

FORCED POPULATION TRANSFER: THE CASE OF PALESTINE

LAND CONFISCATION AND DENIAL OF USE

Working Paper No. 21

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Forced Population Transfer: The Case of Palestine - Land Confiscation and Denial of Use

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Credit and Notations

To honor anonymity and protect the victims, in some cases their names have been omitted and information regarding their locations have been changed. Many thanks to all who have supported BADIL Resource Center throughout this research project and in particular to all interview partners who provided the foundation for this publication.

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BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent, non-profit human rights organization working to protect and promote the rights of Palestinian refugees and Internally Displaced Persons (IDPs). Our vision, mission, programs and relationships are defined by our Palestinian identity and the principles of international humanitarian and human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

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Introducing the Series

This series of working papers on “Forced Population Transfer: The Case of Palestine” constitutes an overview of the forced displacement of Palestinians as a historic and ongoing process which detrimentally affects the daily life of Palestinians and threatens their national existence.

Historical Context: The Case of Palestine

At the beginning of the 20th century, most Palestinians lived inside the borders of Mandate Palestine, now divided into the state of Israel, and the occupied Palestinian territory (the West Bank, including East Jerusalem, and the Gaza Strip). The ongoing forcible displacement policies following the establishment of the British mandate of Palestine in the 1920s made Palestinians the largest and longest-standing unresolved refugee case in the world today. By the end of 2014, an estimated 7.98 million (66 percent) of the global Palestinian population of 12.1 million are forcibly displaced persons. The ultimate aim of BADIL’s series is to parse the complex web of legislation and policies which comprise Israel’s overall system of forced population transfer today. The series is not intended to produce a comprehensive indictment against the State of Israel, but to illustrate how each policy fulfills its goal in the overall objective of forcibly displacing the Palestinian people while implanting Jewish-Israeli settlers/colonizers throughout Mandate Palestine (referring to “historic Palestine”, consisting of Israel, the 1967 occupied West Bank, including East Jerusalem, and the Gaza Strip).

Despite its urgency, the forced displacement of Palestinians rarely receives an appropriate response from the international community. This response should encompass condemnations and urgent interventions to provide relief or humanitarian assistance, while addressing the root causes of this forced population transfer. Short-term response from the international community is insufficient to address this issue, and as such, long-term responses should

be developed to put an end to the ongoing displacement as well as to achieve a durable solution. While many individuals and organizations have discussed the triggers of forced population transfer, civil society lacks an overall analysis of the system of forced displacement that continues to oppress and disenfranchise Palestinians today. BADIL, therefore, spearheads targeted research on forced population transfer and produces critical advocacy and scholarly materials to help bridge this analytical gap.

Forced Population Transfer

The concept of forced population transfer – and recognition of the need to tackle its inherent injustice – is by no means a new phenomenon, nor is it unique to Mandate Palestine. Concerted efforts to colonize foreign soil have underpinned displacement for millennia, and the “unacceptability of the acquisition of territory by force and the often concomitant practice of population transfer” was identified by the Persian Emperor Cyrus the Great, and subsequently codified in the Cyrus Cylinder in 539 B.C.; the first known human rights charter. Almost two thousand years later, during the Christian epoch, European powers employed population transfer as a means of conquest, with pertinent examples including the Anglo-Saxon displacement of indigenous Celtic peoples, and the Spanish Inquisition forcing the transfer of religious minorities from their homes in the early 16th century.

Today, the forcible transfer of protected persons by physical force or threats or coercion constitutes a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute of the International Criminal Court. The forcible displacement of individuals without grounds permitted under international law is a very serious violation, and when those affected belong to a minority or ethnic pargroup and the policies of forcible displacement are systematic and widespread, these practices could amount to crimes against humanity.

International law sets clear rules to prohibit forced population transfer, through the specific branches of international humanitarian law, international human rights law, international criminal law and international refugee law. Both internal (within an internationally recognized border) and external displacement are regulated.

BADIL presents this series of working papers in a concise and accessible manner to its designated audiences: from academics and policy makers, to activists and the general public. Generally, the series contributes to improving the understanding of the ongoing ‘nakba’ of the Palestinian people and the

need for a rights-based approach to address it among local, regional and international actors. The term 'nakba' (Arabic for 'catastrophe') designates the first round of massive population transfer undertaken by the Zionist movement and Israel in the period between November 1947 and the cease-fire agreements with Arab states in 1949. The ongoing 'nakba' describes the ongoing Palestinian experience of forced displacement, as well as Israel's policies and practices that have given rise to one of the largest and longest-standing populations of refugees, internally displaced persons and stateless persons worldwide.

We hope that the series will inform stakeholders, and ultimately enable advocacy which will contribute to the dismantling of a framework that systematically violates Palestinian rights on a daily basis. The series is intended to encourage debate and to stimulate discussion and critical comment. Since Israeli policies comprising forced population transfer are not static, but ever-changing in intensity, form and area of application, this series will require periodic updates.

The series of working papers will address nine main Israeli policies aiming at forced population transfer of Palestinians. They are:

1. Denial of Residency
2. Discriminatory Zoning and Planning
3. Installment of a Permit Regime
4. Suppression of Resistance
5. Denial of Access to Natural Resources and Services
6. Land Confiscation and Denial of Use
7. Institutionalized Discrimination and Segregation
8. Non-state Actions (with the implicit consent of the Israeli state)
9. Denial of Reparations to Refugees and IDPs

Methodology

All papers will consist of both field and desk research. Field research will consist of case studies drawn from individual and group interviews with Palestinians affected by forced population transfer, or professionals (such as lawyers or employees of organizations) working on the issue. The geographic

focus of the series will include Israel, the occupied Palestinian territory and Palestinian refugees living in forced exile. Most of the data used will be qualitative in nature, although where quantitative data is available – or can be collected – it will be included in the research.

Desk-based research will contextualize policies of forced population transfer by factoring in historical, social, political and legal conditions in order to delineate the violations of the Palestinian peoples' rights. International human rights law and international humanitarian law will play pivotal roles, and analysis will be supplemented with secondary sources such as scholarly articles and reports.

Disclaimer

The names of the individuals who provided testimonies in the course of researching this working paper are not included due to security considerations. This is a result of fears of the participants that their involvement in this project might draw reprisals by the Israeli authorities. We thank the participants for their courage.

Introduction

Land confiscation and denial of use and access have been one of the main tools used historically by Israel to seize Palestinian land, and constitutes one of the root causes of the ongoing forced population transfer of Palestinians today. While certain instances of confiscation, home demolitions or blocked access are covered by the media, these reports rarely contextualize these actions as part of a broader Israeli policy of forced displacement of Palestinians. This paper mainly aims to demonstrate Israeli perpetrated land confiscation as a systematic policy resulting in the direct and indirect forcible displacement and transfer of Palestinians. The paper addresses the illegality of this policy and its impact by using international law to assess the main Israeli mechanisms of land confiscation and denial of use and access. A number of case studies are also provided to demonstrate the accompanying violations of human rights associated with the implementation of this policy.

The Israeli policy of land confiscation encompasses an array of mechanisms designed to transfer Palestinian ownership or rights of ownership, particularly access of land, to Israeli bodies and authorities, Zionist organizations such as the Jewish National Fund, and Jewish-Israeli individuals. These mechanisms can be divided into two types: *de jure* and *de facto* confiscation. While *de facto* land confiscation does not immediately change the ownership status but rather reflects the situation on the ground, *de jure* confiscation constitutes the official transfer of ownership. In situations of *de facto* confiscation, Israel is in control of the land and applies numerous measures that seriously hinder or deny the landowner's use and access of the land or property. Such limitations can come in the form of laws or Israeli military orders that designate parcels of land as closed military zones, nature reserves, national parks, seam zones,¹ and/or the

1 Seam zones are sections of Palestinian land within the oPt which have been isolated as a result of the construction of the illegal Israeli Annexation and Separation Wall, with their location falling in-between the Wall and the 1949 Armistice Line (Green Line), and are thus cut off from the rest of the West Bank. For more information, see BADIL Resource Center, Seam Zones, available at: http://www.badil.org/phocadownloadpap/Badil_docs/bulletins-and-briefs/Bulletin-25.pdf

building of the Annexation and Separation Wall, colonies, checkpoints and bypass roads. The owners are subsequently forbidden from using or accessing that land, even though the official ownership has not been transferred. This de facto confiscation is what is commonly known as denial of use and access and in most cases is utilized as an intermediary step that eventually results in *de jure* confiscation, when the transfer of ownership does occur.

Privatization is the process by which the ownership of properties or land is transferred from the authorities and quasi-government organizations to the private sector. By privatizing land originally owned by Palestinians, Israel aims to make the confiscation permanent and erase possibilities of reversing the process within Israeli legal systems. Privatization is mainly used inside Israel, in cities such as Haifa, Acre or Jaffa, and but also in East Jerusalem against properties that belong to the Palestinian refugees and internally displaced persons (IDPs) who were or are residents of those cities.

Whether through de facto or *de jure* confiscation, using force, legislation or recognition of the illegal actions of non-state actors, Israeli land confiscation is a policy violating international laws and principles. Moreover, the following cases demonstrate how the confiscation of Palestinian land is a discriminatory policy motivated by political aims that is used to displace Palestinians from their lands and homes.

EVOLUTION OF LAND CONFISCATION AND DENIAL OF USE

Confiscation of land and denial of use and access in Mandate Palestine has taken place in various stages and through various mechanisms. During the British Mandate, it was suggested that all uncultivable land be registered in the name of the High Commissioner of Palestine, providing that it would be used for the good of the community.² Following the 1948 War, known as the 'Nakba',³ and the forcible displacement of over 750,000 Palestinians to what came to be called the oPt and to neighboring countries, Israel established itself on 78 percent of the territory of Mandate Palestine.⁴ After 1948, Israel as the successor sovereign 'inherited' all the land that was registered in the High Commissioner's name from the British government, which became dubbed as Israeli 'state land'.⁵ Moreover, the properties of all the forcibly displaced

2 Bakir Abu Kishk, "Arab Lands and Israeli Policy," *Journal of Palestine Studies* 11, no. 1 (1981):127 [hereinafter Abu Kishk, "Arab Lands"].

3 Nakba means catastrophe in Arabic.

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

5 Abu Kishk, "Arab Lands", *supra* note 2.

Palestinians were declared ‘absentee property’ and were transferred to a Custodian.⁶ An almost identical process took place in the oPt in the aftermath of the 1967 War, when Israel occupied the remaining 22 percent of the land of Mandate Palestine. Israel also claimed as ‘state land’ all the land that Jordan had designated as such during its administration of the West Bank.

Following the 1967 occupation, Israel proceeded to acquire Palestinian lands in the oPt by applying several approaches simultaneously: expropriations for specific purposes, like military or public use; claiming additional land as ‘state land’; and private purchases.⁷ Also in 1967, Israel annexed 70.5 km² of East Jerusalem,⁸ using one third of this newly acquired land for colonies, in contravention of international law. Today, 87 percent of East Jerusalem is slated for colonial use.⁹ As with other discriminatory policies and practices, the purpose is to forcibly transfer Palestinians through the denial of use of land and property.

In 1995, the Oslo II Accords divided the West Bank into Area A, comprising 17 percent of the West Bank, Area B, 23 percent of the West Bank, and Area C, the remaining 60 percent of the West Bank (see link to map).¹⁰ The Oslo Accords provided that the Palestinian Authority (PA) exercise full control over civil and security matters in Area A.¹¹ In Area B, the PA is responsible for civil matters and public order, but security and military functions remain under Israeli control. Area C is under full Israeli military and administrative control. This area contains all Israeli colonies¹² and related infrastructure, as well as Israeli nature reserves and national parks, military firing zones and the

6 Absentee Property Law, 5710-1950.

7 BADIL and Centre on Housing Rights and Evictions, *Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land in Palestine*, 78, available at: http://www.badil.org/phocadownloadpap/Badil_docs/publications/Ruling%20Palestine.pdf

8 In 1968, the UN Security Council declared the annexation decree illegal and in flagrant violation of international law. See UN Security Council Resolution 252 (1968) of 21 May 1968.

9 OCHA oPt, “Continued settlement activity in East Jerusalem,” 30 September 2014, available at: <https://www.ochaopt.org/content/continued-settlement-activity-east-jerusalem> [accessed 19 September 2017].

10 Israel Ministry of Foreign Affairs, “Israel-Palestinian Interim Agreement Maps”, 28 September 1995, available at: http://www.mfa.gov.il/MFA_Graphics/MFA%20Gallery/1995/9/MFAJ01v30.jpg [accessed 19 September 2017].

11 However, the Israeli forces conduct almost daily incursions into Area A in breach of the Accords, and Israeli Prime Minister Netanyahu claimed that the “freedom of action [of the Israeli forces] in Area A is sacred.” See: Barak Ravid, “Bennett Threatens: Limiting Israel’s Military Activity in West Bank Cities Will Undermine Coalition’s Stability,” *Haaretz*, 7 April 2016, available at: <https://www.haaretz.com/israel-news/premium-1.713312>

12 The term ‘colonies’ in this paper refers to both official settlements and outposts. An outpost is the commonly used term to describe an Israeli-Jewish colony within the West Bank that has been established without authorization of Israel.

Annexation and Separation Wall.¹³ By utilizing a wide range of military orders and other practices, Israel confiscates and denies Palestinians use and access to their lands and properties throughout the West Bank.

MAIN MECHANISMS OF LAND CONFISCATION AND DENIAL OF USE

Looking at the evolution of land confiscation and denial of use in Mandate Palestine, BADIL has identified three main mechanisms used by Israel.

1. Use of force

This mechanism of confiscation through the use of force began in the late 1940s. The Nakba is a prime example of the use of force in the denial of use and access to lands (de facto confiscation). Zionist militias, which later became the Israeli army, forcibly displaced over 750,000 Palestinians in order to gain control of their lands.¹⁴ Israel immediately expropriated an estimated 17,178,000 dunums (17,178 km²) of land in 1948 from Palestinian refugees and afterwards continued to expropriate an additional 700,000 dunums (700 km²) from internally displaced Palestinians.¹⁵ The rights of Palestinians did not stand in the way, as first Prime Minister of Israel David Ben Gurion argued in 1948: “the war will give us the land. The concepts of ‘ours’ and ‘not ours’ are peace concepts, only, and in war they lose their meaning.”¹⁶ Historically, the use of force has been a significant step in denying Palestinians use of their lands and has been complemented by the other two mechanisms of confiscation. For example, after having been taken by force, these properties were also later confiscated through Israeli legislation such as the 1950 Absentee Property Law. Later on, Israel began the process of privatizing the properties.

2. Israeli Legislation

Once the land was taken by force, Israel began working on bridging the gap between effective control and legal title to these lands, title which

13 B'Tselem, “Taking control of land and designating areas off-limits to Palestinian use,” 30 Oct 2013, available at: http://www.btselem.org/area_c/taking_over_land [accessed 19 September 2017].

14 Isaac, *Parallel Discourses*, *supra* note 4.

15 BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons*, 2002, 3, available at: http://www.badil.org/phocadownloadpap/Badil_docs/publications/Survey-2002.pdf

16 Nur Masalha, *Expulsion of the Palestinians: The Concept of “Transfer” in Zionist Political Thought, 1882-1948* (Washington: Institute for Palestine Studies 1992):180.

was still held by displaced Palestinians. Over the years, Mandate Palestine experienced several occupations and administrations: Ottoman, British, Jordanian, and Egyptian. Israel has selectively appropriated and discarded different laws from each of these administrations to assist its policy of land confiscation. In addition to selecting pre-existing laws, Israel also developed and ratified new laws and military orders to complement a tailored dual legal framework: Israeli civil law governing Israel and military orders governing the oPt.

One of the most effective legal instruments is the use of the classification of 'state land'.¹⁷ Israel inherited the land that was registered in the British High Commissioner's name from the British government after 1948. In addition, Israel modified the 'state land' concept/definition to expand its applicability to other categories of Palestinian lands. By exploiting the traditional land registry system of, introducing new definitions of 'state land' through numerous military orders and deliberate misinterpretation of historic relevant provisions, Israel has blurred the line between state land and other categories of lands. The Israeli concept of 'state land' has been designed to encompass public lands, other categories of uncultivated land and private but unregistered lands.¹⁸ In 1980 Israel declared all uncultivated and unregistered lands as 'state land', including all Mewat and Miri¹⁹ land that had not been cultivated for more than 10 years.²⁰ This and other modifications as well as laws enacted since the 1950s apportioned 93 percent of the land in Israel to be under governmental control.²¹ These state lands are owned directly by the Israeli government or by quasi-

17 When ownership of land rests in the hands of the state/government, as opposed to privately owned lands or lands administered by the state but for public use which constitute public lands.

18 See Lorenzo Kamel, "Israeli concept of 'State Land' Needs Another Look", *al-Monitor*, 6 May 2013, available at: <http://www.al-monitor.com/pulse/originals/2013/05/settlements-land-ownership-palestine-israel.html#ixzz4pvgeW9Oa>; BADIL, *Israeli Land Grab and the Forced Population Transfer of Palestinians: A Handbook for Vulnerable Individuals and Communities*, 12 June 2013, available at: https://www.badil.org/phocadownloadpap/Badil_docs/publications/handbook2013eng.pdf [hereinafter BADIL, *Israeli Land Grab*].

