



Joint Urgent Appeal to the United Nations Special Procedures on Israel's Permanent Illegal Annexation of Jerusalem¹

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Submitted by:

1. The Community Action Center - AlQuds University
2. The Civic Coalition for Palestinian Rights in Jerusalem
3. The Palestinian Human Rights Organisation Council, comprising of:
 - Al-Haq, Law in the Service of Man
 - Al Mezan Center for Human Rights
 - Addameer Prisoner Support and Human Rights Association
 - Palestinian Centre for Human Rights
 - DCI - Defense for Children International – Palestine
 - Jerusalem Legal Aid and Human Rights Center
 - Aldameer Association for Human Rights
 - Ramallah Center for Human Rights Studies
 - Hurriyat - Center for Defense of Liberties and Civil Rights

¹ While keeping in mind that Jerusalem in its entirety – both east and west– has been unlawfully annexed by Israel in violation of its protected status under international law, and given that Israel considers the entire area of Jerusalem to be its capital and inseparable from it, as stipulated in its Basic Law on Jerusalem, this urgent appeal will use the term eastern Jerusalem *in lieu* of 'East Jerusalem' to stress on the inseparability of the City of Jerusalem and on the right of the Palestinian people to return and of self-determination. This urgent appeal will focus on the eastern part of Jerusalem as it is made the subject of the Israeli land settlement tackled in its resolution 3790. For further information on the annexation of Jerusalem, please see Al-Haq, "Annexing a City: Israel's Illegal Measures to Annex Jerusalem Since 1948" 2020, <https://www.alhaq.org/publications/16855.html>.

- The Independent Commission for Human Rights (Ombudsman Office) - Observer Member
- Muwatin Institute for Democracy and Human Rights - Observer Member

For the attention of:

- The United Nations Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Mr. S. Michael Lynk;
- The United Nations 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, Mr. Balakrishnan Rajagopal;
- The United Nations Special Rapporteur on the human rights of internally displaced persons, Ms. Cecilia Jimenez-Damary;
- The United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms. E. Tendayi Achiume;
- The United Nations Special Rapporteur on the rights of indigenous peoples, Mr. Francisco Cali Tzay; and
- The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Ms. Tlaleng Mofokeng.

I. Introduction:

In May 2018, the Israeli government passed resolution No. 3790, entitled “Reducing Economic and Social Disparities and Promoting Economic Development in East Jerusalem”.² According to this resolution, the Israeli government approved a budget of

² Reducing economic and social disparities and economic development in East Jerusalem, Resolution No. 3790, 2018, available (in Hebrew) at: https://www.gov.il/he/departments/policies/dec3790_2018.

USD 650 million to strengthen its sovereignty in occupied Jerusalem. Under the clause 'Planning and Registration of Land', 50 million NIS (approximately USD 15,500,000) will be dispensed over the course of six years (2018-2023) for a land title settlement and registration plan for land located in annexed eastern Jerusalem. The resolution further dictates that 50 percent of the land in annexed eastern Jerusalem will be registered no later than the 4th quarter of 2021, and the rest, by the end of 2025. The resolution was adopted, as stated in its introduction, "[i]n light of the need to integrate the Arab residents of East Jerusalem in the Israeli society and economy". This 'need' is not what Palestinians wish for themselves, rather it is an Israeli initiative to stifle the Palestinian identity and forcibly subsume Palestinians into Israeli society, in territory held under illegal annexation. The process has already started in multiple Palestinian neighbourhoods, such as Beit Hanina, Sur Baher, Sheikh Jarrah, Issawiya, Hizma and At-Tur, among others.³

The Israeli land title settlement and registration plan for eastern Jerusalem lands will be carried out by a team headed by the Ministry of Justice with the participation of the Budget Division and the Planning Director of the Ministry of Finance, a representative of the Prime Minister's office, Israel Land Authority, Survey of Israel, the Ministry of Jerusalem and Heritage and the Jerusalem municipality. The process will be based on a set of Israeli property laws, including the Israeli Land Settlement Ordinance (1969), the Absentee Property Law (1950), the Legal and Administrative Matters Law (1970), and other tax law provisions to be levied on property retroactively since 1967, which are inherently discriminatory, and whose application to the unlawfully annexed Jerusalem is illegal under international law.

