

## **Joint Urgent Appeal to the United Nations Special Procedures on Forced Evictions in East Jerusalem**

**Date: 10 March 2021**

### **Submitted by:**

1. The Palestinian Human Rights Organisation Council, comprising of:
  - Al-Haq, Law in the Service of Man
  - Al Mezan Center for Human Rights
  - Addameer Prisoner Support and Human Rights Association
  - Palestinian Centre for Human Rights
  - DCI - Defense for Children International – Palestine
  - Jerusalem Legal Aid and Human Rights Center
  - Aldameer Association for Human Rights
  - Ramallah Center for Human Rights Studies
  - Hurryyat - Center for Defense of Liberties and Civil Rights
  - The Independent Commission for Human Rights (Ombudsman Office) - Observer Member
  - Muwatin Institute for Democracy and Human Rights - Observer Member
2. The Civic Coalition for Palestinian Rights in Jerusalem
3. Community Action Center, Al-Quds University
4. Cairo Institute for Human Rights Studies

### **For the attention of:**

- The United Nations Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Mr. S. Michael Lynk;
- The United Nations Special Rapporteur on the human rights of internally displaced persons, Ms. Cecilia Jimenez-Damary;

- The United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Mr. Balakrishnan Rajagopal;
- The United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms. E. Tendayi Achiume;
- The United Nations Special Rapporteur on the rights of indigenous peoples, Mr. Francisco Cali Tzay; and
- The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Ms. Tlaleng Mofokeng

## 1. Introduction

Since the forcible displacement of 85 per cent of the Palestinian population during the *Nakba* (catastrophe) of 1948 by Zionist settler-colonial forces,<sup>1</sup> Israel designed and issued a series of discriminatory laws, policies, and practices, forming the foundation of its institutionalised regime of racial domination and oppression over the Palestinian people as a whole, including Palestinian citizens of Israel, Palestinians in the occupied Palestinian territory, and Palestinian refugees and exiles abroad.<sup>2</sup> Israel has ensured the maintenance of its apartheid regime over the Palestinian people through its policies and practices, such as the strategic fragmentation of the Palestinian people, including by denying Palestinian refugees and other persons displaced from their homes their inalienable right to return, and the appropriation of their homes, lands and property, coupled with the creation of a coercive environment designed to drive the ongoing transfer of Palestinians on both sides of the Green Line.<sup>3</sup>

In occupied and illegally-annexed East Jerusalem, 15 Jerusalemite families totalling 37 households of around 195 Palestinians, residing in Karm Al-Ja'ouni area in Sheikh Jarrah neighbourhood and Batn Al-Hawa neighbourhood in Silwan, are currently at imminent risk of forced eviction.<sup>4</sup> Unlawfully applying Israeli domestic law to occupied territory, Israeli courts have ruled in favour of lawsuits undertaken by settler organisations to evict the 15 Palestinian families.

Most of the families living in Karm Al-Ja'ouni area and Batn Al-Hawa neighbourhood, who are facing the threat of forced eviction, are refugees. At a time when people around the world are trying to survive the global pandemic, Palestinians in East Jerusalem continue to endure an ongoing *Nakba*, as they continue to be denied their inalienable rights of return and property restitution. In addition, they are subjected to an intensified coercive environment, exemplified in an array of policies including forced eviction thorough which they are again facing the threat of forced displacement and dispossession. They undergo a lengthy, exhausting, and unaffordable

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<sup>1</sup> Salman Abu-Sitta, 'The Right of Return: Sacred, Legal and Possible' in Naseer Aruri (ed) *Palestinian Refugees: The Right of Return* (Pluto Press 2001), 195.

<sup>2</sup> Al-Haq and others, 'Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports' (10 November 2019) para 28.

<sup>3</sup> *Ibid* paras 49, 53, and 90.

<sup>4</sup> Data obtained from the Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ), Peace Now and Al-Haq's documentation.

legal struggle to challenge the eviction lawsuits filed against them by settler organisations in Israeli courts. Given the discriminatory and untransparent nature of the Israeli legal system as applied in the occupied territory, they are effectively denied access to the rule of law. Many Palestinians have already been forcibly evicted under the same Israeli forcible transfer policy.

In light of the above, this joint urgent appeal to the concerned United Nations (UN) Special Procedures underscores Israel's establishment and maintenance of its apartheid regime over the Palestinian people as whole, and the intensified forcible transfer policies and measures in occupied East Jerusalem. The submitting organisations welcome the statement issued on 11 January 2021 by Professor Michael Lynk, UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, calling on Israel "to reverse its eviction orders for Palestinian families living in Occupied East Jerusalem,"<sup>5</sup> and urge the UN Special Procedures to recognise Israel's laws and policies affecting the 15 Jerusalemite families and the Palestinian people as a whole, as an institutionalised regime of racial domination and oppression, call on Israel to repeal its discriminatory laws, which are illegally extended to occupied East Jerusalem, and to end its coercive environments designed to drive Palestinian transfer, including through forced evictions.

## **2. Background on the Ongoing Forcible Transfer Against Palestinian Refugees in East Jerusalem**

Following its establishment in 1948, Israel enacted the Absentees' Property Law of 1950, which is the main law regulating the property of Palestinians who were abroad, forced to flee, or deported during the *Nakba*.<sup>6</sup> Through defining Palestinians refugees, displaced persons, including those who fled to places a few kilometres away from their original homes, and other Palestinians who were abroad during the *Nakba* as "absentees," the 1950 Law assigns their properties for appropriation by the State.<sup>7</sup> These "absentees" have been simultaneously denied their right to return under discriminatory nationality, citizenship, and entry Israeli laws.<sup>8</sup>

Immediately following the occupation of the West Bank, including East Jerusalem, and the Gaza Strip in 1967, Israel unilaterally annexed East Jerusalem, including lands beyond the municipal boundaries of Jerusalem,<sup>9</sup> extending its law, jurisdiction and administration, including the 1950

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<sup>5</sup> Office of the United Nations High Commissioner for Human Rights, 'Israel/OPT: UN expert calls for reversal of Israel's eviction order against 16 Palestinian families' (11 January 2021) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26648&LangID=E>> accessed 03 March 2021

<sup>6</sup> Norwegian Refugee Council (NRC), 'The Absentee Property Law and its Application to East Jerusalem' (February 2017) 1, <[https://www.nrc.no/globalassets/pdf/legal-opinions/absentee\\_law\\_memo.pdf](https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf)> accessed 03 March 2021.

<sup>7</sup> Absentees' Property Law, 5710-1950 <<https://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A>> accessed 03 March 2021.

<sup>8</sup> Al-Haq and others, 'Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports' (10 November 2019) paras 29-35.

<sup>9</sup> B'Tselem, 'East Jerusalem' (11 November 2017) <<https://www.btselem.org/jerusalem>> accessed 03 March 2021.

Absentees' Property Law, to occupied East Jerusalem,<sup>10</sup> in contravention of its obligations under international humanitarian law.<sup>11</sup>

Accordingly, the 1950 Law, yet again, led to systematic and widespread appropriation of Palestinian property in East Jerusalem, similar to the dispossession during the *Nakba* of 1948. Palestinians in East Jerusalem who fled during the *Naksa* of 1967, or were abroad at the time and had not been registered in the 1967 census were considered by Israel as “present absentees” and their properties were eligible for confiscation by the State.<sup>12</sup>

Meanwhile, Palestinians who remained in Jerusalem have been subject to Israel's systematic and institutionalised forcible transfer policies, which aim at ensuring Israeli-Jewish domination, and the systematic erasure of Palestinians. Such policies are exemplified by Israel's “Master Plan 2000” - a city-wide urban planning and zoning scheme for Jerusalem - which aims at ensuring a “demographic balance” for 2020 of 60 per cent Jews to 40 per cent “Arabs” within the city.<sup>13</sup>

To cement Palestinian dispossession and displacement in East Jerusalem, Israel enacted the Legal and Administrative Matters Law in 1970, which exclusively allows Israeli Jews to pursue claims to land and property ownership allegedly owned by Jews in East Jerusalem before the establishment of the State of Israel in 1948.<sup>14</sup> In accordance with the 1970 Law, “assets of Jews” in East Jerusalem, which were managed by the Jordanian Custodian of Enemy Property until 1967, were transferred to the Israeli Custodian General within the Ministry of Justice. The Custodian General has the authority to release the properties to Israeli Jews who claim ownership, or claim that they inherited properties from before the establishment of the State of Israel, upon their request.<sup>15</sup>

Utilising the discriminatory aforementioned law, Jewish Trusts and Jewish entities with unclear legal status have secured land ownership in Batn Al-Hawa neighbourhood in Silwan and Karm Al-Ja'ouni area in Sheikh Jarrah by the Custodian General. Later, these Jewish Trusts and entities sold their ownership rights or transferred their management to settler organisations, which do not have ties to the original alleged Jewish owners.<sup>16</sup> In turn, the settler organisations, which envision further settlement expansion in occupied and illegally-annexed East Jerusalem, have been filing eviction lawsuits against Palestinians in Israeli courts.

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<sup>10</sup> See: NRC, ‘The Absentee Property Law and Its Implementation in East Jerusalem’ (February 2017) 5 <[https://www.nrc.no/globalassets/pdf/legal-opinions/absentee\\_law\\_memo.pdf](https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf)> accessed 03 March 2021.

<sup>11</sup> Article 43, the 1907 Hague Regulations annexed to the Hague Convention IV Respecting the Law and Customs in War on Land (The Hague Regulations 1907).

<sup>12</sup> Al-Haq, ‘House Demolitions and Forced Evictions in Silwan’ (2020) 46-47.

<sup>13</sup> Al-Haq, ‘The Occupation and Annexation of Jerusalem through Israeli Bills and Laws’ (05 March 2018) <<https://www.alhaq.org/advocacy/6263.html>> accessed 03 March 2021.

<sup>14</sup> Legal and Administrative Matters Law, 5730-1970 <[https://www.nevo.co.il/law\\_html/law01/319\\_009.htm](https://www.nevo.co.il/law_html/law01/319_009.htm)> accessed 03 March 2021.

<sup>15</sup> *Ibid.*

<sup>16</sup> See, for example: Fact sheet by CCPRJ annexed to Joint Submission to the UN Human Rights Committee, 29 <<http://www.saintyves.org/uploads/478c319dfbc0b6abd807b7377c485182.pdf>> accessed 03 March 2021; United Nations Office for the Coordination of Humanitarian Affairs (OCHA), ‘Humanitarian Impact of settlements in Palestinian neighbourhoods of East Jerusalem: the coercive environment’ (10 July 2018) <<https://www.ochaopt.org/content/humanitarian-impact-settlements-palestinian-neighbourhoods-east-jerusalem-coercive>> accessed 03 March 2021.

