

ASF



ENFORCING HOUSING RIGHTS: THE CASE OF SHEIKH JARRAH

Report of the fact-finding mission
to Israel and the Occupied Palestinian Territory

May 2011

Avocats **Sans** Frontières



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ASF has given mandate to a delegation of English lawyers to prepare an independent report examining the legal situation in Sheikh Jarrah. The views expressed in this report do not necessarily represent those of ASF, or those of the donor, the Foreign Affairs, Foreign Trade and Development Cooperation of the Kingdom of Belgium.

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Cover photo: the demolition of the Shepherd Hotel in Sheikh Jarrah, 9 January 2011.
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Printed: Graffikka, Belgium. Info@graffikka.be

Acknowledgement

The delegation would like to thank everyone who contributed to the making of this report, in particular Stijn Denayer, who coordinated the project for ASF, and Valentina Azarov, who accompanied the mission in Israel and the Occupied Palestinian Territory. The delegation wishes to express its gratitude to all the people and organisations who met with the mission during its visit in December 2010, including the evicted Sheikh Jarrah families. The delegation would also like to thank photographer Atef Safadi.

With the support of



KINGDOM OF BELGIUM
Foreign Affairs,
Foreign Trade and
Development Cooperation

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Acronyms

ACRI	Association for Civil Rights in Israel
CCDPRJ	Civic Coalition for Defending the Palestinians' Rights in Jerusalem
CESCR	Committee on Social, Economic and Cultural Rights
CRC	International Convention on the Rights of the Child
DPP	Director of Public Prosecution
EU	European Union
HRC	Human Rights Council
ICAHD	Israeli Committee Against House Demolitions
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IDF	Israeli Defense Forces
ILA	Israeli Land Administration
IPCC	International Peace and Cooperation Center
JLAC	Jerusalem Legal Aid and Human Rights Center
JNF	Jewish National Fund
NRC	Norwegian Refugee Council
OPT	Occupied Palestinian Territory
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNSC	United Nations Security Council
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
WCLAC	Women's Centre for Legal Aid and Counselling

1. Introduction

1.1. Context of intervention

Tensions have flared in Sheikh Jarrah, a Palestinian area located to the north of the Old City in occupied East Jerusalem. Over the last three years, more than 60 Palestinians have been forcibly evicted in this area and at least another 500 are at risk of dispossession and displacement, according to the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA).

The Sheikh Jarrah eviction cases are primarily based upon two competing land ownership claims, namely those of: (1) Jewish Committees (“the Committees”) who claim ownership pre-dating 1948; and (2) 28 extended Palestinian refugee families (over 500 people) who have been residing on the land for over 50 years. The 28 Palestinian families, all of which fled or were forcibly expelled from their homes in 1948 from areas that are now in Israel were resettled in the area of Sheikh Jarrah by the United Nations in 1956. Under a housing scheme sponsored by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the 28 Palestinian refugee families were granted funds to build homes on land provided by the Jordanian government, provided they relinquished their right to food assistance from UNRWA. According to individual lease agreements between the respective families and the Jordanian authorities, the families were to pay a nominal rent for three years, after which ownership of the land and the properties would be transferred to them. However, despite assurances to the contrary, legal title to the homes was never formally transferred to the families.

Since the start of the Israeli occupation and annexation of East Jerusalem in 1967, which continues until today, the Palestinian refugee families in Sheikh Jarrah have been the target of eviction proceedings brought by the Committees and their successor, the Nahalat Shimon Company (to whom all rights and obligations were transferred in 2008-2009), before Israeli courts, resulting in the eviction of 4 refugee families to date (60 people) – the Mohammad Al-Kurd, Al-Ghawi, Hanoun and Rifqa Al-Kurd families – all of whom had already been forcibly displaced at least once before.

1.2. ASF’s fact-finding mission and objectives

Following a request from local lawyers and NGOs received by Avocats Sans Frontières, an international legal expert mission visited Israel and the Occupied Palestinian Territory (OPT) from 19 to 23 December 2010.

ASF has given mandate to the delegation of English lawyers to prepare an independent report examining the legal situation in Sheikh Jarrah and providing an assessment within the framework of international humanitarian law and human rights law, as well as a comparative approach with Britain to the domestic legal issues of the previous and ongoing forced eviction cases.

The delegation consisted of four English barristers, all specializing in housing rights – John Beckley, Liz Davies, and Marina Sergides (all three from Garden Court Chambers, London), and John Hobson (Doughty Street Chambers, Manchester), as well as English barrister and human rights lawyer Hannah Rought-Brooks (Tooks Chambers, London) and Bill Bowring, also a barrister practising at the European Court of Human Rights, and Professor of Law at Birkbeck College, University of London. The delegation was accompanied by ASF project coordinator Stijn Denayer and human rights lawyer Valentina Azarov.

During the five day mission, the delegation received briefings from authoritative Israeli and Palestinian non-governmental organisations, including Bimkom – Planners for Planning Rights, the International Peace and Cooperation Center (IPCC), the Israeli Committee Against House Demolitions (ICAHD), the Jerusalem Legal Aid and Human Rights Center (JLAC), the Civic Coalition for Defending the Palestinians’ Rights in Jerusalem (CCDPRJ), the Women's Centre for Legal Aid and Counselling (WCLAC), and Al-Haq, West Bank Affiliate of the International Commission of Jurists. The delegation also met with the Norwegian Refugee Council (NRC), the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Additionally, the mission also held discussions with a dozen of Israeli and Palestinian lawyers, specializing in housing rights issues and/or working on the Sheikh Jarrah cases, as well as with academics and political representatives, including the British Consul-General, Sir Vincent Fean, and the Chief of Staff in the President’s Office of the Palestinian Authority, Dr Hussein Al-Araj.

