropriation around Ma'ale Ha'Zeitim in Ras Al-Amud neighbourhood in East Jerusalem, the touristic enclave of the "City of David" in Wadi Hilweh, and the demolition plan over Al-Bustan, reflect a clear settler objective to control the area immediately adjacent to the Old City's walls by linking existing Israeli settlements and fragmenting Palestinian neighbourhoods.[62] As the UN Secretary-General has observed:

> "In several cases, the sites selected for development were located in close proximity to existing settlements, enabling either the expansion of lands under settlement control, or located in such a way that contiguous areas under settlement control could be made areas of strategic significance."[63]

The planning and construction of Israeli settlements represent a manifest violation of international law. In particular, UN Security Council Resolution 2334 (2016) reaffirms:

> "the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major

61 Article 4, *Fourth Geneva Convention*.

62 The Applied Research Institute – Jerusalem (ARIJ), "Geopolitical Status in Jerusalem Governorate" (December 2006), available at: <http://www.arij.org/files/admin/2006-2_Geopolitical_Status_in_Jerusalem_Governorate.pdf>.

63 Human Rights Council, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan, Report of the Secretary-General, 20 January 2016, UN Doc. A/HRC/31/43, para. 16.

> obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace."

Moreover, in 2019, the UN Secretary-General António Guterres declared: "[s]ettlements are illegal under international law. They deepen the sense of mistrust and undermine the two-State solution."[64] In fact, Israel's planning regime shows a clear intention to expand Israeli settlements into the illegally annexed territory and constitutes a clear breach of core rules of international law, including the prohibition on forcible transfer,[65] the inadmissibility of the acquisition of territory through the use of force, and the right to self-determination of the Palestinian people, including permanent sovereignty over natural wealth and resources. Critically, States have a duty to develop policies that aim at "the constant improvement of the well-being of the entire population," as well as to eliminate obstacles to development, such as policies and practices of discrimination, racial segregation and apartheid, and foreign interference.[66]

64 UN, "Settlements Deepen Sense of Mistrust, Undermine Two-State Solution, Secretary-General Tells Palestinian Rights Committee," 15 February 2019, SG/SM/19461-GA/PAL/1421, available at: <https://www.un.org/press/en/2019/sgsm19461.doc.htm>.

65 Article 49, *Fourth Geneva Convention*.

66 UN General Assembly, Resolution 41/128, *Declaration on the Right to Development*, 4 December 1986, UN Doc. A/RES/41/128, para. 5.

3 HOUSE DEMOLITIONS

"The house, murdered, is the amputation of things from their relations and from the names of emotions… All these things are the memories of people who were emptied of things, and the memories of things that were emptied of people… all end in one minute." – Mahmoud Darwish, from "The House Murdered," 2006.[67]

It is estimated that between a third to a half of East Jerusalem's houses do not have permits, potentially placing over 100,000 Palestinian residents of the city at risk of forced displacement and forcible transfer as a result of demolitions.[68] Between the years 2000 and 2010, 7,392 demolition orders were served in East Jerusalem.[69] While no exact figures on the number of demolition orders served in Silwan are available, the numbers are likely to be quite high, as much of Silwan is either "unplanned" or zoned as "green areas."

Located at close proximity to the Old City of Jerusalem, Silwan is heavily targeted for Israeli settlement activity, resulting in regular displacement and dispossession of Palestinians through illegal house demolitions. In 2019, Al-Haq documented the displacement of 669 Palestinians in the West Bank as a result of house demolitions, including 271 children. Over the same period, Al-Haq documented the displacement of 236 Palestinians in East Jerusalem, including 122 children. In 2018, Al-Haq documented the displacement of 198 Palestinians in Jerusalem, including 102 children, amongst them 33 Palestinians from Silwan, including 19 children. In 2019, Al-Haq documented 14 demolitions of Palestinian homes in Silwan, which resulted in the displacement of 69 Palestinians, including 41 children.

67 Mahmoud Darwish, "The House Murdered," 2006, translated into English by Fady Joudah, available at: <https://progressive.org/dispatches/the-house-murdered/>.

68 OCHA, "High numbers of Demolitions: the on-going threats of demolition for Palestinian residents of East Jerusalem," 15 January 2018, available at: <https://www.ochaopt.org/content/high-numbers-demolitions-ongoing-threats-demolition-palestinian-residents-east-jerusalem>.

69 *Ibid.*

Year of Displacement	West Bank	East Jerusalem	Silwan
2018	513	198	33
2019	669	236	69

Between 2004 and 2018, Al-Haq recorded 98 incidents of demolitions in Silwan. The recorded demolitions resulted in the displacement of 180 Palestinians, including 92 children. Of these, 14 structures have been self-demolished by their owners. In 2019, Israel demolished 64 Palestinian houses in Jerusalem leading to the displacement of 236 Palestinians in the city.[70] The UN condemned record numbers of demolitions in 2019, which resulted in more displacement in the first four months of 2019, than in all of 2018.[71] In the first two months of 2020, Al-Haq documented a further 14 house demolitions in Jerusalem and the resulting forcible displacement of 51 Palestinians.

3.1 Serving Demolition Orders

In Silwan, settler organisations, like El'Ad and Ateret Cohanim, play an active role in detecting unlicensed construction and providing information to the relevant municipal units, in order to later appropriate the land.[72] Israel's Jerusalem Municipality then prepares a case file, and proceeds with either an administrative or a judicial demolition order.[73]

3.1.1 Administrative Demolition Orders

Administrative demolition orders apply to ongoing constructions, new constructions (completed less than 60 days prior to the demolition order),

70 Al-Haq, "Al-Haq Field Report on Human Rights Violations in 2019," 4 February 2020, available at: <http://www.alhaq.org/monitoring-documentation/16346.html>. *See also* Al-Haq, "Al-Haq Field Report on Human Rights Violations in 2018," 21 January 2019, available at: <http://www.alhaq.org/ar/monitoring-documentation/2211.html>.

71 OCHA, "Record number of demolitions, including self-demolitions, in East Jerusalem in April 2019," 14 May 2019.

72 "Israeli court orders eviction of Palestinian family from its Silwan home for Jewish settlers," Wafa News, 23 September 2019, available at: <http://english.wafa.ps/page.aspx?id=iyri4ia113552698677aiyri4i>.

73 OCHA, "Record number of demolitions, including self-demolitions, in East Jerusalem in April 2019," 14 May 2019.

uninhabited buildings or buildings inhabited for less than 30 days prior to the issuing of the demolition order.[74] They are served on the sole ground of lacking a building permit.

Demolition orders are issued either by the Jerusalem Municipality or the Ministry of Interior, which effectively means that the same institutions that define planning policies are also those carrying them out by serving administrative demolition orders. This facilitates Israel's demographic objectives and reinforces the policy of Judaisation and Israeli-Jewish settlement in occupied East Jerusalem.

When served with an administrative demolition order, it is possible for the owner of the targeted property to appeal to the Local Affairs Court. There are only two ways of cancelling such demolition orders: proving that the construction has obtained a permit, or proving that the building is neither new nor incomplete and that it does not fall under the mandate of such an order. After 30 days, the demolition order expires if the demolition has not been carried out.[75]

Besides the high cost of appealing demolition orders in Israeli courts, in many cases, demolitions have been carried out in Silwan before the residents even had the possibility of appealing the order. Indeed, administrative demolitions are issued against the structure, not the owner and/or inhabitant, so the law only requires that the order be hung on the walls of the building.[76] In addition, Israeli bulldozers may come as early as 24 hours after the order has been delivered,[77] leaving no room for the owner to appeal and, in many cases, to even see the order. In Silwan, several building owners reported demolitions without any prior notice.

74 Terrestrial Jerusalem, "A Layman's Guide to Home Demolitions in East Jerusalem," March 2009.

75 *Ibid.*

76 National Planning and Building Law 5725/1965, Article 238 A(e), English translation available at: <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/07-National-Planning-Building-Law-1965.pdf>.

77 Meir Margalit, "Demolishing peace: House Demolitions in East Jerusalem 2000 – 2010", International Peace and Cooperation Center, 2014, p. 221, available at: <http://www.ipcc-jerusalem.org/en/1/12/259/Demolishing-Peace-2014-East-Jerusalem.htm>.

In Focus: Renovations in Silwan

In Silwan, improvements to existing houses are systematically hindered by planning laws and subject to demolition. Even when house renovations are funded by international aid organisations or the UN, they are targeted by Israeli authorities. Asmaa' Al-Shioukhi, a mother of seven, had her home renovated under a UN Development Programme (UNDP) project, only to be almost entirely demolished by the Israeli occupying authorities in 2016. She told Al-Haq:

> *"Our home is an old house. It was built before 1967 and originally belonged to my father… Our life was very difficult, dust falling from the roof and walls, wall clamminess causing severe breathing difficulties, no windows, mounds of dirt surrounding the house, rats and snakes entering the house, etc.*
>
> *In 2014, the UNDP removed piles of rocks and boulders around the house. They opened two windows, repaired electricity and water pipes, and built an area of 50 square metres in front the house, adding two rooms, a kitchen, two bathrooms, and a balcony. At the time, we were told that the restoration did not require a building permit.*
>
> *In July 2015, five members of the Israeli special forces and an employee of the Israeli Jerusalem Municipality came and handed me an administrative demolition order. I threw it in the face of the employee and threw him out of the house. The employee came again two weeks later and left a demolition order on the door.*
>
> *In June 2016, at 3:00 pm, [Israeli] police forces raided our house with an inspector from the Municipality and handed me a decision issued by the Municipality's Court to demolish the house, specifically the new additions to the house.*
>
> *On Tuesday, 29 November 2016, at around 3:30 am, we were asleep when Israeli special forces stormed the house. An Israeli policeman told me that they wanted to demolish the house… Workers came; they threw our clothes and baggage outside and began to demolish the house. The demolition operation continued until 7:00 am. After the demolition, I moved to my eldest daughter's house and now sleep with my husband in her room."*[78]

78 Al-Haq Affidavit No. 856, 1 December 2016.

3.1.2 Judicial Demolition Orders

Judicial demolition orders apply to constructions older than one month and up to five years.[79] The Magistrate Court or Local Affairs Court is mandated to serve the demolition order after a criminal procedure is initiated against an individual accused of engaging in 'illegal' construction, usually the owner. The Court refuses to question the legality or legitimacy of the planning scheme for the area and therefore solely enforces Israeli planning laws as is.[80]

There are two main mechanisms for the issuing of judicial demolition orders. For ongoing constructions, an administrative stop-work order is served by the Jerusalem Planning and Building Committee – or a mandated police officer – to the person reported to have carried out an illegal construction.[81] The Planning and Building Committee asks for judicial confirmation of the stop-work order within five days.[82] If confirmed, the stop-work order becomes a judicial order; the Magistrate Court is then entitled to serve the "offender" with a demolition order.[83] These demolition orders can be issued without prior hearing, "so as to prevent the completion of building operations in contravention of the administrative or judicial stop-work order and the occupation of the building."[84] On the other hand, for inhabited structures, which are older than one month and up to five years, the "offender" is charged and indicted with "illegal building" and a demolition order is served in addition to the criminal indictment.[85]

3.1.3 Demolitions without Conviction

For structures older than five years, when the Israeli occupying authorities lack

79 "With construction older than 5 years a statute of limitations applies." See Terrestrial Jerusalem, "A Layman's Guide to Home Demolitions in East Jerusalem," March 2009.