### 3. Settler-Colonial Context in Sheikh Jarrah Neighbourhood

Considering Sheikh Jarrah's close proximity to the Green Line and to the Old City, which is central to Israel's agenda of consolidating its grip on Jerusalem, including the Old City and its surroundings, the neighbourhood and its some 3,000 Palestinian residents are subject to intensified and systematic Israeli forcible transfer policies and activities.<sup>17</sup>

In almost every single part of the neighbourhood, Israel, the Occupying Power, through settler organisations, executes the erasure of the indigenous Palestinian population. After the Sephardic Community Committee and the Knesset Israel Committee received ownership of Karm Al-Ja'ouni area of Sheikh Jarrah from the Israeli Custodian General, under the 1970 Legal and Administrative Matters Law,<sup>18</sup> the two Jewish Committees transferred their ownership rights to Nahalat Shimon International, a settler organisation. Nahalat Shimon International later initiated eviction lawsuits against 28 Palestinian refugee families residing in Karm Al-Ja'ouni, managing to evict three Palestinian families by 2009.<sup>19</sup>

Following the 2009 evictions, Nahalat Shimon International submitted a Town Plan Scheme to the Jerusalem Local Planning Commission of the Jerusalem Municipality for the establishment of a new settlement (Shimon HaTsadiq) in this part of the neighbourhood. The Plan proposed to evict the Palestinian residents, demolish their houses, and later construct 200 settlement units for Israeli settlers.<sup>20</sup> As of 2020, 29 Palestinian households in Karm Al-Ja'ouni have eviction cases filed against them in Israeli courts by settler organisations.<sup>21</sup>

Similarly, in Im Haroun area of Sheikh Jarrah, 35 Palestinian households with a population of 140 Palestinians, a third of whom are children, are under threat of displacement,<sup>22</sup> after the Israeli Supreme Court ruled, in September 2010, in favour of a settler group which claims that the land was owned by Jews prior to 1948.<sup>23</sup> In July 2017, four settlement plans were discussed at the Jerusalem Regional Planning Committee for Im Haroun. Two of the plans envision "the demolition of two residential buildings, placing 17 Palestinian households with 74 people at risk of

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<sup>17</sup> Palestine Liberation Organisation's Negotiations Affairs Department (NAD), 'Israel's Policy of Forced Evictions: The Case of Jerusalem's Sheikh Jarrah Neighborhood' (24 January 2020) 2.

<sup>18</sup> Little information is known about the status of these two entities. While some sources identify them as Jewish Committees, others refer to them as charitable Trusts. For the purpose of this report, they will be referred to as the two Jewish Committees. See CCPRJ, 'Dispossession & Eviction in Jerusalem: The cases and stories of Sheikh Jarrah' (December 2009); The Jerusalem Institute for Israel Studies, 'The Sheikh Jarrah Affair: The Strategic Implications of Jewish Settlement in an Arab Neighborhood in East Jerusalem' (2010) 23.

<sup>19</sup> See section below titled 'Background of Forced Evictions in Karm Al-Ja'ouni in Sheikh Jarrah'. See also, Fact sheet by CCPRJ annexed to Joint Submission to the UN Human Rights Committee, 29-32 <<http://www.saintyves.org/uploads/478c319dfbc0b6abd807b7377c485182.pdf>> accessed 03 March 2021.

<sup>20</sup> Ir Amim, 'Evictions and Settlement Plans in Sheikh Jarrah: the Case of Shimon HaTzadik' (June 2009), 2 <<https://www.ir-amim.org/sites/default/files/SheikhJarrahEngnew.pdf>> accessed 03 March 2021.

<sup>21</sup> OCHA, 'Palestinian family evicted from its home in East Jerusalem' (10 December 2020) <<https://www.ochaopt.org/content/palestinian-family-evicted-its-home-east-jerusalem>> accessed 03 March 2021.

<sup>22</sup> OCHA, 'Imminent eviction of Palestinian family in East Jerusalem' (13 February 2019) <<https://www.ochaopt.org/content/imminent-eviction-palestinian-family-east-jerusalem>> accessed 03 March 2021.

<sup>23</sup> OCHA, 'The Case of Sheikh Jarrah' (Updated Version October 2010) <[https://www.ochaopt.org/sites/default/files/ocha\\_opt\\_sheikh\\_jarrah\\_factsheet\\_2010\\_10\\_11\\_english.pdf](https://www.ochaopt.org/sites/default/files/ocha_opt_sheikh_jarrah_factsheet_2010_10_11_english.pdf)> accessed 03 March 2021.

displacement”.<sup>24</sup> In September 2017, after an eight-year-long legal battle, eight members of the Palestinian Shamasneh family were forcibly displaced from their home in Im Haroun, while the home was transferred to Israeli settlers.<sup>25</sup> The forced eviction was conducted while the District Court was still considering the latest appeal submitted by the family.<sup>26</sup>

Today, an illegal settlement already exists in Sheikh Jarrah.<sup>27</sup> Three additional settlement plans for some 350 housing units are planned by settler organisations on land that has been mostly expropriated by the State under the Absentees’ Property Law of 1950.<sup>28</sup>

For example, the Shepherd Hotel, which was initially built in the 1930s, and the adjacent land in the neighbourhood of Sheikh Jarrah, which had been expropriated in 1967 by the Israeli occupying authorities, was sold to a settler organisation in 1985. The settler organisation intends to build a new settlement consisting of 90 housing units in this part of the neighbourhood, having already received approval from the Israeli occupying authorities for some 20 housing units.<sup>29</sup> In 2011, the hotel was demolished to give place for the construction of housing units.<sup>30</sup>

Karm Al-Mufti, which is mostly cultivated with olive trees, is another targeted area of Sheikh Jarrah. The 40 dunum (one dunum equals 1000 square metres) olive grove was expropriated by the Israeli Custodian of Absentee Property in 1967. Subsequently, the land was leased to the settler organisation Ateret Cohanim. Even though the land is zoned as a “green area,” where construction is restricted, the settler organisation plans to construct 250 housing units for Israeli settlers.<sup>31</sup> On the other hand, one residential house where a couple of Palestinian families live, and a greenhouse owned by a Palestinian, face the threat of eviction and annexation in Karm Al-Mufti.<sup>32</sup>

### *3.1 Background on Forced Evictions in Karm Al-Ja’ouni area of Sheikh Jarrah*

In 1956, 28 Palestinian refugee families moved to Karm Al-Ja’ouni area of Sheikh Jarrah in East Jerusalem as part of an agreement between the government of Jordan and the United Nations Relief and Works Agency (UNRWA). The agreement stipulated that the Jordanian government would

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<sup>24</sup> OCHA, ‘Imminent eviction of Palestinian family in East Jerusalem’ (13 February 2019)

<<https://www.ochaopt.org/content/imminent-eviction-palestinian-family-east-jerusalem>> accessed 03 March 2021.

<sup>25</sup> Al-Haq, ‘Forced Eviction in Sheikh Jarrah’ (09 September 2017) <<https://www.alhaq.org/advocacy/6320.html>> accessed 03 March 2021.

<sup>26</sup> UNRWA, ‘UNRWA Visit to Evicted Family in East Jerusalem’ (06 September 2017)

<<https://www.unrwa.org/newsroom/press-releases/unrwa-visit-evicted-family-east-jerusalem>> accessed 03 March 2021

<sup>27</sup> NAD, ‘Israel’s Policy of Forced Evictions: The Case of Jerusalem’s Sheikh Jarrah Neighborhood’ (24 January 2020) 3.

<sup>28</sup> Fact sheet by CCPRJ annexed to Joint Submission to the UN Human Rights Committee,

29-32 <<http://www.saintyves.org/uploads/478c319dfbc0b6abd807b7377c485182.pdf>> accessed 03 March 2021.

<sup>29</sup> OCHA, ‘The Case of Sheikh Jarrah’ (Updated Version October 2010)

<[https://www.ochaopt.org/sites/default/files/ocha\\_opt\\_sheikh\\_jarrah\\_factsheet\\_2010\\_10\\_11\\_english.pdf](https://www.ochaopt.org/sites/default/files/ocha_opt_sheikh_jarrah_factsheet_2010_10_11_english.pdf)> accessed 03 March 2021.

<sup>30</sup> Fact sheet by CCPRJ annexed to Joint Submission to the UN Human Rights Committee,

29-32 <<http://www.saintyves.org/uploads/478c319dfbc0b6abd807b7377c485182.pdf>> accessed 03 March 2021.

<sup>31</sup> OCHA, ‘Sheikh Jarrah’ (August 2009)

<[https://www.ochaopt.org/sites/default/files/ocha\\_opt\\_shiekh\\_jarrah\\_english\\_2009\\_08\\_15.pdf](https://www.ochaopt.org/sites/default/files/ocha_opt_shiekh_jarrah_english_2009_08_15.pdf)> accessed 03 March 2021.

<sup>32</sup> NAD, ‘Israel’s Policy of Forced Evictions: The Case of Jerusalem’s Sheikh Jarrah Neighborhood’ (24 January 2020) 3.



provide land, that UNRWA would sponsor the construction of housing units for the Palestinian families on this land, and that the Palestinian families would receive legal title to the properties after three years, in exchange for relinquishing their refugee ration cards and the payment of a nominal rent fee for the interim period.<sup>33</sup> The legal title of the property was never transferred to the Palestinian refugee families. In 1967, East Jerusalem was occupied and illegally annexed. The 28 families have grown to around 72 households of approximately 500 Palestinians, the majority of whom are children.<sup>34</sup>

Pursuant to the 1970 Law, the Sephardic Community Committee and the Knesset Israel Committee in 1972 claimed ownership of the lands of Karm Al-Ja'ouni area, alleging that these lands were owned by Jews since the Ottoman period. After concluding legal proceedings and presenting Ottoman land documents, the ownership was transferred to the two Jewish Committees by the Custodian General and the land was registered in their names.<sup>35</sup> The registration was accepted despite the fact that Jewish people who lived in Sheikh Jarrah before the establishment of the State of Israel in 1948 had been compensated for their loss of their properties by the Israeli government.<sup>36</sup> The registration of the ownership of the land where the 28 Palestinian families live was done without “any announcement, without notification to the families, and in an improper manner” according to the attorney representing the families.<sup>37</sup> In addition, the validity of the ownership documents produced by the two Jewish Committees is highly controversial.<sup>38</sup>

In 1982, the two Jewish Committees filed a lawsuit against 23 of these Palestinian families. An Israeli attorney Toussia-Cohen, who represented 17 of the families, reached an agreement with the two Jewish Committees, that the families would stay in the properties as protected tenants, but in return would recognise the two Jewish Committees’ ownership claims. As such, the families have been required to pay rent to the two Jewish Committees and comply with strict regulation on their ability to renovate or change the property.<sup>39</sup>

The Israeli lawyer concluded the agreement with the two Jewish Committees without the families’ consent,<sup>40</sup> and without challenging or scrutinising the validity of the ownership claims.<sup>41</sup> The agreement was sanctioned by the Jerusalem District Court and formed the basis for eviction lawsuits of the 28 refugee families, who have refused to pay rent to the Jewish Committees, despite

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<sup>33</sup> Al-Haq Affidavit, 281A/2020, given by Abd Al-Fatah Talab Iskafi, 70 years old, a resident of Sheikh Jarrah in East Jerusalem, on 9 November 2020 (hereinafter ‘Al-Haq Affidavit 281A/2020’); Al-Haq Affidavit, 4548/2008, given by Fawzia Mohammad Sudqi Al-Kurd, 56 years old, a resident of Sheikh Jarrah in East Jerusalem, on 18 November 2008 (hereinafter ‘Al-Haq Affidavit 4548/2008’).