Many requests were made prior to and during the visit of the delegation, for meetings with members of the Jerusalem City Council and representatives from the Jerusalem Mayor’s Office. Unfortunately no positive response was received and no one from these bodies made themselves available to meet with the delegation. The delegation did meet with one elected member of the Municipality, Meir Margalit, also a leading member of ICAHD. Requests for meetings were also made to representatives from settler groups and lawyers defending these groups before the courts, but despite

receiving some replies, no one made themselves available to meet with the delegation.

2. Executive Summary: Findings of the Fact-finding Mission

2.1. Applicable International law

The Jerusalem Municipality and the Israeli government insist that the situation in Sheikh Jarrah is a strictly legal matter for Israeli domestic courts to decide upon as purely a dispute of local property ownership between Jewish and Arab residents of Jerusalem.¹ However, the delegation disagrees and observes clear violations of international law.

First and foremost, the delegation emphasizes that the Israeli legal system, which plays a crucial role in deciding the fate of the Palestinian residents of Sheikh Jarrah, in and of itself precludes what would be considered a fair and just legal outcome in international terms. In its 2004 Advisory Opinion, the International Court of Justice (ICJ) held that East Jerusalem is occupied territory, which has been illegally annexed by Israel, and confirmed the applicability of international humanitarian law and international human rights law to East Jerusalem. Under Article 43 of the Hague Regulations, Israeli authorities are obliged to respect the law in force, except when absolutely prevented from doing so, and are prohibited from making permanent changes. Under international law, Israel as the occupying power does not possess sovereignty over East Jerusalem and is vested only with temporary powers of administration. Accordingly, Israel is not entitled to apply its own domestic laws within the OPT, including East Jerusalem.

In the view of the delegation, the situation in Sheikh Jarrah forms an integral part of Israel's illegal settlement policy in the OPT. The ICJ reaffirmed the applicability of Article 49, paragraph 6, of the Fourth Geneva Convention, which provides: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." That provision prohibits not only actual deportations or forced transfers of population, but also any measures taken by an occupying power in order to organize or encourage transfers of parts of its own population into the occupied territory. The delegation observes that with regard to East Jerusalem, which includes Sheikh Jarrah, such measures have been taken by the Israeli government, including:

¹ UN News Service, 'Israel's evictions in Jerusalem violate international law, says senior UN official', 10 December 2009. Available at: <http://www.unhcr.org/refworld/docid/4b29ee022.html> (quoting Karen AbuZayd, the Commissioner General of UNRWA as saying that the UN "rejects Israel's claims that these cases are a private matter to be dealt with by municipal authorities and domestic courts".)

- the unilateral creation of Jerusalem's municipal boundaries in 1967, leading to the annexation of the Old City of Jerusalem (6.5 km²) and land from surrounding Palestinian villages (64.5 km²) in the West Bank.
- the adoption of the Basic Law: Jerusalem Capital of Israel on 30 July 1980, which declared "Jerusalem complete and united" to be "the capital of Israel".

Both the expansion of Jerusalem's municipal boundaries and the 1980 Basic Law have been declared "null and void" by the UN Security Council.² The delegation considers that the evidence presented to it demonstrates that underlying the processes of zoning and planning control in East Jerusalem are clear political motivations on the part of the Jerusalem Municipality and the Israeli state to engineer the demographic balance between Jewish and Palestinian occupants, resulting in a housing crisis for the latter. These actions also amount to a breach of Article 49, paragraph 6, of the Fourth Geneva Convention.

Moreover, the forced eviction of the Sheikh Jarrah families could also amount to grave breaches of the Fourth Geneva Convention, Article 147, "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" and even "unlawful deportation or transfer" of Protected Persons. Officials identified as having ordered or participated in such conduct could incur individual criminal responsibility.

2.2. A Palestinian housing rights crisis

It is the view of the delegation that the situation in Sheikh Jarrah needs to be considered within the broader picture of housing rights for Palestinians in East Jerusalem and Area C of the West Bank, the surrounding planning regime and the legal protection and enforcement mechanisms.

Currently, only 13% of the land in East Jerusalem (21.3 km²) is available for Palestinians to build on, much of which is already densely built upon with overcrowded houses. The ASF delegation observed that the housing conditions in the Palestinian communities in occupied East Jerusalem are in stark contrast to the housing conditions in both the Jewish neighbourhoods in West Jerusalem and the Israeli settlements in East Jerusalem. Palestinian areas are characterised by poor roads, little or no street cleaning, limited sewage infrastructure, few public services

² See, for instance, Resolution 452 (1979), 465 (1980) and 478 (1980).

and an absence of well-maintained public areas. Only about 5–10% of the municipal budget is spent in Palestinian areas, this is despite Palestinians constituting at least 35% of the population of Jerusalem. Additionally, the near impossibility of obtaining building permits, even in the 13% of East Jerusalem zoned for Palestinian construction, has created cramped conditions with numerous generations of family members living in single houses, unsafe building structures and limited or no infrastructure for water, electricity, gas and sewage.