19 Miri land is mostly agricultural or rural land. The ultimate ownership rests with the state; however, an individual could gain right of use. The transfer from the state to an individual can occur after 10 years of cultivation (Fredric M. Goadby and Moses J. Doukhan. *The Land Law of Palestine* (Tel Aviv: Shoshany Print Co., 1935), page 7.) Mewat land refers to barren, uncultivated, vacant areas lying at least one and a half miles away from inhabited areas. This land is not owned or possessed by anyone, but any person who started using *mewat* land with the administration's consent would be entitled to cultivate it, and the land would become *miri* land.

20 Najeh S. Tamim, "A Historical Review Of The Land Tenure and Registration System In Palestine," *An-Najah J. Res.* III, no. 9, (1995): 96, available at: https://journals.najah.edu/media/journals/full_texts/historical-review-land-tenure-and-registration-system-palestine.pdf [accessed 19 September 2017].

21 Knesset, "The State of Israel as a Jewish State," n.d., available at: <http://knesset.gov.il/constitution/ConstMJewishState.htm> [accessed 19 September 2017]

governmental bodies: Israel owns 67 percent, the Development Authority²² owns 13 percent, and the Jewish National Fund (JNF),²³ 13 percent.²⁴

After the 1967 occupation, Israel laid claim to the Jordanian-designated state lands in the West Bank. A 1967-adopted military order²⁵ also allowed for a Custodian appointed by the Israeli Military Commander to deem any lands as state lands, even if they were retroactively shown not to be state lands, provided that the Custodian held ‘good faith’— sincere or honest belief - that they were state lands.²⁶

3. The legalization of acts perpetrated by non-state actors

The third mechanism is legalizing acts of denial of use and access or de facto confiscation carried out by colonizers and colonizers’ organizations. For example, several official Israeli colonies were initially established by colonizers and private organizations, and were retroactively sanctioned by Israel. This support is sometimes direct, by providing protection or infrastructure to these outposts, or tacit, by not dismantling the colonies or removing these colonizers from the oPt.

While not identical to the process of privatization, Israel’s sanctioning of the illegal de facto confiscation perpetrated by non-state actors has become far more significant in recent years. On 6 February 2017, for example, the Israeli Knesset passed the ‘Regularization Law’, legalizing around 4,000 housing units in 55 colonial outposts built on private Palestinian land in the West Bank.²⁷ The Israeli Government Minister claimed the bill is: “[t]he first

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

23 The Jewish National Fund (JNF) has been Israel’s partner in transforming the land of displaced Palestinians into lands “legally owned” by the state and Zionist para-statal organizations. Ever since its incorporation as a company in Britain in 1907, the JNF has worked to acquire land in Mandate Palestine for Jewish settlement only in accordance with its founding principles. See Alaa Mahajneh, “Situating the JNF in Israel’s Land Laws.” *Al-Majdal* 43, 2010, available at: <http://www.badil.org/en/component/k2/item/1404-mahajneh-jnf-and-israeli-law.html>

24 *Ibid.*

25 Order No. 59 Concerning Government Property (Judea and Samaria), 1967.

26 *Id.*, art. 5.

27 BADIL, “Israel’s ‘Regularization Law’ is an act of legalization of its colonization policies,” 10 February 2017, available at: <http://www.badil.org/en/publication/press-releases/86-2017/4731-pr-en-100217-11.html>; Palestinian Human Rights Organizations Council (PHROC), “PHROC Calls for Immediate Action by International Community on Israel’s ‘Regularization’ Law,” 9 February 2017, available at: <http://www.alhaq.org/advocacy/targets/palestinian-human-rights-organizations/1103-phroc-calls-for-immediate-action-by-international-community-on-israels-regularization-law> [accessed 19 September 2017].

step towards complete regulation, namely, applying Israeli sovereignty over Judea and Samaria [Israeli name for the West Bank].”²⁸ This law retroactively legalized any colonial outposts built on private Palestinian land under Israeli law, effectively allowing the illegal expropriation of private Palestinian land and cementing colonization within the Israeli legal system.

The *de facto* confiscation of land by non-state actors and posterior legalization is a way for Israel to gain control over privately-owned lands without infringing upon its own laws. Since Israel cannot always confiscate private Palestinian lands through legislation alone, it allows non-state actors to do so despite being a violation of Israeli laws. The ongoing impunity enjoyed by Jewish-Israeli colonizers hinders the possibility of prosecuting them and since Israel itself has no direct role in the confiscation, it is exempt from any liability. This mechanism, therefore, allows for regular unlawful confiscations of Palestinian property that go unchallenged. Once the land is under their permanent control, Israel legalizes the situation and acquires the property through *de jure* confiscation. This process must be distinguished from privatization, which is the transfer of ownership of confiscated lands or properties from the Israeli government to private individuals or companies.

28 Carey and Emanuella Grinburg, “Israel’s Parliament Passes West Bank Outposts Bill,” *CNN*, 7 February 2017, available at: <http://edition.cnn.com/2017/02/06/middleeast/israel-knesset-west-bank-outposts-bill/> [accessed 19 September 2017].

Legal Framework

Both international human rights law (IHRL) applicable at all times in both Israel and the oPt, and international humanitarian law (IHL) applicable during situations of armed conflict and occupation, or thus applying to the oPt only, prohibit states from carrying out arbitrary confiscation or destruction of property.

The policy of land confiscation and denial of use and access, moreover, affects the realization of numerous other fundamental rights, including the right of refugees and internally displaced persons (IDPs) to reparations (repatriation, property restitution, compensation and satisfaction). It also has a profound impact on national identity, culture and livelihood.

IHRL PROVISIONS

According to IHRL, Israel must respect, protect and fulfill all human rights enshrined in the UN treaties it has ratified. All decisions taken in cases of land confiscation or that lead to denial of access of land should take into account and respect these treaties, both within Israel and extraterritorially in the oPt.²⁹ States are also obligated to respect customary international law, which is a set of general practices or customs that are accepted as binding on all states.³⁰

Right to Property

The right to property, and more specifically, the right to private property is one of the most controversial human rights. Not only in terms of its

29 Elisabeth Wickeri and Anil Kalhan, "Land Rights Issues in International Human Rights Law", *Institute for Human Rights and Business*, 2010, available at: https://www.ihrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf [accessed 15 September 2017].

30 Legal Information Institute, "Customary International Law", *Cornell Law School*, available at: https://www.law.cornell.edu/wex/customary_international_law [accessed 15 September 2017].

interpretation or components, but even its mere existence as a human right is challenged by many.³¹ This controversy is a reflection of the ideological divisions of the Cold War, and the diverse political systems across the globe – such as the communist bloc or many Latin American countries – that had different approaches regarding the ownership of private property. Eventually, after several discussions and amendments, Western states succeeded in incorporating this right into the Universal Declaration of Human Rights (UDHR).³² Article 17 of the UDHR states that “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.” Usually, such declarations are considered soft law³³ under international law; however, the UDHR has achieved the status of customary international law, and thus, it is considered binding.³⁴

The right to property is not enshrined in the two main legally-binding human rights covenants, the International Covenant on Civil and Political Rights (ICCPR) or the International Convention on Economic, Social and Cultural Rights (ICESCR). However, Article 17 of the ICCPR does protect against incidents of “unlawful interference with.... privacy, family, [and] home”, and states that everyone should be afforded protection “against such interference or attacks.” Accordingly, Article 2 of the ICCPR requires state parties to provide “an effective remedy” for persons whose rights have been violated. Under Article 2 of the ICESCR, states are obliged to use “all appropriate means” to realize the rights “recognized in the present Covenant,” which includes “refrain[ing] from forced evictions and ensur[ing] that the law is enforced against its agents or third parties who carry out forced evictions.”³⁵

Deprivation of Property

Under international law, private property confiscation by a state is not illegal or arbitrary *per se*. While arbitrary or unlawful deprivation of property is clearly prohibited by the core human rights conventions, there are international legal

31 Jacob Mchangama, “The Right to Property in Global Human Rights Law,” *CATO Policy Report*, CATO Institute, May-June 2011, available at: <https://www.cato.org/policy-report/mayjune-2011/right-property-global-human-rights-law> [accessed 19 September 2017].

32 *Ibid.*

33 In contrast with “hard law,” the term “soft law” refers to quasi-legal instruments that are not legally binding, or where the binding force is somewhat “weaker.”

34 Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 Ga. J. Int'l & Comp. L. 287 (1996): 289-290, available at: <http://digitalcommons.law.uga.edu/gjicl/vol25/iss1/13> [accessed 19 September 2017].

35 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*, 20 May 1997, E/1998/22, available at: <http://www.refworld.org/docid/47a70799d.html> [accessed 17 October 2017].

instruments permitting the deprivation of property in some specific instances. Such cases are often associated with large-scale development projects in pursuit of a greater public benefit, such as the construction of dams or road infrastructure. While the state, as established, has the authority to expropriate privately-owned property, certain principles must be followed for it to remain lawful. The following common and widely accepted principles are extracted from various components of IHRL and reiterated in domestic and regional legislations to provide a system of protection for private property.³⁶

- **Legality:** Due process or lawfulness of the act of property deprivation. This means the act must have a legitimate aim according to the law, and judicial review must be guaranteed. This principle is meant to avoid arbitrary deprivation of property.³⁷
- **Public interest:** The deprivation of property must be for public purposes, or for the benefit of society.³⁸
- **Proportionality:** there must be a reasonable relationship of proportionality between the means employed and achieving the desired aim. A just balance should be found between the protection of the right of property and the needs of general interest.³⁹
- Ensuring full and just **compensation** (timely, adequate and effective).⁴⁰

The principles are interrelated and should frame the practice of land confiscation and denial of access, when states are considering limiting an individual's right to use property, or depriving them from their property. It is also important to emphasize that the deprivation of private property must be an exceptional act and not a state policy.⁴¹

Furthermore, the aforementioned principles should be implemented together

36 See European Convention on Human Rights, Protocol, Article 1; American Convention on Human Rights, Article 21; African Charter on Human and Peoples' Rights, Articles 14 and 21. These principles can also be found in different forms or structure in numerous IHRL instruments and conventions. For example, the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement include a list of principle that must be followed for an eviction to be lawful: (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines.

37 Laurent Sermet, *The European Convention on Human Rights and property rights*, Council of Europe, 1998, Human rights files no. 11, 32, available at: [http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-11\(1998\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-11(1998).pdf) [accessed 19 September 2017].

38 *Id.*, 33.

39 *Id.*, 34.

40 *Id.*, 38.

41 *Id.*, 26.

with the prohibition of discrimination. The provision on the right to non-discrimination is found in Article 7 of the UDHR and Article 26 of the ICCPR. This provision is also recognized in Article 5 of the International Covenant for the Elimination of Racial Discrimination (ICERD) and specifically guarantees “the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of [...] the right to own property alone as well as in association with others.”

Other Rights Affected by Property Deprivation

The ability to exercise many other rights, which are explicitly protected by various treaties, is dependent upon exercising the rights associated with property. These fundamental rights include, for example, the rights to an adequate standard of living, family life, movement, food, work, and in some cases, even life. The protection against arbitrary deprivation of property, therefore, is also the basis for ensuring human dignity.

The unlawful confiscation of lands can directly affect people’s livelihoods and work, especially in rural areas where many depend on agriculture and husbandry. These acts can also significantly affect the right to food, if the main source of food was the cultivation of lands, and movement, if confiscation is accompanied by denial of use and access. When the confiscation affects people’s homes, aside from the aforementioned rights, it also impacts the right to protection from interference with privacy, family, and more generally, the right to an adequate standard of living.

The Committee on Economic, Social and Cultural Rights (CESCR) summarized that states must “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” The human right to adequate housing, derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.”⁴²

Arbitrary or unlawful deprivation of property can, therefore, affect a myriad of human rights, and the systematic violation of basic human rights can result in displacement of those affected from their homes.

⁴² CESCR, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, (E/1992/23), 13 December 1991, available at: <http://www.refworld.org/docid/47a7079a1.html> [accessed 18 September 2017].

Illegal Forced Displacement and IDPs

Displacement of individuals and groups resulting from the violation of any of the above principles or rights or any combination thereof constitutes forced displacement. Usually this displacement can be direct, when it leads to the “actual displacement of people from their locations,” or indirect, when it “leads to a loss of livelihood.”⁴³ The loss of livelihood often forces people to leave their homes in search of a better standard of living. Moreover, once those displaced leave the area which they were living in and on which their livelihood was based, they often become impoverished.⁴⁴

When those displaced do not cross any international borders and remain within their country, they become Internally Displaced Persons (IDPs). IDPs are defined as “persons or groups of persons who have been forced to flee, or leave their homes or places of habitual residence as a result of armed conflict, internal strife, and habitual violations of human rights, [...], and who have not crossed an internationally recognized state border.”⁴⁵ Arbitrary displacement is completely forbidden by IHRL, and the UN Guidelines on Internal Displacement provide instances of such displacement. These include displacement based on “policies of apartheid, ‘ethnic cleansing’ or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;” cases of large-scale development projects “not justified by compelling and overriding public interests;” and cases in which displacement is used “as a collective punishment.”⁴⁶

Rights of Refugees and IDPs

In 2005, the Commission on Human Rights issued the “Principles on housing and property restitution for refugees and displaced persons” (hereinafter ‘Restitution Principles’), which “reflect widely accepted principles of IHRL,

43 UNESCO, “Displaced Person/Displacement”, n.d., available at: <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/displaced-person-displacement/> [accessed 18 September 2017].

44 *Ibid.*

45 UNHCR, *Guiding Principles on Internal Displacement*, OCHA/IDP/2004/01, June 2001, available at: <http://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html> [accessed 18 September 2017] [hereinafter UNHCR, *Guiding Principles*].

46 *Id.*, Principle 6.

IHL and refugee law and related standards.”⁴⁷ On the right to housing and property restitution, Section II of the Restitution Principles states:

- 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.
- States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.⁴⁸

Accordingly, property confiscation is deeply connected to international refugee law, for in some cases, it constitutes a violation of the right to reparations (return, property restitution and compensation).

The Commission on Human Rights has also stated that violating the property rights of displaced persons “undermine the principle of the right to return.”⁴⁹

The UN Sub-Commission further asserted “that the adoption or application of laws by States which are designed to or result in the loss or removal of tenancy, use, ownership or other rights connected with housing or property, the active retraction of the right to reside within a particular place, or laws of abandonment employed against refugees or internally displaced persons pose serious impediments to the return and reintegration of refugees and internally displaced persons and to reconstruction and reconciliation.”⁵⁰

47 UN Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *Principles on housing and property restitution for refugees and displaced persons*, E/CN.4/Sub.2/2005/17, 28 June 2005, available at: <http://www.unhcr.org/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html> [accessed 18 September 2017].

48 *Ibid.*

49 UN Commission on Human Rights, Res. 1996/71.

50 UN Sub-Commission on the Promotion and Protection of Human Rights, *Resolution 1998/26 on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons*, 1998/26, 26 August 1998, available at: <http://www.refworld.org/docid/3dda64517.html> [accessed 25 August 2017].

Furthermore, Article 19 of the Restitution Principles on the Prohibition of arbitrary and discriminatory laws says:

- States should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.
- States should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.⁵¹

Finally, UNGA Resolutions A/RES/54/74 (1999) and 70/86 (2015) reaffirm that Palestine refugees are “entitled to their property and to the income derived therefrom.”⁵² And fundamentally, The Guiding Principles on Internal Displacement specifically state that “property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.”⁵³

IHL PROVISIONS

In addition to adherence to IHL, including all the aforementioned provisions (legality, public interest, proportionality, access to remedy, as well as exceptionality and non-discrimination), Israel is also bound by the principle of military necessity, in cases of land confiscation in the oPt.

Land Confiscation in IHL

The obligations and prohibitions of the Occupying Power concerning land in occupied territory are clearly addressed in IHL. The seizure of property is only permissible under strict criteria: that the seizure is absolutely necessary for

51 UN Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *Principles on housing and property restitution for refugees and displaced persons*, E/CN.4/Sub.2/2005/17, 28 June 2005, available at: <http://www.unhcr.org/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html> [accessed 25 August 2017].

52 UN General Assembly, , *Palestinian refugees’ properties and their revenues*, A/RES/54/74, 6 December 1999, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/54/74 [accessed 18 September 2017]; ; UN General Assembly, *Palestinian refugees’ properties and their revenues*, A/RES/70/86, 9 December 2015, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/86, [accessed 18 September 2017].