<sup>34</sup> NRC, ‘Case Summary: Karrem Al-Jaouny – Sheikh Jarrah, East Jerusalem’ (18 November 2020).

<sup>35</sup> The Jerusalem Institute for Israel Studies, *The Sheikh Jarrah Affair: The Strategic Implications of Jewish Settlement in an Arab Neighborhood in East Jerusalem* (2010) 7 - 25.

<sup>36</sup> OCHA, ‘Imminent eviction of Palestinian family in East Jerusalem’ (13 February 2019)

<<https://www.ochaopt.org/content/imminent-eviction-palestinian-family-east-jerusalem>> accessed 03 March 2021.

<sup>37</sup> The Jerusalem Institute for Israel Studies, *The Sheikh Jarrah Affair: The Strategic Implications of Jewish Settlement in an Arab Neighborhood in East Jerusalem* (2010) 25.

<sup>38</sup> CCPRJ, ‘Dispossession & Eviction in Jerusalem: The cases and stories of Sheikh Jarrah’ (December 2009) 10-12; Avocats Sans Frontières, ‘Enforcing Housing Rights: The Case of Sheikh Jarrah’ (May 2011) 43.

<sup>39</sup> CCPRJ, ‘Dispossession & Eviction in Jerusalem: The cases and stories of Sheikh Jarrah’ (December 2009) 13.

<sup>40</sup> OCHA, ‘The Case of Sheikh Jarrah’ (Updated Version October 2010)

[https://www.ochaopt.org/sites/default/files/ocha\\_opt\\_sheikh\\_jarrah\\_factsheet\\_2010\\_10\\_11\\_english.pdf](https://www.ochaopt.org/sites/default/files/ocha_opt_sheikh_jarrah_factsheet_2010_10_11_english.pdf)> accessed 03 March 2021.

<sup>41</sup> CCPRJ, ‘Dispossession & Eviction in Jerusalem: The cases and stories of Sheikh Jarrah’ (December 2009) 6.

the fact that not all families are part of the Toussia-Cohen Agreement and the fact that the families who are part of the agreement dispute that their consent was given to the Israeli lawyer.

In the 1990s, the two Jewish Committees sold their ownership rights to Nahalat Shimon International, a private settler company registered in the United States, which vigorously took over the eviction lawsuits against the Palestinian families.<sup>42</sup>

In 2008 and 2009, Nahalat Shimon International evicted three Palestinian families (the Fawzia Al-Kurd, Al-Ghawi and Hanoun families) consisting of 11 households of around 67 people,<sup>43</sup> without any compensation for the families or securing alternative housing.<sup>44</sup> The families' homes were immediately transferred to Israeli settlers. A fourth family (the Rifqa Al-Kurd household) was required to vacate and seal off an extension of her home in 2002 and in 2009 had the sealed part of the home transferred to settlers.<sup>45</sup>

A decade later, an additional eight families (the Al-Sabbagh, Al-Kurd, Skafi, Al-Qasim, Al-Ja'ouni, Hammad, Dajani, and Daoudi families) consisting of 19 households are at imminent risk of forced eviction following the favourable ruling for the settler organisation Nahalat Shimon International in the proceedings by Israeli courts. As such around 87 people, including 28 children, are at imminent risk of forced displacement.<sup>46</sup>

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<sup>42</sup> *ibid* 12.

<sup>43</sup> See, Fact sheet by CCPRJ annexed to Joint Submission to the UN Human Rights Committee, 29-32 <<http://www.saintyves.org/uploads/478c319dfbc0b6abd807b7377c485182.pdf>> accessed 03 March 2021; CCPRJ, 'Dispossession & Eviction in Jerusalem: The cases and stories of Sheikh Jarrah' (December 2009) 21; OCHA, 'The Case of Sheikh Jarrah' (Updated Version October 2010) <[https://www.ochaopt.org/sites/default/files/ocha\\_opt\\_sheikh\\_jarrah\\_factsheet\\_2010\\_10\\_11\\_english.pdf](https://www.ochaopt.org/sites/default/files/ocha_opt_sheikh_jarrah_factsheet_2010_10_11_english.pdf)> accessed 03 March 2021.

<sup>44</sup> OCHA, 'Imminent eviction of Palestinian family in East Jerusalem' (13 February 2019) <<https://www.ochaopt.org/content/imminent-eviction-palestinian-family-east-jerusalem>> accessed 03 March 2021.

<sup>45</sup> Avocats Sans Frontières, 'Enforcing Housing Rights: The Case of Sheikh Jarrah Report of the fact-finding mission to Israel and the Occupied Palestinian Territory' (May 2011) 46-47 <[https://www.asf.be/wp-content/publications/ASF%20Housing%20Rights%20Report%20\(May%202011\).pdf](https://www.asf.be/wp-content/publications/ASF%20Housing%20Rights%20Report%20(May%202011).pdf)> accessed 03 March 2021.

<sup>46</sup> Data obtained from CCPRJ.



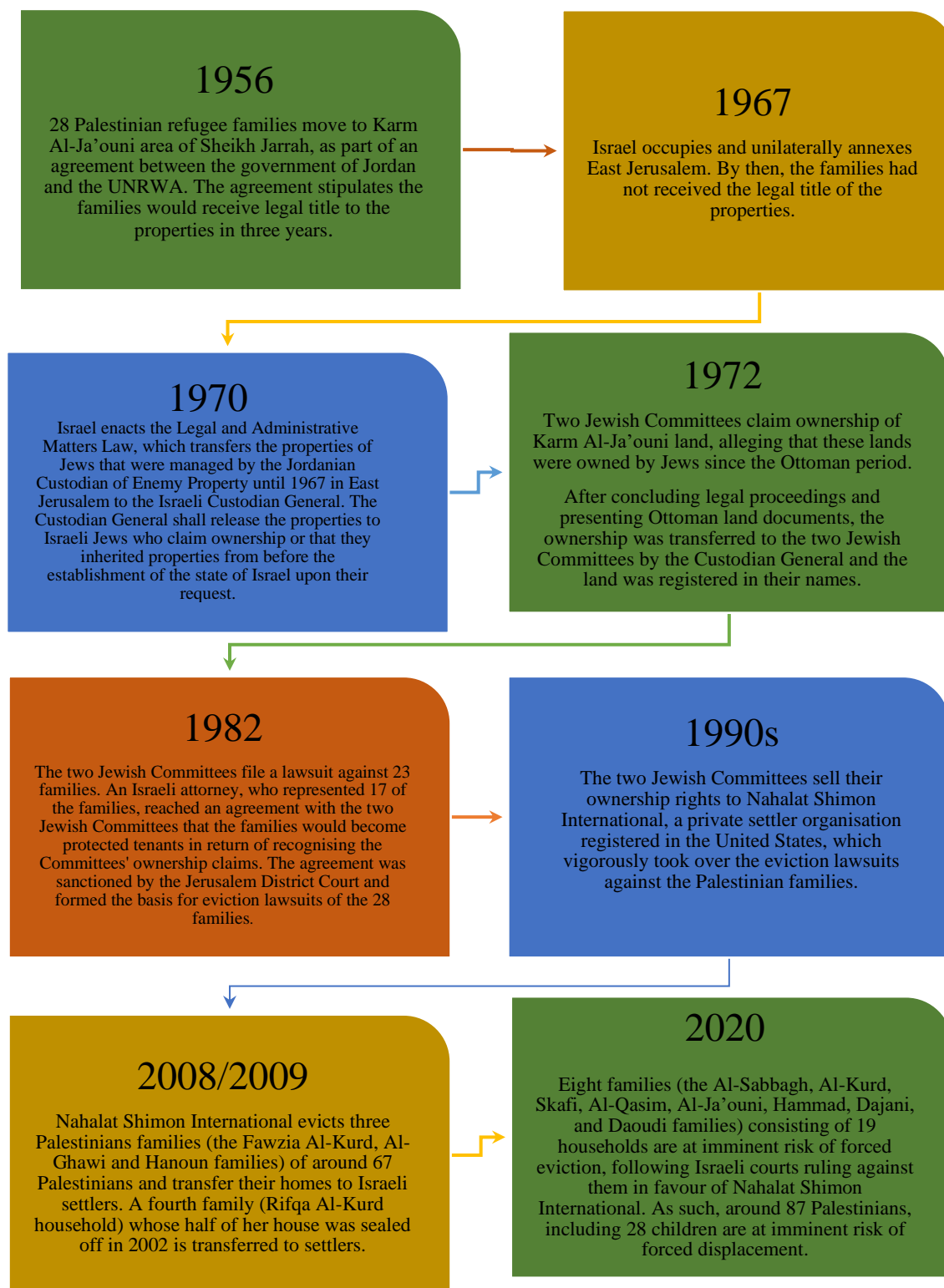


Figure 1: Karm Al-Ja'ouni, Sheikh Jarrah Forced Eviction Timeline

In one of the cases under imminent threat of forced eviction, Rifqa Al-Kurd's household, following the loss of half of their home surface area in 2002, have lived since 2009 separated with blankets from the Israeli Jewish settlers who settled in the evicted area. They are now facing the risk of eviction from the remaining part of their home. Mohammed Al-Kurd, a resident of the family was 11 years old when half of his home was taken over by the Israeli Jewish settlers.<sup>47</sup>

*“On that day in 2009, rifle-wielding settlers, protected by soldiers, took over the homes of the Ghawi and Hannoun families, as well as half of my family's home. Since then, all that has separated us has been drywall and blankets on a clothesline. The blankets are there to block the settlers from harassing us... Now, more than a decade later, they're coming to finish what they started.”<sup>48</sup>*

Mohammad Al-Kurd's family and another three families (the Skafi, Al-Qasim, and Al-Ja'ouni families) totalling 7 households of around 30 people, including 10 children<sup>49</sup> were issued an eviction order by the Jerusalem Magistrate's Court on 8 October 2020.<sup>50</sup> Each family was also ordered to pay NIS 70,000 (around USD 21,340) to cover the settler organisation's legal expenses.<sup>51</sup> On 10 February 2021, the Jerusalem District Court rejected the appeals by the four families and ordered them to evict their homes no later than 2 May 2021. The families intend to appeal to the Israeli Supreme Court.<sup>52</sup>

On 9 November 2020, Abd Al-Fatah Skafi provided his testimony to Al-Haq after receiving an eviction order following a legal battle which lasted for 11 years. Currently 13 members who live in the house are under the imminent risk of forced displacement. Abd Al-Fatah said:

*“We received an eviction order by the Israeli occupation court in 2009 arguing that we do not pay rent to the settler organisation. After 11 years of court proceedings at the Jerusalem Magistrate Court, and precisely on 8 October 2020, the Court issued a decision to evict my family within one month as well as the families of Al-Kurd, Al-Qasim, and Al-Ja'ouni families.”<sup>53</sup>*

Another three families (the Hammad, Dajani, and Daoudi families) totalling 7 households of 25 Palestinians, including 8 children were also issued an eviction order by the Jerusalem Magistrate's Court on 4 September 2020.<sup>54</sup> The families were ordered to pay NIS 30,000 (around USD 9,167)

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<sup>47</sup> Mohammed El-Kurd, 'Tomorrow My Family and Neighbors May Be Forced From Our Homes by Israeli Settlers' (The Nation, 20 November 2020) <<https://www.thenation.com/article/world/east-jerusalem-settlers/>> accessed 03 March 2021.