As a result, Palestinian residents in Jerusalem are suffering a severe housing crisis. The delegation was informed by UN OCHA that the continued natural population growth among Palestinians in East Jerusalem currently requires the construction of 1,500 housing units per year, whereas in 2008 only 125 Israeli-issued building permits (needed for “legal” construction) were issued, allowing for the construction of approximately 400 housing units only.

Similarly, the planning regime and enforcement policy in Area C of the West Bank has led to a severe restriction on the development of Palestinian villages. The delegation was informed that around 200 Palestinian houses are demolished on a yearly basis in Area C. Following field visits to Area C (At-Tuwani) as well as to other areas in East Jerusalem (such as Silwan, Beit Hanina, Shuafat and Anata), the delegation concludes that the planning regime and practice of forced evictions and demolitions in the OPT violates Israel’s obligations under international humanitarian and human rights law. As such, the mission fully endorses the conclusions of the UN Human Rights Committee in these matters.³ In July 2010, the Human Rights Committee considered Israel’s implementation of its obligations under the ICCPR and concluded that its policies in the OPT amounted to violations of the right to non-discrimination, to privacy and a home, and to a family life, criticising the “frequent administrative demolition of property, homes, as well as schools in the West Bank and East Jerusalem due to the absence of construction permits, their issuance being frequently denied to Palestinians”.

2.3. The Sheikh Jarrah Evictions

2.3.1. Inequality before the Israeli courts

While the delegation emphasizes the inapplicability of Israeli domestic law and the Israeli court system to occupied East Jerusalem, it was made clear to the mission during briefings and discussions with lawyers representing the Sheikh Jarrah refugee

³ The treaty body of the International Covenant on Civil and Political Rights (ICCPR), which Israel ratified in 1991.

families, the Norwegian Refugee Council and UN OCHA, that fundamental concerns can be raised as to how these cases have been and are being treated by the courts.

During the meeting arranged with the Palestinian lawyers, those specifically working on the case informed the delegation that in December 2009 they had found Ottoman-period land title documents in the archives in Ankara which cast serious doubt upon the authenticity and accuracy of the documents used by the Jewish Committees and the Nahalat Shimon Company to claim ownership of much of the land in Sheikh Jarrah. The lawyers informed the delegation that these doubts are not being considered properly by the Israeli courts.

Moreover, the delegation observed that there is an asymmetry in the way the Israeli courts treat the question of pre-1948 property rights. Whilst the courts have been willing to uphold claims by Jewish organisations in relation to property in Sheikh Jarrah allegedly owned by Jewish families before 1948, similar ownership claims by the Palestinian residents of Sheikh Jarrah to lands which are located in what is now considered by the Israeli government as part of Israel, are not admitted by the courts. This is due to the Legal and Administrative Matters (Regulation) Law 1970, which specifically permitted pre-1948 Jewish owners to claim property previously owned in East Jerusalem, and the absence of a similar piece of legislation allowing the Palestinian population to reclaim property lost after 1948, for instance in West Jerusalem, as is the case with the majority of the 28 families in Sheikh Jarrah. The ASF delegation considers such asymmetry to be unjustifiable.

2.3.2. Manner of eviction as violating human rights law

The delegation further observes that the manner in which the Sheikh Jarrah evictions have been conducted violate Israel's obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In its General Comment 7 of 1997, the Committee on Economic, Social and Cultural Rights (CESCR), the treaty body for the ICESCR, declared that evictions need to be carried out in strict compliance with international human rights law, and that force should only be used as a last resort, and, when it is impossible to avoid, should be minimised to the utmost extent. The first hand testimonies heard and the reliable reports read by the delegation provide clear evidence that Israel is not complying with its obligations to revert to the use of force only in the most exceptional and extreme circumstances. In particular, the findings of the delegation are that the Israeli police have attended evictions and demolitions in disproportionate numbers, closing off

roads and access points, and removing members of the affected families with disproportionate and unnecessary force, including using plastic handcuffs on children.

The CESCR further declared that evictions need to be carried out in accordance with general principles of reasonableness and proportionality. However, the delegation observed the following violations of these principles in the case of the Sheikh Jarrah evictions: 1) that not all persons carrying out these evictions were properly identified; 2) that evictions have been carried out at night; 3) that evictions have rendered people homeless and that no assistance was provided by the Israeli occupying authorities to assist families who were rendered homeless; and 4) that adequate and reasonable notice for all affected persons prior to the scheduled date of eviction was not always given.

2.3.3. Law enforcement failures

The delegation further received reliable information indicating possible close links between settler groups and the law-enforcing authorities. In many of the eviction cases in Sheikh Jarrah settlers have occupied the homes of evicted Palestinian families almost immediately, within minutes of the eviction. In the event of court verdicts disfavouring settler groups, the orders are often not enforced. In June 2007, for instance, the Mohammad Al-Kurd family were forced to file a High Court petition against Avi Dichter, Minister of Public Security, and the District Police for failure to enforce a court order to remove settlers who had occupied an extension of the Al-Kurd family home. The family had previously received a court order to seal and demolish the extension, yet the occupation by the settlers made it impossible for the family to comply. Credible accounts of intimidation by settlers and their supporters were articulated to the delegation as well as accounts of inaction on the part of the police when complaints were raised. Under international humanitarian law, namely Article 43 of the Hague Regulations, Israel, as the occupying power, is responsible for the safety of the local population.