53 UNHCR, *Guiding Principles*, Principle 21(3), *supra* note 45.

military operations.⁵⁴ Under Article 23(g) of the 1907 Hague Regulations, it is forbidden “to destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war.” Likewise, Article 46 of the aforementioned Regulations affirms that private property must be respected and that it cannot be confiscated.⁵⁵

Furthermore, Article 53 of the 1949 Fourth Geneva Convention (GCIV) stipulates that “any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, [...] is prohibited, except where such destruction is rendered absolutely necessary by military operations.” Moreover, the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” is a grave breach under GCIV,⁵⁶ and is also considered a war crime under the Rome Statute of the International Criminal Court (ICC).⁵⁷

Finally, Rule 133 of Customary IHL establishes that the property of all displaced persons, refugees and IDPs, must be respected.⁵⁸

Forcible Transfer

In the context of occupation, particularly strict provisions are in place regarding the forced displacement of protected persons reflecting their acute vulnerabilities. Palestinians in the oPt have protected status, and as such, their forced displacement is a violation of international law.⁵⁹

According to Article 49 of GCIV, all “individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.” This convention foresees exceptions to this prohibition under special circumstances: “the Occupying

54 Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 53, 12 August 1949, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=3ae6b36d2&skip=0&query=fourth%20geneva%20convention> [accessed 19 September 2017][hereinafter GCIV]; International Committee of the Red Cross (ICRC), Rule 50 and 51 of Customary IHL.

55 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. 46, 18 October 1907, available at: <http://www.refworld.org/docid/4374cae64.html> [accessed 19 September 2017].

56 GCIV, art. 147 and art. 149, 1949, *supra* note 54.

57 Statute of the International Criminal Court (Rome Statute), art. 8(2)(a)(iv), 1998 [hereinafter Rome Statute].

58 ICRC, Rule 133 of Customary IHL, *supra* note 54.

59 GCIV, art. 49, *supra* note 54.

Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand.”⁶⁰ Contravening this law constitutes a grave breach of GCIV under Article 147, as well as a war crime and, potentially, a crime against humanity under the Rome Statute of the ICC.⁶¹

The denial of use and access to land as well as illegal confiscation of Palestinian land often leads to the direct forcible transfer of Palestinians. Both *de facto* and *de jure* confiscations of land create a ripple effect in which a plethora of fundamental rights deteriorate to the point that the victims are left with no other option than to abandon the confiscated area. As such, indirect forcible transfer occurs through the creation of a coercive environment that transforms an area into an uninhabitable living space. Jurisprudence from the ICC and other international criminal tribunals is consistent in asserting that the forcible nature of the displacement must not be limited to forced physical removal. Forcible transfer also includes acts or omissions that amount to threats of force or coercion, creating fear of detention or violence, or taking advantage of a coercive environment. Here, the essential component is that displacement is involuntary, where the person(s) in question are deprived of agency in the decision to leave their homes and communities.⁶² Involuntary displacement due to a coercive environment, when taking place on grounds not permitted under international law according to the provisions outlined above nor for “imperative military reasons” constitutes forcible transfer.

60 *Ibid.*

61 Rome Statute, art. 7(d); art. 8(e)(viii), *supra* note 57.

62 ICTY, Prosecutor v. Popović et. al, Case No. IT-05-88 -T, Trial Judgment, 2010, BADIL, *Coercive Environments*, February 2017.

CASES WITHIN ISRAEL

Starting with its illegal seizure of the lands and properties of those Palestinians forcibly displaced in 1948, Israel continues to implement a discriminatory land confiscation and re-distribution policy.⁶³ From 1950 onwards, Israel systematically introduced and enforced laws that effectively sought to legitimize and legalize its policy of land confiscation. For example, the Absentee Property Law and the guardianship role of the Custodian were supposed to protect Palestinian refugee and IDP properties,⁶⁴ but in practice the law exposed these properties to mass expropriations by the state of Israel and later, to privatization. The Israeli Land Laws of the 1960s further facilitated this system of expropriation and privatization.

The roll-out of Israeli law was done regularly and systematically, facilitating the incremental control and/or state ownership of land and property. The main laws used for such objectives are listed below.



63 Adalah, Land and Planning Rights Database, available at: <https://www.adalah.org/en/content/index/2007> [accessed 25 August 2017].

64 Areej Sabbagh-Khoury, "The Internally Displaced Palestinians in Israel", *Jadal: Mada Al-Carmel Arab Center for Applied Social Research*, no. 3, May 2009, available at: <https://web.archive.org/web/20120331091408/http://jadal.mada-research.org/?LanguageId=1&System=Item&VolumeId=15&MenuId=5&ItemId=138> [accessed 19 September 2017].

Year	Law	Stated Objective of the Law	Scope of the Law	Effect of the Law
1943	Land Acquisition for Public Purposes Ordinance and its amendments	<p>This British Mandate-era law allows the Finance Minister to confiscate land for “public purposes.” Public purpose is defined as “any purpose certified by the Minister of Finance to be a public purpose.”⁶⁵</p> <p>This law was adopted by Israel and was further amended in 1964, 1978 and in 2010. This Law and its amendments granted the Minister broad powers to declare new purposes which would fall under the definition public purposes.</p>	<p>The 2010 amendment allows the state not to use the confiscated land for the originally designated public purpose for 17 years, and prevents landowners from demanding the return of confiscated land not used for the original declared purpose if it has been transferred to a third party, or if more than 25 years have elapsed since the confiscation.</p>	<p>The law was used to expropriate Palestinian land.</p> <p>The 25-year lapse and potential transfer to a third party prevent Palestinians from submitting lawsuits to reclaim confiscated land.</p>
1950	Absentee Property Law	<p>The Law defined ‘absentee’ broadly so that it applied to every Palestinian resident who had left their usual place of residence in Palestine after the adoption of the partition of Palestine resolution by the UN in November 1947. Palestinians within Israel who had remained on their land who could be identified as enemies were deemed “present absentees” and also had their property confiscated.</p> <p>The Law established that absentee property was to be transferred to the Custodian of Absentee Property for protection and to facilitate its use for development by the state.⁶⁶ The Custodian was not allowed to sell the property.</p>	<p>This law stripped both Palestinian refugees and IDPs of their property rights. Once the properties were acquired by the Custodian, the ability of Israel through the roll-out of additional laws in partnership with government and non-government agencies to utilize and privatize the land became possible.</p>	<p>By considering ‘absentees’ all Palestinians that fled their homes after November 1947, the properties belonging to 750,000 displaced Palestinians of the 1948 War were confiscated and placed under custodianship. The Custodian acquired one million dunums (1000 km²) of land by 1950.⁶⁷</p> <p>While the law technically provided for protection Custodian-held property, this was not the case. Significant portions of the land were transferred to the Development Authority from the Custodian.</p>

65 Yifat Holzman-Gazit, *Land Expropriation in Israel: Law, Culture and Society*, (Abingdon: Routledge, 2016), 13.

66 David Kretzmer, *The Legal Status of Arabs in Israel* 49, (Boulder: Westview Press, 1990): 55.

67 George Bisharat, “Land, Law, and Legitimacy in Israel and the Occupied Territories,” *American University Law Review* 43, no. 2 (Winter 1994): 514 [hereinafter Bisharat, “Land, Law”].

1950	Development Authority (Transfer of Property) Law	<p>The Development Authority was established to work with government agencies and was given broad powers to acquire and develop property to allow it to be sold.</p> <p>The Development Authority was to ensure that ownership of the land remains in perpetuity in Jewish hands.</p>	<p>The Development Authority was only allowed to sell land to the state, the Jewish National Fund or to institutions approved by the Government.⁶⁸</p>	<p>The wording of the law was sufficiently broad to allow the Development Authority to transfer and sell property to political groups and colonizer organizations effectively beginning the process of privatizing absentee property.</p> <p>Between 1948 and 1953 alone, 350 of the 370 new Jewish-Israeli communities were created on lands confiscated under the Absentee Property Law, which were granted to the Development Authority.</p>
1953	Land Acquisition (Validation of Acts and Compensation) Law	<p>Allowed the Custodian to vest ownership in the acquired Palestinian lands into the Development Authority for the development of Israel.⁶⁹</p> <p>Development was defined as for “settlement, security or ‘improvement,’” allowing for further confiscation under these pretexts.</p> <p>It also allowed for the legal registration of acquired land.</p> <p>This law provided compensation to the owners who were dispossessed of their land.</p>	<p>All the land held by the Custodian was transferred to the Development Authority.⁷⁰</p> <p>Any remaining titles were stripped from their original Palestinian holders and under the pretext of ‘development’ additional confiscation occurred.</p> <p>This law provided for compensation to the owners who were dispossessed of their land, but Palestinians outside Israel did not benefit from this scheme, and compensation was very low.⁷¹</p>	<p>Through this law Palestinian property was placed at the discretion of Israel under an appearance of legality.</p>

68 Knesset, Development Authority (Transfer of Property) Law, art. 4(a), 31 July 1950.

69 Bisharat, “Land, Law”, 518, *supra note 67*.

70 *Ibid.*

71 *Id.*, 519.

1960	Basic Law: Israel Lands	Defined "Israel Lands" as lands in the ownership of the state, JNF and the Development Authority. The Law established that lands managed by the Israel Lands Administration (ILA, below) shall not be transferred.	The law forbids the ILA from selling the lands, but it allowed it to lease them.	This amounted to 93 percent of what is now Israel being designated as "Israel Lands". Only 3-3.5 percent is owned by the Palestinian population. ⁷²
1960	Israel Lands Administration Law	Established the Israel Lands Administration (ILA), the government authority that administers the "Israel Lands", and the Israel Lands Council (ILC), to dictate policy and supervise activities of the ILA in relation to "Israel Lands."	Thus, this authority manages almost all Palestinian refugee and IDP lands. The ILC was granted certain powers to approve the sale, transfer, and lease of "Israel Lands" with the approval of the ILC.	Allowed this government agency to further control the re-distribution of Palestinian lands, where lands were primarily leased to Jewish-Israelis. Leases were usually granted for 49 or 69 years. These long-term leases began to resemble a type of ownership and laid the foundations for the eventual transfer of ownership under subsequent laws.
1961	Covenant between the government and the JNF	This Covenant granted the JNF 50 percent representation on the ILC even though the JNF only owned 13 percent of "Israel Lands."	Within its by-laws the JNF is prohibited from providing the property it acquires for sale or lease to non-Jews. While JNF land is managed by the ILA, the policies of the latter are decided by the ILC, which is influenced by the JNF.	The JNF, a quasi-governmental body, acquired a strong and influential position in the ILC to manage all "Israel Lands," not only the portion it owned directly. Tenders for JNF lands are only open to Jewish-Israelis. This explicitly excludes non-Jews (namely Palestinians) from accessing land under the administration of the JNF.

72 Adalah, "Land Acquisition Law (Actions and Compensation)," n.d., available at: <https://www.adalah.org/en/law/view/533> [accessed 19 September 2017].

2009	Israeli Land Authority Law (Land Law Reform)	<p>It modified the ILC seats, but kept the JNF's large representation with 6 of 13 members.</p> <p>It also conferred 800,000 dunums of state land to be privatized, enabling private individuals to acquire ownership rights.</p> <p>A land swap agreement between the newly established ILA and the JNF was mandated: the JNF would cede control of developed land in the center of the country, and in exchange, the ILA would give the JNF ownership of lands in the Naqab⁷³ and the Galilee.⁷⁴</p>	<p>Facilitates the transfer of land ownership between the ILA and the JNF.</p> <p>The Israeli government agreed that those lands in the Naqab and Galilee would be managed in accordance with the JNF's principles, i.e. they would be managed for the benefit of Jews only.</p>	<p>Once land is privatized and has been purchased by a <i>bona fide</i> buyer,⁷⁵ it will be impossible for Palestinians to claim ownership rights of the lands, even under Absentee Property Law.</p> <p>Further land swaps also gave greater ability to the JNF to settle only Jewish-Israelis in additional localities within Israel.</p>
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The 2009 Land Law Reform legislation sedimented a transitional process of state-owned to privately-owned land, ensuing the effect of preventing Palestinian refugees and IDPs from asserting any claims to land with the Israeli authorities or within the Israeli judicial system. First, the land was confiscated from Palestinians, then the land was administered for the purposes of Israeli state-building, and finally the land was and continues to be privately sold. Contextualization and application of these different Israeli laws, through the policies of denial of use and access and confiscation of Palestinian land and properties, are illustrated through two case studies, Jaffa and al-Araqib.

73 The area referred to as the Negev desert in Hebrew.

74 Adalah, "Adalah and ACRI call to cancel discriminatory land swap agreement between Israeli government and the JNF", January 2016, available at: <https://www.adalah.org/en/content/view/8724> [accessed 19 September 2017].

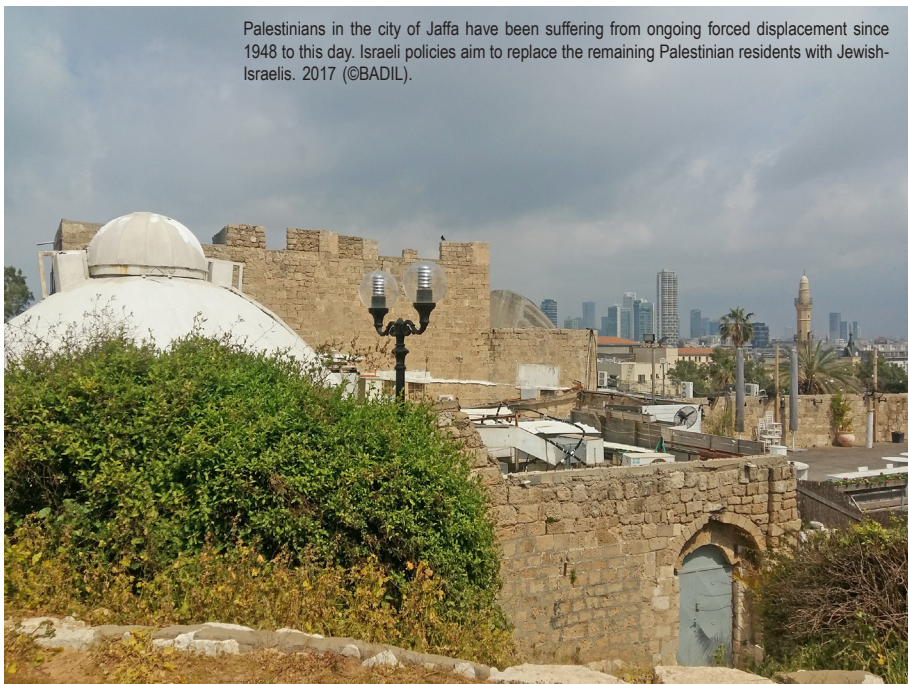
75 One of the main principles of private land ownership is that of "bona fide purchaser" or a purchase made in good faith. So long as a bona fide purchaser buys the property without notice of any other party's claim against the property and properly records the transaction, the bona fide purchaser takes good title to the property despite competing adverse claims.

CASE 1: JAFFA

This is an ongoing Nakba, but it has an economic aspect more than anything else. It's caused by the big investments happening in Jaffa. Privatization is making Palestinians powerless. Here Palestinians aren't being fought by force, Israel is using another weapon, and it's fighting us with money and the economy. Palestinians in Jaffa have an economic disadvantage, they are looking for alternatives outside Jaffa, and this is why our number keeps decreasing.

Ramy Sayegh, 33-year old resident of Jaffa.

Interview: Jaffa, 20 March 2017



BACKGROUND

During the Nakba, thousands of Palestinians were forcibly displaced from Jaffa by Zionist militias. Only 4,000 out of 120,000 Palestinians managed to remain in the city; the rest fled, and became refugees in the West Bank, Gaza and neighboring countries. Palestinians who remained were subjected to military rule,⁷⁶ and were confined by the Israeli military to the al-Ajami

⁷⁶ Eve Spangler, *Understanding Israel/Palestine: Race, Nation, and Human Rights in the Conflict*, (Rotterdam: Sense Publishers, 2015), 119.

neighborhood of Jaffa, into properties owned by Palestinians who had fled during the War.⁷⁷ This population, therefore, qualify as internally displaced persons (IDPs) since their displacement was forced and within the borders of the newly created state.

Almost all of the lands, buildings, homes, factories, farms and religious sites belonging to refugees or internally displaced Palestinians from Jaffa were placed under Israeli control to be eventually privatized through several transfer stages. First, the properties were transferred to the Custodian of Absentee Property; later they became Israeli 'state lands' under the systematic land laws and polices enacted since the 1950s;⁷⁸ then they were transferred to Israeli quasi-governmental organizations, and finally, to private individuals or companies.

The transfer of ownership of property and lands from refugees and IDPs to the state of Israel is illegal according to customary IHL and human rights law, including refugee law. Despite this prohibition, Israel transferred ownership of Jaffa properties originally belonging to Palestinian refugees and IDPs to itself, and conferred their administration to Israeli government-owned companies such as Amidar⁷⁹ and Halamish.⁸⁰ The vast majority of Jaffa property, housing as well as other real estate, fell into the hands of the government and quasi-governmental companies like those aforementioned.⁸¹ These companies continue to play a crucial role in selling land and properties, mainly through auctions. They also have an intricate role in implementing coercive policies that pressure Palestinians to leave Jaffa.⁸²

77 Sami Abu Shehadeh and Fadi Shbaytah, "Jaffa: From Eminence to Ethnic Cleansing," *Al-Majdal* 39, no. 40, (Autumn 2008): 9, available at: http://www.badil.org/phocadownload/Badil_docs/publications/al-majdal-39-40.pdf [accessed 19 September 2017] [hereinafter Abu Shehadeh and Shbaytah, "Jaffa"].