As will be presented below, resolution 3790 is designed to ostensibly show that it aims to reduce social and economic disparities, but actually, it seeks to seize control over more Palestinian property, to maintain and strengthen the Jewish majority in the city, to

³ See The Status of Governmental Resolution, 2019, p.34, available (in Hebrew) at: https://www.gov.il/BlobFolder/news/matmedet-3790-2019/he/EatJer_NotebookA4_E_DIGITAL.pdf

force facts on the ground in order to ensure that Jerusalem, both - the western side and the eastern side, remains under Israeli control, and to prevent the realization of the Palestinian people's right of return and to self-determination.

Different Israeli officials have made statements emphasizing the importance of the resolution for Israeli colonial purposes. For instance, the Israeli Minister of Jerusalem and Heritage, Rafi Peretz, stated:

[t]he fact that almost all land in East Jerusalem is unregistered is a persistent failure of 50 years and a solution must be reached. The land title settlement and registration plan have been adopted by various ministries, and it is a firm confirmation of the fact that East Jerusalem is part of the vision of a 'Unified Jerusalem'.⁴

Further, on 13 May 2018, the former Israeli Minister of Justice and current Israeli Interior Minister, Ayelet Shaked, said in reference to the resolution, "[a] day before strengthening Jerusalem through moving the American embassy to it, and after decades of Israeli sovereignty, we are *de facto* applying sovereignty over East Jerusalem through land registration regulations."⁵

II. Background to the Issue of Israel's Land Settlement in Eastern Jerusalem:

In 1928, the British government ordained the commencement of land settlement in Mandatory Palestine. Between 1928 and 1948, the British mandate succeeded in settling the land titles of 5,243,000 dunams, the majority of which were located in rural areas along the coastal plain. The main purpose of the land title settlement process is to examine the chain of title of every block and parcel of land in order to determine, definitely and conclusively, the land title for every piece of land settled, and the precise

⁴ Hazaki Barukh, East Jerusalem lands - will be registered in the registry, 17 November 2020, available (in Hebrew) at: <https://www.inn.co.il/news/457572>.

⁵ Anat Danieli, The Ministry of Justice will regulate the registration of land in East Jerusalem at a cost of NIS 50 million, 13 May 2018, available (in Hebrew) at: https://www.calcalist.co.il/real_estate/articles/0.7340.L-3737943.00.html.

mapping of its location and borders.

After its establishment in 1948, Israel adopted the legal infrastructure from the British mandate period and resumed the land settlement process in the majority of the areas under Israeli control. Between the years 1948 and 1967, the Israeli government conducted land title settlement in West Jerusalem, with the purpose of establishing neighbourhoods for the new Jewish immigrants to populate, as well as demonstrating sovereignty over the newly conquered city and the surrounding Palestinian villages, including Lifta, Ein Karem, Malha, Deir Yassin and Sheikh Bader, a number of which have Israeli Jewish neighbourhoods built over them.

In parallel, the Hashemite Kingdom of Jordan, which took control over the West Bank, including eastern Jerusalem, commenced a land title settlement in eastern Jerusalem. The process was interrupted following the Israeli occupation and unlawful annexation of eastern Jerusalem in 1967, as Israel did not resume the land title settlement in eastern Jerusalem due to practical and political difficulties. Among other considerations, the international consensus opposing Israel's occupation and unlawful annexation of Jerusalem deterred Israel from carrying out land title settlement in eastern part of Jerusalem. Although Israel did not issue an official decision on the matter, the land title settlement that started in the British mandate period and continued under Jordanian rule was frozen in 1967.⁶ As of 1967, 90 percent of the land title in eastern Jerusalem was yet not settled.

Nevertheless, Israel continued its governmental plan to facilitate the use of land in Jerusalem and develop the city, but with a new strategy: expropriation of lands. Since 1967, Israel has expropriated thousands of dunams in the Holy Basin and eastern Jerusalem; at least 41,000 dunams in 15 locations in Jerusalem were expropriated in order to build Jewish neighbourhoods containing 25,000 new housing units.⁷ Effectively

⁶ Ronit Levine-Schnur, "Privatization, Separation, and Discrimination: The Cessation of Land Settlement in East Jerusalem," (in Hebrew), *Iyunei Mishpat*, Tel Aviv University, 34 (2011): 192-193.