Under international human rights law, in particular Articles 6 and 9 of the ICCPR, the Palestinian families in Sheikh Jarrah are guaranteed a right to life and security of the person. In the view of the delegation, the failure to protect Palestinian families in Sheikh Jarrah from settler violence amounts to a breach of Israel's obligations under international humanitarian law and human rights law.

2.4. Comparative analysis

Using their experience as housing lawyers in England, the delegation has compared the Israeli planning regime and legal framework for evictions and demolitions with the regime in Britain. The delegation believes that such comparison highlights that Israel's failure to comply with international legal standards and its obligations as an occupying power is compounded by overt discrimination within the Israeli domestic system itself.

The comparison between the British and Israeli systems reveals a number of significant and highly worrying differences. The first significant issue is that the legitimacy of the British courts in determining planning and eviction disputes is accepted whereas Israeli jurisdiction over such disputes is not legitimate in the context of an illegal annexation. Secondly, no planning policy in Britain could include a goal of maintaining or achieving a certain demographic balance on the basis of race, nationality, ethnic origin or anything else, while there is an express municipal policy in Jerusalem on demographic balance. Thirdly, unlike the Israeli courts in East Jerusalem, there is no suggestion that the British courts discriminate between litigants on the grounds of ethnicity, race or national origin and in any event this is prohibited in Britain under equality legislation, which does not exist in Israel.⁴ Fourthly, the process of eviction is much less violent and does not involve the use of the army. Finally, there is no equivalent of the settlers and their organisations being ready to move into houses whose occupants have been evicted. This comparison leads the delegation to the conclusion that Israeli government claims that its actions are the ordinary consequences of enforcing a planning regime are false. Rather, the delegation concludes that the actions are the consequence of inbuilt and structural discrimination against the Palestinian population.

2.5. Postscript: subsequent events

After the delegation had left East Jerusalem, demolitions continued. On 9 January 2011, the Jerusalem Municipality demolished a significant part of the Shepherd Hotel,⁵ on behalf of its settler owner, C&M Properties.⁶ The building is on the slopes of the Sheikh Jarrah valley, overlooking the homes described in this report, and is of historical importance. It is being demolished in order to provide 20 housing units. Those housing units will not be available to Palestinians and the demolition is a further instance of increasing settler occupation in the Sheikh Jarrah area.⁷ The

⁴ CERD, *Concluding Observations: Israel*, UN Doc. CERD/C/ISR/CO/13, 14 June 2007, para 16.

⁵ 'The Shepherd's lost sheep', *The Economist*, 13 January 2011. Available at: http://www.economist.com/node/17913606?fsrc=rss&story_id=17913606

⁶ A US registered company established by Irving Moskowitz, an American businessmen who has funded settler organisations for 20 years.

⁷ Following the demolition, the bureau of Israeli Prime Minister Binyamin Netanyahu said in a statement that actions undertaken at the Shepherd Hotel were conducted in accordance with Israeli law, adding that "there should be no expectation that the State of Israel will impose a ban on Jews

demolition was widely condemned by the international community, including by UN Secretary-General Ban Ki Moon, who stated: "It is deeply regrettable that growing international concern at unilateral expansion of illegal Israeli settlements is not being heeded."⁸

The delegation has also been informed that eviction proceedings have now been initiated against a further family that has resided in Sheikh Jarrah since the original agreements were made with UNRWA and Jordan.

Richard Falk, UN Special Rapporteur on the OPT, has noted a sharp increase in the number of house demolitions in the OPT. In the period 1 January to 11 March 2011, Israel has demolished 96 Palestinian structures throughout the West Bank, including East Jerusalem, consisting of 32 homes and other residential structures. As a result, 175 people, more than half of them children, have lost their homes, a sharp increase compared to the same period in 2010 when there were 56 demolitions and 129 people displaced. At the same time, Israeli settlements in the West Bank have continued to expand. Falk said that the this "pattern of eviction, demolition, expansion of settlements, and settlers' violent expropriation of Palestinian homes in the occupied East Jerusalem violates fundamental human rights, as well as provisions of the Fourth Geneva Convention governing belligerent occupation".⁹

After the delegation's return, the Guardian newspaper published documents leaked from negotiations between the Israeli government and the Palestinian Authority. The documents indicate that the PA representative proposed in May 2008 that the PA might concede land in East Jerusalem to Israel, including in Sheikh Jarrah.¹⁰ The leaks have been condemned by the PA, but not the contents of the documents. The delegation believes that these developments clearly demonstrate that the significance of the situation in Sheikh Jarrah is recognized at the highest levels. Nevertheless, the delegation believes that the families in Sheikh Jarrah should not be treated as political pawns, but that their rights to respect for their homes, occupied by them for over 50 years in good faith – as they complied with all conditions in the agreements with UNRWA and Jordan – should be respected by all political representatives.

purchasing private property in Jerusalem." Melanie Lidman & Khaled Abu, 'PMO: Sheikh Jarrah demolition "in accordance with law"', Jerusalem Post, 1 October 2010. Available at: <http://www.jpost.com/NationalNews/Article.aspx?id=202950>

⁸ UN OCHA, *East Jerusalem: Key Humanitarian Concerns* 45 (Special Focus, March 2011).