80 Jerusalem Legal Aid and Human Rights Center, "Court Monitoring Report of Practices and Procedures at the Court of Local Affairs in Jerusalem Regarding House Demolitions and Unauthorized Construction in Occupied Jerusalem", December 2017, available at: <http://www.jlac.ps/userfiles/CourtMonitoring2017.pdf>. *See*, in particular, pp. 16-17: "The judges attempt to distance themselves from any political questions by refusing to widen their scope of discretion… His / her rulings, it can be argued, are based on the assumption that the power of prosecution and the municipal representatives are bigger and more significant than his own."

81 National Planning and Building Law 5725/1965, Article 224-225.

82 *Ibid*, Article 226.

83 *Ibid*, Article 243.

84 *Ibid*, Article 244.

85 *Ibid*, Article 219.

legal grounds to convict[86] persons for so-called "illegal" construction, Article 212 of the Israeli Planning and Building Law is used, which allows demolitions without conviction under certain conditions.[87] Notably, in 2009, the Israel Supreme Court issued a decision that stated that such orders should be justified only when the authorities can demonstrate that the demolition is required for the public interest.[88]

In Al-Bustan neighbourhood of Silwan, owners of structures built several decades ago are currently at risk of demolitions, following a planning scheme that classifies the area as "open land." In this case, the homes of around 1,500 Palestinians are threatened with demolitions to make room for a public park, under "public interest" justifications. In 2005, the Municipality announced its intention to demolish 88 houses in Al-Bustan and began serving demolition orders to the neighbourhood's residents, in order to build the touristic "King's Garden" linked with the "City of David." Following lawsuits by residents, the Municipality eventually filed a new plan, in early 2010 that required the demolition of at least 22 structures to build a park in the western part of the neighbourhood, while another 66 structures would receive retroactive approval along with increased building rights. In early 2017, 16 Palestinian homes, housing at least 118 individuals, received demolition orders.[89] Following legal petitions, the Court approved the Municipality's plan to seize the land for "public purposes."[90]

3.1.4 Imposing Unbearable Financial Penalties to Encourage Self-Demolitions

In many cases, Palestinians in Silwan are forced to demolish their own homes, under threat of legal and financial punitive measures. Refusing to self-demolish a home has devastating consequences on Palestinian owners: they are forced to pay very heavy fines, and may serve prison sentences, in addition to losing their homes.

86 *Ibid*, Article 204.

87 *Ibid*, Article 212.

88 Dan Kadar v. State of Israel 8338/09, published in "Nevo," 31 January 2010. *See also* Norwegian Refugee Council (NRC), "Legal Memo: Demolition Orders in East Jerusalem – Legal Procedures," January 2017, pp. 7-8, available at: <https://www.nrc.no/globalassets/pdf/legal-opinions/demolitions_east_jerusalem_memo.pdf>.

89 Information about Al-Bustan neighbourhood was obtained during an interview with Fakhri Abu Diab on 30 April 2019.

90 Interview with Adv. Ziad Kawar on 21 May 2019.

This aggressive demolition policy against Palestinian homes cannot be justified under measures of law enforcement. It is worth noting that Palestinians affected by house demolition policies in Jerusalem are often the poorest and most vulnerable segments of an already disadvantaged Palestinian society.[91] Its outcomes are harsh; self-demolitions create homelessness, poverty, and reduced life conditions, while further constituting a grave breach of the Geneva Conventions.[92]

Building without a permit is heavily punished with fines of up to 2,500 pounds and a one-year prison term.[93] In case of a "continuing offence" – construction going on after the delivering of a stop-work order or a demolition order – the "offender" is liable to a fine of 10,000 pounds,[94] and to an additional "fine of 500 pounds or seven days' imprisonment in respect of every day that the offence continues after service of the order".[95]

In addition, the Court systematically orders the demolition of the building, or parts of it,[96] deciding also if the demolition shall be carried out by the Local Commission[97] (on its demand) or by the indicted individual. By default, the Magistrate Court orders the indicted individual to carry out the demolition. If the individual refuses to demolish his own house, they are liable to a fine of 10,000 pounds or imprisonment of up to 18 months as a means of paying for the costs of the demolition.[98] If the demolition is carried out by the Local Commission, it could recover the expenses of the operation by selling the materials of the demolished building,[99] and is therefore entitled to recover the price of the demolition to the

91 *See* The Jerusalem Fund for Education and Community Development, "Conversation with Hanan Ashrawi: Reflections on Palestinian Politics and Society," Video and Edited Transcript, Dr. Hanan Ashrawi, Transcript No. 457, 18 April 2016, available at: <https://www.thejerusalemfund.org/9027/conversation-hanan-ashrawi-reflections-palestinian-politics-society>.

92 Articles 53 and 147, *Fourth Geneva Convention*.

93 National Planning and Building Law 5725/1965, Article 204. N.B.: the English translation on the Knesset website, provides the details of the fines in Pound sterling and not in Israeli Shekel. *See* <http://knesset.gov.il/review/data/eng/law/kns5_planning_eng.pdf>.

94 *Ibid*, Article 240.

95 *Ibid*.

96 *Ibid*, Article 205.

97 "Every local planning area shall have a Local Planning and Building Commission". *Ibid*, Article 17.

98 *Ibid*, Article 210.

99 *Ibid*, Article 213.

convicted person as a civil debt.[100]

In an attempt to save their homes – or at least to delay demolitions – Palestinians use the possibility to appeal against the demolition order in the Israeli Court of Appeals and the Supreme Court. In these cases, the cost of appeal will be added to the fines. A special request has to be made to freeze the demolition order, but the Court will consider postponing the demolition only when the owner provides sufficient proof that they are in the process of obtaining a permit for the building. This requires legal representation, as well as the expertise of an engineer or architect, resulting in even more financial costs. In most cases, Palestinian residents of Silwan cannot afford the high costs of an engineer or legal representation. Indeed, during a three-month Court monitoring period in 2017, the Jerusalem Legal Aid and Human Rights Center (JLAC) found that 60 per cent of Palestinians did not have legal representation at all,[101] which significantly lowered their chances of postponing the demolition of their homes.

In all cases, Silwan's residents are ultimately issued a double punishment: in addition to losing their homes, they are also highly indebted to pay the costs of the demolition to the Israeli occupying authorities. These penalties are a tool designed to compel Palestinians to leave Silwan and other Palestinian neighbourhoods. In recent years, self-demolitions have become a growing trend in Silwan. Between 2004 and 2018, self-demolitions constituted around 15 per cent of the total demolitions in Silwan.[102] In April 2019, OCHA stated: "Since the beginning of 2019, a third of demolished structures (36 of 111) were self-demolitions. A total of 260 structures were demolished by their owners in East Jerusalem since January 2009, half of them residential homes. While the number of self-demolitions varies annually, the monthly rate in 2019 has increased to nine per month versus an average of three per month over the previous three years."[103]

100 *Ibid*, Article 186.

101 *See* JLAC, Court Monitoring Report, 2017, p.12, available at: <http://www.jlac.ps/userfiles/CourtMonitoring2017.pdf>.

102 Figures provided by Al-Haq's Monitoring and Documentation Department.

103 OCHA, "Record number of demolitions, including self-demolitions, in East Jerusalem in April 2019," 14 May 2019, available at: <https://www.ochaopt.org/content/record-number-demolitions-including-self-demolitions-east-jerusalem-april-2019>.

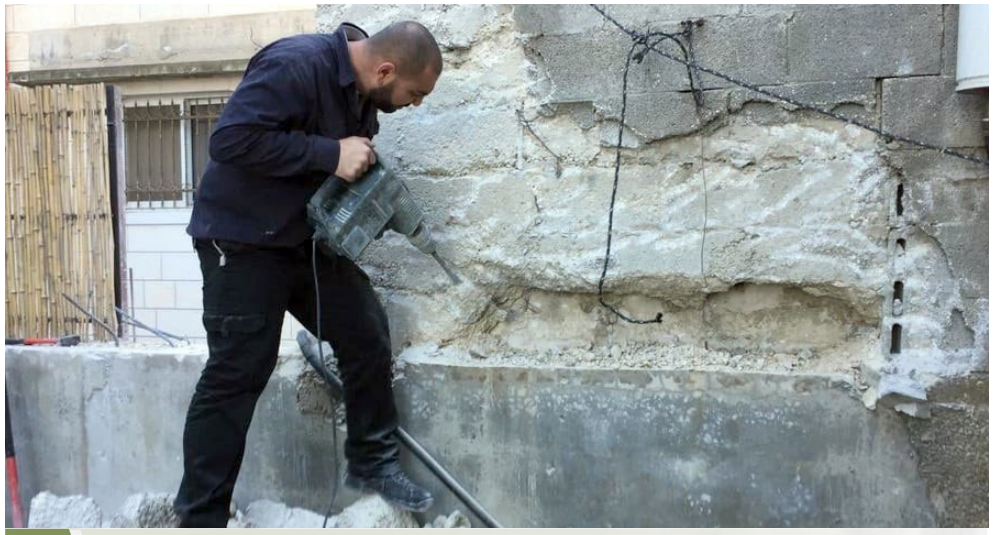


Photo 5: Atallah Aleiwat, a resident of Silwan, self-demolished his house following an order by the Jerusalem Municipality, March 2019 (Source: Wadi Hilweh Information Center).

In March 2019, Atallah Aleiwat was forced to demolish his 90-square-metre home in Silwan:

"The Court approved the first administrative demolition order in 2017, but the occupation authorities did not demolish the house at the time, thanks to our attorney. On 4 October 2018, the Court of First Instance issued another decision forcing us to immediately vacate the house and demolish it. My husband proceeded to demolish our home on 6 March 2019, because we would have had to pay thousands of shekels if the Jerusalem Municipality had demolished it. Over the past eight years, we paid approximately 150,000 shekels for building without a license. It cost us nearly 150,000 shekels to build the house and the demolition cost about 20,000 shekels."[104]

On 2 March 2019, the Jerusalem Municipality coerced Hussam Abbasi to demolish a 65-square-metre extension of his house in the Ras Al-Amud neighbourhood of Silwan, leaving only 40 square metres for his family to live:

"I did not request a permit… because the cost of getting a license is too expensive, sometimes up to 500,000 shekels. The first stage of the house

104 Al-Haq Affidavit No. 154A, 6 March 2019.

was built six years ago on land that I own; it was an area of 40 square metres. Last year, I added two floors of an additional area of 65 square metres. On 30 November 2018, a notice to stop construction was hung on the door of our house. On 2 December 2018, three members of the Israeli occupation's Municipality raided the neighbourhood with about fifteen guardsmen in uniform. They came to my house at around 9:00 am and told me that I have to tear down the extension within 20 days. He told me that if I did not comply, the Municipality would demolish it and that it would cost me 80,000 shekels. Therefore, I demolished the additional 65 square metres that I built last year… using a jackhammer. The construction had cost me 60,000 shekels and it cost me 1,000 shekels to demolish it. We're now staying in the remaining part of the house, in a surface area of 40 square metres… My wife, my daughter, and I are sharing the same room."[105]

In Focus: Planning and Building Law Amendment No. 109

On 1 August 2016, the Israeli Government proposed a wide range of amendments to the Planning and Building Law.[106] The draft showed a clear intention from the Government to target Palestinians building without a permit by expediting demolitions and limiting access to legal recourse.[107]

On 25 October 2017, the Israeli Parliament approved the amendments. Under the new law, building inspectors will be mandated to serve administrative demolition orders, for an extended period of six months. The Court can then postpone a planned demolition twice, for a six-month period each time. Under the new law, fines imposed on individuals charged with building without a permit would reach up to 400,000 NIS.[108]

105 Al-Haq Affidavit No. 156A, 2 March 2019.

106 Draft Planning and Building Law (Amendment No. 109), 5776-2016 (the "Kaminitz Law").

107 ACRI et al., "Kaminitz Law (Draft Planning and Construction Law) (Amendment 109) 5776-2016," Position Paper, 29 January 2017, available at: <https://law.acri.org.il/en/wp-content/uploads/2017/02/2017.2.5-keminitz-law-position-paper-eng.pdf>. *See*, in particular, p. 6: "the Draft Law aggravates the existing situation, because it intensifies the means of enforcement and provides for heavier penalties without leaving room for discretion regarding the circumstances of the case."