78 *Ibid.*

79 Amidar was founded in 1949, a year after the Palestinian Nakba or establishment of Israel. It is the national Israeli company jointly owned by the Jewish Agency, the Jewish National Fund, and the Israeli government. The organization manages all public housing (Abu Shehadeh and Shbaytah, "Jaffa", 13, *supra note 77*).

80 "Halamish was founded in 1961 and is jointly owned by the Israeli government and the Tel Aviv-Jaffa Municipality. The state lent Halamish some funds to get started, with which it bought land and apartments." (Orly Vilnai, "Public Housing Company Halamish May Sell Off Assets to Pay NIS 100 Million Debt to Treasury" *Haaretz*, 7 February 2012).

81 Nezar Al Sayyed, *Consuming Tradition, Manufacturing Heritage* (New York: Routledge, 2001), 254.

82 Jonathan Cook, "Jaffa 'renewal plan' aims at eviction," *The National*, September 2008, available at: <http://www.jonathan-cook.net/2008-09-15/affa-renewal-plan-aims-at-eviction/> [accessed 19 September 2017].

TENANCY STATUS

Palestinians remaining in the Jaffa area were displaced into absentee properties and granted only tenancy status, meaning they were not allowed to purchase or even renovate the property. Until 1985, residents in Jaffa were not granted permits to improve or alter the buildings, or to make extensions. This amounted to a situation where, due to natural growth, these residents were forced to expand their homes without permits to accommodate their now larger families.

Jaffa remained relatively derelict and neglected until the late 1980s and early 1990s. When more Jewish-Israelis began to relocate there due to overcrowding in Tel Aviv, the Israeli authorities began to document unlicensed properties and government companies began to impose fines on properties that did not provide ownership papers or proper building permits. If the tenants, who were predominantly Palestinian, could not pay these fines to the owners of the building (the quasi-governmental or government agencies), they were evicted and their properties were put up for auction.⁸³

By imposing tenancy status onto absentee properties, Palestinians became subject to discriminatory policies such as the systematic refusal of applications for property renovations and reparations, and the lack of or inadequate service provision. As stated by a former vice-chairman of the local building and planning committee to the press on one occasion in 2008: “The municipality froze all [building] permits in the area for a long period and would not even let people replace an asbestos roof. They turned all the residents of the neighborhood into offenders.”⁸⁴ This resulted in the issuance of regular eviction orders that were based on violations of the tenancy contracts, like renovating without permits or squatting.⁸⁵ This situation is widespread, as “every Palestinian in Jaffa is either directly facing eviction by the municipal authorities, or has a neighbor or relative who faces eviction. An estimated 500 families are in this situation.”⁸⁶

While Palestinian residents in Jaffa were given the option to buy the property,

83 Adalah, “Modern Displacement of Palestinians in Yaffa”, May 2008, available at: <https://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/Articles/muhsin-yaffa-2008.pdf> [accessed 19 September 2017]; Noam Leshem, *Life after Ruin: The Struggles over Israel's Depopulated Arab Spaces* (Cambridge: Cambridge University Press, 2017), 42.

84 Jonathan Cook, “Jaffa ‘renewal plan’ aims at eviction,” *The National*, September 2008, available at: <http://www.jonathan-cook.net/2008-09-15/affa-renewal-plan-aims-at-eviction/> [accessed 19 September 2017].

85 Abu Shehadeh and Shbaytah, “Jaffa”, 12, *supra* note 77.

86 *Id.*, 14.

the financial capacities of most did not allow them the means to purchase the property, neither directly nor through auction, nor to pay the fines required to remain in their residences. After years of neglect and marginalization, in places like al-Ajami, one of the poorest neighborhoods in Jaffa, and the financial realities of Palestinian residents left no legitimate opportunities for them to remain in their homes. Therefore, these policies ultimately result in the expulsion of the Palestinian inhabitants from Jaffa.

“What happens in auctions is that a company like Amidar announces there is an auction on, let us say, Abu Yousef’s home. They announce the time and location and they invite people to view the home and whoever pays more gets the home. So really, Abu Yousef or any other family in Jaffa have no control over their homes, they are not the owners.”

*Ramy Shayegh, 33-year old resident of Jaffa.
Interview: 20 March 2017*

In addition, the true intentions of the Israeli government were documented in structural plans outlined for the Palestinian neighborhoods throughout the years. For example, the Local Master Plan 2236 envisaged “the doubling of the Jewish population in the predominantly Arab neighborhoods overlooking the Mediterranean in Jaffa.”⁸⁷ This specific plan was initially drafted and submitted for approval in 1965 and although it was not approved at that time, its implementation began immediately.⁸⁸ The plan was eventually approved in 1995.⁸⁹

With the privatization of state-controlled absentee properties under the Israeli Law Reform 2009, Israeli policies of discrimination and displacement in al-Ajami intensified, as well as in other Palestinian neighborhoods.⁹⁰ These policies continue until today and the al-Ajami neighborhood is now considered a real estate hotspot for Jewish-Israeli buyers.

87 Daniel Monerescu, *Jaffa Shared and Shattered: Contrived Coexistence in Israel/Palestine* (Bloomington & Indianapolis: Indiana University Press, 2015), 122.

88 Ravit Goldhaber, “The Jaffa Slope Project: An Analysis of “Jaffaesque” Narratives in the New Millennium,” *Adalah*, n.d., 52, available at: <https://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/Makan/Makan-v2/Makan-Vol-2-Right-to-a-Spatial-Narrative-47-Jaffa-Slope-Project-Analysis-Jaffaesque-Narratives-in-New-Millennium-Ravit-Goldhaber.pdf> [accessed 21 September 2017].

89 *Ibid.*

90 Nufar Auni, and Oren Yiftachel, “The New Divided City? Planning and ‘Gray Space’ between Global North-West and South-East,” in *The Routledge Handbook on Cities of Global South*, eds: Susan Parnell and Sophie Oldfield (London and New York: Routledge, 2014), 499.

TESTIMONY

The following testimony belongs to a family from Jaffa. The family shares ownership of their home with Amidar, which obtained partial ownership when a portion of the home was declared absentee property and transferred to the state (Development Authority). The current partial control of the home by Amidar puts the property at risk of privatization.

“I’m now 77 years old. I never lived in any other place than Jaffa. My husband had six siblings; there were seven of them altogether. In 1948 when the war erupted, three of his siblings were in Lebanon on vacation. They were registered as absentees and so their property was registered as absentee property as well. My husband inherited the entire family home [three sevenths of those shares were declared absentee property]. He passed away in 1973, and almost thirty years later, Israelis started coming knocking on my door. They would tell me, ‘We are from Amidar and there are three shares registered as absentee property here, which means the state owns them.’ They took the measurements of the home, and then they started bringing me a paper every month. It had the amount of money I had to pay monthly for using three shares of my own home as well as the debt [from accumulated fines] I owe the state for staying in the home without paying. They used to tell me that they will divide our home and give the three shares to other people that I don’t know. Imagine some strangers living in my home and sharing the bathroom and the kitchen with me...

I was 29 when my husband passed away and I had four young kids to look after. I started working and opened a day nursery in my home. I made sure that my kids received the best education I could provide. My two sons studied in France. Our financial situation was really hard, I used to work here and send money to France, to my boys. How do you think I used to feed my children? I used to feed them mainly rice and milk.

[In 2007]⁹¹ we received a lawsuit from Amidar, they filed one against us. The case went on for around 10 years. The judge in the final hearing was better than the other judges before him; the others were really cruel and they all insisted that we pay for renting our own home. This one at least allowed me to speak. I told him ‘See my hand? Would you cut my hand and separate it from my body?’ I even said in Hebrew, ‘We didn’t steal the home and just settle in it, we own this home. My husband told me before he passed away that those papers are his will, he gave the home to our children.’

91 Dana Weiler-Polak, “Why is Israel laying claim to an Arab home in Jaffa?” *International Solidarity Movement*, 22 November 2009, available at: <https://palsolidarity.org/2009/11/why-is-israel-laying-claim-to-an-arab-home-in-jaffa/> [accessed 21 September 2017].

Amidar's lawyer told the judge that our home falls under this law from 1948 [1950],⁹² the Absentee Property Law, which means that the three shares [declared as absentee property] are owned by the state. They wanted to sell the home; they wanted to make money from those three shares. The judge ruled that we could buy the three shares for half the price, which is one million shekels [around 275,000 USD]. We had to buy three shares of our own home, and they gave us 90 days to agree on everything with Amidar and buy the shares.

This home has never been empty; I've been living in this home for 50 years and I've only ever lived in this home and my husband lived in it before 1948. This home can't be an absentee property because it was never empty. Still, in all of these 50 years they never stopped harassing me, knocking on my door, and sending people to harass me. I remember one time a guy came to my home and started screaming and telling me: 'This isn't your home; you think you're going to take it? It's not yours to take.' It was torture; we spent most of our lives in courts.

We started feeling the pressure from these courts in the last ten years or so [since the first lawsuit with Amidar in 2007]. Everything became much more intense. We knew that there was no escape from this, and we're also exhausted. If we don't solve this case now it's going to follow our children and their children after them. We only want to have peace of mind; we don't want someone to keep coming to the home and I don't want to receive any more papers. Even the solution they gave us a few months ago isn't easy. It's not easy to buy three shares of your own home at such an expensive price. Now there is that million shekels that they want us to pay. I'm really scared to die before I get to see my children living peacefully in our home; I just want them to be happy here. What should I do? My [eldest] son has four children to take care of, how can he afford to pay a million shekels?

My daughters would tell me to sell the home and move to another place to find peace of mind. But I always told them that I became a widow and worked hard all of these years to keep this home, and to keep it for them, how can I sell it now? Why would I? It's impossible. I would never sell this home and leave."

Sara Aftem, 77-year old female resident of Jaffa.

Interview: Jaffa, 20 March 2017

92 The interviewee said 1948, but the law was officially passed in 1950.

LEGAL ANALYSIS

The elements of this case violate the principles of IHRL concerning the right to protection of property. The categorization of the property as absentee constitutes *de jure* confiscation of private property. While the stated aim of the declaration could be considered legitimate, its use and posterior Israeli actions vis-à-vis absentee property are not. The subsequent judicial process and fines associated with this categorization do not allow for sufficient judicial review, as the consequence of Israeli domestic law places the current Palestinian residents at a disadvantage.

Such properties, moreover, have been progressively privatized, which also shows an eventual lack of public purpose. The proportionality is also absent, since there is no just balance between the protection of the right of property and the needs of general interest in this case. The right of the Jewish-Israeli buyer to buy the privatized property is prioritized over the right of the Palestinian family to own the property, showing a clear imbalance. These three elements added to the lack of compensation paid to the owners of the property, means that the principles governing the deprivation of property are missing, rendering these cases of property deprivation unlawful.

The vast number of similar cases in Jaffa, on the other hand, makes the case of the Aftem family one of many, shedding light onto a systematic policy rather than an exceptional act. Israeli laws aimed at seizing Palestinian land or property in favor of Jewish-Israelis also violate multiple IHRL prohibitions concerning non-discrimination, as they do not affect the Jewish-Israeli population.⁹³

The facts of this case also violate Article 17 of the ICCPR, which prohibits arbitrary and unlawful interference in the family's privacy and home. The denial of services and neglect of infrastructure in Palestinian areas are clear indications that Palestinians in Jaffa are not being provided with a minimum standard of living compared to Jewish-Israelis.⁹⁴ Israel is thus not only violating the right to non-discrimination, but also the right to an adequate standard of living.

The family continues to live with fear, uncertainty and instability emanating from the ongoing harassment and threats, and further legal proceedings and fines. Palestinian residents are at an economic disadvantage from being able to legally own such properties due to the institutionalized discrimination of Israeli domestic law, and the economic and social neglect of the Palestinian areas of

93 BADIL meeting with Adalah, February 2017.

94 Jo Roberts, *Contested Land, Contested Memory: Israel's Jews and Arabs and the Ghosts of Catastrophe*, (Toronto: Dundurn, 2013).

Jaffa. Elements of coercion can be found in the legal, financial and psychological pressure faced by the family. For example, the fines and taxes demanded from the family for 'renting' three shares of their home and the associated fees of almost 30 years create a significant financial burden. The constant delivery of notices, the harassment and visits by Amidar representatives and the 10-year court case all create pressure on the family to the point that the victim's children actually encourage their mother to give up the home.

While the victims of the above cases have not yet been displaced, if displacement does occur under these circumstances, it would be unlawful. Direct displacement as a result of the state-perpetrated violations of the laws and principles of IHRL regarding fundamental rights associated with the right to own property and the protection of property constitutes unlawful displacement. As such, evictions arising from this situation would be considered arbitrary. Indirect forced displacement arising from human rights violations leading to the loss of livelihood, and resulting in displacement (without an official eviction) would also be considered unlawful.

Despite the fact that the family has been continuously residing in the home even prior to 1948, a portion of the home remains classified as absentee property due to the illegal manipulative application of the Absentee Property Law. The stated objective of the Absentee Property Law is to safeguard absentee property until the status of Palestinian refugees is resolved. Since three shares of the home have been deceptively classified as absentee property, selling or privatizing these shares violates refugee law, which prohibits state ownership or privatization of refugee and IDP property.⁹⁵ It can only be concluded that the Absentee Property Law, in combination with other land-related laws, confers legitimacy to illegal Israeli actions, actions that detrimentally impact the right to property restitution of Palestinian refugees and IDPs.⁹⁶ This case exemplifies how Israel has confiscated refugee and IDP properties through the absentee property regulations and has sold, and continues to sell, those properties. The privatization of these properties is not only prohibited, but it thwarts the right of Palestinian refugees to restitution of their lands and properties, thereby complicating their return. This reality makes the displacement process in Jaffa one of ethnically-based gentrification aimed at emptying the historic old city of Palestinians and replacing them with Jewish-Israelis.

95 "Adalah to Attorney General and Custodian of Absentee Property: Israel's Sale of Palestinian Refugee Property Violates Israeli and International Law," *Adalah*, 2009, available at: <https://www.adalah.org/en/content/view/7003> [accessed 21 September 2017].

96 See section above on International Refugee Law. Additionally see UNHCR, *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework*, March 2005, PPLA/2005/01, available at: <http://www.refworld.org/docid/425689fa4.html> [accessed 21 September 2017].

CASE 2: Al-Araqib

“Hardly anyone leaves just because they want to. If you hear about anyone leaving, you should know that they were forced to leave.”

Mohammad Touri, resident of al-Araqib.

Interview: Al-Araqib, 23 February 2017



BACKGROUND

The Naqab comprises 60 percent of the total area of Israel, and Palestinian Bedouins own 5.5 percent of it, comprising 600,000 dunums (600 km²).⁹⁷ Al-Araqib constitutes one of many⁹⁸ ‘unrecognized’ Bedouin villages in

⁹⁷ Israel Land Authority, “Background” - *Bedouin Information*, n.d., available at: http://www.mmi.gov.il/static/HanhalaPirsumim/Beduin_information.pdf [accessed 21 September 2017].

⁹⁸ The numbers reported vary from 39 to just over 50 depending on the assessment of the word village. For example, according to one HRW report, approximately 39 Bedouin villages exist in the Naqab, containing approximately 60,000 Palestinian Bedouins, about half the Bedouin population of that area. See Human Rights Watch, *Off the Map: Land and Housing Rights Violations in Israel’s ‘Unrecognized’ Bedouin Villages*, 30 March 2008, summary available at: <https://www.hrw.org/report/2008/03/30/map/land-and-housing-rights-violations-israels-unrecognized-bedouin-villages>

the Naqab. These Bedouins, who have Israeli citizenship, have lived on their ancestral lands for centuries. According to a Human Rights Watch report of 2008: “Even though Bedouin villages in the Negev [Naqab] pre-date Israel’s first master plan in the late 1960s, state planners did not include these villages in their original plans, rendering these long-standing communities ‘unrecognized.’ As a result, according to Israel’s Planning and Building Law, all buildings in these communities are illegal, and state authorities refuse to connect the communities to the national electricity and water grids, or provide even basic infrastructure such as paved roads.”⁹⁹

Al-Araqib is a Palestinian Bedouin village located in the Naqab, north of Bir Saba (Israeli named Be’er Sheva). As such, the discriminatory policies implemented against al-Araqib are implemented against all other Bedouin communities under the same classification, ultimately affecting tens of thousands of Palestinians. Before the intensification of Israeli policies and the wave of demolitions beginning in 2010, the village had over 400 inhabitants.¹⁰⁰ Today, 22 Palestinian Bedouin families - around 80 people - remain in al-Araqib,¹⁰¹ while the rest have moved to nearby cities such as the Bedouin township of Rahat.

The lands of al-Araqib are privately owned by the Touri Bedouin tribe, who purchased the land in 1905 when Palestine was under the rule of the Ottoman Empire. In 1929, during the British Mandate era, they renewed these ownership documents, which they still possess today. Both the Ottoman and British Mandate governments recognized the property rights of the Touri tribe to the lands of al-Araqib.