<sup>48</sup> *ibid.*

<sup>49</sup> Data obtained from CCPRJ.

<sup>50</sup> Al-Haq Affidavit 281A/2020

<sup>51</sup> OCHA, 'Palestinian family evicted from its home in East Jerusalem' (10 December 2020)

<<https://www.ochaopt.org/content/palestinian-family-evicted-its-home-east-jerusalem>> accessed 03 March 2021.

<sup>52</sup> CCPRJ, 'Urgent Appeal: Stop The Israeli Policy of Forced Population Transfer in Occupied Jerusalem: Update on The Cases of Sheikh Jarrah' (04 March 2021).

<sup>53</sup> Al-Haq Affidavit, 281A/2020.

<sup>54</sup> Data obtained from CCPRJ.

for the expenses of the settlers' lawyers.<sup>55</sup> On 4 March 2021, the Jerusalem District Court rejected the appeal of the three families and ordered them to evict their homes by 1 August 2021.<sup>56</sup>

Ahmad Hammad, whose family is under the imminent threat of forced eviction in Sheikh Jarrah said:

*"I don't know what will happen if they evict us... This ruling came at a time where life is pretty much as a standstill due to the coronavirus pandemic... We're taking this day by day... Even if we decided to pitch a tent outside our house and live there, the Israeli government will not allow it."*<sup>57</sup>

Another five households from the Al-Sabbagh family have been in a lengthy legal battle with Nahalat Shimon International. On 3 November 2020, the Jerusalem Magistrate Court ordered the family to evict their homes no later than 24 November 2020, placing 32 people, including 10 children from the family at imminent risk of forced displacement.<sup>58</sup> The families were also ordered to pay NIS 7,500 (around USD 2,291) to the settler organisation in compensation for legal expenses. The family appealed to the Jerusalem District Court and secured an interim injunction.<sup>59</sup> In effect, the eviction is frozen until a decision is made on the appeal. It is important to note that the family tried to challenge the issue of ownership of the property by the settlers, an issue which the court never resolved.<sup>60</sup>

#### **4. Settler-Colonial Context in Silwan**

Between 60,000 and 65,000 Palestinians reside in Silwan and are subjected to Israel's forcible transfer policies. This is a strategic area for settler organisations for its proximity to the Old City, and its historical and archaeological significance.<sup>61</sup> Driven by religious and ideological motivations, settler organisations like El'Ad and Ateret Cohanim collude with Israeli governmental institutions and deploy religious tourism to spread false narratives of a "Jewish Silwan" to justify the displacement of Palestinians.<sup>62</sup>

Silwan includes several neighbourhoods, including: Ras Al-Amud, Al-Bustan, Wadi Hilweh, Wadi Al-Rababah, Batn Al-Hawa, and Wadi Yasul. Each neighbourhood has been subjected to

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<sup>55</sup> OCHA, 'Palestinian family evicted from its home in East Jerusalem' (10 December 2020)

<<https://www.ochaopt.org/content/palestinian-family-evicted-its-home-east-jerusalem>> accessed 03 March 2021.

<sup>56</sup> CCPRJ, 'Urgent Appeal: Stop The Israeli Policy of Forced Population Transfer in Occupied Jerusalem: Update on The Cases of Sheikh Jarrah' (04 March 2021).

<sup>57</sup> Linah Alsaafin, 'Eviction of Palestinians in Sheikh Jarrah part of Israeli policy' (Al-Jazeera, 29 Nov 2020)

<<https://www.aljazeera.com/news/2020/11/29/eviction-of-palestinians-in-sheikh-jarrah-part-of-israeli-policy>> accessed 03 March 2021.

<sup>58</sup> CCPRJ, 'Urgent Appeal: Stop The Israeli Policy of Forced Population Transfer in Occupied Jerusalem: Update on The Cases of Sheikh Jarrah' (04 March 2021).

<sup>59</sup> OCHA, 'Palestinian family evicted from its home in East Jerusalem' (10 December 2020)

<<https://www.ochaopt.org/content/palestinian-family-evicted-its-home-east-jerusalem>> accessed 03 March 2021.

<sup>60</sup> NRC, 'Case Summary: Karrem Al-Jaouny – Sheikh Jarrah, East Jerusalem' (18 November 2020).

<sup>61</sup> "Before the Israeli occupation of East Jerusalem, residents of Silwan owned some 65,000 dunums of lands in the eastern Jerusalem periphery. Large parts of this land have been confiscated by the Israeli authorities for illegal construction of the Israeli settlement of Ma'ale Adumim." Al-Haq, 'House Demolitions and Forced Evictions in Silwan' (August 2020) 10.

<sup>62</sup> Al-Haq, 'House Demolitions and Forced Evictions in Silwan' (August 2020) 44-71.

settler-colonial plans, implemented through different mechanisms by the Israeli government and settler organisations.

As will be explored in more detail, in the eviction cases in Batn Al-Hawa, the settler organisation Ataret Cohanim was appointed as a trustee to the Benvenisti Trust, a Jewish trust that allegedly owned land in Batn Al-Hawa before 1948. The Benvenisti Trust, whose management is in the hands of the settler organisation Ataret Cohanim, then contacted the Custodian General who handed over the property to them pursuant to the 1970 Law. As such eviction lawsuits against 81 families (approximately 436 individuals, 80 per cent of whom are refugees) proceeded in the neighbourhood.<sup>63</sup>

Another mechanism which enables the dispossession of Palestinian property, the transfer of Palestinians, and the expansion of settlements in Jerusalem, is Israel's discriminatory planning and zoning regime. Since the annexation of East Jerusalem, Israel has unlawfully nullified the previous provisions of the 1966 Jordanian Planning Law, which had placed competence over planning, zoning, and building permissions in the hands of Palestinian village councils.<sup>64</sup>

Despite the fact that East Jerusalem is occupied and illegally annexed and the majority of the population in East Jerusalem are Palestinians and that Israeli settlers reside illegally in occupied East Jerusalem, Israeli zoning laws have allocated 35 per cent of the land area for the construction of illegal settlement by Israeli settlers, and 52 per cent of East Jerusalem has been allocated as "green areas" and "unplanned areas" in which construction is prohibited. As such, only 13 per cent of the land is allocated for Palestinian construction.<sup>65</sup>

Most of the zoned area for Palestinian construction was already densely constructed in 1967. Most of the planning schemes submitted by Palestinians are rejected by the Israeli authorities.<sup>66</sup> Additionally, the process of acquiring building permits and legal aid to obtain such permits typically surpasses what Palestinian residents of East Jerusalem can afford. As such, the Palestinian population in East Jerusalem have been left with no alternative but to build without permits. The Israeli discriminatory system has caused an acute housing shortage for Palestinians. By 2015, only 7 per cent of building permits were granted for Palestinian residents of East Jerusalem by the Israeli municipality.<sup>67</sup> The United Nations Office for the Coordination of

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<sup>63</sup> Al-Haq, 'House Demolitions and Forced Evictions in Silwan' (August 2020) 48; Zena Tahhan, 'In Jerusalem's Silwan, Palestinians fear looming ethnic cleansing' (Middle East Eye, 28 November 2018) <<https://www.middleeasteye.net/news/jerusalem-silwan-palestinians-fear-looming-ethnic-cleansing>> accessed 03 March 2021.

<sup>64</sup> Al-Haq, 'House Demolitions and Forced Evictions in Silwan' (August 2020) 44-40.

<sup>65</sup> OCHA, 'The Planning Crisis in East Jerusalem' (April 2009) 8 <[https://www.ochaopt.org/sites/default/files/ocha\\_opt\\_planning\\_crisis\\_east\\_jerusalem\\_april\\_2009\\_english.pdf](https://www.ochaopt.org/sites/default/files/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf)> accessed 03 March 2021.

<sup>66</sup> Human Rights Watch, 'Separate but unequal' (December 2010) 132.

<sup>67</sup> Nir Hasson, 'Only 7% of Jerusalem Building Permits Go to Palestinian Neighborhoods' (Haaretz, 7 December 2015) <<http://www.haaretz.com/israel-news/.premium-1.690403>> accessed 03 March 2021.

Humanitarian Affairs (OCHA) estimates that around 90,000 Palestinians are at risk of demolition in occupied East Jerusalem.<sup>68</sup>

The neighbourhood of Wadi Hilweh in Silwan is home to over 4,000 Palestinians and to the archaeological site of what Israel considers to be the “City of David”. It was designated by the Israeli government as a national park. As such, the neighbourhood has been off limits for building and development for Palestinians. As it is nearly impossible to obtain building permits, residents of Wadi Hilweh have been forced to build without permits to meet their natural growth needs, and as such they are at risk of demolition and displacement. Meanwhile, in 2018 the settler organisation El’Ad pushed for an amendment to the National Parks Law to enable them to construct settlement units for Israeli settlers in Wadi Hilweh. This amendment passed a preliminary vote at the Israeli Parliament.<sup>69</sup>

In a plan initiated by El’Ad to expand the excavation in the so-called “City of David” and then followed up by Israeli governmental institutions, the entire Al-Bustan neighbourhood in Silwan has been designated as an “open area.” Since then, 88 Palestinian houses, inhabited by more than 1,500 Palestinians, have received a collective demolition order along with an order to have their lands confiscated.<sup>70</sup> Following legal petitions, the Court approved the Municipality’s plan to seize the land for “public purposes” in order to build the touristic “King’s Garden” linked to the so-called “City of David”.<sup>71</sup> Similarly, Wadi Yasul in Silwan has been zoned by the Israeli authorities as a “green area” since the late 1970s. A 2019 demolition order places around 500 people, around 20 cent of them refugees, at risk of displacement in Wadi Yasul.<sup>72</sup>

Israel has similarly used the 1943 British Land (Acquisition for Public Purposes) Ordinance, which empowers the Israeli Finance Minister with broad discretion to expropriate private land under what he determines to be “public needs.” In Wadi Al-Rababah in Silwan, the Israeli government confiscated 130 dunums of land under this Ordinance for the construction of an Israeli settler touristic park in 1970.<sup>73</sup> As of 1999, this British Land Ordinance has been used to dispossess around 24,500 dunums (much of which has been privately-owned by Palestinians) in and around East Jerusalem by the Israeli government under the pretext of using it for “public purposes”.<sup>74</sup>

#### *4.1 Background on Forced Evictions in Batn Al-Hawa in Silwan*

Similar to the story of Karm Al-Ja’ouni in Sheikh Jarrah, seven families (the Dweik, Shweiki, ‘Odeh, A-Rajabi, Abu Nab, Ghaith and Abu Rammouz families) consisting of 18 households in

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<sup>68</sup> OCHA, ‘East Jerusalem: Key Humanitarian Concerns’ (August 2014) <[https://www.ochaopt.org/sites/default/files/ocha\\_opt\\_Jerusalem\\_FactSheet\\_August2014\\_english.pdf](https://www.ochaopt.org/sites/default/files/ocha_opt_Jerusalem_FactSheet_August2014_english.pdf)> accessed 03 March 2021.