108 OCHA, "New legislation impedes challenges to demolitions and seizures in the West Bank," 10 July 2018, available at: <https://www.ochaopt.org/content/new-legislation-impedes-challenges-demolitions-and-seizures-west-bank#ftn6>.

In Focus: Wadi Yasul

On the morning of 17 April 2019, the Burgan family residence in the Wadi Yasul in Silwan was demolished by the Israeli occupying authorities, without giving the family any time to collect valuables, clothes or even medicine for an elderly family member who has diabetes. Violently awoken from the midst of their sleep, the family were gathered behind a cordon, as they watched their home being demolished by Israeli bulldozers. Areej Burgan recounted:

Photo 6: House demolition in Wadi Yasul, April 2019 (Source: Wadi Hilweh Information Center).

"On Wednesday, 17 April 2019, at around 5:30 am, members of the occupation forces, with black and green uniforms, and some Jerusalem Municipality officials arrived unannounced to our house in Wadi Yasul. My husband, his mother, my six children, and I were sleeping. I woke up at the sound of doors banging. My husband and I opened the door. I saw that the main entrance door had been broken down and the occupation forces were in the courtyard… They told us to immediately leave the house, without allowing us to take movables or luggage. We went out with my children and watched them demolish the house. The bulldozer destroyed my kitchen before my eyes. I was not even allowed to take clothes. The only clothes I have left are ones that were hung on the washing line outside."[109]

109 Al-Haq Affidavit No. 216A, 17 April 2019.

Areej's husband, Izz, was solicited by the Israeli settler organisations El'Ad and Ateret Cohanim, who offered to buy his property, despite it being encumbered with a pending demolition order. In his affidavit to Al-Haq, he stated:

Photo 7: House demolition in Wadi Yasul, April 2019 (Source: Wadi Hilweh Information Center).

"My house was built in 2013. The building cost me 250,000 shekels. I constructed [the house] without a permit, but I began licensing the structure after I received the first demolition order, six years ago. My case went up to the Supreme Court where… the demolition order was confirmed two weeks ago…

Ateret Cohanim and El'Ad had already bought two parcels bordering our house. An individual from El'Ad offered me a blank check or land in Beit Hanina in exchange for our land. I refused because I knew what they were trying to do… All our movables and equipment were destroyed during the demolition… Our only solution is to build again. We do not have any other solution."[110]

110 Al-Haq Affidavit No. 217A, 17 April 2019.

3.2 Legal Analysis

3.2.1 Legal Consequences of House Demolitions under International Humanitarian Law

Israel's application of its Planning and Building Law 5725 (1965) to occupied East Jerusalem violates core provisions of occupation law, which prohibit the belligerent occupant from exercising sovereignty over the occupied territory and from thereby applying direct rule.[111] As such, Israel is obliged to continue the application of local civil laws in the occupied territory, in this case, the previous provisions of the 1966 Jordanian Planning Law, which places competence over planning, zoning, and building permissions in the hands of Palestinian village councils. Instead, by forcing the application of its rigid discriminatory planning regime, where it is nearly impossible for Palestinians to obtain building permits, Israel systematically targets and demolishes Palestinian houses that do not conform to the illegally applied planning regime.

More specifically, the demolition of private Palestinian property, in occupied territory, violates a number of provisions of international humanitarian law. Article 46 of the Hague Regulations protects private property, which "must be respected."[112] Meanwhile, Article 53 of the Fourth Geneva Convention stipulates that the destruction of any "real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organisations, is prohibited, except where such destruction is rendered absolutely necessary by military operations." As there are no active hostilities in Silwan, nor are there military imperatives, the destruction of private property belonging to Palestinians cannot be justified under international humanitarian law. It must be noted, that the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" is considered a grave breach of the Fourth Geneva Convention,[113] and constitutes a war crime under the Rome Statute of the International Criminal Court.[114]

111 Article 43, *Hague Regulations*; and Article 47, *Fourth Geneva Convention*.

112 Article 46, *Hague Regulations*.

113 Article 147, *Fourth Geneva Convention*.

114 *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (hereinafter '*Rome Statute*'), Article 8(2)(a)(iv).

Photo 8: Backhoes destroying a residential house in SIlwan, 2019 (Source: Wadi Hilweh Information Center).

3.2.2 The Right to Adequate Housing and to an Adequate Standard of Living

Israel's highly political and racially-motivated "demographic balance" policy in Jerusalem, mirrored in the agenda of Israeli settlers to Judaise the area, is the main underlying reason for the ongoing, accelerating house demolitions in Silwan, without the slightest consideration for the consequences of such a policy on the human rights and dignity of the indigenous Palestinian people.

The right to adequate housing is internationally recognized[115] as a precondition for the enjoyment of several human rights, including the rights to work, health, social security, privacy, and education. For example, the Universal Declaration of Human Rights (UDHR) provides that everyone has a right to an adequate standard of living for oneself and one's family, including adequate housing,[116] while the ICESCR enshrines "the right of everyone to an adequate standard of living for

115 OHCHR and UN Habitat, "The Right to Adequate Housing," Fact Sheet No. 21/Rev.1, 2015, available at: <https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf>.

116 UN General Assembly, *Universal Declaration of Human Rights*, Resolution 217 A (III), 10 December 1948, UN Doc. A/RES/217 A (III), Article 25(1).

himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."[117] To fulfil these rights, States must take positive steps to achieve their full realization to the maximum of their available resources and without discrimination.[118]

Accordingly, the UN Committee on Economic, Social and Cultural Rights (CESCR) has interpreted the right to housing as "the right to live somewhere in security, peace and dignity."[119] Further, CESCR has identified a number of factors to evaluate the appropriateness of housing, such as affordability, habitability of facilities and infrastructure, as well as their location, accessibility, and cultural adequacy.[120] Along with the natural growth of the Palestinian population of Silwan, the systematic destruction of houses and the impediment to any potential for development creates unbearable life conditions for the residents of Silwan, amounting to the creation of a coercive environment, which leaves Palestinians with virtually no choice but to live in overcrowded houses or to leave the area, the ultimate goal of Israel's discriminatory policies and practices.

117 Article 11(1), ICESCR.

118 Article 2(1), ICESCR.

119 CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, UN Doc. E/1992/23 (hereinafter 'CESCR, General Comment No. 4'), para. 7.

120 *Ibid*, para. 8.

4 SETTLING SILWAN: THE EVICTION PROCESS

"Forced evictions violate, directly and indirectly, the full spectrum of civil, cultural, economic, political and social rights enshrined in international instruments." – Office of the High Commissioner for Human Rights and UN Habitat, 2014.[121]

Between 1967 and 1999, Israel appropriated approximately 24,500 dunums (6,054 acres) of land, making up over a third of the land in and around occupied East Jerusalem.[122] Most of the appropriated land is privately owned by Palestinians, with only a small proportion constituting Jordanian State land, Islamic *waqf* land, or land owned by Jews prior to 1948.[123] As of September 2019, Israel has authorised planning for 57,737 housing units in Jerusalem, with 21,834 units for Israeli settlers in occupied East Jerusalem, 26,367 units for Israeli settlers in illegally annexed West Jerusalem, and a mere 9,536 remaining units allocated for Palestinians in occupied East Jerusalem.[124] By 2018, the total Israeli settler population in the East Jerusalem 'Holy Basin' around the Old City, including Silwan, was 3,500 settlers.[125]

Today, there are two illegal settlements in Silwan, both located in the Ras Al-Amud neighbourhood. The first, Ma'ale Ha'Zeitim, was established in 1998, with

121 OHCHR and UN Habitat, *Forced Evictions* (Fact Sheet No. 25 Rev. 1), 2014, p. 5.

122 Ir Shalem, *East Jerusalem – Planning Situation*, November 1999, p. 4.

123 B'Tselem, "A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem," May 1995, p. 57, available at: <https://www.btselem.org/publications/summaries/199505_policy_of_discrimination>.

124 Peace Now, "Jerusalem Municipal Data Reveals Stark Israeli-Palestinian Discrepancy in Construction Permits in Jerusalem", 12 September 2019, available at: <https://peacenow.org.il/en/jerusalem-municipal-data-reveals-stark-israeli-palestinian-discrepancy-in-construction-permits-in-jerusalem>.

125 "Settlements in Palestinian areas in East Jerusalem are concentrated in the so-called 'Holy Basin' area: the Muslim and Christian quarters of the Old City, Silwan, Sheikh Jarrah, At-Tur (Mount of Olives), Wadi Joz, Ras al-'Amud, and Jabal Al-Mukabbir. According to Israeli statistics, it is estimated that some 3,500 Israelis currently live in these settlements." *See* OCHA, "Humanitarian impact of settlements in Palestinian neighbourhoods in East Jerusalem: evictions and displacements," 5 June 2018, available at: <https://www.ochaopt.org/content/humanitarian-impact-settlements-palestinian-neighbourhoods-east-jerusalem-evictions-and>.

a population of at least 670 Israeli settlers[126] and plans to expand the settlement from 60 to 200 housing units.[127] The second settlement of Ma'alot David was established in 2009, consisting of 110 housing units, located on ten dunums (2.47 acres) of appropriated Ras Al-Amud lands.[128] In addition, settler enclaves in Wadi Hilweh are controlled by around 330 settlers, while the Ateret Cohanim compounds in Batn Al-Hawa have been colonised by approximately 200 Israeli settlers.[129]

Israel's settlement enterprise in Silwan is driven by religious and ideological motivations,[130] propagated by two main private settler organisations - El'Ad and Ateret Cohanim - who receive backing and protection from the Israeli Government. The collusion between these settler organisations and Israeli governmental institutions has been documented,[131] even if it is still difficult to estimate its extent.

126 ARIJ, "Locality Profiles and Needs Assessment for Jerusalem Governorate," 2014, available at: <https://www.arij.org/files/arijadmin/IDRC/publications/Jerusalem_VProfile_EN.pdf>.

127 EU Heads of Mission, "Report on East Jerusalem," 10 February 2012 (excerpts). *See* Journal of Palestine Studies, Vol. 41, No. 3, Spring 2012, pp. 223-232, available at: <http://www.jstor.org/stable/10.1525/jps.2012.xli.3>.

128 PASSIA, "Jerusalem 2008 – Chronology of Events," 2008, available at: <http://passia.org/media/filer_public/70/90/70905409-7c22-449b-8304-5d3521c051e1/chrono-j2008docx.pdf>.

129 ACRI, "Unsafe Space The Israeli Authorities' Failure to Protect Human Rights amid Settlements in East Jerusalem," September 2010, p. 38, available at: <https://law.acri.org.il//pdf/unsafe-space-en.pdf>; OCHA, "Humanitarian Impact of settlements in Palestinian Neighbourhoods of East Jerusalem: the coercive environment," June 2018, available at: <https://www.ochaopt.org/content/humanitarian-impact-settlements-palestinian-neighbourhoods-east-jerusalem-coercive>.

130 *See* Friends of Ateret Cohanim – Jerusalem Chai, "Our mission", available at: <http://www.jerusalemchai.org/about.cfm?categoryID=101&categoryName=Our%20Mission>.

131 *See* Daniel Seidemann, "The settlement enterprise in East Jerusalem," 2017 (unpublished).