In 1926, a parcel of land was purchased in the vicinity of al-Araqib by a group of Jews (later Jewish-Israelis), which became the Mishmar Hanegev Kibbutz.¹⁰² When the British Mandate ended and Israel was established, only the purchase documents of Mishmar Hanegev were recognized by

99 *Ibid.*

100 Ahmad Melhem, “Why Israel wants these Bedouins to pay for their village’s demolition”, *Al Monitor*, 17 April 2016, available at: <http://www.al-monitor.com/pulse/originals/2016/04/araqib-village-israel-demolition-palestine-land.html> [accessed 21 September 2017].

101 Oren Yiftachel, Ahmad Amara, and Sandy Kedar, “Israel Says Bedouin ‘Trespass’ on State Land. New Study: Not So,” *Haaretz*, 1 January 2014, available at: <http://www.haaretz.com/opinion/.premium-1.566357> [accessed 25 September 2017].

102 Amelia Smith & Penny Green, “Forced evictions in Israel-Palestine,” *Middle East Monitor*, June 2014, 27, available at: http://statecrime.org/data/2014/07/20140709_ForcedEvictionsInIsraelPalestine.pdf [accessed 21 September 2017].

Israeli authorities,¹⁰³ and al-Araqib was considered an illegal village under Israeli law.¹⁰⁴ This discriminatory decision was the first step within a series of policies used by Israel to forcibly displace the inhabitants of al-Araqib from their homes and lands.¹⁰⁵

Public Purposes

Israel has confiscated large amounts of Palestinian land inside Israel under the pretext that it was being confiscated for 'public purposes.' Article 2 of the 1943 Land Ordinance defined public purpose as "any purpose certified by the Minister of Finance to be a public purpose."¹⁰⁶ That same law permits land confiscation to expand an existing road, to build a new road, a public park or a stadium.¹⁰⁷ As presented in the table of laws, on February 2010 the Knesset passed an amendment to the 1943 Land Ordinance in order to ensure that Palestinian lands confiscated for public purposes would not be returned to their Palestinian owners.¹⁰⁸ This amendment confirmed the Israeli ownership of Palestinian lands confiscated for public purposes, even in cases when the land was never used for such purpose. This was achieved by expanding the authority of the Israeli Minister of Finance to allow for the alteration of the purpose of confiscation if the initial purpose is not realized. The amendment also states that land confiscated for public purposes does not have to be used for its declared purposes for 17 years. Additionally, it states that the owner of the property does not have the right to have this property returned if more than 25 years have passed since the confiscation occurred.¹⁰⁹ Moreover, the new law expands the definition of public purposes to include "the establishment of new towns and the expansion or development of existing towns."¹¹⁰

103 Oren Yiftachel, Ahmad Amara, and Sandy Kedar, "Israel Says Bedouin 'Trespass' on State Land", *Haaretz*, 1 January 2014, available at: <http://www.haaretz.com/opinion/.premium-1.566357> [accessed 21 September 2017].

104 Human Rights Watch, "Israel: Bedouin Facing Mass Evictions From Their Land," 30 August 2013, available at: <https://www.hrw.org/news/2013/08/30/israel-bedouin-facing-mass-evictions-their-land> [accessed 21 September 2017].

105 Nadia Ben-Youssef, Suhad Bishara, and Rina Rosenberg, "From Al-Araqib to Susiya: The forced displacement of Palestinians on Both Sides of the Green Line," *Adalah*, May 2013.

106 Yifat Holzman-Gazit, *Land Expropriation in Israel: Law, Culture and Society*, (Abingdon: Routledge, 2016), 13.

107 POICA, "'For Public Purposes' The Israeli Finance Minister requests the acquisition of 102 dunums of land in Bethlehem Governorate," 18 December 2015, available at: <http://poica.org/2015/12/for-public-purposes-the-israeli-finance-minister-requests-the-acquisition-of-102-dunums-of-land-in-bethlehem-governorate/> [accessed 21 September 2017].

108 Adalah, "Land (Acquisition for Public Purposes) Ordinance - Amendment No. 10," 2010, available at: <https://www.adalah.org/en/law/view/502> [accessed 21 September 2017].

109 *Ibid.*

110 Adalah, "Knesset Enacts New Amendment to the Land Ordinance of 1943 to Block Palestinian Claims for Land Previously Confiscated by the State," 25 February 2010, available at: <https://www.adalah.org/en/content/view/7677> [accessed 21 September 2017].

ISRAELI DISCRIMINATORY LAWS AND INSTITUTIONS AT PLAY IN AL-ARAQIB

In 1951, the inhabitants of al-Araqib were displaced under the guise of ‘public purposes’ under the Land Acquisition Law (1953),¹¹¹ claiming that the village lands would be used for military training for six months. Israel promised the inhabitants that they would be allowed to return to the village after six months, but after this time passed, they were denied return to their homes without explanation.

“They forced us to leave, and they built a border between what they called the military area and what was left of our village. After six months, they told us that we wouldn’t be allowed to go back. The six-month-period passed and during that time we never saw a single soldier. There were no military trainings and there was nothing happening on the land.”

*Nader Touri, 74-year old resident of al-Araqib.
Interview: Al-Araqib, 23 February 2017*

Since there had been no Israeli official registration of the ownership of the majority of lands in the Naqab, in 1972 Israel allowed its citizens to submit land claims under the Land Settlement Law (1969).¹¹² Despite the submission of multiple claims for land ownership, the Touri’s application for al-Araqib was never considered.¹¹³ Additionally, the Israeli authorities did not consider the applications of other ‘unrecognized’ villages since the 1970s, and these lands were designated as ‘settlement land’.¹¹⁴

111 This law “permits the state to formalize the transfer of Palestinian land that on 1 April 1952 was not in the possession of its owners; that had been used or assigned between 14 May 1948 and 1 April 1952 for military and settlement purposes; and was still required for these purposes.” See BADIL, “Land Ownership in Palestine/Israel (1920-2000),” *Stocktaking and Perspectives*, no. 5, Spring 2000.

112 Adalah, “ILA and JNF should stop plan to build forest on ruins of Bedouin village,” August 2009, available at: <https://www.adalah.org/en/content/view/6990> [accessed 21 September 2017].

113 Zochrot, “al-Araqib,” 2014, available at: <http://zochrot.org/en/village/52884> [accessed 21 September 2017] [hereinafter Zochrot “al-Araqib”].

114 Adalah, “ILA and JNF should stop plan to build forest on destroyed Bedouin village,” 13 August 2008, available at: <https://www.adalah.org/en/content/view/6990> [accessed 21 September 2017] [hereinafter Adalah, “ILA and JNF”].

Jewish National Fund (JNF)

The Jewish National Fund was founded in 1901 during the Fifth Zionist Congress in Basel, Switzerland. It was set up as part of a network of charities to colonize land for Jews in Palestine. The JNF was originally set up as a non-governmental organization yet having been given the special relationship with the Israeli government, it can be argued that the JNF is a quasi-governmental agency.

The JNF currently holds title to about 13 percent of the 93 percent of Israeli state-controlled land, and all land controlled by JNF - owed or administered - is leased to Jews only.¹¹⁵ The JNF cannot sell the lands as it holds them on behalf of “the Jewish People in perpetuity,” but it can develop them and lease them to any Jew or to a company under Jewish control.¹¹⁶

The main development carried out by the JNF in these lands has been forestation, mainly with the goal of concealing the Palestinian villages that used to be there. More than two thirds of the JNF forests are planted on Palestinian villages destroyed by Israel.¹¹⁷ A JNF staff member admitted that, “a great part of our parks are on lands that were Arab villages, and the forests are a cover-up.”¹¹⁸

FORESTATION PLANS

The JNF, which is carrying out plans on behalf of the ILA, considers the village of al-Araqib a “recreational area” designated for forestation.¹¹⁹ The JNF made the first attempt to forest al-Araqib lands in 1998. Around 45 families returned to al-Araqib around that time recognizing that a forest on their lands would hinder their claims to the land.¹²⁰ The move by the

115 Palestine Land Society, “Jewish National Fund’s Violation of International and Domestic Law,” August 2005, available at: <http://www.palestineremembered.com/Articles/JNF/Story1513.html> [accessed 21 September 2017].

116 *Ibid.*

117 Eitan Bronstein Aparicio, “Most JNF - KKL forests and sites are located on the ruins of Palestinian villages,” *Zochrot*, April 2014, available at: <http://www.zochrot.org/en/article/55963> [accessed 21 September 2017].

118 SOS Israel, “Eretz Yisroel Shelanu Expose: The Arab ‘Right of Return’ Begins at ‘Park Ayalon Canada,’” June 2008, available at: <http://www.sos-israel.com/?pageID=6319&siteLang=2> [accessed 21 September 2017].

119 Noga Malkin, “Erasing links to the land in the Negev,” *Foreign Policy*, 11 March 2011, available at: <http://foreignpolicy.com/2011/03/11/erasing-links-to-the-land-in-the-negev/> [accessed 25 September 2017].

120 Nadia Ben-Youssef, Suhad Bishara, and Rina Rosenberg, “The forced displacement of Palestinians,” *Open Democracy*, 19 September 2013, available at: <https://www.opendemocracy.net/nadia-ben-youssef-suhad-bishara-rina-rosenberg/forced-displacement-of-palestinians> [accessed 21 September 2017] [hereinafter Ben-Youssef, Bishara, Rosenberg, “Forced Displacement”].

JNF for forestation of the lands of al-Araqib would establish facts on the ground that would further sever the ties of the Palestinian Bedouins to their lands. After the return of some former residents to the village and the start of cultivation of the lands, Israel took measures to destroy the crops and force the residents out.¹²¹

“In 1998,¹²² they [the Israeli Land Authority] sprayed the land with chemicals from planes, and again in 1999.¹²³ There are no laws that protect Palestinians; in Israel, the law only protects Jewish-Israelis. They continued to spray our land and farms with poisonous chemicals for four or five more years, which caused many diseases like cancer. Four people from my family died because of this and doctors in Israel refused to give us a paper with the cause of death. Eventually the Supreme Court ruled that the spraying had to stop, but nothing else. There was no compensation for all the animals that died or the crops which were all poisoned. Israel didn’t compensate people for what they lost from the poisonous chemicals. After all of this, we went back to work and we started farming our land again. For a few years, we would farm the land and then Israelis would come during the spring with their big machines and take all the harvest. We farm the land and they take everything.”

*Nader Touri, 74-year old resident of al-Araqib.
Interview: Al-Araqib, 23 February 2017*

In 2007, following a petition filed by Adalah, the Israeli Supreme Court ruled on the illegality of spraying the fields, without granting any compensation for the losses caused by the chemicals.¹²⁴ In the meantime, the forestation plans continued. In 2006, Israel and the JNF began another foresting project on the land of al-Araqib. A third attempt at forestation by the JNF of al-Araqib, estimated at covering around 1,200 dunums, began in 2009.¹²⁵ This year, the JNF and God-TV channel¹²⁶ started planting a million trees in the western part of al-Araqib.¹²⁷

121 Zochrot, “al-Araqib,” *supra* note 113.

122 It should be noted here that the interviewee mentions the spraying of the land with poisonous chemicals as having occurred before 2002 (date cited by Human Rights Watch) or 2003 (date cited by Adalah).

123 It also took place in 2003-2004.

124 Human Rights Watch mentions this event as having started in 2002; See Human Rights Watch, “Israel: Halt Demolitions of Bedouin Homes in Negev,” 1 August 2010, available at: <https://www.hrw.org/news/2010/08/01/israel-halt-demolitions-bedouin-homes-negev> [accessed 21 September 2017].

125 Adalah, “ILA and JNF,” *supra* note 114.

126 International Christian media network.

127 Nadia Ben-Youssef, Suhad Bishara, and Rina Rosenberg, “Forced Displacement,” *supra* note 120.

Following complaints from the residents a petition was sent to the Director of the ILA and the JNF to halt the plans.¹²⁸ These petitions have not succeeded in stopping the Israeli land grab policies in the village. In March 2010, three months before the first demolition of the village, the Israeli Minister of Agriculture said in parliament that the planting of forests in al-Araqib was to “safeguard national lands.”¹²⁹ The day before the first demolition, Israeli Prime Minister Netanyahu stated in a government meeting that allowing for a region without a Jewish majority in the Naqab would pose “a palpable threat” to Israel.¹³⁰ On March 2012, Benzi Lieberman, Director of the ILA, said that the “ILA will do all in its power to keep state land from trespassers – and this includes farming – in order to safeguard the land.”¹³¹ These statements indicate that there is political motivation behind land confiscation and forestation plans in al-Araqib, and more generally, vis-à-vis Palestinian Bedouins and their lands in the Naqab.

DEMOLITIONS

On 27 July 2010, the ILA together with over 1,000 police officers, completely demolished the village for the first time. The ILA claimed that the destruction and evacuation of the village came after years of legal and physical battles against the Touri tribe of al-Araqib.¹³² More than 300 Palestinians were left homeless,¹³³ and the majority of the families were forcibly displaced to the nearby government-planned townships such as Rahat.¹³⁴ Since that first demolition in 2010 to the end of April 2017, al-Araqib has been demolished 112 times.¹³⁵ Furthermore, since 2010, Israel has fined al-Araqib residents more than two million shekels (approximately \$554,000) to curtail the cost of the over 100 demolitions.¹³⁶ A recent wave of demolitions in the

128 *Ibid.*

129 *Ibid.*

130 *Ibid.*

131 Joanna Paraszczuk and Sharon Udasin, “Court Rejects 6 Beduin Negev Land Lawsuits,” *The Jerusalem Post*, 19 March 2012, available at: <http://www.jpost.com/National-News/Court-rejects-6-Beduin-Negev-land-lawsuits> [accessed 21 September 2017].

132 Jack Khoury and Yair Yagna, “Police Destroy Dozens of Buildings in Unrecognized Bedouin Village in Negev,” *Haaretz*, 28 July 2010, available at: <http://www.haaretz.com/police-destroy-dozens-of-buildings-in-unrecognized-bedouin-village-in-negev-1.304443> [accessed 21 September 2017].

133 Ben-Youssef, Bishara, Rosenberg, “Forced Displacement,” *supra note* 120.

134 *Ibid.*

135 “Al-Araqeeb demolished for 112th time,” *Middle East Monitor*, 26 April 2017, available at: <https://www.middleeastmonitor.com/20170425-al-arakeeb-demolished-for-112th-time/> [accessed 21 September 2017].

136 “Israeli forces demolish Bedouin village of al-Araqib for 110th time,” *Ma’an News Agency*, 9 March 2017, available at: <http://maannews.com/Content.aspx?id=775870> [accessed 21 September 2017].

last seven months has had a particularly severe impact on the lives of the Bedouins in al-Araqib.¹³⁷ Those who remain are fighting desperately to hold on to their land.

TESTIMONY

“I am from the Touri tribe in al-Araqib. I’m 74 years old and married with 17 children. They’re all married and have their own children except for one boy and one girl. My children are living everywhere; we aren’t living together in al-Araqib anymore. After the misery Israel caused this village, most of them took their families and went to live in one of the nearby cities, but some of my children still live in al-Araqib. They have to wake up in the morning and go to Rahat for school or work but they come back and sleep here in al-Araqib. In my case, I never left al-Araqib, only to go to the Israeli courts or police station [for the court cases about the land].

This is our land and this is our battle over our land, they want to displace us from our land and make us refugees. We refuse to leave; this is our land, our fathers’ land and our grandfathers’ land. Israel wants us to leave and go to Rahat or Hura or any of those townships in the Naqab. But we want to stay in our land, and we won’t let go of al-Araqib. Israel would do anything to force us to leave. They told us in 2009 that they are ready to give us money or give us another piece of land somewhere else, but only if we leave al-Araqib. Of course, we refused, we don’t want money - we want our land. We saw what happened with the Bedouins who agreed to leave in exchange for another piece of land. They were fooled, Israel made them pay for the other land as if they were renting it and after few years the Israelis told them to leave and look for another place, that the lease period had finished.

We have never received a demolition order; the demolitions always happen suddenly, without us knowing about it. In 26 July 2010, we were surprised to find Israelis surrounding us from all sides. It felt like they were invading Syria or Egypt. At 3 am on 27 July 2010, it started. There were many different units; border control, police, commando, air force unit ... there was also a field prison and a field clinic. Flash bombs lit the whole area from the highway to the entrance of the village.

The Israelis didn’t respect anyone. They humiliated everyone, the elders, children and women. They forced everyone out of their homes and tents in

¹³⁷ Between 23 July 2016 and 23 February 2017, al-Araqib was demolished nine times. The last demolition before the interview, on 8 February 2017, was the 109th demolition. Data collected by BADIL from different media sources.

the middle of the night and the bulldozers started demolishing everything. They demolished 57 homes that night, they threw everything away: milk, flour, wheat, water, and all the food. They uprooted hundreds of trees. The worst thing was that they re-planted those uprooted trees somewhere else. They took our trees and gave them to the JNF. Where does this happen in the world? Where in the world does the state take the citizens' trees and give them to someone else? That night they demolished the whole village, they destroyed everything, they imprisoned many people, and they humiliated and harassed the women and children.