<sup>69</sup> Al-Haq, ‘House Demolitions and Forced Evictions in Silwan’ (26 August 2020) 10-24.

<sup>70</sup> Al-Haq, ‘88 Palestinian Houses to be demolished for Israeli Park’ (11 February 2012) <<http://www.alhaq.org/monitoring-documentation/6931.html>> accessed 03 March 2021.

<sup>71</sup> Al-Haq, ‘House Demolitions and Forced Evictions in Silwan’ (26 August 2020) 33.

<sup>72</sup> OCHA, ‘Wadi Yasul: a community at risk of mass displacement’ (20 June 2019) <<https://www.ochaopt.org/content/wadi-yasul-community-risk-mass-displacement>> accessed 03 March 2021.

<sup>73</sup> Al-Haq, ‘House Demolitions and Forced Evictions in Silwan’ (26 August 2020) 49.

<sup>74</sup> Centre on Housing Rights and Evictions and BADIL, ‘Ruling Palestine – A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine’ (May 2005), 132.

Batn Al-Hawa neighbourhood in Silwan, are at imminent risk of forced eviction in relation to eviction orders issued against them in favour of the settler organisation Ateret Cohanim by Israeli courts. As a result, 108 people are at risk of forced displacement.<sup>75</sup>

Appropriating Palestinian property by claiming ownership prior to 1948 by Israeli Jews in East Jerusalem pursuant to the 1970 Law can take different forms. The case of Batn Al-Hawa involves the Benvenisti Trust, a Jewish Trust, which claims ownership of 5.2 dunums of Batn Al-Hawa land, that they claim was used to settle Yemenite Jews in the late nineteenth century, who later left Palestine in 1929, during the Palestinian uprising.<sup>76</sup> They premise their claim on a property deed from the Ottoman rule period.<sup>77</sup>

In 2001, members of the settler group Ateret Cohanim were appointed as trustees to the Benvenisti Trust, even though Ateret Cohanim does not have any ties to the Benvenisti Trust.<sup>78</sup> In 2002, the Custodian General transferred the land to the Benvenisti Trust, whose management is in the hands of the settler organisation Ateret Cohanim.<sup>79</sup> The decision was sanctioned by the Jerusalem District Court.<sup>80</sup> The transfer was done without informing the Palestinian residents who have lived on the land since the 1950s, and who have contracts proving so.<sup>81</sup>

Since Ateret Cohanim took control of the Benvenisti Trust in 2002, it has filed eviction orders against the Palestinian families. The Palestinian residents filed a petition with the Israeli High Court to contest the evictions in 2017,<sup>82</sup> in which they argue that under Ottoman law that applied at the time, the ownership applies only to the buildings, which do not exist anymore, but not the land itself.<sup>83</sup> In June 2018 the Israeli government acknowledged that the Israeli Custodian General's transfer of the land to the Benvenisti Trust was done without investigating the nature of the Trust, Ottoman laws at the time, or the existing buildings.<sup>84</sup> Yet, the Israeli High Court on 21

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<sup>75</sup> Data obtained from Peace Now and Al-Haq's documentation.

<sup>76</sup> Al-Haq, 'House Demolitions and Forced Evictions in Silwan' (26 August 2020).

<sup>77</sup> Zena Tahhan, 'In Jerusalem's Silwan, Palestinians fear looming ethnic cleansing' (Middle East Eye, 28 November 2018) <<https://www.middleeasteye.net/news/jeruselems-silwan-palestinians-fear-looming-ethnic-cleansing>> accessed 03 March 2021.

<sup>78</sup> Ir Amim, 'Broken Trust: Settlement Private in Involvement State' (May 2016) 4; Btselem, 'Batan al-Hawa neighborhood, Silwan: The next target for "Judaization" of E. J'alem' (11 December 2016) <[https://www.btselem.org/jerusalem/20161208\\_batan\\_al-hawa](https://www.btselem.org/jerusalem/20161208_batan_al-hawa)> accessed 03 March 2021.

<sup>79</sup> OCHA, 'Humanitarian Impact of settlements in Palestinian neighbourhoods of East Jerusalem: the coercive environment' (10 July 2018) <<https://www.ochaopt.org/content/humanitarian-impact-settlements-palestinian-neighbourhoods-east-jerusalem-coercive>> accessed 03 March 2021.

<sup>80</sup> Btselem, 'Batan al-Hawa neighborhood, Silwan: The next target for "Judaization" of E. J'alem' (11 December 2016) <[https://www.btselem.org/jerusalem/20161208\\_batan\\_al-hawa](https://www.btselem.org/jerusalem/20161208_batan_al-hawa)> accessed 03 March 2021.

<sup>81</sup> Zena Tahhan, 'In Jerusalem's Silwan, Palestinians fear looming ethnic cleansing' (Middle East Eye, 28 November 2018) <<https://www.middleeasteye.net/news/jeruselems-silwan-palestinians-fear-looming-ethnic-cleansing>> accessed 03 March 2021.

<sup>82</sup> OCHA, 'Humanitarian Impact of settlements in Palestinian neighbourhoods of East Jerusalem: the coercive environment' (10 July 2018) <<https://www.ochaopt.org/content/humanitarian-impact-settlements-palestinian-neighbourhoods-east-jerusalem-coercive>> accessed 03 March 2021.

<sup>83</sup> Zena Tahhan, 'In Jerusalem's Silwan, Palestinians fear looming ethnic cleansing' (Middle East Eye, 28 November 2018) <<https://www.middleeasteye.net/news/jeruselems-silwan-palestinians-fear-looming-ethnic-cleansing>> accessed 03 March 2021.

<sup>84</sup> Nir Hasson, 'Israel Admits: Jerusalem Land, Home to 700 Palestinians, Given to Settler Group Without Proper Checks' (Haaretz, 11 June 2018)



November 2018, rejected the appeals of the families,<sup>85</sup> paving the way for the settler group Ateret Cohanim to continue legal proceedings to evict 81 Palestinian families, numbering approximately 436 individuals.<sup>86</sup>

As with the people of Sheikh Jarrah, around 80 per cent of the residents of Batn Al-Hawa are refugees,<sup>87</sup> who have been denied their right to return and to reclaim their original properties. They are now at threat of being displaced for a second time in favour of Israeli settlers. Since 2015, 14 families have already been evicted in Batn Al-Hawa.<sup>88</sup> The settler group Ateret Cohanim already controls six buildings in Batn Al-Hawa, comprising 27 housing units, the majority of which had been home to Palestinian families.<sup>89</sup>

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<<https://www.haaretz.com/israel-news/.premium-israel-admits-it-negligently-allotted-e-j-lem-land-to-jewish-group-1.6163258?ts=1607256143349>> accessed 03 March 2021.

<sup>85</sup> Zena Tahhan, 'In Jerusalem's Silwan, Palestinians fear looming ethnic cleansing' (Middle East Eye, 28 November 2018) <<https://www.middleeasteye.net/news/jeruselems-silwan-palestinians-fear-looming-ethnic-cleansing>> accessed 03 March 2021.

<sup>86</sup> Al-Haq, 'House Demolitions and Forced Evictions in Silwan' (26 August 2020) 48.

<sup>87</sup> Zena Tahhan, 'In Jerusalem's Silwan, Palestinians fear looming ethnic cleansing' (Middle East Eye, 28 November 2018) <<https://www.middleeasteye.net/news/jeruselems-silwan-palestinians-fear-looming-ethnic-cleansing>> accessed 03 March 2021.

<sup>88</sup> Peace Now, 'District Court Rejects the Appeal of 8 families from Batan Al-Hawa Ordering their Eviction' (24 November 2020) <<https://peacenow.org.il/en/district-court-rejects-the-appeal-of-8-families-from-batan-al-hawa-ordering-their-eviction>> accessed 03 March 2021.

<sup>89</sup> B'Tselem, 'Batan al-Hawa neighborhood, Silwan: The next target for "Judaization" of E. J'alem' (11 December 2016) <[https://www.btselem.org/jerusalem/20161208\\_batan\\_al-hawa](https://www.btselem.org/jerusalem/20161208_batan_al-hawa)> accessed 28 December 2020.