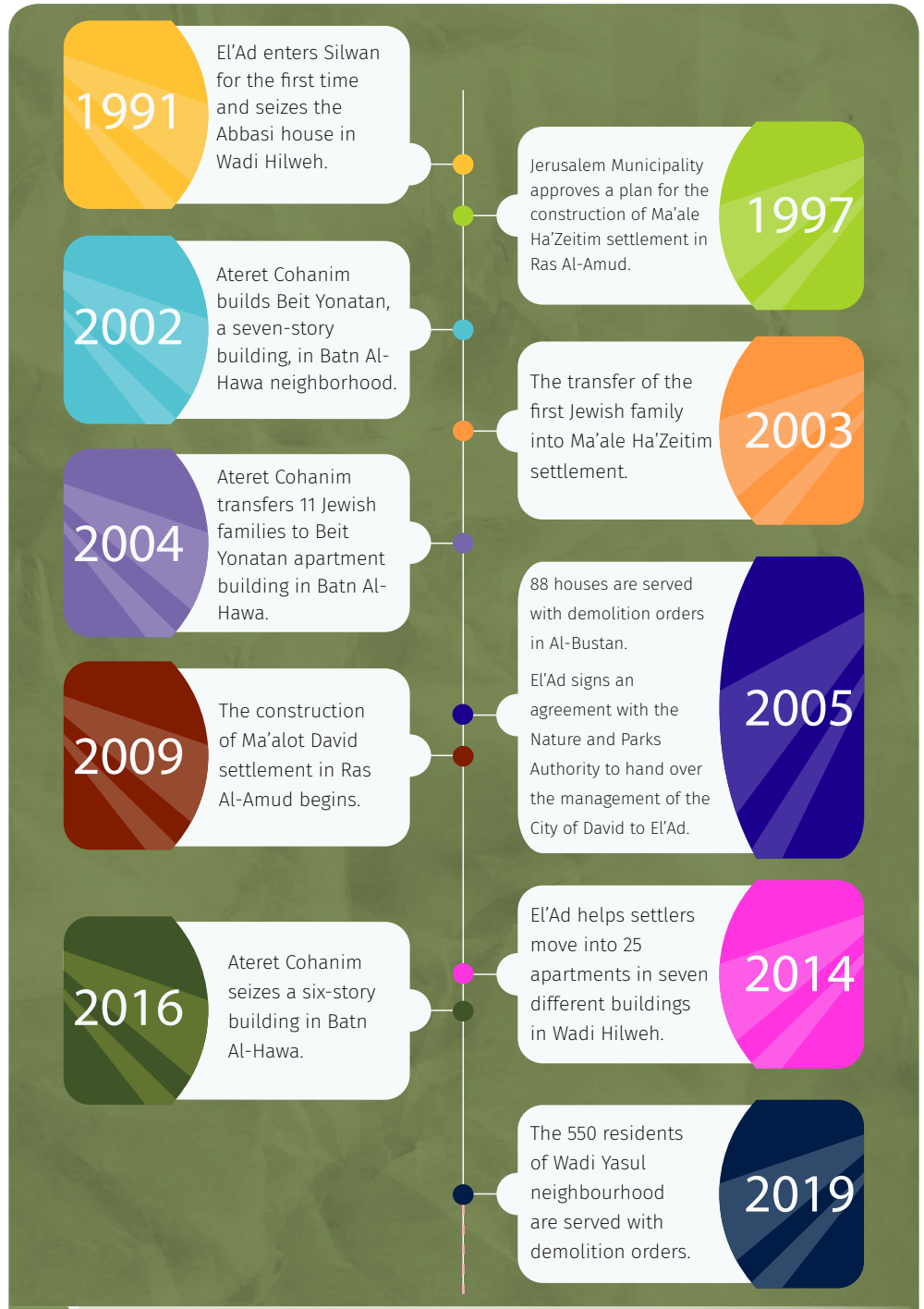


Figure 5: Timeline of land and property seizure by Israeli settlers in Silwan - Information obtained by the author.

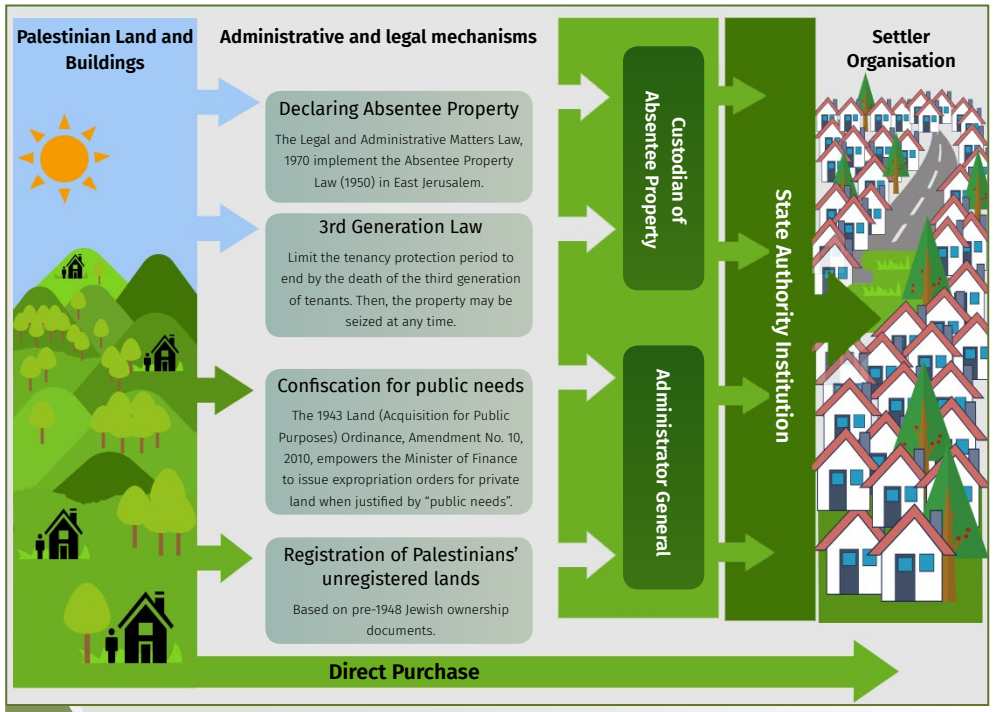


Figure 6: Eviction methods (Credit: Clara Schade-Poulsen).

4.1 Mechanisms of Dispossession

Together with its State-backed settler organisations, Israel uses a wide range of legal and non–legal mechanisms in order to seize Palestinian property in East Jerusalem. In Silwan, four main mechanisms are utilised:

4.1.1 Declaring "Absentee" Property

The Absentee Property Law 5710-1950 is one of the most important, and at the same time, odious, legal instruments used for seizing the lands and homes of Palestinians since 1948. The law defines as "absentees" any persons who owned property in the area of Israel and who lived outside this area between 29 November 1947 and 19 May 1948, or who were residing in Lebanon, Egypt, Syria, Saudi Arabia, Jordan, Iraq, Yemen or parts of Palestine located outside the 1948 borders of the State of Israel.[132] In fact, the law applied mainly to Palestinian

132 Absentee Property Law 5710-1950, Article 1.

refugees who were displaced from their homes and property by Zionist forces during the Nakba.

In 1970, three years after the illegal annexation of East Jerusalem, the Israeli Parliament (the Knesset) passed the Legal Procedures and Implementation Law 5730-1970,[133] which aimed at applying Israeli domestic law – including the Absentee Property Law – in occupied East Jerusalem. It stated that the owners of houses (primarily Palestinians) who could not prove that they were in the annexed area on 28 June 1967, could have their property confiscated. This resulted in the widespread and systematic appropriation of Palestinian property by the State, similar to the dispossession which occurred following the Nakba, treating Palestinians in East Jerusalem who had not registered in the 1967 census, including those who found themselves abroad at the time, as "present absentees."

4.1.2 Claiming Pre-1948 "Absentee" Property

In Silwan, settler organisations, such as El'Ad and Ateret Cohanim, conduct extensive investigations to identify absentees amongst Palestinian residents.[134] Based often on false or partial information gathered by those organisations, Israel's Custodian of Absentee Property confiscates the alleged "absentee property" and transfers it then to the Development Authority, turning it into State land.[135] The Development Authority then grants protected tenancy or long-term leases to the settlers – the same body which investigated and provided information about the alleged "absentees" – who are then entitled to seize the property.[136] Subsequently, the settler organisations file a lawsuit to evict Palestinian residents, considering them "squatters," in disregard of their protected tenancy rights[137] under the laws of occupation, and their right to maintain the status quo of their living arrangements.[138] While the Absentee Property Law has been employed only sporadically around East Jerusalem, it has been used in a targeted and systematic manner in Silwan and the

133 Laws of the State of Israel No. 603, 13 August 1970.

134 Emek Shaveh, "Elad's Settlement in Silwan," 10 September 2013, available at: <https://alt-arch.org/en/settlers/>.

135 Established under the Development Authority (Transfer of Property) Law 5710-1950.

136 The Klugman Commission report (1992), p.433-435.

137 *See* Palestinian Vision, "Third Generation Law: Altering Jerusalem's Palestinian Demographics," 2015, pp. 34-38.

138 Article 43, *Hague Regulations*.

Photo 9: A house seized by Israeli settlers in Batn Al-Hawa - Antoine Frère © 2019.

Old City.[139] For example, on 20 September 2019, following a claim of "absentee" property taken by El'Ad and the Jewish National Fund against 18 members of the Sumrin family in Silwan, the Jerusalem Magistrates Court ruled in favour of their forced eviction, after they lost their case.[140]

In Batn Al-Hawa, a further 81 Palestinian families – approximately 436 individuals – have received eviction orders following a claim from Ateret Cohanim that 5.2 dunums of Batn Al-Hawa land belong to the Benvenisti Trust.[141] The area, they allege, was settled by Yemenite Jews in the 19th century, and was abandoned in 1929, during the Palestinian uprising.[142] Ateret Cohanim premises their claim to the land on a property deed issued during Ottoman rule.[143] In 2001, the Jerusalem District Court allowed individuals associated with Ateret Cohanim to manage the Trust,

139 D. Seidemann, "The settlement enterprise in East Jerusalem," 2017, p. 109.

140 Nir Hasson, "After 30 Years of Legal Battle, Israeli Court OKs Evacuation of East Jerusalem Family," Haaretz, 25 September 2019, available at: <https://www.haaretz.com/israel-news/.premium-two-palestinians-injured-during-police-operation-in-east-jerusalem-1.7899032>.

141 Interview with Adv. Ziad Kawar on 30 April 2019.

142 *ibid*.

143 Zena Tahhan, "In Jerusalem's Silwan, Palestinians fear looming ethnic cleansing," Middle East Eye, 27 November 2018, available at: <https://www.middleeasteye.net/news/jerusalems-silwan-palestinians-fear-looming-ethnic-cleansing>.

even though no ties to the original Trust have been proven.[144] The Administrator General released the Benvenisti plots to Israeli settlers, along with three additional dunums, where Palestinian families now live. Palestinian residents filed 27 petitions to Israel's Magistrate Court to contest the eviction, arguing that Jewish ownership applies only to the building, which does not exist anymore.[145]

4.1.3 Confiscation for "Public Needs"

The expropriation of land for public needs is based on the 1943 British Land (Acquisition for Public Purposes) Ordinance,[146] from which Israel derives the authority of the Finance Minister to issue expropriation orders for private land when justified for "public needs." The Finance Minister is granted broad discretion in determining which criteria fulfil a "public needs" justification. An amendment to the law in 2010, confirmed State ownership of confiscated property, even when the confiscation does not fulfil its original purpose. The Israeli High Court of Justice has upheld the confiscation of private Palestinian property for "public needs," broadly defined to include the construction of infrastructure in Jerusalem and its "new" settlement neighbourhoods.[147] As a result of Israel's demographic balance policy, there is inherent bias in the definition of "public purpose" at Israel's executive and judiciary levels.[148] In 1970, Israel confiscated 130 dunums (32 acres) of land for the construction of an Israeli settler touristic park in Wadi Al-Rababah, near Al-Bustan in Silwan, under the Acquisition for Public Purposes Ordinance.[149]

144 B'Tselem, "Batan al-Hawa neighborhood, Silwan: The next target for "Judaization" of E. J'alem", 11 December 2016, available at: <https://www.btselem.org/jerusalem/20161208_batan_al-hawa>.