⁷ Haiem Zandberg, *Jerusalem - Settling and Expropriation of Land Title*, Hamishpat H, 2003, [in Hebrew], available at:

one third of the land in eastern Jerusalem has been expropriated for Jewish settlement and housing purposes,⁸ and from 1967 until today, a total of 56,000 housing units have been built in eastern Jerusalem for 220,000 Jewish Israeli settlers. The tool of expropriation is much faster and less complicated; it transfers the ownership of land to the state, leaving the old owners with the right to apply for compensation, and enabling the state to concentrate the land in a way that serves its development plan: strengthening the Jewish settlements in Jerusalem and ensuring a 'unified Jerusalem' with a Jewish majority on the expense of Palestinian Jerusalemites.

III. Context:

Today, the reality for Palestinians in Jerusalem remains alarming. Prospects of development are thwarted due to the scarcity of building permits and the threats of home demolition, which continue to undermine the viability of Palestinian life in Jerusalem. The zoning and planning crisis impact every aspect of Palestinian Jerusalemites, including housing and mobility, as well as distribution of public spaces and the ability to build adequate health and educational facilities. The construction of the Annexation Wall, which began in 2002, furthered Palestinian fragmentation, depriving many residing behind the Wall from the services on which they depend.

Although Palestinians constitute 40 percent of the population in Jerusalem- including the populations of both East and West Jerusalem, less than a quarter of the housing units are available for them.⁹ Housing density in the Palestinian neighbourhoods of eastern Jerusalem is close to eight people per housing unit, while the average family size is made up of 5.1 people. The housing density in the Jewish homes in Jerusalem is one

<https://hamishpat.colman.ac.il/wp-content/uploads/2018/12/%D7%99%D7%A8%D7%95%D7%A9%D7%9C%D7%99%D7%9D-%D7%94%D7%A1%D7%93%D7%A8-%D7%95%D7%94%D7%A4%D7%A7%D7%A2%D7%AA-%D7%96%D7%9B%D7%95%D7%99%D7%95%D7%AA-%D7%91%D7%9E%D7%A7%D7%A8%D7%A7%D7%A2%D7%99%D7%9F.pdf>

⁸ Ir Amim, Settlements and National Parks, available (in Hebrew) at:

<https://www.ir-amim.org.il/en/issue/settlements-and-national-parks>.

⁹ Bimkom, E.C.B. Cohen-Bar, Trapped in Planning, 2014, p. 67, available at:

<http://bimkom.org/eng/wp-content/uploads/TrappedbyPlanning.pdf>.

person per room, whereas in the Palestinian homes this lies at 1.8 persons per room.¹⁰ In order for each Palestinian family to have its own apartment, Palestinian neighbourhoods would need approximately 25,000 additional housing units.¹¹ Israeli resolution 3790 purports to reduce social disparities, but instead of resolving the housing crisis that Palestinian Jerusalemites suffer from the most, it worsens it.

Israel's discriminatory zoning regime in eastern Jerusalem is the main hindrance to obtaining an Israeli building permit. Zoning is a precondition for issuing building permits, and only 13 percent of the land in eastern Jerusalem is zoned for Palestinians to build on, of which the majority is occupied by existing properties. On the other hand, 35 percent of eastern Jerusalem is zoned for Israeli settlements.¹² Palestinians, given the natural increase within the Palestinian population alongside the shortage in housing units and Israel's discriminatory planning and zoning regime, have no other choice but to build without an Israeli-issued building permit, or to live in structures and spaces that are not meant for housing, including warehouses, basements, and stores. Approximately, one third of the Palestinian houses in eastern Jerusalem lack an Israeli-issued building permit, hence, nearly one third of the Palestinian population in eastern Jerusalem, of over 100,000 Palestinian residents, are potentially at risk of being displaced, through the application of a coercive environment to force their transfer.¹³

IV. International law and the Issue of Land Settlement in Eastern Jerusalem:

After the occupation of eastern Jerusalem in 1967, Israel unlawfully annexed the newly occupied 70.5 km² land, extended its sovereignty over it and placed it under the administration of the Israeli Jerusalem municipality. These acts were condemned countless times by the international community, including through the UN Security

¹⁰ Korach, M., Choshen, M., Jerusalem Facts and Trends, *Jerusalem Institute for Policy Research*, 2018 p. 64, available at: <https://bit.ly/3mzy8US>

¹¹ Bimkom, E.C.B. Cohen-Bar, Trapped in Planning, p.68

¹² Office of the European Union representative, Six-Month Report on Demolitions and Seizures in the West Bank, including East Jerusalem Reporting Period: 1 January – 30 June 2020, 2020, p.2, available at: https://www.un.org/unispal/wp-content/uploads/2020/11/EUDEMPT_181120.pdf.