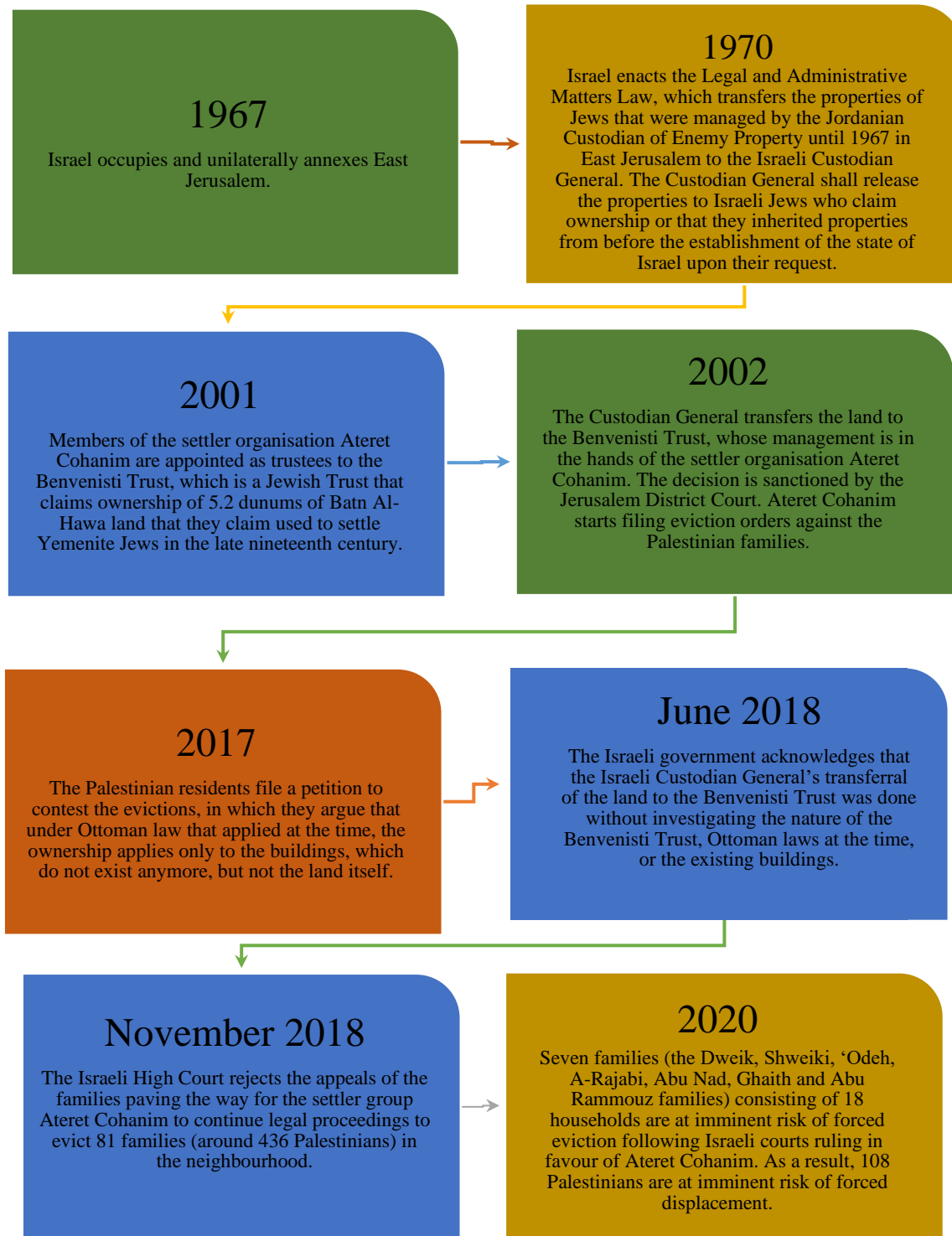


Figure 2: Batn Al-Hawa, Silwan Forced Eviction Timeline

In two separate legal proceedings on 18 and 23 November 2020, the Jerusalem District Court rejected the appeals of three Palestinian families (the Dweik, ‘Odeh and Shweiki families). The families are thus at imminent threat of forced eviction. Moreover, the families were ordered to pay NIS 20,000 (around USD 6,111) to Ateret Cohanim, for the legal expenses incurred.<sup>90</sup> The order places eight households of 48 people at imminent risk of forcible displacement.<sup>91</sup> The families intend to appeal to the Supreme Court.<sup>92</sup>

Asmahan Rabah Shweiki who is now under the imminent threat of forced eviction from Batn Al-Hawa was displaced in 1967 from the Old City in East Jerusalem and moved to Hebron. At the age of 27 she married Mohammed Ibrahim Shweiki and moved to Silwan. In 1988, they bought a house in Batn Al-Hawa. Asmahan had two of her sons killed by the Israeli occupying forces in the first *Intifada* (uprising) and the second *Intifada* while living in this house. Asmahan currently lives in the house with her son and his family, which together total eight members.

*“In 2019, we received an eviction order by the Jerusalem Magistrate Court which we appealed. It was decided that there will be a court session at the District Court on 1 February 2021. On 18 November 2020, the Israeli police raided our house and gave us an eviction order until 20 December 2020. In case we don’t evict the house, the order stipulated that each member has to pay a fine of 1030 NIS (around USD 314) in addition to a 20,000 NIS (around USD 6,111) to the settler organization. This order was delivered to us despite the fact that there is a scheduled court session in February 2021. We asked our lawyer to freeze the eviction order, but he assured us that these papers should have been delivered to us before this time and that this is an attempt to intimidate and scare us and that our court session is on 1 February 2021. Our income is so limited which does not allow us to rent a house in Jerusalem. Recently, we have been living under psychological pressure and uncertainty about whether we will stay or we will be evicted.”<sup>93</sup>*

In addition to the threat of losing their homes, Palestinians are subjected to an expensive legal struggle. They are required to pay the legal expenses of the settler organisations, fines, and the cost of their own eviction. In addition, they are sometimes subject to pressure and threats by settler organisations. The Dweik family, one of the families under imminent threat of forced eviction in Batn Al-Hawa, consists of five households of 26 members. Since 2007, they have been fighting the eviction lawsuit brought against them by the settler organisation, in exhausting and expensive court proceedings. Settlers take advantage of such situations by exerting pressure and presenting enticing offers until the families consent to leave the houses. Mazen Dweik, a father and a dialysis patient, was offered help in receiving a kidney transplant donor and a large sum of money if he agreed to leave without resistance by Ateret Cohanim. The Dweik family was also threatened that

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<sup>90</sup> OCHA, “Palestinian family evicted from its home in East Jerusalem” (10 December 2020)

<<https://www.ochaopt.org/content/palestinian-family-evicted-its-home-east-jerusalem>> accessed 03 March 2021.

<sup>91</sup> Peace Now, ‘District Court Rejects the Appeal of 8 families from Batan Al-Hawa Ordering their Eviction’ (24 November 2020) <<https://peacenow.org.il/en/district-court-rejects-the-appeal-of-8-families-from-batan-al-hawa-ordering-their-eviction>> accessed 28 December 2020.

<sup>92</sup> OCHA, ‘Palestinian family evicted from its home in East Jerusalem’ (10 December 2020)

<<https://www.ochaopt.org/content/palestinian-family-evicted-its-home-east-jerusalem>> accessed 03 March 2021.

<sup>93</sup> Al-Haq Affidavit 305A, Asmahan Rabah Shweiki, 72 years old, resident of Batn AL-Hawa Silwan (5 December 2020).

if they would not leave their homes willingly, the settlers would sue them for “usage fees” for all the years they stayed in the property, as a kind of retrospective rent. In fact, besides the eviction order that has been issued in favour of the settler organisation against the Dweik family, the family has been sued for NIS 670,000 (around USD 204,730) “usage fees”, in a separate case.<sup>94</sup>

On 7 September 2020, the Jerusalem Magistrate’s Court ordered the eviction of A-Rajabi family by 1 April 2021, placing 26 members of the four households of A-Rajabi family at imminent threat of forced displacement. The family intends to appeal to the Jerusalem District Court.<sup>95</sup>

On 30 December 2020, the Magistrate’s Court issued a decision to evict two families (the Abu Nab and Ghaith families) consisting of four households and gave them until March 2021 to implement the decision. The order places 22 people at imminent threat of forced displacement.<sup>96</sup> In 2015, other households of the Abu Nab family were evicted and part of their properties were turned into a tourist center, run by the settler organisation.<sup>97</sup>

On 3 January 2021, the Abu Rammouz family consisting of two households of 12 people, including five children, found out by chance that they have an eviction order against them dating back to 2016. Nitham Rushdi Abu Rammouz gave his testimony to Al-Haq stating:

*“On 3 January 2021, I went to the Jerusalem Magistrate Court to recover the value of a financial bail that I had previously paid regarding the decision to expel me from the Old City in Jerusalem. An employee at the Court informed me about a court decision in my name and asked me to go to the secretariat. The secretariat informed me that an eviction order was issued in absentia against my family on 15 June 2016. The order stipulates that each family member has to pay NIS 650 (around USD 198) for the expenses of the Court. It should be noted that during this period, I have not received any judicial notice on the eviction order, and I was not been summoned to the Court. Although the decision was issued by the Court in absentia and by default has not been appealed, until this moment the decision has not been implemented or transferred to the procedure department, as far as I know, and there is no specific date for the eviction.”*<sup>98</sup>

## **5. Legal Analysis**

Israeli settlement activities in Sheikh Jarrah and Silwan are part of a much larger scheme aimed at forcing the transformation of Jerusalem’s demographic composition and cultural character to

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<sup>94</sup> Peace Now, ‘District Court Rejects the Appeal of 8 families from Batan Al-Hawa Ordering their Eviction’ (24 November 2020) <<https://peacenow.org.il/en/district-court-rejects-the-appeal-of-8-families-from-batan-al-hawa-ordering-their-eviction>> accessed 03 March 2021.

<sup>95</sup> Peace Now, ‘Court Rules on the Eviction of 4 Palestinian families from their homes in Batan Al-Hawa, Silwan’ (09 September 2020) <<https://peacenow.org.il/en/court-rules-the-eviction-of-4-palestinian-families-from-their-homes-in-batan-al-hawa-in-silwan>> accessed 03 March 2021.

<sup>96</sup> Peace Now, ‘The Magistrate’s Court ordered the eviction of 4 more families in Batan Al-Hawa’ (30 December 2020) <<https://peacenow.org.il/en/the-magistrates-court-ordered-the-eviction-of-4-more-families-in-batan-el-hawa>> accessed 03 March 2021.

<sup>97</sup> EU, ‘Local EU statement on settlement activity in Batn Al-Hawa, Silwan’ (2 August 2018) <[https://www.un.org/unispal/wp-content/uploads/2018/08/EUSTATE\\_020818.pdf](https://www.un.org/unispal/wp-content/uploads/2018/08/EUSTATE_020818.pdf)> accessed 03 March 2021.

<sup>98</sup> Al-Haq affidavit 15A/2021, given by Nitham Rushdi Abu Rammouz, 39 years old, resident of Silwan, on 05 January 2021.

entrench exclusive Israeli-Jewish ownership over Jerusalem at the expense of its Palestinian protected population. Through intensified settler-colonial policies and activities in East Jerusalem, which includes the neighbourhoods of Sheikh Jarrah, Silwan, the Old City, Wadi Al-Joz, At-Tur (Mount of Olives), Israel aims to consolidate its domination from West Jerusalem, extending to the E1 area surrounding the illegal Ma'ale Adumim settlement in the eastern periphery of the city.<sup>99</sup>

### 5.1 Apartheid and Occupation

Immediately after occupying East Jerusalem in 1967, Israel extended its law and jurisdiction to occupied East Jerusalem. Article 43 of the 1907 Hague Regulations obliges the Occupying Power while administrating the occupied territory to “take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” As such, the application of Israeli law and jurisdiction over East Jerusalem is *per se* in violation of international humanitarian law. UN Security Council resolution 478 of 1980 further stressed that “all legislative and administrative measures and actions taken by Israel, the Occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem... are null and void and must be rescinded forthwith.” Notably, the *de jure* annexation of East Jerusalem violates peremptory norms of international law including the prohibition on the acquisition of territory through the use of force and the right of the Palestinian people to self-determination.<sup>100</sup>

Since the occupation and illegal annexation of East Jerusalem, some 300,000 Israeli settlers have been illegally transferred into the occupied Jerusalem governorate,<sup>101</sup> of which 3,500 settled in the heart of Palestinian neighbourhoods in East Jerusalem.<sup>102</sup> Article 49(6) of the Fourth Geneva Convention clearly prohibits the transfer of the Occupying Power’s own civilian population into the territory it occupies and transfer in is also a war crime under the Rome Statute of the International Criminal Court (ICC).<sup>103</sup> Further the appropriation of lands, pillage of natural resources, destruction of houses and forced displacement of the protected population to facilitate settlement construction and expansion in the occupied territory constitute war crimes and crimes against humanity within the jurisdiction of the ICC.<sup>104</sup>

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<sup>99</sup> “The E1 area stretches across 22,000 dunums of confiscated Palestinian land and also provides a vital passage joining the northern and southern sections of the West Bank, as well as Jerusalem.” Al-Haq, ‘Virtual Field Visit: E1 Area’ (28 January 2014) <<https://www.alhaq.org/advocacy/6683.html>> accessed 03 March 2021.