145 Interview with Adv. Ziad Kawar on 30 April 2019.

146 1943 Land (Acquisition for Public Purposes) Ordinance, Amendment No. 10, 2010, available at: <https://www.adalah.org/en/law/view/502>.

147 HCJ 5091/91, *Nusseibeh et al. v. Minister of Finance et al.,* para. 17.

148 HCJ 412/74, *Flescher v. Minister of Finance*.

149 Haqocom, "Expropriation, Forced Eviction, Destruction of Palestinian Heritage," available at: <http://haqocom.ps/en/content/expropriation-forced-eviction-destruction-palestinian-heritage> (accessed 28 March 2020).

4.1.4 Private Purchase

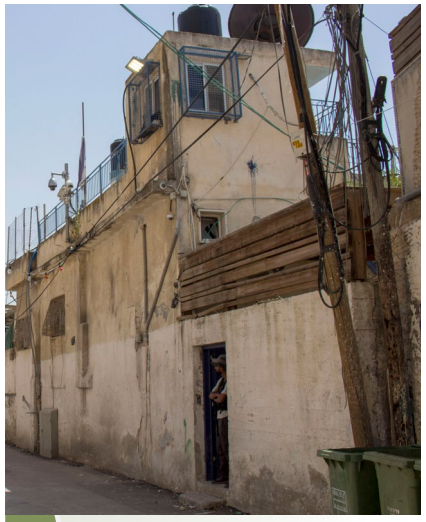


Photo 10: A house taken over by settlers in Batn Al-Hawa being guarded by an armed Israeli settler - Antoine Frère © 2019.

Since property owned by Jews prior to 1948 has already been identified and reclaimed, Israeli settler organisations currently use private purchase as the main method of confiscating property in Silwan. Generously funded by Zionist organisations in Israel and abroad,[150] settlers offer Palestinian owners purchase deals that are much higher than market-price value. Targeting Palestinians in financial need, settler organisations have managed to seize many properties in Wadi Hilweh, Batn Al-Hawa, Ras Al-Amud and other neighbourhoods of Silwan. For instance, in Wadi Hilweh, 33 per cent of the land is under the control of Israeli settlers, 22 per cent of which has been privately acquired.[151]

The Israel Land Fund, specialising in land acquisition in East Jerusalem and the West Bank, boasts on its website that it "employs numerous lawyers, appraisers, surveyors, investigators, translators and other professionals as outsourcers in order to run as cheaply and efficiently as possible."[152] While Ateret Cohanim wrongfully boasts that all the land acquired by the organisation was the result of a fair trade with Palestinian owners, in fact, the settlers' practices are far from fair, respectful or lawful.[153] To cover themselves legally, settlers often use a Palestinian middle-person to act as a mediator. According to a resident of Batn Al-Hawa:

> *"On 1 October 2014, at 2:30 a.m., settlers broke into our building… but they did not enter our apartment. That was a terrible day, I will not forget it. The settlers began to shout and celebrate loudly. They seized five apartments in the building with a suspicious sale. The residents of the building allegedly sold it to a Palestinian man called S.Q. who in turn sold to the settlers. S.Q. offered my husband a lot of money to buy our house… but my husband refused."*[154]

150 In 1992, the Klugman Committee found that the Israeli Government transferred 8.2 million NIS to private organisations in order to seize control of Palestinian homes in East Jerusalem.

151 *See* D. Seidemann, "The settlement enterprise in East Jerusalem," 2017.

152 *See* Israel Land Fund, "About Us," available at: <http://www.israellandfund.com>.

153 Ir Amim, "Shady Dealings in Silwan," 1 May 2009.

In 2008, the Negotiations Affairs Department of the Palestine Liberation Organization (PLO) declared that all transactions with Israel, including foreign countries transferring money to seize confiscated land in the OPT violate international law and are null and void.[155]

4.1.5 Intimidation

Photo 11: Surveillance cameras and wired fence around Ma'ale Ha'Zeitim settlement in Silwan - Antoine Frère © 2019.

Harassment and intimidation of Palestinian families are key tools used by Israeli settlers to seize Palestinians' homes. Settler organisations use different methods to force the eviction of Palestinian families, combining methods of intimidation, false testimonies, and filing lawsuits against them, alternating their strategy depending on available opportunities.

154 Al-Haq Affidavit No. 76, 15 January 2017.

155 PLO Negotiations Affairs Department, "Property transactions in the Occupied Palestinian Territory—Legal brief," October 2008.

Case Study: The Al-Rowaidi Family

The case of Samir Darwish Al-Rowaidi, a resident of Wadi Hilweh is particularly illustrative of settler eviction practices:

> *"Our problems with the settlers started in 1988, when the settlers came through El'Ad to take over Palestinian homes in Wadi Hilweh… They seized four houses in the area, very close to my buildings. The settlers claimed that the homes belonged to them before 1948… They began by stationing Israeli police guards in an empty plot of land near the house, and then they erected a fence on the land. The land belongs to my grandfather, but the settlers brought forged papers claiming that they were paying property taxes to the Jordanian Government since 1951…*
>
> *In 1991, more than ten armed settlers along with their guards raided the land. They were accompanied by the head of the settler group, David Berry. They assaulted us by beating us. My sister, my uncle, and his wife were taken to the hospital… We filed a lawsuit at the Israeli Court in order to affirm our right to the land… The settlers produced and presented a false testimony from a lawyer claiming that the building belonged to a man named Muhammad Salim Darwish… they claim that this person died in Amman and therefore the house is absentee property."*[156]

It is worth noting that the burden of proof is almost always on the Palestinian families, as title deeds and information given by settler organisations are rarely questioned in Court. Eventually, Samir's lawyer managed to prove that a fictitious testimony had been given by a "witness" who was later convicted of providing serial false testimonies.

In 2015, the Supreme Court ruled in favour of the Al-Rowaidi family. However, from 1988, when the settlers began to demonstrate interest in his house in Wadi Hilweh, up until the final Supreme Court ruling, Samir and his family suffered 27 years of physical and psychological harassment and continuous threats of eviction. The Al-Rowaidi family estimates costs of litigation amounted to 300,000 NIS.

156 Al-Haq Affidavit No. 10558, 14 March 2015.

4.2 Legal Analysis

4.2.1 The International Protection against Forced Evictions

CESCR defines forced evictions as "the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."[157]

Forced evictions directly violate the right to non-interference with one's home, family, and privacy.[158] When affecting minorities, forced evictions are often constitutive of a discriminatory practice. According to the UN 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: "Forced evictions intensify inequality… and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous peoples."[159]

The Office of the UN High Commissioner for Human Rights (OHCHR) has noted that forced evictions may violate, directly or indirectly, the full spectrum of human rights.[160] However, they are not illegal *per se*, with their illegality residing in the system that creates them; the way they are planned, decided, and carried out. States must provide to individuals under their jurisdiction a degree of security of tenure sufficient to guarantee legal protection against forced evictions, harassment, and other threats, in a non-discriminatory manner.[161] States must also regulate business activities and adopt laws that protect tenancy rights, prevent discrimination, and prevent third party interference with enjoyment of fundamental rights, including the rights threatened by forced evictions, in line with the framework envisaged in

157 CESCR, General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, UN Doc. E/1998/22 (hereinafter 'CESCR, General Comment No. 7'), para. 3.

158 Article 17, ICCPR.

159 Human Rights Council, Basic principles and guidelines on development-based evictions and displacement, 5 February 2007, Annex I to UN Doc A/HRC/4/18, para. 7.

160 OHCHR, Forced Evictions: Fact Sheet No. 25/Rev. 1 (2014) 5-6.

161 *See* CESCR, General Comment No. 4.

the UN Guiding Principles on Business and Human Rights.[162]

According to OHCHR, for evictions to be justified, they must be carried out "(a) only in the most exceptional circumstances; (b) after all feasible alternatives to eviction … are explored in consultation with affected community; and (c) after due process protections are afforded to the individual, group or community."[163] Such criteria apply solely in exceptional circumstances, which must be justified by a genuine public interest, be proportional and non-discriminatory; the alternative to forced evictions must be evaluated comprehensively and in good faith; and the due process protection must include an opportunity for genuine consultation and adequate and reasonable notice before the date of eviction; finally, evictions must not take place at night or in similarly oppressive environments.[164] More notably, evictions must not result in homelessness, while alternative and sustainable accommodation must be provided before any eviction is carried out,[165] as well as adequate compensation. On this, the UN Human Rights Committee recommended that:

> "all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land... to persons and communities which have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups."[166]

In Silwan, the basic right to be protected from the threat of forced evictions is intentionally violated. Evictions take place at night, with little to no notice. Most of the time, the Israeli police protect Israeli settlers enforcing the eviction, while no measures are taken to prevent the illegal forced evictions by these settler organisations or individual settlers. Driven by religious and ideological motives, evictions in Silwan are not the result of a legitimate administrative process, rather, they are decided without any due representation and defence for Palestinian home owners, and without their consultation.

By encouraging forced evictions within the framework of its discriminatory planning

162 *See* OHCHR, "Guiding principles on business and Human rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," 2011.

163 OHCHR, Forced Evictions (2014).

164 *Ibid*.

165 Human Rights Committee, *Naidenova et al. v. Bulgaria*, Communication No. 2073/2011, 27 November 2012, UN Doc CCPR/C/106/D/2073/2011, para. 3.8.

166 Commission on Human Rights, Resolution 77 (1993), 10 March 1993, UN Doc E/CN.4/RES/1993/77, para. 4.

regime over Palestinians in Silwan, Israel violates a wide range of fundamental rights, from the right to adequate housing to security of tenancy. Israel is therefore in breach of its duties as occupying power towards the Palestinian people, as the protected population.

4.2.2 Occupation and Private Property

The law of occupation provides that the private property of the protected population cannot be confiscated by the occupying power,[167] while the taking of property is permitted only "for the needs of the army of occupation."[168] However, when the local law, which the occupying power must comply with, permits expropriation of private land for a public purpose, it may use this specific authority for the benefit of the protected population, however not for its own benefit.[169]

In Silwan, the vast majority of expropriated land was privately-owned by Palestinians, subsequently expropriated by the Israeli occupying authorities for 'public use' and then put for lease or sold to settler organisations, benefitting Israeli-Jews at the expense of the indigenous Palestinian people. Critically, there is neither military necessity nor a legitimate public need to seize Palestinian property in Silwan.

Moreover, Israel's illegal and discriminatory planning policy targets so-called "absentee" property, which refers to the property of Palestinian refugees and displaced persons, whose right of return to their homes, lands, and property, Israel has denied as matter of State policy. In particular, customary international humanitarian law provides that: "the property rights of displaced persons must be respected."[170] The UN Guiding Principles on Internal Displacement add: "property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use."[171]

167 Rule 51, ICRC Customary IHL, Database, available at <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule51>.

168 Article 52, *Hague Regulations*.

169 *See* Eyal Zamir and Eyal Benvenisti, *The Legal Status of Lands Acquired by Israelis before 1948 in the West Bank, Gaza Strip and East Jerusalem*, (The Jerusalem Institute for Israel Studies, 1993), p. 119.