⁹ UN News Centre, 'UN rights expert condemns sharp increase in Israeli demolition of Palestinian homes', 11 March 2011. Available at:

<http://www.un.org/apps/news/story.asp?NewsID=37739&Cr=israel&Cr1=>

¹⁰ Ian Black & Seumas Milne, 'Israel spurned Palestinian offer of "biggest Yerushalayim in history"', Guardian, 23 January 2011. Available at: <http://www.guardian.co.uk/world/2011/jan/23/palestinians-israel-biggest-jerusalem-history?INTCMP=SRCH>

3. Recommendations

In light of the findings of the fact-finding mission detailed above, and the fact that currently there are nine separate eviction proceedings against Palestinian families residing in Sheikh Jarrah before the Israeli courts, which are all civil proceedings brought by the Nahalat Shimon Company, the settler organization which seeks to demolish the existing Palestinian neighbourhood and build a settlement in its place,¹¹ the ASF delegation calls upon:

Israel:

To act on its legal obligations as an occupying power and immediately cease both the construction of Israeli settlements throughout the Occupied Palestinian Territory, including East Jerusalem – which in many cases has taken place by means of unlawful appropriation of land, and the government-facilitated and supported transfer of its civilian population to these settlements.

To desist from taking any measures in order to organize or encourage transfers of parts of its own population into the Sheikh Jarrah neighbourhood of East Jerusalem, in particular by engineering discriminatory planning and building permit policies for the Palestinian population.

To immediately desist from practices of forced evictions of Palestinian families and subsequent confiscation and/or demolition of their homes within the occupied territory, in particular within the neighbourhood of Sheikh Jarrah in East Jerusalem.

To fulfil its obligations under international humanitarian law and human rights law and provide appropriate police protection for the Sheikh Jarrah families from Israeli settlers intent on personally evicting the Palestinians, and to provide effective law enforcement against settlers, and to exercise due diligence by fully investigating and prosecuting any such acts of violence by Israeli settlers.

The United Nations and the International Community:

For the High Contracting Parties to the Geneva Convention of 1949 to fulfil their obligations under common Article 1, and “ensure respect” for the provisions of the Conventions under all circumstances by taking appropriate measures to compel Israel

¹¹ Ir Amim, *Evictions and Settlement Plans in Sheikh Jarrah: the Case of Shimon HaTzadik 1* (June 2009).

to comply with its obligations and to cease to render aid or assistance to its violations by abstaining from forming further relations, diplomatic and economic, with Israel in accordance with their international responsibility as third states.

For the United Nations, to intensify pressure on Israel to respect its obligations under international human rights law and humanitarian law and to take all necessary measures to ensure that Israel desists from its illegal practices and policies of house demolitions and forced evictions, and all other measures leading to the forced displacement of the Palestinian population, and brings an end to the occupation of the Occupied Palestinian Territory, including East Jerusalem.

The European Union:

To implement the European Union Guidelines on promoting compliance with international humanitarian law (2005/C 327/04) in order to ensure Israeli compliance with the relevant standards of humanitarian law under paragraph 16(b), (c), and (d) of these guidelines.

As per Article 2 of the EU-Israel Association Agreement, to suspend the agreement until Israel desists from violations of Palestinian human rights.

Following the European Parliament's resolution of 20 November 2008 on the case of the Mohammad Al-Kurd family, which calls "on the Council, the Commission and the international community, including the Quartet, to make all possible efforts to protect Palestinian residents in the Sheikh Jarrah neighbourhood and other areas of East Jerusalem and calls on the Quartet to play a more active role in this direction", to reiterate these calls and take necessary measures to ensure compliance therewith by members states.

To further reinforce its calls that East Jerusalem is occupied territory, administered by Israel as an occupying power, which is prohibited from exercising unlawful de facto sovereign rights in this territory, and is therefore not subject to the jurisdiction of the Israeli courts system.

To ensure EU presence at Israeli courts where cases are discussed that involve the eviction of Palestinian families from Sheikh Jarrah, and to systematically bring high-level visitors to visit Sheikh Jarrah with an objective of monitoring the situation on the ground and ensure that Israel complies with the EU demands and ceases its violations of the human rights of the local population.

The United Kingdom:

To declare publicly that it will use its influence and all available mechanisms within the EU to ensure that the EU acts upon the recommendations set out immediately above.

To ensure that senior UK officials observe court hearings concerning Sheikh Jarrah, and visit Sheikh Jarrah; and join high-level groups from the EU.

To continue and if possible intensify the present policy of providing all possible support to the Sheikh Jarrah families.

To give urgent and public consideration to the question how it can best comply with the obligations laid upon it (and all other states) by the International Court of Justice in 2004:

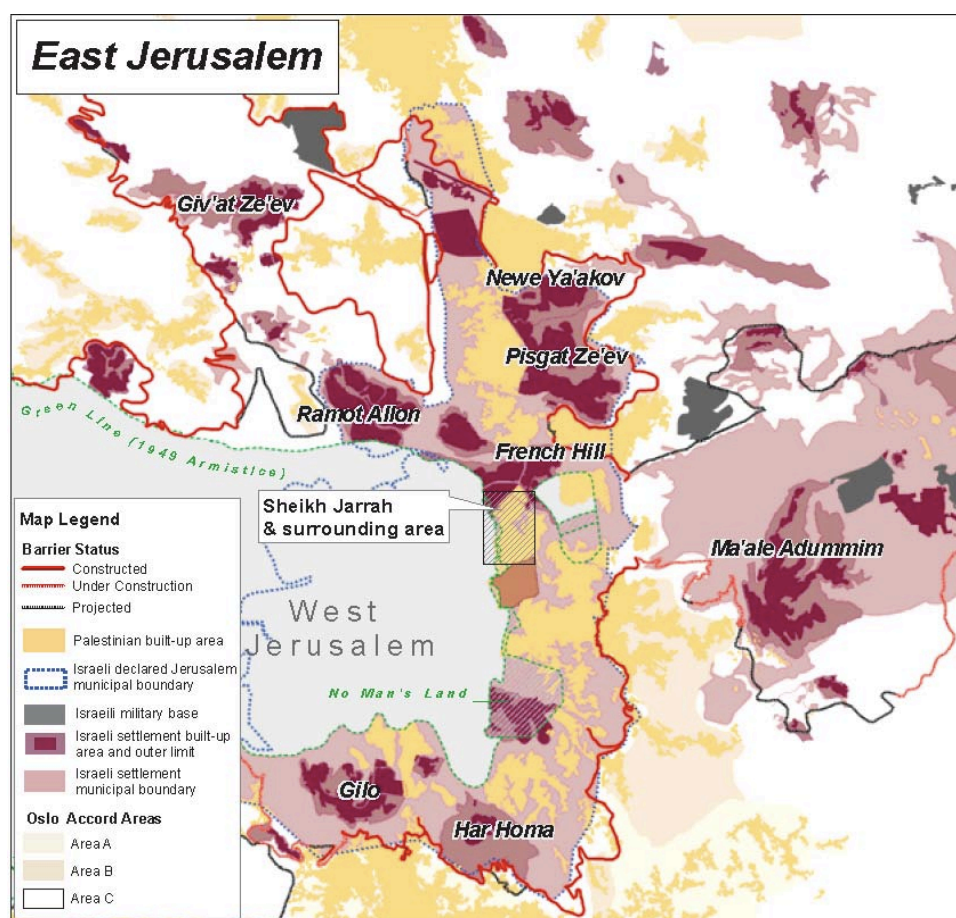
All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

In particular, to take steps to implement the recommendation by Amnesty International in 2009 that the UK government should "suspend all military exports to Israel until there is no longer a substantial risk that such equipment will be used for serious violations of human rights."¹²

¹² See Amnesty International, 'News: January 2009'. Available at: http://www.amnesty.org.uk/news_details.asp?NewsID=18004

4. Structural Context of Housing Rights in the OPT

To understand the situation facing the Palestinian families in Sheikh Jarrah, it is necessary to understand the legal and political context in which their legal cases have been and are taking place. As such, this section will examine the recent history of East Jerusalem, as well as the area's legal status (both as seen internationally and as implemented by Israel), the arrangements for housing and planning within East Jerusalem and the rest of the West Bank, and the impact of the construction of the Wall and of Israeli settlement into the OPT.



Sheikh Jarrah, as situated in East Jerusalem and in the context of Israeli settlement in the Occupied Palestinian Territory. ©UN OCHA

4.1. The history

On 29 November 1947 the United Nations General Assembly recommended, by its resolution 181, that Palestine be divided into separate Arab and Jewish states and

that Jerusalem be established as a *corpus separatum* under a special international regime and administered by the UN.¹³

Between the end of the 1948 war (known as the War of Independence by Israel and the Naqba ("Catastrophe") by Palestinians) and the Six Day War in 1967, East Jerusalem was under Jordanian control. Property that had belonged to Jewish people in East Jerusalem and who had been evacuated from their homes during the 1948 war came under the management of the Jordanian Custodian of Enemy Property.

Meanwhile property that had belonged to Palestinians in what became the State of Israel, including West Jerusalem, was transferred to the Israeli Development Authority pursuant to the Absentees' Property Law 1950. It is estimated that between a fifth and a quarter of the land comprising the state of Israel was formerly Palestinian property that was taken into Israeli state control through the 1950 Act.¹⁴ Whilst the 1950 Absentees' Property Law did not permit the transfer of previously Palestinian owned lands to third parties, such transfers were nevertheless made by the Israeli Custodian of Absentee Property to the Israeli Development Authority. The Development Authority Law (1950) (Transfer of Land) then allowed for the settlement of new Israeli immigrants onto that land which was previously Palestinian owned.

On 7 June 1967, the Israeli army occupied East Jerusalem. A military administration was formed and steps were taken to unify the city; the Mandelbaum Gate, the crossing point between West and East Jerusalem was removed along with other barriers that had been set up along the Green Line (the line of division set out in the truce agreement between Israel and Jordan in 1949). On 27 June 1967 the Israeli Parliament passed laws annexing East Jerusalem¹⁵ and by 29 June 1967 the previous Arab City Council and its Secretariat were disbanded.¹⁶

The UN has declared invalid the measures taken by Israel to change the status of Jerusalem. At the UN Security Council, Israel's extension of jurisdiction over East Jerusalem was deemed to be a *de facto* annexation and was condemned as such,¹⁷ and on 4 July 1967, the General Assembly declared invalid all measures taken by Israel to change the status of Jerusalem.¹⁸ Internationally, the law of belligerent occupation precludes the annexation of occupied territory and, even in the absence of

¹³ UN General Assembly Resolution 181 (1947).