<sup>100</sup> See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136.

<sup>101</sup> This includes the annexed area and the remaining part of the Jerusalem governorate. Palestinian Central Bureau of Statistics (PCBS), ‘Jerusalem Statistical Yearbook 2018’ 2018, 79 <<https://www.palestine-studies.org/sites/default/files/jq-articles/Pages%20from%20JQ%2076%20-%20PCBS.pdf>> accessed 03 March 2021.

<sup>102</sup> OCHA, ‘Imminent eviction of Palestinian family in East Jerusalem’ (13 February 2019) <<https://www.ochaopt.org/content/imminent-eviction-palestinian-family-east-jerusalem>> accessed 03 March 2021.

<sup>103</sup> Article 49, of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136 [120].

<sup>104</sup> Article 8 (2)(a)(iv), Article 8(2)(a)(vii), Article 8(2)(b)(xvi), Article 7(2)(d) of the Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3.

Not only has Israel unlawfully extended its domestic civil legal system to occupied East Jerusalem, but proceeded to enact more discriminatory laws and policies that enforce the confiscation of Palestinian property in East Jerusalem in favour of settlers, the forcible transfer of Palestinians, and the expansion of Israeli-Jewish presence in the city. Israel's discriminatory legal foundation provides the basis for its creation of an apartheid regime over the Palestinian people as a whole.<sup>105</sup>

Two particular laws outline the alarming apartheid regime enforced by Israel against Palestinians in East Jerusalem: The 1950 Absentees' Property Law and the 1970 Legal and Administrative Matters Law. As seen in the cases of Batn Al-Hawa and Karm Al-Ja'ouni, most of the Palestinian residents of these neighbourhoods have been previously displaced during the *Nakba* of 1948 or the 1967 *Naksa* and have ever since been denied their right to return. Under the 1950 Absentees Property Law, their properties were dispossessed by the Israel in violation of their property rights and the customary protections of refugee property.<sup>106</sup>

The Hague Regulations prohibit the requisition of private immoveable property in the absence of military need or military operations.<sup>107</sup> The UN Guiding Principles on Internal Displacement require that: "property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use."<sup>108</sup> The Guiding Principles further prohibit arbitrary displacement "[w]hen it is 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".<sup>109</sup> Further, several United Nations resolutions affirm the right of the Palestinian refugees to return to their homes and property, their right to property restitution and their right to compensation.<sup>110</sup>

Israel's persistent refusal to grant Palestinian refugees, displaced persons, and their descendants their right of return to their homes and property amounts to a core element of its policy of strategic fragmentation of the Palestinian people, by which it maintains its apartheid regime.<sup>111</sup> Instead of fulfilling its obligations under international law, including the reparations (which take the form of return, property restitution, compensation and rehabilitation) of Palestinian refugees and displaced persons for the suffering they endured as a result of the loss of their property,<sup>112</sup> Israel is now placing the Palestinian residents of Batn Al-Hawa and Karm Al-Ja'ouni (most of whom are

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<sup>105</sup> Al-Haq and others, 'Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports' (10 November 2019).

<sup>106</sup> Articles 23(g), 46, and 56, The Hague Regulations (1907); Rule 133, ICRC Customary IHL Database <[https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule133](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule133)> accessed 03 March 2021.

<sup>107</sup> Articles 46, 52 and 53, The Hague Regulations (1907); Terry Rempel, 'Rights in Principle – Rights in Practice: Revisiting the Role of International Law in Crafting Durable Solutions for Palestinian Refugees' (BADIL, 2009) 399.

<sup>108</sup> UN, Guiding Principles on Internal Displacement (2nd edn, 2004), principle 21(3).

<sup>109</sup> *Ibid*, Principle 6(2).

<sup>110</sup> UN General Assembly, Resolution 194 (III), (11 December 1948) UN Doc A/RES/194 (III); UN General Assembly, Resolution 3236 (XXIX), (22 November 1974) UN Doc A/RES/3236 (XXIX).

<sup>111</sup> Al-Haq and others, 'Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports' (10 November 2019), para 63.

<sup>112</sup> Badil, 'Forced Population Transfer: the case of Palestine: Denial of Reparations' (Working Paper No. 22 October 2018) <<http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/WP22-Reparations-of-Reparations.pdf>> accessed 03 March 2021.



refugees) under the threat of further displacement with eviction lawsuits filed by settler organisations, facilitated through the Legal and Administrative Matters Law of 1970.

Israel also maintains its institutionalised regime of racial domination and oppression over the Palestinian people through the creation of a coercive environment, particularly in East Jerusalem.<sup>113</sup> Israel's prolonged unlawful and colonial settlement enterprise, the policy of residency revocation, forced evictions, discriminatory planning and zoning, and house demolitions, have contributed towards the creation and maintenance of a coercive environment in Jerusalem designed to facilitate the forcible transfer of the Palestinian people and the manipulation of the city's demographic character in favour of Israeli-Jewish domination.<sup>114</sup> Such coercive environment may constitute an indirect transfer under the Rome Statute.<sup>115</sup>

### ***5.2 International Human Rights Law; the International Covenant on Economic, Social and Cultural Rights***

Israel is also in violation of an array of its obligations under international human rights law. The Office of the High Commissioner for Human Rights (OHCHR) has noted that forced evictions violate, directly or indirectly, the full spectrum of human rights.<sup>116</sup>

The Committee on Economic, Social and Cultural Rights (CESCR) has identified a series of legal requirements which must be met to justify evictions:

1. They may only occur “in the most exceptional circumstances”.<sup>117</sup>
2. Prior to any eviction, States must ensure, “that all feasible alternatives are explored in consultation with affected persons.”
3. Evictions cannot be undertaken in a discriminatory manner.
4. If eviction is inevitable, States should afford procedural protections and due process, including an opportunity for genuine consultation, adequate and reasonable notice for all affected persons before evictions, refrain from carrying out evictions at night; provide adequate legal remedies; and where possible, legal aid to persons who are in need.
5. More notably, evictions must not result “in rendering individuals homeless or vulnerable to the violation of other human rights”. Alternative and sustainable accommodation must be provided before any eviction is carried out, as well as adequate compensation for the affected property.<sup>118</sup>

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<sup>113</sup> Al-Haq and others, ‘Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports’ (10 November 2019) paras 90.

<sup>114</sup> *Ibid.* paras 90-104.

<sup>115</sup> Article 8, Rome Statute of the International Criminal Court.

<sup>116</sup> OHCHR, ‘Forced Eviction: Fact Sheet No. 25/Rev.1’ (2014) 5.

<sup>117</sup> Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)’ (13 December 1991) UN Doc E/1992/23, para 18.

<sup>118</sup> CESCR, ‘General comment No. 7: The Right to Adequate Housing (Art. 11 (1) of the Covenant): Forced evictions’ (20 May 1997) UN Doc E/1998/22, paras 13-17.

### *5.2.1 Evictions Can Happen Only in the Most Exceptional Circumstances*

Israel does not carry out its forced eviction policy “in the most exceptional circumstances”. The seriousness of the illegality of forced evictions carried out by Israel in East Jerusalem is accentuated by the systematic structure that creates them. It has been outlined that East Jerusalem is subject to a coercive environment designed to drive the transfer of Palestinians from the city. Forced Eviction is only one policy in an array of mechanisms by which Israel wants to ensure Israeli-Jewish domination in the city.

In one of the cases currently under imminent threat of forced eviction in Sheikh Jarrah, Mohammed Al-Kurd said his family cannot afford to rent a home in Jerusalem if they are evicted and displaced from their home, and the only choice they will have will be to move outside Jerusalem, where they risk having their Jerusalem residency status revoked by Israel, and not be allowed to come back to the city again.<sup>119</sup>

Residency revocation is yet another systematic measure aimed at the forcible transfer of Palestinians from Jerusalem. Since the annexation of Jerusalem in 1967, Israel accorded Palestinians a “permanent” residency status to live in Jerusalem. Ever since, it has created and expanded criteria for revoking the residency status, including by requiring Palestinians to prove that their “centre of life” is in the city and to swear allegiance to the Occupying Power. Between 1967 and 2017, more than 14,500 Palestinians from Jerusalem have had their residency rights revoked.<sup>120</sup>

Another third of the Palestinian Jerusalemites residing in large densely-populated Palestinian Jerusalem neighbourhoods have been deliberately cut off from Jerusalem by the construction of the Annexation Wall, while all Israeli settlers illegally residing in occupied East Jerusalem have been transferred into enclaves in the area in between the Wall and the Green Line, fulfilling the ultimate goal of consolidating Jewish-Israeli demographic majority in the city of Jerusalem.<sup>121</sup>

As such, it can be concluded that the systematic manner the forced eviction policy is being carried out, coupled with measures and policies taken to implement the transfer the protected Palestinian population, violate the first legal requirement set by the CESCRC not to carry out forced eviction unless “in the most exceptional circumstances”.

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<sup>119</sup> Linah Alsaafin, ‘Eviction of Palestinians in Sheikh Jarrah part of Israeli policy’ (Al-Jazeera, 29 Nov 2020) <<https://www.aljazeera.com/news/2020/11/29/eviction-of-palestinians-in-sheikh-jarrah-part-of-israeli-policy>> accessed 03 March 2021.

<sup>120</sup> See: Al-Haq, ‘Residency Revocation: Israel’s Forcible Transfer of Palestinians from Jerusalem’ (03 July 2017) <<https://www.alhaq.org/advocacy/6331.html#:~:text=Residency%20revocations%2C%20including%20punitive%20revocations,of%20the%20Fourth%20Geneva%20Convention.>> accessed 03 March 2021.

<sup>121</sup> The International Court of Justice noted that 80 per cent of the settlers living in the oPt are located in enclaves (the area in between the Wall and the Armistice Line of 1949), which indicates that the Wall aims “to include within that area the great majority of the Israeli settlements.” Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136 [119]; Human Rights Council, ‘Situation of human rights in the Palestinian territories occupied since 1967’ (22 October 2018) UN Doc A/73/447, para 42.

### *5.2.2 All Feasible Alternatives Should Be Explored Before Evictions and They Cannot Happen in a Discriminatory Manner*

In the eviction cases in Silwan and Sheikh Jarrah, collusion between Israel's discriminatory laws, governmental institutions, and the judiciary is clear in its goal to forcibly transfer the Palestinians out of the city and replace them with Israeli-Jewish settlers.