170 Rule 133, ICRC Customary IHL Database, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule133>.

171 OCHA, Guiding Principles on Internal Displacement (2nd ed., 2004) principle 21(3).

The Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons state that "All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal."[172]

In Silwan, the seizing of property is typically justified using Israel's Absentee Property Law, under which Israel has confiscated the property of myriad Palestinian refugees and displaced persons. This Law in and of itself amounts to a gross violation of Palestinian property rights and the customary protection of refugee property. Rather than systematically seizing privately-owned property which it defines as "absentee property," Israel must, in line with its obligations under international law, reinstitute and compensate Palestinian refugees and displaced persons for the damages they incurred as a result of the loss of their property, in Silwan and elsewhere.

The unlawful appropriation of property by the occupying power amounts to the crime of pillage,[173] which is prohibited under both the Hague Regulations[174] and the Fourth Geneva Convention,[175] and is considered a war crime within the jurisdiction of the International Criminal Court (ICC), as set out in the Rome Statute.[176]

172 UN Economic and Social Council, "Housing and property restitution in the context of the return of refugees and internally displaced persons. Final report of the Special Rapporteur, Paulo Sérgio Pinheiro. Principles on housing and property restitution for refugees and displaced persons," UN Doc. E/CN.4/Sub.2/2005/17, 28 June 2005, p. 2.

173 "Pillage is the forcible taking of private property by an invading or conquering army from the enemy's subjects". *Black's Law Dictionary* (West Publishing, 5th edn, 1979), p. 1033.

174 Article 28, *Hague Regulations.*

175 Article 33(2), *Fourth Geneva Convention.*

176 Article 8(2)(e)(v), *Rome Statute.*

4.2.3 The Prohibition on Population Transfer in Occupied Territory

In Silwan, the maintenance and expansion of Israel's illegal settlement enterprise is central to Israeli State policy. The UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 has characterized Israel's policies and practices as an "overall pattern combining forced expulsions of Palestinians outwards and of Government-supported voluntary transfers of Israeli settlers inwards reflect[ing] a systematic policy of Israel to set the stage for an overall dispossession of Palestinians and the establishment of permanent control over territories occupied since 1967."[177]

Article 49(6) of the Fourth Geneva Convention is very clear in its absolute prohibition on the transfer of civilian populations into occupied territories: "the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." This provision prohibits settlements in broad and unequivocal terms without regard to the purported purpose of such settlements, and was specifically adopted to prevent a process of colonisation, which inevitably ensues from such population transfers. The ICRC's Commentary on the Fourth Geneva Convention reaffirms that Article 49(6) "is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons, or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race."[178]

By sponsoring, promoting and supporting settlement activities in Silwan, within occupied territory, and actively evicting Palestinians from their homes to allow for the transfer of Israeli civilians into the occupied territory, Israel is continuously breaching its duties as occupying power under international humanitarian law. Israel's actions in violation of Article 49(6) of the Fourth Geneva Convention amount to a war crime within the jurisdiction of the ICC under Article 8(2)(b)(viii) of the Rome Statute.

177 UN Human Rights Council, Reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk (10 January 2011) UN Doc. A/HRC/16/72, para. 19.

178 ICRC, Commentary of 1958, Article 49, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=523BA38706C71588C12563CD0042C407>.

4.2.4 Forced Displacement and Demographic Manipulation

Eviction ultimately, and invariably, leads to displacement. According to the UN Guiding Principles on Internal Displacement: "All authorities and international actors shall respect and ensure respect for their obligations under international law… so as to prevent and avoid conditions that might lead to displacement of persons."[179] Moreover, Principle 6(2) prohibits arbitrary displacement, including:

> "(a) When it is based on policies of apartheid, 'ethnic cleansing' or similar practices aimed at or resulting in alteration of the ethnic, religious or racial composition of the affected population; (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand; (c) In cases of large-scale development projects, that are not justified by compelling and overriding public interests."[180]

Israel's discriminatory planning regime throughout occupied East Jerusalem, including over Palestinians in Silwan, along with its widespread and systematic policy of house demolitions and evictions, have contributed towards the creation and maintenance of a coercive environment, gravely undermining the living conditions of Palestinian residents of Silwan, while violating a wide array of their fundamental human rights in the process. Along with Israel's prolonged settler-colonial enterprise undertaken in Silwan, Israeli policies reveal a clear intention to forcibly uproot Palestinians from the immediate proximity of the Old City, and further outside of Israel's illegally demarcated municipal boundaries of Jerusalem.

Forcible transfer of protected persons is prohibited under the Fourth Geneva Convention and relevant principles of customary international law.[181] This unequivocal prohibition applies to both cases of individual and mass forcible transfers, regardless of their motive.[182]

Population transfer is defined in the Rome Statute as the "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law"[183]

179 *UN, Guiding Principles on Internal Displacement* (2nd edn, 2004), principle 5.

180 *Ibid*., Principle 6(2).

181 Article 49(1), *Fourth Geneva Convention*; and ICRC Customary rule No. 129.

182 Article 147, *Fourth Geneva Convention.*

183 Article 7(2)(d), *Rome Statue.*

and as such constitutes a war crime.[184] When committed as part of a widespread or systematic attack directed against a civilian population, transfers may further be considered a crime against humanity.[185]

The dimension of force referred to in the term 'forced displacement' is interpreted broadly, and "... is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment."[186]

During times of armed conflict and occupation, the displacement of the civilian population is only allowed for the security of the civilian population involved, or for imperative military necessity.[187] In the Stakić appeal judgment, the International Criminal Tribunal for the former Yugoslavia (ICTY) ruled that:

> "Although displacement for humanitarian reasons is justifiable in certain situations… it is not justifiable where the humanitarian crisis that caused the displacement is itself the result of the accused's own unlawful activity."[188]

As a matter of principle, in occupied territory, a lack of building permits and public order cannot be used to justify the displacement or relocation of civilians.[189] Therefore, any attempt to evict and displace protected persons who inhabit structures without a building permit is manifestly unjustified under international law, and, therefore, illegal.

184 Article 8(2)(a)(vii), *Rome Statute.*

185 Article 7(1)(d), *Rome Statue.*

186 ICC, Elements of Crimes (2011), p. 6.

187 ICRC, Customary Rule No. 129.

188 ICTY, *Prosecutor v. Stakic Milomir* (Appeal judgment), 22 March 2006, IT-97-24-A, para. 287.

189 *See* Eyal Benvenisti, *Expert Opinion: On the prohibition of forcible transfer in Susya Village*, 30 June 2011, available at: <https://www.diakonia.se/globalassets/blocks-ihl-site/ihl-file-list/ihl--expert-opionions/the-prohibition-of-forcible-transfer-in-susya-village.-prof.-eyal-benvenisti.pdf>.

5 VIOLENCE, HARASSMENT, AND ARBITRARY DETENTION: CHILDREN'S ROUTINE IN SILWAN

"Violence, verbal and physical abuses, inhumane and degrading treatment, forced evictions, land and property grabbing, the destruction of property and housing... gravely affect the right to the enjoyment of the highest attainable standard of physical and mental health... Impunity, a feeling of injustice, the recurrence of events and anticipation of renewed abuses, especially on relatives and children, compound these conditions."[190]

Israel's ongoing settlement of Silwan has created harsh realities for Palestinian children and families living in the area. Violations in Silwan span illegal house demolitions and forced evictions for the benefit of illegal Israeli settlers, regular violence, harassment, and intimidation by the Israeli occupying forces and by Israeli settlers, and arbitrary detention gravely affecting children. These human rights violations will be highlighted in this section of the report.

5.1 House Demolitions and Forced Evictions

From 2004 to April 2019, Al-Haq monitored the forced displacement of 99 children from Silwan, following the demolition of their homes. In Batn Al-Hawa, Wadi Yasul, and Al-Bustan, hundreds of children are under the threat of imminent displacement, as the Israeli courts confirmed the demolition orders against their homes. The rising number of demolitions reported in recent years in East Jerusalem – and specifically in Silwan – is an immediate threat to children's safety, stability, physical and mental health, and well-being.

190 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, 7 February 2013, UN Doc. A/HRC/22/63, para. 57.

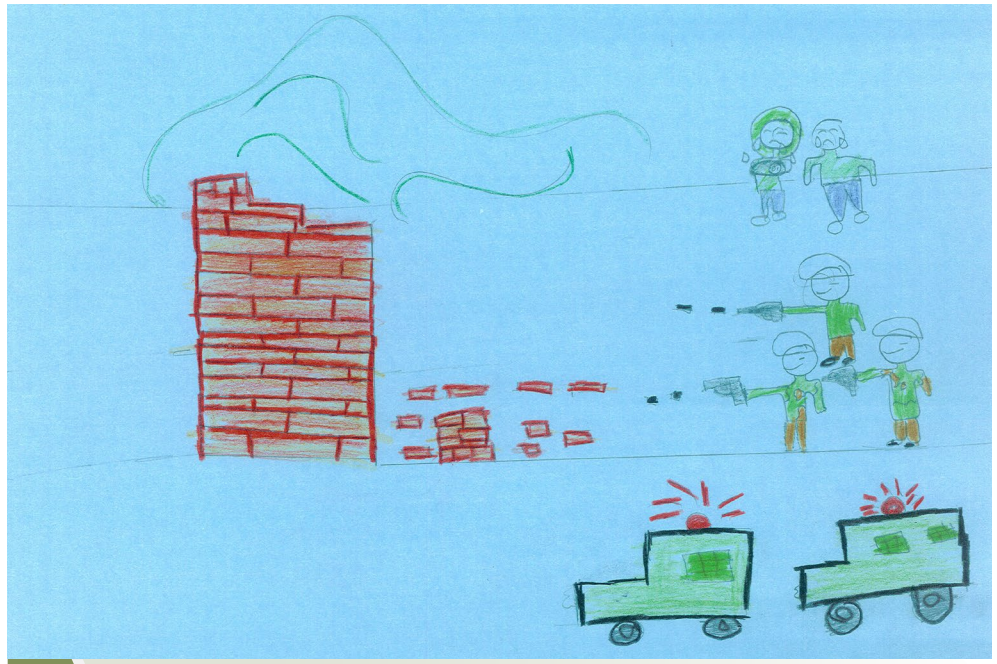


Figure 7: Drawing by a Palestinian child resident of Silwan (Source: Madaa Creative Center).

House demolitions and forced evictions are traumatising experiences for the whole family. However, they have a particularly aggravated impact on children. Exposure to unlawful house demolitions and forced evictions may detrimentally affect the psychological condition and mental health of children, who may experience post-traumatic stress, including nightmares, anxiety, apathy, and withdrawal.[191] Children may also develop a feeling that they and their families are expendable and a loss of self-esteem as a result. In addition, children often suffer from disturbance and restrictions on access to schools and healthcare and face a higher risk of family separation.