On 16 January 2011, the Israelis came back and collected the ruins and took them out of the village. Nothing was left in the village, nothing left to prove that people were living in this village. No homes, no trees, no animals and not even the ruins. The only thing left was the cemetery. Only 30 families stayed. All the other families left. The families with children had to leave, but where are they supposed to put those children? Where are they supposed to sleep? It was winter, and cold and rainy. On 17 January 2011, the Israelis came back to the town but this time it was to attack those people who remained in the village. They started beating up everyone, including children, women, and the elderly. They didn't care about anyone.

They demolished this town 109 times,¹³⁸ and made us 901 times stronger. They demolish the homes and we rebuild them. This is our life. Israel implanted fear in many people. Everyone is scared. I know people and especially children who suffer psychologically because of everything we went through. Look at my friend, they broke his children's hands. Even the women, I dare you to find a single woman who doesn't have a scar on her body or who was never injured by rubber bullets or police sticks.

I always feel threatened, look at me now! What am I doing? Sitting here with you? Okay, but they can still come right now and demolish everything we have. This is what they do. They come without us knowing, they demolish everything and then leave."

Nader Touri, 74-year old resident of al-Araqib.

Interview: Al-Araqib, 23 February 2017

138 At the time of the interview.

LEGAL ANALYSIS

Similar to the case of al-Ajami neighborhood in Jaffa, the case of al-Araqib, has significant discriminatory elements and is particularly important as the Israeli denial of use and land confiscation policies in the village have resulted in an abundance of human rights violations. The forcible displacement of Palestinian Bedouins in al-Araqib has happened multiple times over the last decades through the premeditated creation of a coercive environment effecting numerous generations of its residents.

This deliberately oppressive environment put in place by Israel is mainly based on discriminatory policies against Palestinian Bedouins: primarily because the village was ‘unrecognized’ by Israel, while the nearby Kibbutz Mishmar Hanegev, for example, was recognized and supported by Israel. Furthermore, Israel has created 59 individual farms in the Naqab from 1998 – 2008 allocating vast land tracts almost exclusively to Jewish-Israelis.¹³⁹ Israel continues to refuse to recognize the Touri tribe ownership of the land of al-Araqib, despite the fact that there exists valid proof of ownership documents from both the Ottoman and British era administrations. This discriminatory policy favoring Jewish-Israeli settlement in the Naqab, while grabbing Palestinian Bedouin land and forcibly relocating them in townships, is a clear violation of Article 5 of the ICERD, which prohibits discrimination based on race, color, or national or ethnic origin.

The subsequent decision declaring al-Araqib land as ‘state land’, and therefore designating it for public purposes, does not meet the requirements of legality, public purposes nor proportionality as stipulated by IHRL. Israel is required to balance its decisions regarding protection of the right to property, as well as other rights associated with the ability to exercise the right to property, of the people of al-Araqib, and the general public interest. The decision of non-recognition of the village is unlawful. Considering the size of the Naqab, it is highly probable that different uninhabited lands could have been selected for military training in the 1950s, for forestation or for agriculture in more recent years. Also, despite the initial confiscation being based on public purposes, the stated aim was never realized, making the confiscation unnecessary. While forestation is an important and necessary policy, it does not justify the serious and widespread human right violations that accompany it. Additionally, there are dozens of unrecognized villages in the Naqab that are in the same predicament; therefore, the case of al-Araqib

139 Human Rights Watch, “Off the Map: Land and Housing Rights Violations in Israel’s Unrecognized Bedouin Villages,” 20, no. 5 (E), March 2008, 2, available at: <https://www.hrw.org/sites/default/files/reports/ipt0308webwcover.pdf> [accessed 22 September 2017].

is not exceptional, but rather points to a state policy with both political and discriminatory underpinnings.

Furthermore, the 'unrecognized' designation disqualifies villages from receiving infrastructure development and service provision. The interviewee detailed how his children had left their original village, al-Araqib, to settle in other areas to access essential services and better work opportunities. The denial of services, such as water, sanitation or electricity resulting from its 'unrecognized' status, severely affects the right to an adequate standard of living. This deprivation of essential services is forcing Bedouins out of the village in search of better living conditions. In addition, Israeli policies of displacement implemented in al-Araqib harm the Bedouin social fabric by impacting family or tribe unity, which is an essential component of their culture. The ongoing displacement is affecting the right to family life of the inhabitants of the village, including having and maintaining family relationships.¹⁴⁰

The numerous demolition operations have also imposed harsh consequences on the population's wellbeing, safety and security. People including children and elders remained homeless and without shelter for months at a time, violating their right to adequate housing. During these demolition operations, the population of al-Araqib was subjected to excessive use of force given the extent of police and military forces present, and the violence used against the inhabitants. The ongoing demolitions have severely affected the Bedouin lifestyle, grounded in agriculture and husbandry; accordingly, families' financial situations have worsened. Further worsening the living conditions of Bedouins, the ILA sprayed chemicals on the lands of al-Araqib seriously affecting the health of its inhabitants, and may even be directly responsible for a number of deaths. This could amount to grave violations of both the right to health and the right to life.

Finally, the people of al-Araqib are subjected to significant economic burdens, as illustrated by the absence of any form of compensation allocated for the loss of the livestock and crops due to chemical treatments, home demolitions, plus Israeli-imposed fines. Article 2 of the ICCPR provides for an adequate remedy for the violation of the right to property that Israel denies to the residents of al-Araqib, by requiring payment for the demolition of their own homes and properties. Israel is therefore responsible for impoverishing al-Araqib Bedouins by denying them access to their farm lands, in violation

140 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art. 16, available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 28 September 2017] [hereinafter UDHR].

of both the right to work and the right to food. Israel is depriving the village residents of their only source of livelihood and consequently, its financial resources, leading to poverty and high unemployment among the population. Due to all of these factors, the economy in al-Araqib is severely distressed, which serves to add to the coercive environment leading to population displacement.

CASES IN THE OPT

The Israeli policy of land confiscation and denial of use in the oPt contains many sub-policies that detrimentally affect the rights of Palestinians, in disregard of their status as ‘protected persons’, violating their rights to life, adequate standards of living and housing, freedom of movement, non-discrimination and property rights. Similar to the situation inside Israel, the confiscation and denial of use of Palestinian land in the oPt was justified through the adoption of laws from previous foreign administrations, and the construction of additional laws as a needed basis to provide bogus legality to the process. In other words, policies and processes in the oPt also occurred through the roll-out of law in the form of Israeli military orders.

After the 1967 occupation, legislation similar to the Israeli Absentee Property Law was extended to the West Bank vis-à-vis the properties of Palestinians

Photo of the Efrat colony (background), taken from the Palestinian village of al-Khader, Bethlehem. 2017 (©BADIL).



forcibly displaced during and after the war; additionally, a Custodian of Absentee Property was appointed to 'Judea and Samaria'.¹⁴¹ In April 2015, the Israeli Supreme Court legalized the use of the Absentee Property Law in occupied East Jerusalem in order to confiscate lands in Jerusalem belonging to Palestinians living in the West Bank, and retroactively legalized any action that had been taken by the Custodian in applying the Absentee Property Law in East Jerusalem. The court did, however, state that in future instances the law could only be applied in rare circumstances.¹⁴²

From 1967 to 1979, in direct violation of its obligations as an Occupying Power, Israel confiscated lands under the guise of military necessity, which were later utilized for the establishment of permanent colonies. In 1979, the Israeli High Court ruled in the Dweikat case ("Elon Moreh" ruling) that colonies cannot be considered a 'security necessity' and private land cannot be used for the purpose of their establishment.¹⁴³ In this case, the court held that colonies could only be built on land that had been confiscated for specific purposes insofar as construction was consistent with those purposes. Concerned by the restrictions imposed by this decision, the Israeli authorities sought an alternative means by which to acquire land for the purpose of colony construction and expansion. They appropriated a provision of the Order-in-Council enacted under the British Mandate that defined "public lands" as "all lands in Palestine subject to the control of the government" and those "which are or shall be acquired for the public service or otherwise."¹⁴⁴ Taking advantage of suspensions of land registration some eleven years earlier,¹⁴⁵ Israeli authorities began to declare vast swathes of land as 'state land'.¹⁴⁶ However, in 2017, this ruling was effectively overturned when Israel issued the 'Regularization Law', which retroactively legalized colonial outposts built on private Palestinian lands.¹⁴⁷

Two other mechanisms of land confiscation – both illegal under international

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

142 Norwegian Refugee Council (NRC), "Legal Memo: The Absentee Property Law and its Application to East Jerusalem," February 2017, available at: https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf [22 September 2017].

143 Peace Now, "The Bluff Behind Land Takeovers as a Military Necessity Revealed," July 2016, available at: <http://peacenow.org.il/wp-content/uploads/2016/08/bluff-revealed.pdf> [accessed 22 September 2017].

144 George Emile Bisharat, "Land, Law and Legitimacy in Israel and the Occupied Territories," *American University Law Review* 43, no. 2 (Winter 1994): 539.

145 Raja Shehadeh, "From Occupation to Interim Accords: Israel And the Palestinian Territories," *BRILL*, (1 January 1997): 81.

146 Raja Shehadeh, "The Land Law of Palestine: An Analysis of the Definition of State Lands," *Journal of Palestine Studies* 11, no. 2 (January 1982): 95.

147 The Settlement Regularization in Judea and Samaria Law, 5777-2017.

law – are prevalent in the West Bank: the Annexation and Separation Wall, as well as the construction and expansion of colonies and their associated infrastructures.¹⁴⁸ The Wall illegally runs through the West Bank appropriating private Palestinian land.¹⁴⁹ If completed, the wall will de facto annex 708 square kilometers of the West Bank.¹⁵⁰

In the Gaza Strip, or the so-called ‘buffer zone’, is a military no-go area that comprises the entire northern and eastern perimeter of the Gaza Strip’s border with Israel, inside the Palestinian territory, as well as at sea. The precise areas designated by Israel as ‘buffer zone’ are unknown, and the unpredictably changing Israeli policies are typically enforced with live fire.¹⁵¹ The buffer zone covers 17 percent of Gaza’s total land area and, most significantly, 35 percent of its agricultural land.¹⁵² It is estimated that 113,000 people or 7.5 percent of the population have been directly impacted by the buffer zone.¹⁵³ It violates the provisions of the Oslo Accords and all the subsequent ceasefire agreements.¹⁵⁴ The Israeli imposed buffer zone surrounding the Gaza Strip, both on the land-locked side and the sea-side, could constitute de facto confiscation.

There are various other Israeli mechanisms leading to confiscation of Palestinian land in the oPt. Some of these are addressed within the case studies presented below, which provide an illustration of how such mechanisms operate on the ground.

148 BADIL, *Israeli Land Grab*, 73, *supra* note 18.

149 International Court of Justice, Advisory Opinion, “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”, 9 July 2014, available at: <http://www.icj-cij.org/docket/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6> [accessed 22 September 2017].

150 BADIL, *Israeli Land Grab*, 57, *supra* note 18.

151 Palestinian Centre for Human Rights, “The Buffer Zone in the Gaza Strip,” 2010, available at: <http://pchgaza.org/en/?p=5042> [accessed 25 September 2017].

152 United National Office for the Coordination of Humanitarian Affairs and World Food Programme, “Between the Fence and a Hard Place: The Humanitarian Impact of Israeli Imposed Restrictions to Land and Sea in the Gaza Strip,” 2010, 5, available at: <https://www.ochaopt.org/content/between-fence-and-hard-place> [accessed 25 September 2017].

153 Diakonia, “Within Range: An Analysis of the Legality of the Land ‘Buffer Zone’ In the Gaza Strip,” September 2011, 10, available at: https://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within_range_legal_analysis_of_the_gaza_buffer_zone_on_land_diakonia_sept2011.pdf

154 PCHR, “Israeli Buffer Zone Policies Typically Enforced with Live Fire,” *IMEMC*, 11 May 2015, available at: <http://imemc.org/article/71548/> [accessed 22 September 2017].

Case 3: Deir Istiya

The way to reach our land used to take us an hour, now we need between three to five hours. It's impossible to get there in less than three hours unless we take a taxi, which costs 100 shekels [28 USD]. You can never work enough to afford covering the cost of transportation to your land.

*Ibrahim Yousef, 57-year old resident of Deir Istiya.
Interview: Deir Istiya, 21 March 2017*



BACKGROUND

Located in the West Bank governorate of Salfit, the Palestinian village of Deir Istiya contains 4,000 inhabitants and is surrounded by seven Israeli colonies: Emmanuel, Karne Shomron, Ginnot Shomeronm, Yakir, Nofim, Revava and Ma'ale Shomron.¹⁵⁵

Between 1967 and 2013, Israel confiscated 4,071 dunums (4.071 km²) of Deir Istiya land, which is equivalent to 12 percent of the total town area. Numerous military orders issued by the Israeli Civil Administration (ICA) facilitated,¹⁵⁶ and continue to facilitate, the construction of colonies and

155 Tulkarem Qalqilya Team, "The road that blocks other roads," *EAPPI BLOG*, 29 June 2016, available at: <https://blog.eappi.org/tag/deir-istiya/> [accessed 22 September 2017]; The Applied Research Institute - Jerusalem, "Deir Istiya Town Profile," September 2013, available at: <http://vprofile.arij.org/salfit/pdfs/vprofile/Deir.pdf> [accessed 22 September 2017][hereinafter ARIJ, "Deir Istiya"].

156 ARIJ, "Deir Istiya Town Profile", 21, *supra* note 155.

their associated infrastructure such as checkpoints and by-pass roads. In addition, according to proposed Israeli construction plans, the Annexation and Separation Wall, after completion, will confiscate 18,827 dunums of Palestinian land, equivalent to 55% of Deir Istiya's total area, for Israeli settlement activities.¹⁵⁷

By-pass Roads

The by-pass road system is designed to connect the Israeli colonies with each other and cities inside Israel, in order to facilitate the movement of Israeli colonizers between them, without requiring passage through Palestinian inhabited areas. This system was initiated during the first stages of colonization of the oPt in the 1970s. While the stated common purpose of roads is to connect people and places, the majority are only accessible to Jewish-Israelis. Further, most by-pass roads in the West Bank create a physical barrier that stifles Palestinian urban and social development and has led to both isolation and fragmentation of Palestinian communities. The actual route and structure of these by-pass roads in the West Bank indicate a discriminatory policy and deepen Israeli spatial domination of the West Bank and its inhabitants.

Denial of use is enforced in practice and materializes as a consequence of other illegal policies, rather than being traced in Israeli declared measures or orders. The expansion of Road 55,¹⁵⁸ located next to Deir Istiya, led to the closure of all the agricultural roads previously used by Palestinian farmers, cutting them off from their farm lands located on the opposite side of the by-pass road. As a result, farmers were de facto denied use of their land. The only way farmers can access their fields is by using a rainwater tunnel, big enough to walk through but which does not have capacity for transferring farm equipment or livestock. This Israeli by-pass road obstructed privately-owned Palestinian land and severely curtailed farmers' movement, resulting in an adverse impact on their means of livelihood, which is agriculture.

This policy of denial of use and access is also happening in the nearby area called Wadi Qana. Wadi Qana is a fertile valley that includes natural springs and privately owned Palestinian farmland, which has been cultivated by its inhabitants for generations. In 1979, this area was declared a closed military zone, although the order was withdrawn following popular protests.¹⁵⁹

157 *Id.*, 19.

158 Israeli-built road that connects colonies north of the West Bank with Israel. The road links the city of Kfar Saba inside Israel with colonies near Nablus, and ends in Road 60, another colonizer road that cuts through all of the West Bank.

159 International Women's Peace Service, "Wadi Qana," 2014, available at: <http://iwps.info/villages/wadi-qana/> [accessed 22 September 2017]; Wadi Qana History, "Timeline," n.d., available at: <http://wadiqana.wixsite.com/salfit/timeline> [accessed 22 September 2017].

Eventually this area, comprising more than 14,000 dunums (14 km²) of land, was declared an Israeli nature reserve in 1983.¹⁶⁰

This designation means that Palestinian owners are no longer permitted to freely farm the land.¹⁶¹ Since 2011, the Israel Nature and Parks Authority has prohibited farmers from planting anything on their land in Wadi Qana. This Israeli agency was also responsible for uprooting and confiscating Palestinian trees in the area. Furthermore, it has been documented that Israeli colonizers in the surrounding outposts such as Alonei Shilo and El Matan are directly releasing their wastewater into the valley.¹⁶² Due to the designation of the land as a nature reserve and the wide range of restrictions imposed with regards to the use and access of the land, inhabitants of Wadi Qana were pressured to move to Deir Istiya. These policies of denial of use and access to land have led to high unemployment rates in the agricultural sector in Deir Istiya.¹⁶³

TESTIMONY 1

“I am a 60-year-old farmer, married, and I have five sons and one daughter.

We moved from our home on the main road of Deir Istiya six years ago [2001] out of fear of living there, and now we are also being denied access to the home we are living in now. We feared for our sons because of the violence from the colonizers and the Israeli soldiers.¹⁶⁴ Although Israel did not order us to leave, they made it so hard for us to be able to reach our home. My parents built the house back in 1975 and we had a building permit back then. Today building in this area is forbidden, because it’s categorized as Area C.