¹³ Ibid, p.2

Council unanimously adopted resolution 242 of November 1967,¹⁴ calling on Israel to withdraw its armed forces from the territories occupied in 1967, and resolution 252 condemning the occupation of any land through armed aggression and demanding Israel to “desist from taking any further action which tends to change the status” of the City.¹⁵

In 1969, the UN Security Council adopted resolution 267, which confirmed resolution 252, and reaffirmed that “acquisition of territory by military conquest is inadmissible”.¹⁶ Furthermore, in Resolution 298, the UN Security Council confirmed “[i]n the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status”.¹⁷ In 1980, the UN Security Council adopted Resolutions 476 and 478, condemning in the strongest terms possible the enactment of Israeli law proclaiming changes in the legal status of Jerusalem, stressing the necessity of ending the prolonged occupation of the territories occupied in 1967, reiterating that all measures which had altered the status of Jerusalem were “null and void” and had to be rescinded, and calling on all states that have established diplomatic missions in Jerusalem to withdraw them from the city.¹⁸ In Resolution 465, the UN Security Council demanded Israel to stop the planning and construction of settlements in territories occupied since 1967, including Jerusalem, and called on Israel to dismantle the existing settlements.¹⁹

The UN General Assembly adopted similar resolutions, condemning the prolonged occupation of territories occupied by Israel in 1967 and the construction of the Wall, deploring the excessive use of force against Palestinians and determining that Israel’s

¹⁴ United Nations Security Council (UNSC) Res 242 (22 November 1967) UN Doc S/RES/242.

¹⁵ United Nations Security Council (UNSC) Res 252 (21 May 1968) UN Doc S/RES/252.

¹⁶ United Nations Security Council (UNSC) Res 267 (3 July 1969) UN Doc S/RES/267.

¹⁷ United Nations Security Council (UNSC) Res 298 (25 September 1971) UN Doc S/RES/298.

¹⁸ United Nations Security Council (UNSC) Res 476 (30 June 1980) UN Doc S/RES/476; United Nations Security Council (UNSC) Res 478 (20 August 1980) UN Doc S/RES/478.

¹⁹ United Nations Security Council (UNSC) Res 465 (1 March 1980) UN Doc S/RES/465.

transformation of Jerusalem, including historical, cultural and religious sites, and deeming such actions as constituting a “flagrant violation of the principles of international law”.²⁰ The UN Human Rights Council, and many different UN experts and multinational organisations, expressed the same opinion regarding the unlawful annexation of eastern Jerusalem, the illegality of all measures intended to cement Israel’s control over the city, and have reiterated their refusal to recognise eastern Jerusalem as part of Israel’s territory.

The International Court of Justice, in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, reaffirmed that eastern Jerusalem is part of the occupied Palestinian territory and Israel is the Occupying Power, and referred to the Hague Regulations of 1907 as well as to the Fourth Geneva Convention of 1949 and as the applicable legal framework.²¹

Despite this opposition, Israel rejects the applicability of international law in eastern Jerusalem, and refers to the territories annexed in 1967 as part of a “Unified Jerusalem” under Israeli sovereignty. As the Occupying Power, however, Israel is obliged to fulfil its obligations under international law, namely those established in the Fourth Geneva Convention, the Hague Regulations, and international customary law. International humanitarian law, more specifically Article 43 of the Hague Regulations, confers upon the Occupying Power the obligation to respect, unless absolutely prevented, the laws in force in the occupied territory.²² This means that Israel is prohibited from applying its domestic laws in occupied eastern Jerusalem. Accordingly, and with regard to the matter at hand, settling land titles or registering lands in eastern Jerusalem according to the Israeli property law regime is prohibited and legally invalid.

²⁰ e.g. UN General Assembly resolutions n. 2253; n. 36/15; n. 55/130; n.10/14; n. 60/104; n. 70/89; n. 71/96.

²¹ *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004, para. 78, available at: <https://www.refworld.org/cases,ICJ,414ad9a719.html>.

²² International Conferences (The Hague), *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*, 18 October 1907, available at: <https://www.refworld.org/docid/4374cae64.html>.