The Convention on the Rights of Child (CRC)[192] enshrines the child's right to adequate housing, as well as the prohibition on interference in their privacy, family, or home.[193] The CRC also enshrines the right to an adequate standard of

191 OHCHR and UN Habitat, *Forced Evictions* (Fact Sheet No. 25 Rev. 1), 2014, p. 17.

192 Israel ratified the CRC in 1991.

193 Article 16(1), CRC.

living for the child's growth and development.[194]

Unlawful house demolitions and forced eviction practices in the context of the Israeli occupation violate a wide range of children's rights as protected under international law. Indeed, children benefit from special protection, notably under international humanitarian law, where children are accorded the full protection of the Fourth Geneva Convention.[195] As occupying power, Israel has obligations to protect Palestinian children under its control, especially against forced displacement when not justified by imperative military reasons or their own security.[196] Considered a vulnerable group, children under occupation further enjoy specific and wider protection of the Fourth Geneva Convention in terms of their family rights, education and care.[197]

> "Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason."[198]

With regards to the ongoing and pending demolitions in Silwan, Israel has systematically failed to fulfil its duties towards Palestinian children under its control. By ordering demolitions of homes inhabited by children, Israel endangers children's lives and violates their basic human rights, including their rights to adequate housing, family life, education and care. Furthermore, the enforcement of unlawful demolition orders is aggravated by the horrendous conditions endured by children during and after the demolition operation.[199] Israel's demolition and forced eviction policy in Silwan and other parts of the OPT engages Israel's State responsibility as an occupying power and constitutes a war crime both under the Fourth Geneva Convention and under the Rome Statute.[200]

194 Article 27(1), CRC.

195 Article 38(4), CRC.

196 ICRC, Customary Rule No. 129.

197 Article 50, *Fourth Geneva Convention*.

198 Article 77, Additional Protocol I to the Geneva Conventions (1977).

199 Al-Haq Affidavits Nos. 216A and 217A, 17 April 2019.

200 Article 27(1), *Fourth Geneva Convention*; Article 8, *Rome Statute*.

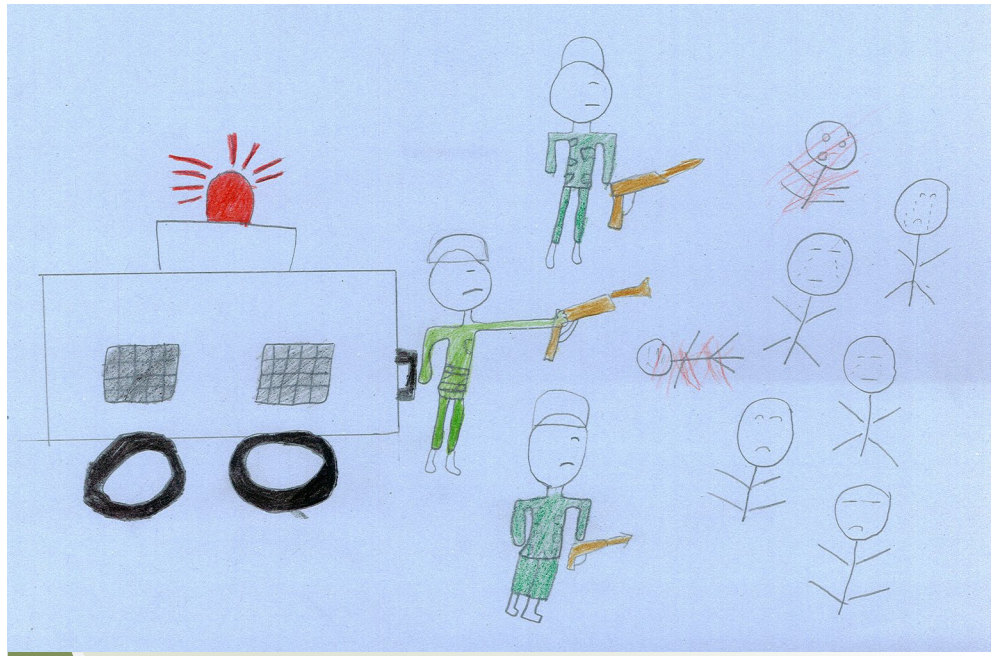


Figure 8: Drawing by a Palestinian child resident of Silwan (Source: Madaa Creative Center).

5.2 Violence, Harassment, and Intimidation by the Israeli Occupying Forces

As a consequence of ongoing settlement activities in Silwan, a range of Israeli occupying forces, including security guards, police officers, and soldiers are mandated to "ensure public order" over the area, which basically means protecting Israeli settlers at the expense of the rights of the Palestinian people. The presence of the Israeli occupying forces creates a threatening and coercive environment and results in frequent confrontations with Palestinian youths, with alleged stone throwing often used as a pretext by Israeli forces to resort to lethal and other excessive force against Palestinian children in Silwan. Al-Haq's affidavits show that the Israeli occupying forces consistently resort to the use of excessive force against Palestinian children, sometimes below the age of ten. According to Qassam, a ten-year-old Palestinian child and resident of Hawsh Al-A'war in Silwan:

> *"My brother, my cousin, and I were forced to sit on a pile of bricks in Hawsh Al-A'war. Then, a group of youth threw stones at a white car that we know*

belongs to the settlers' guards. Three Israeli guards got out of the car dressed in green uniforms and ran towards the youth who fled. I felt very scared, so I began to run, as did the rest of the children with me. I slipped and fell on my face. Then I felt a strong grip on my right arm, it was the hands of Israeli guards. They started to punch and kick me on my back, and I was crying and screaming 'Dad! Dad!' I said to the border guards: 'I did not do anything... I did not do anything,' then they shouted at me: 'you threw stones!' I do not know for how long they were beating me, and I was hoping God would send someone to save me from the hands of the guards."[201]

According to Muhammad, a 17 year old, a resident of Batn Al-Hawa:

"They beat me with sticks, their hands, and feet. Then they lifted me off the ground, dragged me to an [Israeli] army vehicle, turned my face towards the car and tied my hands behind my back. I was taken to the settlers' building known as 'Beit Yonatan'… When we entered the garage, a member of the [Israeli] occupying forces slapped me on the face, and then pushed me to the wall and kicked me, and then dragged me and pushed me roughly towards the garage door. I felt dizzy because the strike was in the middle of my chest. I fell to the ground, and then stood up. I felt blood coming from my chest. Then, the officer who hit me took my handcuffs off and brought me water and tissues as he looked at the blood. He gave me a cigarette and told me: 'Calm down,' because I was crying due to the pain in my head. He said to me: 'You have to say you fell to the ground on your own and that's how you injured your head.'"[202]

As protected persons, children from Silwan are entitled at all times to be humanely treated, and shall be protected against all acts of violence or threats.[203] Article 32 of the Fourth Geneva Convention prohibits measures that may cause physical suffering of protected persons, including measures of brutality.[204] The CRC specifically provides that States Parties shall take all appropriate measures to

201 Al-Haq Affidavit No. 10920, 16 August 2015.

202 Al-Haq Affidavit No. 10417, 23 January 2017.

203 Article 27(1), *Fourth Geneva Convention*.

204 Article 32, *Fourth Geneva Convention*.

"protect the child from all forms of physical or mental violence, injury or abuse."[205]

Acts of violence, harassment, and intimidation carried out by the Israeli occupying forces against Palestinian children in Silwan violate Israel's obligations towards children under its control. By securing the seizure of Palestinian property and land by Israeli settlers, encouraging ideological settlement within Palestinian neighbourhoods and placing 24/7 surveillance by armed guards in Silwan's streets to protect settlers, Israel has created a coercive environment that incites violence against Silwan's residents and confrontations with illegal Israeli settlers. This environment encourages conflict and indirectly pushes children to participate in acts of violence. Consequently, Israel fails in its responsibilities as an occupying power to ensure both public order and safety, and the protection of Palestinian children in Silwan.

205 Article 19(1), CRC.

5.3 Arbitrary Detention

Regular confrontations between Palestinian children and the Israeli occupying forces in Silwan have resulted in arbitrary arrests and detention of Palestinian children. Al-Haq has monitored and documented countless violations of children's rights during arrests, in violation of their righ to a fair trial. According to Ahmad, a 13-year-old Palestinian child from Silwan, who was arrested by the Israeli occupying forces in 2015:

> *"I asked to speak with my father over the phone but the Israeli police refused. They took me to a room in the police station with a woman and a young policewoman. I waited there for three hours, I was sitting on a chair, and they only brought me a cup of water… I was then forced to sit on a drawer for a long time and they brought me documents that they told me to sign before I can return home. The documents were in Hebrew, which I do not understand. When I asked them to explain what these documents were, they refused. I asked not to sign it unless my father is present, but they refused as well… I eventually signed the papers. Then they released me on the street by myself, it was night by then and there were no buses and my parents did not know where I was."*[206]

According to Udi, 14 years old from Wadi Yasul:

> *"My friend and I were standing in a corridor inside the police station. I was thirsty, and asked the [Israeli] policeman for water, but he denied my request. Then I felt the need to go to the bathroom, but the policeman refused. I could not stand not being allowed to use the bathroom and defecated myself… I was then brought to a room with other youth. We stayed in the room for two hours, and then I was taken to interrogation… I felt very bad during the interrogation because my clothes were full of bowel. I do not know how the investigator did not smell the odour coming from my clothes."*[207]

As highlighted above, children enjoy special protection under international humanitarian law. Article 38(5) of the Fourth Geneva Convention provides that "Children under fifteen years… shall benefit by any preferential treatment to the same extent as the nationals of the State concerned." In its commentary on the

206 Al-Haq Affidavit No. 10596, 31 March 2015.

207 Al-Haq Affidavit No. 10808, 15 June 2015.

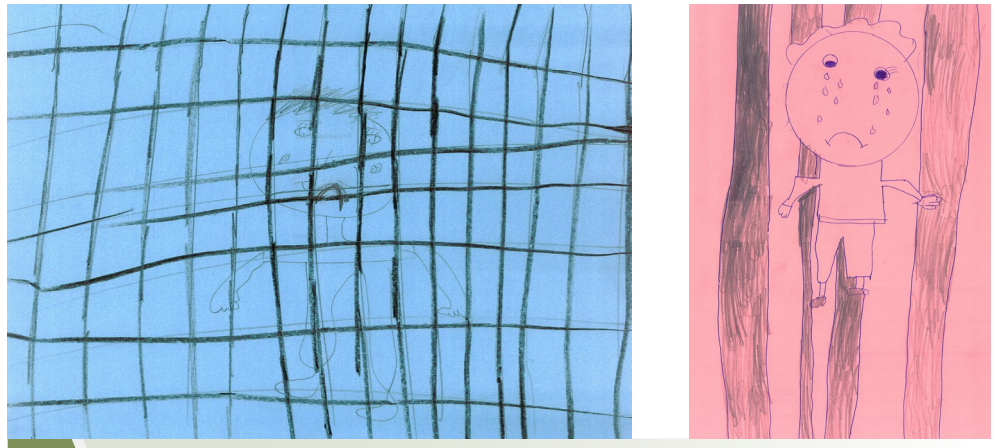


Figure 9: Drawings by Palestinian child residents of Silwan (Source: Madaa Creative Center).

Geneva Conventions, the ICRC has interpreted this article to mean that children under 15 years of age are to be afforded preferential treatment in essentially all regards.[208]

Children are protected from arbitrary arrests and detention,[209] and from all kinds of humiliating and degrading treatment, as fundamental guarantees.[210] Additionally, Article 37 of the CRC provides that "no child shall be deprived of his or her liberty unlawfully or arbitrarily" and protects children from cruel, inhuman or degrading treatment.

The arrest of children is permitted only under strict conditions in international humanitarian law and international human rights law. Such arrests "shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."[211] The CRC provides that "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age." In Article 40, the CRC establishes procedural

208 Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Jean S. Pictet (Ed.), (Geneva: International Committee of the Red Cross, 1958), p. 248.