Forcible Transfer

I used to work here in Deir Istiya but I had to move from my old home to this other area of the village. I would never sell my home there for anything, but we lost some of our land in the area because Israel wanted to build a by-pass

160 B’Tselem, “Wadi Qana – From Palestinian agricultural valley to settlements’ tourism park,” 23 April 2015, available at: http://www.btselem.org/area_c/wadi_qana [accessed 22 September 2017].

161 *Ibid.*

162 *Ibid.*; B’Tselem, “Settlers’ walk today in Wadi Qana, where the authorities are displacing Palestinian farmers who own the land”, 23 April 2015, available at: http://www.btselem.org/area_c/201504_wadi_qana [accessed 22 September 2017].

163 UNOCHA (oPt), “Settlement expansion around an Israeli-declared ‘nature reserve,’” *The Monthly Humanitarian Bulletin*, 31 October 2014, available at: <https://www.ochaopt.org/content/settlement-expansion-around-israeli-declared-nature-reserve> [accessed 22 September 2017].

164 The subject of the interview feared that colonizers might attack Palestinian children by running over them with cars.

road. There are three colonies neighboring our former home: Yakir, Nofim and Revava. From the other side, there is also the Emmanuel colony. Israel did not even give us notice that our land would be taken to build this road.

I had a shed there where I raised and grazed chickens. Israel ordered me to demolish it, and I did, because I didn't want to have any problems. It was a 100 m² [the shed]. I demolished 60 or 70 meters of it and kept the rest as a storeroom, but then they told me to demolish the rest of it.

I really felt pressured to leave my house. I lost half a dunum of my land and another five or six dunums and a fig tree because of the by-pass road. Another road was built behind my home for the electricity generators for the colonies. Because of this, I lost another 250 to 300 m² and they [Israel] made me demolish a stone wall fence as well as uproot two of my big olive trees.

Of course, the displacement has had an impact on my economic situation. Now I pay 700 Shekels [193 USD] monthly for the rent, but I used to live in my own home on my land before I was forced to move. This has cost me a lot. But, what really kills me is having to leave my home. It really breaks my heart.

Colonies bring fear and violence

Our land is cultivated with olive trees. In the olive picking season we only go to our land on Saturdays,¹⁶⁵ and stand on the sidewalk of the street to pick our olives. We are always afraid when we go because there is always a threat [of violence] when we have to cross the road to get to our land. I don't feel afraid, but my wife and son do, and sometimes they are sick with fear. They are afraid because of the risk of violence from the colonizers. My nephew's son was run over and dragged 100 meters by a colonizer's car.¹⁶⁶ My nephew's son is now disabled. My nephew left that area after what happened to his son. Another time, my other nephew was beaten and shot at when he was coming home from school.

Israel wants to confiscate the land and expel the Palestinians from their homes, and the Israeli soldiers protect the Israeli colonizers here, and in other areas as well. In Wadi Qana, Israel and the colonizers deny Palestinian owners access to their lands, and Israel is confiscating the lands and uprooting the trees.”

Raed Salah, 60-year old farmer from Deir Istiya.

Interview: Deir Istiya, 21 March 2017

165 Jews observe Shabbat on Saturdays and usually rest during the day. This is why the chances of encountering colonizers on Saturdays on their land are significantly less.

166 According to the facts mentioned in the testimony, BADIL assumes this incident took place within the last six years.

TESTIMONY 2

“I am a 57-year-old farmer and a political and social activist in Deir Istiya. I am married with four children: two daughters and two sons. My eldest daughter is at university and my youngest son is in first grade [six years old].

My brothers and I lost 120 dunums of the land that we inherited from our father, in an area called Khirbet Shihadeh, which is part of Deir Istiya. We can no longer go to this land because it's surrounded by three Israeli colonies: Novim, Yakir, and Ravava. Novim and Yakir blocked one entrance to our land in 1995, and Ravava closed the other entrance in 2001. So, we have no access our own land. We used to be able to get to our land in 50 minutes or an hour walking, but now we need five hours to reach it. Once we left the town at 9 am and came back at 8 pm. It took the whole day to walk over and back. Because of this, now I can't farm my land. The ownership of the land has not changed in Khirbet Shihadeh. The area there is about 6,300 dunums, which is owned by many Palestinians. I own part of this land. We used to live there, graze sheep and have a life there! This was my first loss of land.

There aren't any colonies built on our land, but there is a sewage pipeline installed on it. The sewage pipeline that services the colonies of Novim and Ravava caused a lot of damage and divided my land into two, and of course, they [Israel] took some of it too, for the second time. They also uprooted olive trees that I planted there in 1986. Even after Israel took some of our land to install this pipeline, sometimes sewage from Ravava still leaks onto the land. My neighbors' olive trees have dried up because of this. My olive trees haven't dried, but I am affected by the roads, the bad smell and the health hazards. The colonizers set fires to our land too. They have done this to me before but I also know many other people this has happened to. Once, the land is burned you can't do anything with it!

My third loss of land happened when they installed an electricity network and an electricity generator. My land was dug up to accommodate that generator. Now I am afraid to go to my land. I am afraid to work on my land and pick my olives. My sons are also afraid to come with me. I can't plant anything there anymore, not even okra or onions! In addition to that, my family can't accompany me anymore. This loss was really the hardest.

My father was able to cover the cost of my education when I was growing up since we raised sheep in Khirbet Shihadeh, where we used to spend the weekends. However, nowadays I am an employee. I still have the land I

inherited from my father, but now because I can't produce anything on the land, I can't afford to cover the costs of my daughter's education. I can say that now I am financially destroyed. Ultimately we have lost our livelihood that we used to make from the land and the independence that we used to have.

We are working with the municipality and other associations to help us restore access to the land and find families that might be willing to live there because there is 6,300 dunums [6.3 km²] that Palestinian families should be able to use and live on. Getting there is very hard, but some families could live there if they are willing to stay there 24 hours a day, seven days per week. Commuting from Khirbet Shihadeh every day is impossible today because of the by-pass road. This policy is an indirect strategy to displace and expel Palestinians. The Israeli helicopters fly over these lands every six months to take pictures. That's why Palestinians have to keep going to these lands, to show that we are still there as failure to do this will activate Israeli measure, derived from Ottoman laws, to confiscate land. It's now our duty to make sure the land is never confiscated."

Ibrahim Yousef, 57-year old farmer from Deir Istiya.

Interview: Deir Istiya, 21 March 2017

LEGAL ANALYSIS

First and foremost, the existence of colonies and the transfer of the civilian population of Israel into the oPt constitutes a grave breach under Article 49 of GCIV, which prohibits the Occupying Power from transferring its civilian population into the territory it occupies. Therefore, it follows that the confiscation of occupied land for the construction and expansion of colonies, including confiscation and denial of use for the provision of services to those colonies, cannot be justified and is also prohibited.

In Wadi Qana (the area near Deir Istiya), privately-owned Palestinian land was confiscated under the declaration of a nature reserve. In Deir Istiya, land was confiscated for the construction of by-pass roads, and the installation of sewage pipelines and electricity generators for the colonies. Article 23(g) of the Fourth Hague Convention and Customary IHL both forbid the seizure of private property in occupied territory, unless it is required by imperative military necessity. In both cases, the confiscation of land by Israel, does not meet the criteria of imperative military necessity.

The situation is compounded with the creation of by-pass roads to connect

and service colonies in the area. The colonies and their accompanying infrastructure separate Palestinians from their lands,¹⁶⁷ livelihoods,¹⁶⁸ and from each other. The denial of access and use of their land results in Palestinian landowners in the oPt being exposed to the associated obstacles and hardships (such as the closure of agricultural roads and the additional time needed to reach the land), thus exacerbating an already coercive environment. The situation in the Deir Istiya area is further intensified by colonizers' attacks, which appear to be condoned - if not supported - by the Israeli army according to Testimony 1. The violence perpetrated by colonizers and the impunity with which it is committed, create further coercive factors affecting Palestinians. Both testimonies attest to the involuntariness of the relocation of the residents of Deir Istiya to other areas. In other words, their displacement is forced due to the coercive environment created by the policies and practices of Israel. Under these circumstances, Palestinian displacement constitutes forcible transfer: a grave breach of GCIV and a war crime according to the Rome Statute.

Taken collectively, the situation resulting from the policies of the Israeli government in the oPt not only amounts to a plethora of human rights violations but also constitutes a grave breach of its obligations as an Occupying Power. Thus, it can be concluded that the creation and expansion of colonies (which in itself is prohibited) is a vehicle for other war crimes such as forcible transfer resulting from a coercive environment, or the extensive destruction and appropriation of property when carried out unlawfully and wantonly.¹⁶⁹

167 UDHR, art. 17, 1948 states that "Everyone has the right to own property [...] and no one shall be arbitrarily deprived of his property." See: UDHR, art. 17, *supra* note 140.

168 UDHR, art. 23, 1948 and ICESCR, art. 6, 1976 address the right to work. See: UDHR, art. 23, *supra* note 140; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, art.6, available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 28 September 2017].

169 Rome Statute, art. 8(2)(a)(iv), *supra* note 57.

Case 4: Silwan



BACKGROUND

Silwan is a Palestinian neighborhood located on the outskirts of the Old City of occupied East Jerusalem. East Jerusalem was occupied and illegally annexed following the 1967 War in violation of international law. The main mechanisms employed to confiscate Palestinian properties in Silwan are manipulation of the Absentee Property Law, fraudulent purchases and the declaration of national parks.

Manipulation of Absentee Property

The Absentee Property Law has been one of the most vigorous weapons in dispossessing Palestinian residents in Silwan. The effectiveness of this tool is based on the close collusion between the Israeli government and private colonizer organizations.

The Israeli government has candidly supported private colonizer organizations such as El'ad¹⁷⁰ and Ateret Cohanim. El'ad was established “with the goal of redeeming land, strengthening the Jewish connection to

¹⁷⁰ El'ad has facilitated the implantation of 300 colonizers into Silwan since the 1990s.

Jerusalem and returning Jewish awareness to the City of David,”¹⁷¹ whereas Ateret Cohanim specializes in gaining control of assets in the Muslim Quarter of the Old City in particular.¹⁷² El’ad and Ateret Cohanim operate in Wadi Hilwe and in Batan al-Hawa, respectively, two Palestinian neighborhoods within Silwan.

In 1992 an official committee of inquiry known as the Klugman Report investigated the relationship between these colonizer organizations and the Israeli government in East Jerusalem, detailing how the Israeli government transferred lands from Palestinians to colonizers.¹⁷³ The report found that when El’ad and Ateret Cohanim found desirable properties inhabited by Palestinian families, they turned to the Israeli government for support. Both organizations rely on the Custodian of Absentee Property to confiscate and gain control over Palestinian land. As mentioned in the legal framework, the Absentee Property Law establishes that if the owner of a property in Israel is living in an enemy state, then that property is declared ‘absentee property.’ This was how the Palestinian properties of Silwan were declared absentee by Israel and were passed over to the Custodian of Absentee Property.¹⁷⁴ Properties belonging to Palestinians residing outside of Silwan, in the rest of occupied West Bank, have also been declared as absentee property.¹⁷⁵ The Custodian then rents these properties to colonizer organizations such as Ateret Cohanim and El’ad, who initiate and facilitate the transfer of Jewish-Israelis to live in the confiscated properties.¹⁷⁶

In 2015, for example, Ateret Cohanim filed eviction orders against 81 Palestinian families living on 2.6 dunums of land in the Batan al-Hawa neighborhood of Silwan. On 19 October 2015, two Palestinian families were forcibly evicted; police officers were later deployed and the entire area of

171 Moaz Al-Za’tari and Jonathan Molony, “House Demolitions in Silwan: The Judaization of East Jerusalem,” *Al-Maqdese for Society Development (MSD)*, October 2010, 28, available at: http://www.al-maqdese.org/AR/wp-content/uploads/2014/06/demolition-silwan_English_ayman-final.pdf

172 *Id.*, 17.

173 “Report of the Committee to Examine Buildings in East Jerusalem (the Klugman Report)”, 10 September 1992. An English translation is available in “The Klugman Report – Report of the Committee to Examine Buildings in East Jerusalem”, *The Palestine Yearbook of International Law* 9, (1996/1997): 417.

174 Peace Now, “The Government Helps the Settlers Take Over a Home in Silwan,” 10 March 2015, available at: <http://peacenow.org.il/en/the-government-helps-the-settlers-take-over-a-home-in-silwan> [accessed 22 September 2017].

175 Norwegian Refugee Council, “Legal Memo: FAQs on Main Legal Issues in East Jerusalem,” February 2017, available at: https://www.nrc.no/globalassets/pdf/legal-opinions/faqs_ej_memo.pdf

176 Meron Rapoport, *Shady Dealings in Silwan*, (Jerusalem: Ir Amim, 2009), 13 [hereinafter Rapoport, “Shady Dealings in Silwan”].

Silwan was placed under an Israeli military imposed curfew.¹⁷⁷ The presence of colonizers in East Jerusalem goes hand-in-hand with the presence of Israeli police and military personnel, which creates friction and stress for the local Palestinian population. Furthermore, the children of Silwan are subject to arbitrary detentions, house arrests and mistreatment by the Israeli army on a daily basis.¹⁷⁸ The 81 families together with the rest of the Palestinian residents of Silwan face an intensely coercive environment.

Property confiscation in Batan al-Hawa has escalated at an alarming pace. To date, Ateret Cohanim has control over 27 housing units in the neighborhood, most of which were homes of Palestinian families.¹⁷⁹ The Israeli judiciary system has been condoning this type of “organized state violence,” which has been effectively dispossessing and forcibly transferring protected persons, in gross violation of GCIV.¹⁸⁰ The existence of this dubious quasi-governmental relationship has been directly acknowledged by the colonizer organizations themselves. According to Doron Spillman, El’ad’s Director of Development: “This is a government project. We are almost a branch of the government of Israel without getting buried under government bureaucracy.”¹⁸¹ With the exploitation of the Absentee Property Law, El’ad, for instance, has been given 36 dunums of the total 116 dunums of land in the Silwan neighborhood of Wadi Hilwe.¹⁸²

The UN Human Rights Council appointed an independent fact-finding mission to investigate Israeli colonies in the oPt. This international mission submitted a report in 2013 that corroborated the Klugman Report’s finding that the Custodian of Absentee Property was indeed an “institution to dispossess Palestinians of their land and property.”¹⁸³ The UN report found that the confiscations occurred without proper testing of the validity of evidence that

177 UN OHCHR, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan,” October 2016, 3, available at: http://www.ohchr.org/Documents/Countries/PS/SG_Report_on_Israeli_A.71.355.pdf

178 Defense for Children International Palestine (DCIP), “Arrest and abuse by Israeli police part of life for children in Silwan,” 22 February 2014, available at: http://www.dci-palestine.org/arrest_and_abuse_by_israeli_police_part_of_life_for_children_in_silwan

179 B’Tselem, “Batan al-Hawa neighborhood, Silwan: The next target for ‘Judaization’ of E. J’alem”, 11 December 2016, available at: http://www.btselem.org/jerusalem/20161208_batan_al-hawa [accessed 22 September 2017][hereinafter B’Tselem, “Batan al-Hawa”].

180 Rapoport, “Shady Dealings in Silwan,” 39, *supra* note 176.

181 *Id.*, 45.

182 *Id.*, 13.

183 UN Human Rights Council, *Report of the independent international fact finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63)*, 7 February 2013, 32.

the residents could be declared “absentee” within the meaning of the law. After the property was declared absentee property, which placed it under the control of the government, the Custodian would transfer the property to the Jerusalem Development Authority. The 2013 UN Human Rights Council report also concluded that the confiscation of lands in Silwan as a way to transfer Jewish-Israeli colonizers into the occupied territory is “an explicit but undeclared Israeli policy involving senior figures in various government ministries, the Finance Ministry (the Custodian of Absentee Property), the Housing Ministry, the Israel Land Administration, the JNF, government companies, security forces, and the Jerusalem Municipality.”¹⁸⁴

Fraudulent Purchases of Palestinian Property

After the release of the incriminating Klugman Report, it became more prevalent for colonizers to dubiously purchase coveted lands or properties. This mechanism often involves violent home invasions, coercive acquisition of the Palestinian landowners’ fingerprints or signatures, the kidnapping of the landowner, the use of corrupt land brokers, and forgery.¹⁸⁵ Despite rampant instances of fraudulent land purchases, the government continues to facilitate and endorse the illegal and often violent occupation of Palestinian homes by colonizers by providing them with the protection of security forces and police.¹⁸⁶ Colonizer organizations have intensified these tactics to further dispossess Palestinians, relying on their special relationship with the Israeli government, which provides them with almost blanket impunity. The onerous burden of proof of land or property ownership is placed on the Palestinians rather than on the colonizer organization,¹⁸⁷ and Palestinians rarely receive justice from challenging the tactics of colonizers or colonizer organizations in Israeli courts.¹⁸⁸

184 *Id.*, 15.

185 Mohammad Elyas Nazzal, “Land and Property Leaking in the West Bank” 2016, 140-160.
تسريب الاراضي والعقارات في الضفة الغربية

186 *Id.*, 16.

187 *Id.*, 18.