Further, Israel, as the Occupying Power, is considered to be a ‘temporary administrator’ of the occupied land, and since its occupation ought to be temporary, it may not extend its sovereignty nor acquire permanent ownership over the land. The administrative role of the Occupying Power is governed by the rules of international humanitarian law and international customary law which provide protection against abusive exploitation of the property in the occupied territory. According to Article 55 of the Hague Regulations “[t]he occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of *usufruct*.”²³ *Usufruct* is a legal right accorded to a party, that confers the temporary right to use and derive income or benefit from someone else’s property without changing the character of the property. The party who enjoys the use and benefit of the property is called usufructuary.

It also states that public immovable property must be administered according to the rules of *usufruct*; where any transfer of confiscated property or natural resources to the permanent ownership of the occupant or their use for the benefit of its own civilian population and economy is absolutely prohibited. International customary law further stipulates that the confiscation of private property is prohibited and property rights must be respected.²⁴

The protection of property rights is enshrined in multiple international law provisions. Under Article 17 of the Universal Declaration of Human Rights, it is stated that “[e]veryone has the right to own property...” and “[n]o one shall be arbitrarily deprived of his property”.²⁵ The Israeli land title settlement and registration plan is being carried out unlawfully and in violation of Palestinians’ property rights, and will result in the extensive

²³ International Conferences (The Hague), *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*, Art 55., 18 October 1907

²⁴ International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rule 51, available at: <https://www.refworld.org/docid/5305e3de4.html>.

²⁵ The United Nations, *Universal Declaration of Human Rights*, 1948, art. 17

appropriation of Palestinian property in eastern Jerusalem, not justified by a military necessity, which amounts to grave breaches of the Geneva Conventions, war crimes and crimes against humanity according to the Rome Statute of the International Criminal Court.²⁶

Land title settlement in eastern Jerusalem as designed by the Israeli government has the perilous effect of denying the Palestinian people their inalienable right to return to their homes and properties in Jerusalem, in contravention to international law as reaffirmed in General Assembly Resolution 194 (III).²⁷

V. The Ramifications of Carrying Out the Land Title Settlement and Registration Plan in Eastern Jerusalem:

Land title settlement, under normal circumstances, is a means to resolve disputes over land ownership and ensure certainty and order in the property realm. However, the Israeli land title settlement is meant to seize control of Palestinian property, and establish and maintain a Jewish majority in Jerusalem. In addition to the illegality of carrying out of land title settlement and registration in occupied and annexed Jerusalem under international law, this process poses a great deal of peril to Palestinian property when applied in combination with the application of other laws. The Israeli land settlement process includes the application of an array of discriminatory laws, including the Absentee Property Law (1950), the Legal and Administrative Matters Law (1970), and other tax law provisions to be levied on property retroactively. Together, these laws aim to further Judaize the City, including by expanding Jewish settlements and forcibly transferring the indigenous occupied Palestinian population. The process of land registration also includes a special supervision committee involved in the process of

²⁶ Article 147, Fourth Geneva Convention (1949); Rome Statute of the International Criminal Court, (*last amended 2010*), 17 July 1998, art. 8(2)(a)(iv); art. 7(1)(d).

²⁷ On 11 December 1948, the United Nations General Assembly adopted Resolution 194(III) resolving that: "the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible." And see, UNGA res 3236 (22 November 1974) A/RES/3236.

examining the chain of title, composed of, among others, the General Custodian and the Custodian for Absentee Property. According to Article 22 to the Israeli Land Settlement Ordinance (1969),²⁸ an inability to prove ownership over a piece of land will automatically convert it into an Israeli state property.

The first and foremost challenge is the application of the Absentee Property Law of 1950. Under this law, any person who was the legal owner of property located inside the Green Line at any time between 29 November 1947 (the date of the UN General Assembly resolution no. 181 to partition Palestine) and the day on which the end of the state of emergency shall be declared (which is still in effect until this day),²⁹ but who fled or was expelled or abandoned his/her normal place of residence, regardless of whether he/she returned, in the course of the 1948 *Nakba*, is regarded as an 'absentee' who had forfeited his/her claims to their land. Property is then classified as absentee property and transferred to the Custodian of Absentee Property, who automatically retains ownership rights.³⁰ This effectively means that when examining the chain of title, it is enough for one transaction to be held with an individual who would fit the definition of 'absentee' according to the Absentee Property Law, for the property to pass to the Custodian of Absentee Property, who is vested with the competence to manage property of 'absentee' Palestinians.³¹ In addition, if real estate is inherited, and one of the heirs falls under the definition of 'absentee', his share will pass to the Custodian of Absentee Property, who can then pass it to the Israeli development authority or to other third parties.