209 ICRC Customary Rule No. 99.

210 Additional Protocol I (Article 75), Additional Protocol II (Article 4).

211 Article 37(b), CRC.

guarantees for children during arrest:

> "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."[212]

Amongst the guarantees enshrined in the CRC is the obligation to guarantee due process in arresting children and the prohibition on obtaining forced testimonies or guilt confessions.[213] The Israeli Youth (Judiciary, Punishment, and Methods of Treatment) Law, 5731-1971 oversees child arrests by the Israeli occupying forces. The Law restricts the use of physical restraints, places restrictions on the interrogation of minors at night, allowing access to family members and the right to have a family member present during interrogation.[214] However, the latter could be denied if there is a reasonable belief that doing so would delay the investigation, or if a reasonable attempt has been made to contact a relevant adult.[215]

Even if Israeli law provides a framework corresponding to international standards, the law is applied in an overtly discriminatory manner against Palestinian children in Silwan, and more broadly in occupied East Jerusalem. The presence of a family member is regularly denied to Palestinian children. Although no precise figures are available for Silwan, B'Tselem and HaMoked monitored and documented 60 cases of child arrest in East Jerusalem between 2015 and 2016. They found that 95 per cent of children arrested were interrogated without the presence of a parent and 80 per cent of them were forced to sign confessions they did not understand in Hebrew.[216] Affidavits collected by Al-Haq, including excerpts cited above, show that children under the age of 15 were treated in an abusive manner: they were denied the right to go to the bathroom, forced to sign confessions, denied contact

212 Article 40(1), CRC.

213 Article 40(1)(a) and (b)(iv), CRC.

214 The Youth (Judiciary, Punishment, and Methods of Treatment) Law, 5731-1971.

215 B'Tselem, HaMoked, "Unprotected, Detention of Palestinian teenagers in East Jerusalem," October 2017.

216 *Ibid*.

with their parents, released in remote areas at night, and suffered humiliating and degrading treatment, including intimidation.

Israel's illegal practices against Palestinian children in Silwan and other areas of the OPT impede and violate a wide range of children's rights. Such forms of violence, harassment, and intimidation at the hands of the Israeli police may further amount to prohibited torture and other cruel, inhuman, and degrading treatment under international human rights law. Indeed, the Convention against Torture (CAT)[217] defines torture as any intentional act carried out by a public official that inflicts severe moral or physical pain on someone in order to obtain information or a confession or in order to punish him or her.[218] There is a severity threshold in the definition of torture but Article 16 of CAT creates an equivalent prohibition of acts of cruel, inhuman or degrading treatment or punishment. Both are absolutely prohibited under customary international law.[219] Accordingly, relevant Israeli police officers, and Israeli officials, may be held criminally responsible for war crimes and crimes against humanity under the Rome Statute.

217 Israel ratified CAT in 1991.

218 Article 1(1) of CAT.

219 ICRC, Customary Law Rule No. 90.

6 CONCLUSIONS

Located in close proximity of Jerusalem's Old City, Silwan lies at the forefront of Israel's ongoing settler-colonial enterprise in Jerusalem. Since the early 1990s, Silwan has exemplified Israel's systematic erasure of Palestinians in and around the Old City of Jerusalem to the benefit of Zionist settler organisations. In less than three decades, religious and ideological settler groups such as El'Ad and Ateret Cohanim have managed to increase the Israeli-Jewish settler population in Silwan from none to over a thousand individuals. Driven by a Zionist settler-colonial narrative, these organisations have carried out Israel's illegal settlement of Silwan without any consideration for the lives and inherent rights of the indigenous Palestinian people.

The collusion between Israeli governmental bodies and these settler organisations is often covert and could be described as a four-step process:

1. **The Israeli Government's urban planning placed Silwan in open "green areas**," hindering any Palestinian housing expansion or improvement. As a consequence, Palestinians cannot obtain building permits and are compelled to build illegally to meet the natural growth of the population.
2. **Policies were put in place to condemn and heavily penalise Palestinian construction as 'illegal.'** As a consequence, any new construction or housing improvements are subject to demolitions and result in fines for Palestinian residents.
3. **Zionist settler organisations, supported by foreign and Israeli Government funding, take over Palestinian lands, houses, and property in Silwan**, using Israeli tenancy and property laws, shady dealings, the harassment of Palestinian owners, and the proactive and violent seizing of Palestinian property.
4. **Seized property is turned into Israeli State land** and occupied by ideologically-driven settlers protected by armed Israeli guards funded by Israeli public funds. Public areas are turned into settler tourism sites to spread the false narrative of a 'Jewish Silwan,' for the sole benefit of illegal Israeli settlers.

Photo 12: Panoramic view of Silwan - Antoine Frère © 2019

As a result, Silwan's Palestinian residents experience frequent confrontations with both individual settlers and the Israeli occupying forces. The first victims of these confrontations are Palestinian children and youth in Silwan, who suffer torture and other ill-treatment, arbitrary arrests and detention, violence, harassment, and intimidation, and deprivation of their right to adequate housing, with significant impacts on their health, their right to education, their right to family life and care, and their general well-being.

These discriminatory policies and practices are further aggravated by the increase and intensification of forced displacement in Silwan. More Palestinian houses continue to be demolished and self-demolished in Silwan, resulting in the uprooting of Palestinian families, including children, and the creation of a coercive environment designed to further drive Palestinian displacement. Legal and political developments also indicate that more power is being given to settler organisations to manage public lands and natural parks in Silwan, whereas official Israeli Government plans for Silwan are matched by colonial plans of settler groups.

During the Nakba in 1948 and following the 1967 War, thousands of Palestinian families were forcibly displaced and uprooted from their homes, lands, and property by Zionist forces, applying the logic of "a land without a people for a people without a land." Until this day, in a less visible and more insidious manner, this report shows that this logic remains Israel's modus operandi in occupied East Jerusalem, led by both the Israeli Government and illegal settler organisations. In Silwan, like in many other Palestinian neighbourhoods in Jerusalem, the Palestinian people face the imminent threat of population transfer and deportation through a complex and institutionalised process, fuelled by public and private pressure. If nothing is done to reverse this dynamic, Israel's discriminatory policies and practices will continue to seek to rid Silwan of its Palestinian people, identity, and heritage, for the benefit of Israel's illegal settlement enterprise.

7 RECOMMENDATIONS

In light of the above, Al-Haq stresses that Israel, the occupying power, has an obligation to:

- Abide by international human rights law and international humanitarian law in its conduct towards the Palestinian people, notably in Silwan;
- Ensure the protection of Palestinian civilians under its responsibility in the OPT;
- Cease the unlawful application of its domestic laws and policies to illegally annexed East Jerusalem;
- End all practices of forced evictions and house demolitions targeting the Palestinian people, including in East Jerusalem;
- Ensure that State agents respect international law and the rights of the child when enforcing public order and are held accountable for widespread and systematic human rights violations committed against the Palestinian people;
- Uphold the right of the Palestinian people to self-determination, including permanent sovereignty over natural wealth and resources, and end its prolonged military occupation of the OPT.

Third States have an obligation to ensure respect for international humanitarian law in the OPT and should:

- Refrain from taking any measures aimed at recognising Israel's illegal annexation of occupied East Jerusalem or any other policy or practice purporting to, but which does not, alter Jerusalem's legal status, character, or demographic composition;
- Refrain from promoting Israeli settler tourism in occupied East Jerusalem, including in Silwan;
- Cooperate to bring to an end, including through coercive measures such as sanctions, Israel's occupation, colonisation, and apartheid regime, as well as as the prolonged denial of the right to self-determination of the Palestinian people, including permanent sovereignty, and the right of return of Palestinian refugees to their homes, lands, and property, as

mandated by international law;

- Ensure international justice and accountability, including by activating universal jurisdiction mechanisms to try perpetrators of suspected war crimes and crimes against humanity committed in the OPT in their own jurisdictions and supporting a full, thorough, and comprehensive investigation into the Situation in Palestine by the ICC.

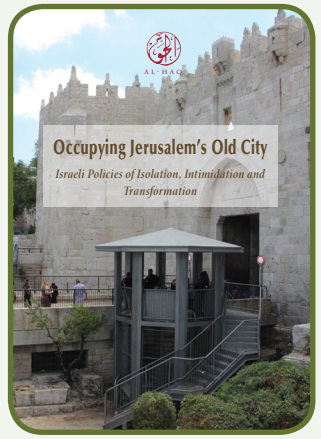
Al-Haq further recommends that the State of Palestine should:

- Support Palestinian presence in occupied East Jerusalem through all possible means;
- Ensure that Palestinian real estate and property policies do not worsen Palestinian living conditions and rights in East Jerusalem, including to an adequate standard of living and to adequate housing;
- Take all possible measures to preserve Palestinian identity, culture, and heritage in Jerusalem.

NOTES

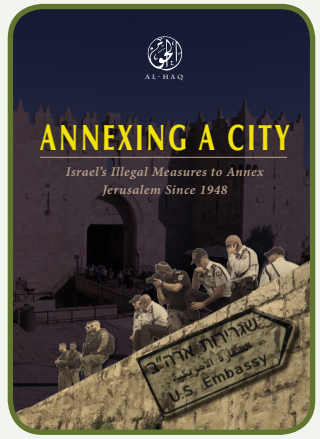
NOTES

READ ALSO ...



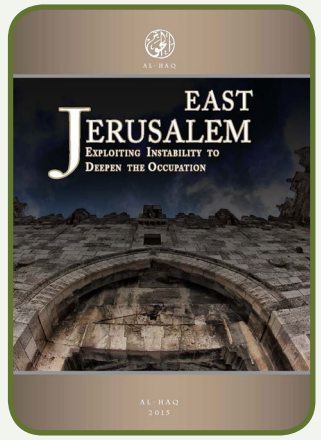
Occupying Jerusalem's Old City

Israeli Policies of Isolation, Intimidation and Transformation



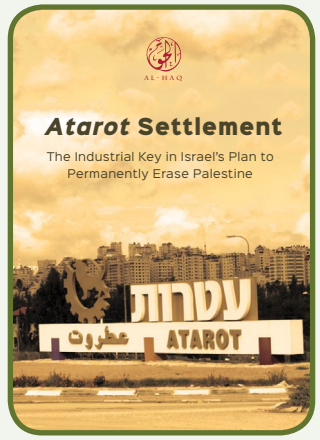
Annexing a City

Israel's Illegal Measures to Annex Jerusalem Since 1948



East Jerusalem

Exploiting Instability to Deepen the Occupation



Atarot Settlement

The Industrial Key in Israel's Plan to Permanently Erase Palestine

STAY CONNECTED AND UPDATED

Al-Haq's Website: **www.alhaq.org**

Al-Haq on Facebook: **www.facebook.com/alhaqorganization**

Al-Haq on Twitter: **www.twitter.com/AlHaq_org**

Al-Haq Multimedia Channel on Vimeo: **www.vimeo.com/alhaq**

Al-Haq Multimedia Channel on YouTube: **www.youtube.com/Alhaqhr**

SMARTPHONES

Al-Haq - 54 Main Street 1st & 2nd Fl. - Opp. Latin Patriarchate

Saint Andrew's Evangelical Church - (Protestant Hall)

P.O.Box: 1413 - Ramallah - West Bank - Palestine

Tel: + 970 2 2954646/7/9

Fax: + 970 2 2954903

www.alhaq.org

AL-HAQ

About Al-Haq

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah in the Occupied Palestinian Territory (OPT). Established in 1979 to protect and promote human rights and the rule of law in the OPT, the organisation has special consultative status with the United Nations Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. Al-Haq conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. Al-Haq has a specialised international law library for the use of its staff and the local community.

Al-Haq is the West Bank affiliate of the International Commission of Jurists- Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), ESCR-Net – The International Network for Economic, Social and Cultural Rights, the Palestinian Human Rights Organizations Council (PHROC), and the Palestinian NGO Network (PNGO). In 2018, Al-Haq was a co-recipient of the French Republic Human Rights Award, whereas in 2019, Al-Haq was the recipient of the Human Rights and Business Award.

ISBN 978-9950-327-63-4