188 Even in cases such as the Abbasi house in Silwan, where the Jerusalem District Judge concluded that the lands were confiscated as “absentee property” in an “extreme lack of good faith” with “no factual or legal basis”, the land remained confiscated and colonizers from El’Ad continued to live on it. See Ahdaf Soueif, “The dig dividing Jerusalem,” *The Guardian*, 10 May 2010, available at: <https://www.theguardian.com/world/2010/may/26/jerusalem-city-of-david-palestinians-archaeology> [accessed 22 September 2017].

TESTIMONY 1

“In Silwan, even if you own your own land, your home, it can still be sold twice without you knowing about it. I don’t trust anyone these days. Not so long ago, I was sitting with some family members and a cousin told us that he wanted to sell his home. He said he showed his ownership document to a man. The moment I heard his name [the buyer] I panicked. I’ve heard about this specific land broker many times and I knew that he sells lands to Israelis and makes fraudulent land purchase contracts. I immediately told my cousin that he would lose his property if he hadn’t lost it already. We didn’t wait; we went directly to the home and took back the ownership documents. Then we went to our lawyer and registered the property as an Islamic waqf [which can be inherited but not sold]. A few days later colonizers came to that same home and tried to claim it. This incident happened in the Silwan neighborhood of Wadi Hilwe in 2015.

I think 25 or 27 homes were handed to Israelis in one week. The original owners sold them to a religious Muslim man from 48 [meaning Israel], a man who was really well-known. He bought all of these homes and told the owners that their properties would become an Islamic waqf, but all of these homes were actually sold to El’ad.

My home is also in a central neighborhood of Silwan and the whole neighborhood is targeted, all the people here suffer from the same thing. Israel keeps telling us that Palestinians don’t own their properties in this neighborhood. They want all the Palestinians out of here.”

Yusra Adnan, housewife from Silwan.

Interview: Central neighborhood, Silwan, 22 March 2017

NATIONAL PARKS

In addition to the *de jure* confiscation described above, *de facto* land confiscation has also been occurring by declaring lands as national parks. In the Wadi Hilwe neighborhood of Silwan, this process began in 1974, with the creation of the Jerusalem Walls National Park. The nearby al-Bustan neighborhood was proclaimed as an ‘open space’ in 1976. This ‘open space’ was later renamed and expanded to become King’s Garden Park.

Israel illegally annexed 70,500 dunums [70.5 km²] of land in East Jerusalem in 1967, of which 24,000 [24 km²] were confiscated for ‘public purposes’ such as national parks. East Jerusalem’s status as an occupied territory under international law prohibits the occupying power from confiscating the land - unless for imperative military necessity. Confiscation of occupied

land for public purposes, and specifically for establishing recreational parks or nature reserves, does not fulfill the imperative military necessity requirement of IHL. While the lands taken for national parks are not being directly confiscated, Palestinians are denied use and access to them through additional methods such as home demolitions and evictions, resulting in de facto land confiscation. National parks are often planned and initiated by private colonizer organizations who also serve in the Israel Nature and Parks Authority, creating a land confiscation scheme whereby the process of “nature and landscape preservation also serve the authorities [...] as a means for seizing land.”¹⁸⁹

Wadi Hilwe neighborhood

The Jerusalem Walls National Park spans 1,110 dunums (1.11 km²).¹⁹⁰ Due to the designation of these lands as a national park, the lands of approximately 4,000 Palestinian families in 250 buildings are now threatened by demolition.¹⁹¹ Between 2006 and 2015, at least 15 homes were demolished in Silwan, including within Wadi Hilwe.¹⁹² The demolition of these homes has led to the forcible transfer of some residents, while the pending demolition orders indicate that a greater number of these residents are also at risk of being forcibly transferred.

The Israeli government has given El’ad “administration and development powers” over the City of David National Park, an archaeological park in Wadi Hilwe,¹⁹³ while simultaneously allowing El’ad to determine where to conduct archaeological excavations and dig tunnels in Silwan.¹⁹⁴ These excavations are being carried out without the consent of the Palestinian residents; they often result in cracked walls, collapsing floors and sinkholes in roads, making the land inaccessible.¹⁹⁵ These actions have a direct impact

189 Bimkom, “From Public to National: National Parks in East Jerusalem,” 2012, 4, available at: http://bimkom.org/eng/wp-content/uploads/From-Public-to-National_English_FINAL2012_withMAPS_lowres1.pdf [accessed 22 September 2017][hereinafter Bimkom, “From Public to National”].

190 Emek Shaveh, “East Jerusalem: Where are the Antiquities? National Parks Between the Old City of Jerusalem and Area E1,” 13 September, 2013, available at: <http://alt-arch.org/en/nationalparks/> [accessed 25 September 2017].

191 B’Tselem, “Jerusalem Walls National Park,” 28 July 2015, available at: http://www.btselem.org/jerusalem/national_parks_jerusalem_walls [accessed 22 September 2017][hereinafter B’Tselem “Jerusalem Walls National Park”].

192 *Ibid.*

193 Ir Amim, “Settlements and National Parks,” n.d., available at: www.ir-amim.org.il/en/issue/settlements-and-national-parks [accessed 25 September 2017].

194 *Ibid.*

195 B’Tselem, “Jerusalem Walls National Park,” *supra note* 191.

on the development of the affected neighborhoods of Silwan, and deny residents access to their properties and lands.¹⁹⁶

Al-Bustan neighborhood

Residents of al-Bustan neighborhood in Silwan also experience de facto land confiscation. In 1976, under City Master Plan No. 9, al-Bustan was declared an open area, prohibiting any further construction and development there.¹⁹⁷

In 2010, the Jerusalem municipality published the plan for the King's Garden National Park,¹⁹⁸ an expansion of the City of David National Park.¹⁹⁹ The King's Garden National Park is in the valley portion of al-Bustan that contains 90 Palestinian homes built after 1976 in response to the natural growth of the Palestinian population there. All of these homes, constructed without permits, are slated for demolition. If these demolitions are carried out, they will result in the forcible transfer of the Palestinian inhabitants.²⁰⁰

From 2009-2010, the Israeli government attempted to force the Palestinian residents of al-Bustan to relocate to Beit Hanina, another Palestinian neighborhood of East Jerusalem. Now, in 2017, Israel plans to relocate the families to the eastern part of al-Bustan, while demolishing 22 homes in the western part.²⁰¹ This forcible relocation plan, which affects more than 20 families, is illegal under international law as it would amount to forcible transfer. The Israeli-controlled municipality, moreover, has no authority to build new homes for these families on land owned by other Palestinians in western al-Bustan.²⁰²

Alongside these demolition orders and evictions, families face lawsuits and criminalization of those who try to resist the confiscation of their land. In addition to being denied building permits to renovate or expand their homes to accommodate growing families, residents are also deprived access to services such as education, waste management, and industry.²⁰³

196 Bimkom, "From Public to National: National Parks in East Jerusalem," 31, *supra note* 189.

197 B'Tselem, "Al Bustan Neighborhood - Garden of the King", 16 September 2017, available at: http://www.btselem.org/jerusalem/national_parks_al_bustan_garden_of_the_king [accessed 22 September 2017] [hereinafter B'Tselem, "Al Bustan"].

198 Bimkom, "From Public to National: National Parks in East Jerusalem," 26, *supra note* 189.

199 Rapoport, "Shady Dealings in Silwan," 19, *supra note* 176.

200 B'tselem, "Al Bustan", *supra note* 197.

201 B'Tselem, "Jerusalem Walls National Park", *supra note* 191.

202 B'tselem, "Al Bustan", *supra note* 197.

203 B'Tselem, "Batan al-Hawa", *supra note* 179; Rapoport, "Shady Dealings in Silwan", 10, *supra note* 176.

TESTIMONY 2

“I was born in al-Bustan neighborhood and stayed here when I got married. When my husband and I started building our own home the Israelis came and demolished it. They filed a [law] suit against us because we built without a permit, because the whole of al-Bustan neighborhood is declared as a green and protected area.

We have a unique situation in al-Bustan because our case isn't about one individual or one family. My father's home, my uncle's homes, and all the people I know are targeted by Israel. Actually, everyone in the neighborhood has received demolition orders which started in 2005.²⁰⁴ All of these plans [for the national park] are just an indirect way to force us to move out of here.

When they started giving demolition orders, they also started arresting a lot of people, including children and youth. This always happens at night. So, the issue isn't only demolition orders and taking our land and property, it is the pressure they're putting on the people who are living here. Kids stopped going to school, most of the youth in the neighborhood are not educated and are unemployed.

We know that we don't have [building] permits but there are buildings that were given to Jewish-Israelis in the same area and they also have no building permits. Why is it us who have demolition orders and not them? Why are they only targeting Palestinians?

If you have a demolition order or law suit against your home, you are forced to pay a monthly fine to the municipality. It's as if you are renting your own home because you end up paying the municipality at least 2,500 Shekels [688 USD, per month]. This money is considered a fine and usually it's for building without a permit. But to be honest with you, there are no houses built with permits, not even the old ones.

The reactions to demolition orders vary. Some people consider moving from the neighborhood. People are buying houses in other places so that when the demolition happens in al-Bustan they have another place to live. Other people have already left al-Bustan. This is a rational reaction under the circumstances, but the only people who leave are the ones who are financially able to. The majority of the people living here have no financial resources so the only option for those people is to stay here.

Personally, I've never thought about what I will do when my home gets

²⁰⁴ As noted above, in 2004 the Jerusalem City Engineer initiated demolition orders for homes in al-Bustan neighborhood.

demolished. Deep down, I know that this day is coming. Now, we are waiting; I don't have a plan for the future and I know that most of the people in Silwan don't have one either. My family, my husband's family and everyone I know are still in al-Bustan, so even if I want to leave al-Bustan, where would I go?

Israel's policies are mainly to empty all of Jerusalem of its Palestinian residents. Their goal is to force Palestinian residents out of here and replace them with Jewish-Israelis.

*Ruba Said, resident of al-Bustan neighborhood, Silwan.
Interview: Al-Bustan, Silwan, 22 March 2017*

LEGAL ANALYSIS

Israel illegally confiscates occupied Palestinian land in violation of Rule 51 of Customary IHL and Article 23 of the Fourth Hague Convention of 1907 through its use of the Absentee Property Law, fraudulent land sale transactions and declaring lands for public purposes far exceeding the strict exception of imperative military necessity. Israel is also in violation of a number of human rights laws and provisions, including - but not limited to - the provisions associated with the right to the protection of property.

The consequences of these violations result in both direct and indirect forcible transfer of protected persons in occupied East Jerusalem. Forcible transfer in Silwan is caused by arbitrary evictions, home demolitions, and the creation of a coercive environment, illustrated by the unbearable economic, physical, and psychological pressures its residents face. The implementation of Israel's land confiscation policy violates Article 49 of GCIV, which prohibits forcible transfer. These actions can amount to war crimes and, potentially, crimes against humanity, according to the Rome Statute.²⁰⁵

The fraudulent land sale transactions and declaring lands for public purposes are also violations of Article 17 of the UDHR guaranteeing the right of a person to "own property alone as well as in association with others" and the right not be to "arbitrarily deprived of his property;" and Article 17 of the ICCPR, which protects against incidents of "unlawful interference with.... privacy, family, [and] home."

As Testimony 2 elucidates, the impending home demolition or confiscation of their land is accompanied by the myriad of other policies affecting their day to day existence and ability to enjoy other fundamental rights. The lawsuits,

205 Rome Statute, art. 7(d) and art. 8(e)(viii), *supra* note 57.

arrests, fines, criminalization, lack of access to services like education, healthcare and waste management, and violence from colonizers and police together shape a coercive environment in al-Bustan. Accordingly, Israel is also violating the right to an adequate standard of living, including housing, which is guaranteed in Article 25 of the UDHR and Article 11 of the ICESCR.

Conclusion

Upon examination, the policy of land confiscation and denial of use has been one of the most injurious and effective Israeli mechanisms to forcibly displace or transfer Palestinians from their lands, starting from the 1948 Nakba to the present day. The largest confiscation of Palestinian land took place in 1948 with the Absentee Property Law, and after the beginning of the 1967 occupation, with the illegal annexation of East Jerusalem. Both actions and the subsequent Israeli legislation attempting to legitimize them are incompatible with international law. Israel intentionally and consistently violates the human rights provisions associated with permissible confiscation: legality, public interest, proportionality and compensation, as well as the requirement for these principles to be applied exceptionally and in a non-discriminatory manner. Israel has not only created multiple and complex legal mechanisms to facilitate *de jure* and *de facto* confiscation, but implements these mechanisms through a discriminatory lens and with a political motive, to ensure that Palestinians are forced out and replaced by Jewish-Israeli colonizers.

The cases above demonstrate multiple mechanisms of *de facto* confiscation where Israel manipulates or outright ignores the rights connected to ownership without actually being the legal owners, preventing Palestinians from exercising their ownership rights. This results in the denial of access to their homes, lands, livelihood or source of income and essential services. This denial can result in the direct forced displacement of the residents when their homes are located on confiscated land, or indirect due to coercion and pressure to leave the area.²⁰⁶

²⁰⁶ Jurisprudence from the International Criminal Court (ICC) and other international criminal tribunals is consistent in holding that the understanding of the forcible nature of displacement is not limited to simple indications of physical removal. Forcible transfer also includes acts or omissions which amount to threats of force or coercion, the creation of fear of detention or violence, or taking advantage of a coercive environment. The essential component is that the displacement must be involuntary, with the person(s) in question being deprived of genuine choice in the decision to leave their homes and communities. (For more information about Israel's forcible transfer of Palestinians in the oPt, see BADIL, *Coercive Environments: Israel's Forcible Transfer of Palestinians in the Occupied Territory*, February 2017).

The practical consequences of situations of *de jure* confiscation are similar to those of *de facto* confiscation for affected Palestinians. Regardless of whether or not a change of ownership does occur, the consequences in both instances are equivalent to a denial of proprietary rights that normally accompany ownership. The Israeli policies of *de jure* and *de facto* confiscation consequently breach the rights of both Palestinians inside Israel and the protected inhabitants of the oPt to enjoy the effective ownership of their land and property, which may ultimately result in their forcible displacement or transfer.

The illustrated cases and legal analyses highlight the clear incompatibility of Israeli laws and practices with international law and Israel's obligations as the occupying power. Israel has implemented the land confiscation and denial of use policy through multiple layers and phases: law, force, and the legalization of acts perpetrated by non-state actors (colonizers and colonizer organizations). These three steps show that Israel's policy is systematic and ongoing, and that Israel responds to its desire to control the maximum amount of land with minimum Palestinians by adjusting legislation and practices where and when it sees fit. Israel has often manipulated legal precedents and laws in order to legitimize its land grab.

Israel's disregard for both IHL and IHRL is demonstrated clearly in the documented cases in Jaffa, al-Araqib, Deir Istiya, and Silwan presented in this paper. The consequences are not only violations of human rights but also the commission of war crimes, and potentially crimes against humanity. In serious violation of IHRL, Israel uses discriminatory declarations of land for public purposes. Israel collaborates and supports the JNF, a non-state actor, in order to confiscate land belonging to the Bedouin village of al-Araqib in the Naqab and forcibly displace its inhabitants. Similarly, it violates international human rights law in Jaffa, where a land privatization scheme and absentee property laws have been used in order to forcibly displace Palestinians and confiscate their land. The construction of colonies and their associated infrastructures in Deir Istiya in the occupied West Bank result in the forcible transfer of Palestinians in violation of both IHL and IHRL. Finally, the overlapping mechanisms of the illegal annexation of East Jerusalem, declarations of national parks on occupied land, fraudulent purchases of land by non-state actors, and absentee property laws create a coercive environment against Palestinians in Silwan and confiscate their lands in violation of both IHL and IHRL. These cases show how land confiscation and

denial of use are also intrinsically connected to other policies of forcible transfer such as discriminatory zoning and planning, as well as the permit regime.²⁰⁷

While the mechanisms described above show how Israel's land confiscation and denial of use policy adapts and evolves, the goal remains consistent. These discriminatory laws and practices are designed to ensure that Palestinians are forced out and replaced by Jewish-Israelis. The policy of land confiscation and denial of use leads to both forced displacement of Palestinians inside Israel or to the forcible transfer of Palestinians inside the oPt.

As it has been noted in the introduction of this series of Working Papers,²⁰⁸ the mere presence of legislation and legal mechanisms is insufficient to tackle the long-recognized human catastrophe of forced population transfer. The political will to ensure they are deployed consistently is necessary in order to ensure that the fundamental rights of vulnerable communities and groups are protected.

207 See BADIL's working paper series on *Forced Population Transfer: The Case of Palestine*.

208 See BADIL, *Introduction*, in *Forced Population Transfer: The Case of Palestine*, March 2014.

This Series of Working Papers on forced population transfer constitutes a digestible overview of the forced displacement of Palestinians as a historic, yet ongoing process, which detrimentally affects the daily life of Palestinians and threatens their national existence. The Series utilizes an inclusive interpretation of the human rights-based approach, emphasizing that obligations under international law must supersede political considerations. Outlining the nuances and the broader implications of forced population transfer requires careful scrutiny of Israeli policies aimed at forcibly transferring Palestinians, and their role in the overall system of suppression in Palestine.