Under the auspices of the Absentee Property Law, tens of Palestinian homes in Jerusalem have been transferred to private settler organisations after the Custodian of

²⁸ Land Title Settlement Ordinance [New version], Art. 22, 1969, available (in Hebrew) at: https://www.nevo.co.il/law_html/law01/286_031.htm#Seif22.

²⁹ The Absentee Property Law 5710-1950, Laws of the State of Israel No. 37, 20 March 1950, p. 86, section 1(b), ('Absentee Property Law').

³⁰ See, for example, Absentee Property Law, sections 10, 11.

³¹ Norwegian Refugee Council, The Absentee property Law and its Application to East Jerusalem, February 2017, p.3, available at: https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf.

Absentee Property took control of them.³² This law affects even Palestinians who never left their homes, but due to Jerusalem's unlawful annexation and the redrawing of its municipal boundaries, they ended up officially outside Israel. Accordingly, their properties in eastern Jerusalem became subject to confiscation by the Israeli government through the Custodian of Absentee Property.

The application of the Absentee Property Law has been an issue of criticism even amidst Israeli authorities. While the Israeli High Court confirmed the application of the Absentee Property Law to eastern Jerusalem in several cases,³³ the Israeli Attorney General (AG) expressed in 2005 his position pertaining to the legal difficulties arising from implementing the law in eastern Jerusalem vis-a-vis properties belonging to Palestinians residing in the West Bank. According to the AG, the "absence" of Palestinians who live in the West Bank and who own properties in eastern Jerusalem is **merely technical**, generated by Israel's unilateral action to expand the municipal boundaries of Jerusalem following the occupation and unlawful annexation of eastern Jerusalem, thereby including more West Bank land into Jerusalem boundaries and cutting off Palestinians found outside these boundaries from their properties,³⁴ which in effect renders these Palestinians 'present absentees'.³⁵ He opined that the powers given by law to the Custodian of Absentee Property should not be used in relation to Palestinians residing in the West bank with properties in eastern Jerusalem except in special circumstances subject to prior approval by the Attorney General.³⁶ The AG

³² Peace Now, The Klugman Report, 9 May 2019, available at:

<https://peacenow.org.il/en/the-klugman-report>.

³³ C.A. 54/82 Levi v. Afaneh (1986); H.C.J. 4713/93 Golan v. The Special Committee under Art. 29 to the Absentees Property Law. It should be noted that the Jerusalem District Court ruled in one case against the legality of the law, and the decision was appealed by the state, however both parties reached an agreement and the appeal was withdrawn. Thus, no new decision on the legality of the law was made. See, C.A. 2250/06 The Custodian of Absentees' Property v. Daqa Noha et. al. (13/2/2014)

³⁴ The illegally expanded municipal area of the City of Jerusalem was formally defined in 1980, following the adoption of the Basic Law: Jerusalem, by the Israeli Knesset on 30 July 1980, which declared the entire area of Jerusalem as inseparable from and the capital of the state of Israel.

³⁵ Adalah, Amicus Opinion submitted to the Israeli Supreme Court sitting as High Court of Appeals, 4 August 2013, para. 6, available as a link at: <https://www.adalah.org/en/content/view/8198>; and in Hebrew at: https://www.adalah.org/uploads/oldfiles/Public/files/Amicus%20Opinion_August_2013.pdf.

³⁶ Position of the State Attorney, 23 August 2014, (in Hebrew), available at: <https://www.justice.gov.il/Publications/NewsOld/Pages/NichseyNifkadim.aspx>.

asked to immediately halt the application of the Absentee Property Law to eastern Jerusalem properties owned by Palestinians in the West Bank.³⁷

The following Israeli Attorney General adopted a different position; he confirmed the application of the Absentee Property Law to eastern Jerusalem in its entirety without any restrictions, meaning that the definition of “absentee” includes Palestinians residing in the West Bank, only explaining that caution must be exercised when discussing the release of “Absentee property”.³⁸