¹⁴ Yitzhak Reiter & Lior Lehrs, *The Sheikh Jarrah Affair: The Strategic Implications of Jewish Settlement in an Arab Neighborhood in East Jerusalem* 44 (Jerusalem Institute for Israel Studies, 2010).

¹⁵ The Law and Administration Ordinance (Amendment No 11), Law and the Municipalities Ordinance (Amendment No 6) Law.

¹⁶ Usama Halabi, *The Arab Jerusalem Municipality* (PASSIA 1993).

¹⁷ UN Security Council Resolution 252 (1968).

¹⁸ UN General Assembly Resolution 2253 (1967).

annexation, forbids the substitution of the occupier's laws and legal systems for those, which were previously in force.

Despite being in breach of international law and despite the protestations of the UN, Israel continued with its consolidation of the annexation of East Jerusalem with the passing in 1980 of the Basic Law: Jerusalem Capital of Israel, which declared "Jerusalem complete and united" to be "the capital of Israel".¹⁹ In 1990 the UN Security Council condemned the killing of 17 Palestinians by Israeli police near the Al-Aqsa mosque and reaffirmed that East Jerusalem was under belligerent occupation.²⁰ Israel responded by stating that "Jerusalem is not, in any part, occupied territory: it is the sovereign capital of the State of Israel".²¹

In 1970 the Israeli Knesset passed into law the Legal and Administrative Matters (Regulation) Law in order to bring all property it considered to have been owned by Jews before 1948 and thereafter confiscated by the Jordanian authorities, under Israeli jurisdiction. As will be seen below, this law led to much of the land in Sheikh Jarrah, including land on which 1948 Palestinian refugees had settled, coming under the auspices of the Israeli General Custodian.²²

4.2. The law in force in East Jerusalem

The legal system which is currently considering the fate of the residents of Sheikh Jarrah is, therefore, the law of Israel and the Israeli court system. In and of itself, in the view of the delegation, that precludes what would be considered a fair and just legal outcome in international terms. In 2004 the International Court of Justice held that East Jerusalem is occupied territory and confirmed the applicability of international humanitarian law and international human rights law to East Jerusalem.²³ Israel as the occupying power does not possess sovereignty over East Jerusalem and is vested only with temporary powers of administration.²⁴ Any change to the law in East Jerusalem is contrary to international law unless required for the legitimate needs of the occupation.²⁵ The general application of Israeli laws to East

¹⁹ Basic Law: Jerusalem, Capital of Israel, Laws of the State of Israel, vol. 34 (1980), at 209.

²⁰ UN Security Council Resolution 672, UN Doc. S/RES/672 (1990).

²¹ *Report submitted by the Secretary-General to the Security Council in accordance with Resolution 672*, UN Doc. S/21919, 31 October 1990.

²² See infra at "**5.3. Historical and legal developments: 1967-2011**".

²³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, ICJ, Advisory Opinion, 9 July 2004, para 70-78.

²⁴ Lord McNair & A.D. Watts, *The Legal Effects of War (1966)*, in: *Oppenheim's International Law, Vol. 2: Disputes, War and Neutrality* 436-438 (H. Lauterpacht ed., 7th ed. 1952).

²⁵ Christopher Greenwood, *The Administration of Occupied Territory in International Law*, in: *International Law and the Administration of Occupied Territories* 241, 247 (Emma Playfair ed., 1992).

Jerusalem, i.e. the wholesale substitution of Israel's laws for those that were previously in existence, is impermissible.

4.3. Planning and building in East Jerusalem

4.3.1. Introduction

Throughout the period of its occupation, Israel has significantly restricted Palestinian development in East Jerusalem.²⁶ Over one third of East Jerusalem has been expropriated for the construction of Israeli settlements, while a mere 13% is currently zoned by the municipal authorities for Palestinian construction.²⁷

The ASF delegation has learned through its meetings on 19 December 2010 with Israeli and Palestinian NGOs specifically working on planning issues, namely Bimkom – Planners for Planning Rights and the International Peace and Cooperation Center (IPCC), that there are three players active in trying to restrict Palestinian development in Jerusalem and/or to maintain the demographic balance: the Israeli government, the Municipality of Jerusalem and private settler organisations.

The government is responsible for legislation including the 1950 Absentees' Property Law and the 1965 Planning and Building Law. It also has the power to approve or reject the Municipality's outline plans for Jerusalem. The Municipality, on the other hand, establishes and implements its planning policy, makes decisions on applications for permits and of course is the responsible body for implementing, and often making, demolition orders. Human Rights Watch reports that, since 2007, the Jerusalem Municipality and the Israeli Ministry of Housing have announced plans to construct roughly 10,000 housing units in East Jerusalem settlements for which planning has been approved or is in the approval process.²⁸ As the third player, private settler organisations are involved in acquiring property in Palestinian areas, while enjoying degrees of support and impunity from the state.²⁹

²⁶ UN OCHA, *The Planning Crisis in East Jerusalem: Understanding the Phenomenon of 'Illegal' Construction 2* (Special Focus, April 2009).