The 1970 Law and the 1950 Law work together to enforce the institutionalised regime of systematic domination and oppression over the Palestinian people as a whole. They allow exclusive property ownership to Israeli Jews and displacement and dispossession of the indigenous Palestinians.

Israeli governmental institutions are highly discriminatory in working for the expansion of the Israeli-Jewish domination in Jerusalem. For example, in a stark discriminatory manner of what happened in Batn Al-Hawa, in another case in Sheikh Jarrah, a Muslim Trust administrating land from the Ottoman period was advocating for preventing the eviction of Palestinians. The Custodian General at the time cited the same Ottoman laws, which were used to proceed the eviction of the families in Batn A-Hawa by Israeli court, to prove that the Muslim trust does not have legal title to the land and so to pave the way for evictions.<sup>122</sup>

Moreover, the Custodian for Abandoned Properties has been declared, by a Committee led by Haim Klugman, director-general of the Israeli Ministry of Justice, as an effective institution in securing the dispossession from Palestinians of their land and property in East Jerusalem and the transfer of the expropriated property from the State to settler organisations.<sup>123</sup>

The Israeli judicial system is similarly complicit in the violations incurred by forced eviction. In an opinion article by Mohammed Al-Kurd, who underwent the experience of forced eviction from half of his family's home in Karm Al-Ja'ouni in 2002 and is now facing the risk of eviction from the remaining part of their home, Mohammed wrote:

*"My family and our neighbors understand this. We know from firsthand experience that the Israeli judicial system is created by and for those who benefit endlessly from Israel's settler-colonial regime. The Israeli courts have continually prevented us from presenting documents demonstrating ownership of our homes and land."*<sup>124</sup>

One of the 28 Palestinian refugees in Karm Al-Ja'ouni in Sheikh Jarrah subject to the threat of forced eviction filed an appeal in 1997 contesting the ownership claims of the two Jewish Committees. The Israeli Supreme Court rejected his appeal arguing that it was not possible to verify the ownership documents presented by the Palestinian.<sup>125</sup> Meanwhile, the ownership

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<sup>122</sup> *Ibid.*

<sup>123</sup> Human Rights Council, 'Report of the independent international factfinding mission to investigate the implications of the Israeli settlements' (7 February 2013) UN Doc. A/HRC/22/63, 33.

<sup>124</sup> Mohammed El-Kurd, 'Tomorrow My Family and Neighbors May Be Forced From Our Homes by Israeli Settlers' (The Nation, 20 November 2020) <<https://www.thenation.com/article/world/east-jerusalem-settlers/>> accessed 03 March 2021.

<sup>125</sup> CCPRJ, 'Dispossession & Eviction in Jerusalem: The cases and stories of Sheikh Jarrah' (December 2009).

documents submitted by the Jewish Committees to claim land ownership in Karm Al-Ja'ouni in Sheikh Jarrah had never been verified by Israeli courts.<sup>126</sup>

In addition, Israel has not consulted with or informed Palestinians in Sheikh Jarrah and Silwan of the transfer of the land they live on to Jewish entities. In both neighbourhoods, the transfer of the ownership from the Custodian General to the Jewish entities was done without informing the Palestinian residents. In a more extreme case, an eviction order has been issued by an Israeli court without informing the Palestinian residents.

These examples reflect that Israel does not ensure that any feasible alternatives are explored in consultation with affected persons. Instead, Israel carries out the eviction policy with an absence of good faith and in a discriminatory manner.

### *5.2.3 If Eviction is Inevitable, Due Process Should Be Afforded*

In violation of its responsibility to afford procedural protections and due process, Israel executes its evictions at night and in oppressive circumstances. While evicting Palestinian families, the Israeli police protect Israeli settlers enforcing the eviction. Al-Haq has documented several cases where evictions were carried out in oppressive environments against Palestinian families in these neighbourhoods. Fawziyya Mohammad Al-Kurd, one of three families that have been evicted from Karm Al-Ja'ouni in Sheikh Jarrah described the forced eviction when Al-Haq took her statement in 2008:

*“At around 3:00 am on 10 November 2008, I got up after I heard noise and sounds in the neighbourhood. At that stage, my husband and I were sleeping in the house. Suddenly, I heard someone knock heavily on my house door. As soon as I opened the door many Israeli occupying soldiers and police officers, raided the house. They carried my husband from his bed, put him in his wheelchair, and dragged him outside. As a result, the urine drainage bag, which was connected to his body through a pipe, dropped on the ground. I saw them drag Abu-Kamel on the wheelchair outside the house. ‘Don’t you see he is sick! This man suffers from heart disease and diabetes and you will be responsible for anything that happens to him.’ I shouted at the soldier. I heard a police officer tell others to get my husband out of the house. In the end, I managed to persuade the officers to send my husband to the house of Al-Sabbagh family, our neighbours, because it was cold. Soldiers insisted that I stay at a distance of 300 metres away from the house. There, I sat on a hill in the cold weather, watching settlers transport their pieces of furniture into my house and settle in it. On 10 November 2008, my husband’s health condition deteriorated as a result of the forced eviction. On 22 November 2008, he suffered from a sharp heart attack and passed away. In short, I have been expelled from my house and have lost my husband. In only ten days, the occupying authorities turned my life upside down.”<sup>127</sup>*

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<sup>126</sup> *Ibid.*

<sup>127</sup> Al-Haq Affidavit 4548/2008. See also extracts from Al-Haq Affidavit 5217/2009 taken by Nadia Mousa Yousef Hannoun who underwent forced eviction in 2009 in Sheikh Jarrah. The Centre on Housing Rights and Evictions (COHRE) and Al-Haq, ‘Joint Alternative Report to the Human Rights Committee on the occasion of the consideration of the Third Periodic Report of Israel’ June 2010, 27-28.

#### 5.2.4 Eviction Should Not Result in Homelessness

No Palestinian family that was evicted has been afforded an alternative accommodation, nor have they received compensation or legal remedy, and even so this would not negate the violation of Article 49 of the Fourth Geneva Convention, which operates as the *lex specialis*. The current 195 Palestinians at imminent risk of forcible displacement are facing yet this threat in a global pandemic.

Around 72 per cent of all Palestinian families in Jerusalem live below the poverty line, compared to 26 per cent of Israeli-Jewish families.<sup>128</sup> The high costs of the legal struggle they endure to resist forced evictions is routinely above their ability. Palestinians are required to pay the legal expenses of the settler organisations, fines, and the cost of their own eviction, on top of the loss of their homes and their displacement. All these factors have rendered Palestinians under enormous financial and psychological pressures.

Israel fails to meet any of the requirements of the legal test set by the CESCR, and consequently is in violation of its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), in particular the right to an adequate standard of living, including the right to adequate housing.<sup>129</sup> Moreover, Israel is in violation of the right to non-interference with one's home, family, and privacy under International Covenant on Civil and Political Rights (ICCPR).<sup>130</sup> In the context of Israel's racial discrimination regime, forced eviction also violates the right to equal and non-discriminatory protection before the law.<sup>131</sup>

As of 2020, OCHA reported that 218 Palestinian households in East Jerusalem (approximately 970 individuals around half of which are children) have eviction cases filed against them and are thus at risk of displacement.<sup>132</sup> The majority of the cases have been filed by settler organisations, usually based on claims of ownership from before 1948 and loss of protected tenant status by the Palestinian families.<sup>133</sup> Between 2017 and 2020, around 15 households, comprising 62 Palestinians were evicted in Sheikh Jarrah, Silwan and the Old City.<sup>134</sup> As the global pandemic continues, the Israeli apartheid regime intensifies its forcible transfer measures and policies in East Jerusalem. The institutionalised impunity enjoyed by Israel sustains the continuation of the gross violations perpetrated against the Palestinian people as a whole including the ongoing *Nakba*.

## 6. Recommendations

In light of the above, our organisations urge the relevant UN Special Procedures to:

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<sup>128</sup> Association for Civil Rights in Israel, 'East Jerusalem – Facts & Figures' (May 2019) <<https://www.english.acri.org.il/east-jerusalem-2019>> accessed 03 March 2021.

<sup>129</sup> Article 11, International Covenant on Economic, Social and Cultural Rights.

<sup>130</sup> Article 17, International Covenant on Civil and Political Rights (ICCPR).

<sup>131</sup> Article 26, ICCPR.

<sup>132</sup> OCHA, 'Palestinian family evicted from its home in East Jerusalem' (10 December 2020) <<https://www.ochaopt.org/content/palestinian-family-evicted-its-home-east-jerusalem>> accessed 03 March 2021.

<sup>133</sup> OCHA, 'Humanitarian Bulletin: occupied Palestinian territory' (October 2016) <[https://www.ochaopt.org/sites/default/files/ocha\\_opt\\_the\\_humanitarian\\_monitor\\_2016\\_11\\_09\\_english.pdf](https://www.ochaopt.org/sites/default/files/ocha_opt_the_humanitarian_monitor_2016_11_09_english.pdf)> accessed 03 March 2021.

<sup>134</sup> OCHA, 'Palestinian family evicted from its home in East Jerusalem' (10 December 2020) <<https://www.ochaopt.org/content/palestinian-family-evicted-its-home-east-jerusalem>> accessed 03 March 2021.

1. Recognise and to declare that the laws and policies Israel have created, and continue to maintain, as an institutionalised regime of racial domination and oppression over the Palestinian people as a whole, which amounts to the crime of apartheid;
2. Call on Israel to cease the unlawful application of its domestic laws and policies to illegally annexed East Jerusalem;
3. Call on Israel to immediately cease the court proceedings against the 15 Palestinian families who are under imminent threat of forced eviction, as well as the eviction orders placing the Jerusalemite people at risk of forced displacement, and to ensure the return of Palestinians evicted to their properties as restitution or compensating them for their loss where this is not possible;
4. Call on Israel to immediately repeal all laws it has enacted to further the Israeli policy of population transfer and achieve demographic goals in Jerusalem in violation of Palestinians' fundamental rights, including their right to self-determination and right to return and reclaim their properties, including 1950 Absentees' Property Law and the 1970 Legal and Administrative Matters Law;
5. Call on Israel to abide by the legal test set by the UN Committee on Economic, Social and Cultural Rights if the eviction is exceptionally required;
6. Call on the international community to cooperate to bring to an end, including through coercive measures such as sanctions, Israel's occupation, colonisation, and apartheid regime, as well as the prolonged denial of the right to self-determination of the Palestinian people, and the right of return of Palestinian refugees to their homes, lands, and property, as mandated by international law;
7. Call on the international community to ensure international justice and accountability, including by supporting a full, thorough, and comprehensive investigation into the Situation in Palestine by the International Criminal Court; and
8. Call on the UN to ensure the fulfilment of various UN resolutions in relation to the inalienable right of Palestinian refugees to return to their homes and to restitution and compensation of their properties, as well as resolutions directed at altering the composition and character of Jerusalem.