In 2015, the problematic nature of implementing this law in eastern Jerusalem was reflected in an Israeli High Court decision, which held that the Absentee Property Law is applicable to Palestinians in the West Bank with properties in eastern Jerusalem. However, its implementation should be limited to rare circumstances - without indicating what those are.³⁹ In its ruling, the Israeli High Court suggested that if the Israeli Government thinks that there is a need that justifies the acquisition of properties owned by Palestinians who now reside in the West Bank, those confiscations preferably should be made according to the confiscation provisions as they appear in the Israeli Planning and Building law.⁴⁰

Second, the application of Israel’s discriminatory Legal and Administrative Matter Law (1970), which addresses the question of alleged Jewish property prior to 1948, has alarming consequences in the context of the land title settlement in Jerusalem. The law firstly transfers all properties allegedly owned by Jews in annexed Jerusalem that came under the administration of the Jordanian Custodian of Enemy Property to the administration of the Israeli General Custodian, a member of the Israeli Ministry of Justice. Then, Article 5 of the law allows the latter to release such properties to the

³⁷ Adalah Amicus Opinion, para. 7.

³⁸ Adalah Amicus Opinion, para. 8. The Absentee Property Law grants the Custodian of Absentee Property a discretionary power to decide whether to release confiscated absentee property, and if the Custodian of Absentee property decides to do so, article 29 to the Absentee Property Law states that a special committee appointed by the government should advise in advance on the release of such property.

³⁹ CA (Jerusalem) 5391/06 **Hussain v. Cohen**, para. 32, 15 April 2015.

⁴⁰ The Planning and Building law 1965, Laws of the State of Israel No. 467, 12 August 1965, p. 307, section 8.

ownership of the alleged original Jewish owner, or whoever comes in his/her place, upon his/her request. This law applies only to Jews, while denying Palestinians the same for properties they lost in 1948 *Nakba* and 1967 *Naksa*, despite the fact that Jews who allegedly lost property prior to 1948 received compensation from the Israeli government in the form of property in western Jerusalem, thereby effectively making them eligible for compensation twice. It should be stressed that pre-1948 alleged Jewish property rights may have included ownership, long term lease, protected tenancy in Islamic Waqf property and other complex property rights, that were all later construed as full ownership, a position later validated by Israeli courts. As previously mentioned, Israel has already started land title settlement in multiple Palestinian property blocks in eastern Jerusalem; some of these blocks were allegedly linked to Jews prior to 1948, which means that the property will be transferred to the General Custodian according to this law.

Proving property ownership in eastern Jerusalem is very complicated due to, *inter alia*, the political history of the City. Between 1858 and 1917, land title was registered in the Ottoman Land Registry Offices according to Tapu law. During the Ottoman period, many landholders did not register their land title because they did not want to pay registration fees and taxes to the Ottomans, or did not register the exact areas of their properties to pay less taxes, and/or out of desire to avoid granting more legitimacy to the Ottoman authorities.⁴¹ Between 1917 and 1948, the British started mapping Palestinian cities and villages. And in 1948, Jordan resumed the property registration plan until the occupation of eastern Jerusalem in 1967. Whilst some Jordanian documents are still located in Amman, and Ottoman documents in Turkey, obtaining them is complicated and expensive. Additionally, the large number of heirs owning a particular plot can complicate proving ownership even more.⁴²

⁴¹ Abraham Granott, *The Land System in Palestine, History and Structure*, translated by M. Simon, pp. 74 and 76, (London), 1952.

⁴² United Nations, Office of the Coordinator of Humanitarian Affairs, oPt, April 2009, p. 20. available at: https://reliefweb.int/sites/reliefweb.int/files/resources/63BFD8D187E28D0CC12575A9002A5724-Full_Report.pdf

The Israeli property tax regime sets another precarious threshold before Palestinians in the land title settlement and registration plan. The property tax regime will be applied retroactively, from the date of the occupation of eastern Jerusalem in 1967, and will include an **annual property tax in the amount of 2.5 percent** of the value of the land, on lands that are designated as “suitable for building,” (although this tax was cancelled in 2000, it still affects lands not yet registered, due to the fact that prior to registration, landowners need to prove tax-exempt status); a **tax on the sale of property** in the amount of 25 percent of the profit gained from the sale of property, and a **purchase tax** of up to 10 percent of the value of the asset. Both the purchase tax and the sale tax of the property will be calculated for every transaction involving every property that will go through the land title settlement process. In some cases, the sum of the taxes might reach the value of the asset itself, and if not paid, the asset will be seized by the tax authorities. This means that even if Palestinians manage to prove their ownership of their properties, they will be required according to the Israeli tax regime to pay property taxes from 1967 until this day. This stands in stark violation of Articles 48 and 49 of the Hague Regulations of 1907, which oblige the Occupying Power to collect tax in accordance with the rules of assessment and incidence in force, and allocate the money collected for the administration of the occupied territory.⁴³

Another matter of grave concern is the forging of ownership documents by Jewish settler organisations and the inherently discriminatory Israeli judicial system. Palestinians’ forgery complaints are rarely investigated by the Israeli Police. And even when the matter reaches Israeli courts confirming that ownership documents were indeed forged, criminal and/or other legal proceedings are rarely initiated against wrongdoers, leaving affected Palestinians without any remedy for the harm caused.⁴⁴

⁴³ International Conferences (The Hague), *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*, 18 October 1907, Articles 48, 49.

⁴⁴In the Jerusalem District Court, criminal procedure 325/96: Elad, a settler organization, tried to take possession of a property on the basis of a document signed posthumously by the Palestinian owner, later the District court ruled that the document was forged. In another case, a settler organization sent a Palestinian landowner a warning on tax debts in order to pressure him to sell the house, but later it was

VI. Conclusion and Recommendations:

The Israeli land title settlement and registration plan aims to dispossess and displace Palestinian Jerusalemites from their homes, appropriate their lands and strengthen the Israeli grip over the City. It is part of a bigger vision of a 'Unified Jerusalem', which involves a Jewish majority, and further Palestinian dispossession and fragmentation, with the ultimate aim of establishing and maintaining Israel's settler-colonial and apartheid regime. The implementation of this plan will force Palestinians to attempt to prove ownership of their properties, which is procedurally and financially burdensome. Even if they succeed, they will be required to pay ludicrous amounts of property taxes, which most Palestinian Jerusalemites cannot afford, leading ultimately to the forcible transfer of the occupied population, and the deprivation of the Palestinian people's right to return and to self-determination.

In light of the above, our organizations submit this urgent appeal and call on the UN Special Procedures to:

1. Recognise and declare that the laws and policies Israel has created, and continues to maintain, form part of its institutionalised regime of racial domination and oppression over the Palestinian people as a whole, which amounts to the crime of apartheid;
2. Call on Israel to immediately cease the application of its domestic law to illegally annexed Jerusalem as restated in internationally binding UN Security Council resolutions, including the land title settlement and registration plan, the

found that those documents were forged. In CivC (DC TA) 4080-10 **Ahman Omar Abdallah Mohammad v. Bdl Holindegs**, (01 December 2013) (Isr.), the district court ruled that the alleged purchase of the land by settlers was made based on forged documents; despite this, no criminal measures were taken against them, nor against the notary who testified that the Palestinian owners signed the documents before lawyers. In another case, the court found that a police officer drafted an agreement to silence a Palestinian who wished to testify against settlers; despite that, he remained in his position without holding him accountable. See also, Ir Amim, *Shady Dealings in Silwan*, 2009, pp. 16, 38, available at: <https://www.ir-amim.org.il/sites/default/files/Silwanreporteng.pdf>

application of which amounts to the crime of appropriation and forcible transfer of the occupied Palestinian population;

3. Call on Israel to immediately repeal all laws it has enacted to further its policy of population transfer and establish and maintain a Jewish majority in Jerusalem in violation of Palestinians' fundamental rights, including their right to self-determination and right to return and reclaim their properties, including the 1950 Absentee Property Law, and the 1970 Legal and Administrative Matters Law;
4. Urge the international community to recognise and declare that the land title settlement in annexed Jerusalem violates Israel's obligations under international law, and that if carried out, all its findings are invalid as an internationally wrongful act and all its conclusions are null and void;
5. Call on the UN Member States to ensure that all of its previous resolutions regarding Jerusalem and the inalienable rights of Palestinian refugees to return to their homes and to the restitution of their properties, are respected and fulfilled, and on Israel to respect and implement such resolutions;
6. Call on the international community to cooperate to bring to an end, including through coercive measures such as sanctions, Israel's occupation, colonisation, and apartheid regime, as well as the prolonged denial of the right to self-determination of the Palestinian people, and the right of return of Palestinian refugees and displaced to their homes, lands, and property, as mandated by international law; and
7. Call on the international community to ensure international justice and accountability, including by supporting a full, thorough, and comprehensive investigation into the Situation in Palestine by the International Criminal Court.