²⁷ *Id.*

²⁸ Human Rights Watch, *Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories* 135 (2010). Similarly, Ir Amim reports that, since 1967, the Israeli authorities have constructed approximately 50,000 residential units in Israeli settlements in East Jerusalem, while constructing only 600 residential units for Palestinian residents – the last of which were built over 30 years ago. Ir Amim, *State of Affairs – Jerusalem 2008: Political developments and changes on the ground* 30(n42) (December 2008).

²⁹ Several authoritative organizations have reported on the support settler organizations receive from the Israeli State. UN OCHA, for instance, observes that although settler activity in Palestinian areas in East Jerusalem is "spearheaded by wellfinanced settler organizations", it is also "supported by the state". B'Tselem on its part reports that "the government has supported and assisted the establishment of several enclaves of settlers in the heart of Palestinian neighborhoods", including Sheikh Jarrah. Similarly, Human Rights Watch recently published a report which "documents that

4.3.2. Zoning and planning policy

The Israeli Planning and Building Law 1965 sets up the system whereby permits, granted by the Municipality, are required for the construction of any buildings or extensions and for demolition orders to be made where there has been construction without a permit (so-called "illegal" constructions). It also states that no construction is allowed in areas with insufficient public infrastructure. The Fourth Geneva Convention of 1949 regarding occupied territories prohibits the occupying power from destroying private property unless such destruction is rendered absolutely necessary by military operations. The Planning and Building Law also allows for the construction of Israeli settlements, in clear violation of Article 49(6) of the Fourth Geneva Convention, which prohibits an occupying power from transferring parts of its civilian population into the territory it occupies.³⁰

Following the Israeli occupation of East Jerusalem in 1967, the Municipalities Ordinance 1967 was passed leading to the annexation of land from surrounding Palestinian villages to the Jerusalem Municipality. Jerusalem's municipal boundaries were unilaterally redrawn and came to include not only the 6.5 km² that represented the former East Jerusalem municipality, but also 64.5 km² from the lands of 28 surrounding Palestinian villages in the West Bank governorates of Jerusalem, Ramallah and Bethlehem.³¹ The annexation was managed in a way that incorporated the maximum amount of land whilst minimising the increase in the Palestinian population of Jerusalem. This was done by annexing land belonging to Palestinian villages to Jerusalem whilst leaving the populated villages themselves outside the new municipal boundaries,³² thereby separating Palestinians from their land.³³

The annexation of East Jerusalem and the lands of these surrounding Palestinian villages, led to a shift in the demographic make-up of Jerusalem as whole. The proportion of Jewish occupants of Jerusalem fell to approximately 74% of the population, a drop that was seen as a threat to the vision of a "complete and united

Israel has sponsored the development of Jewish settlements in Palestinian areas of East Jerusalem, even in houses from which Palestinian residents are evicted (...)", and highlighted a study of the Israeli daily Haaretz in 2003, which found that government funding to settlements amounted to 1.4 billion USD annually, including 526 million USD in security costs to protect settlers. UN OCHA, *East Jerusalem: Key Humanitarian Concerns*, supra note 8, at 53; Eyal Hareuveni, *By Hook and By Crook: Israeli Settlement Policy in the West Bank* (B'Tselem, July 2010); Human Rights Watch, *Separate and Unequal*, supra note 28, at 10.

³⁰ See infra at "**7.4. Israeli settlements**".

³¹ Applied Research Institute – Jerusalem (ARIJ), *Evolution of Spatial and Geo-Political Settings of Jerusalem (1947-2010)* 45 (December 2010).

³² Adnan Abdelrazak & Khalil Tofakji, *The De-Arabization of East Jerusalem: Israeli Colonial Policies and Practices* 10 (The Arab Studies Society, 2008).

³³ A process which will be seen to be repeated with the construction of the Wall. See infra at "**4.5. The Wall**".

Jerusalem” as the “eternal capital of Israel”.³⁴ Attempts were made to increase the Jewish population of the Municipality by expropriating privately owned Palestinian land to construct settlements and by providing incentives for Jewish settlement into East Jerusalem.³⁵

Of the 71 km² of East Jerusalem lands, including the Old City, which Israel annexed to the Jerusalem Municipality after 1967, 35% has been expropriated for Israeli settlements.³⁶ Most of this expropriated land was privately owned Arab property.³⁷ According to UN OCHA, over 195,000 Israeli settlers now live in settlements in East Jerusalem.³⁸

Another 22% of the land of East Jerusalem has been designated as “green areas” where no construction is allowed. These “green areas” are not empty. Some of the most densely populated Palestinian communities, for example Silwan, are designated as “green”. Palestinians continue to live there but are prohibited from building and/or expanding. It is important to stress that the laws and regulations Palestinians are now found to be breaching were enacted *after* they had originally settled and built in areas of East Jerusalem. Where a settlement is proposed in a “green” area, the zoning can be changed and the area re-designated.³⁹

A further 30% consists of unplanned areas, where again no one has permission to build.⁴⁰

That leaves only 13% of the land in East Jerusalem (21.3 km sq) available for Palestinians to build on, 7% of Jerusalem as a whole. Palestinians cannot purchase land in the designated Israeli settlement areas, the green zones or of course in West Jerusalem. They cannot build in the unplanned areas. At the same time, there is no prohibition on Israeli settler organisations acquiring properties in Palestinian areas. There are around 2,000 settlers living in Palestinian areas outside the Old City, including Silwan, Ras Al-Amud, At-Tur, Wadi al-Joz, and Sheikh Jarrah. These settlers live in residences custom-built and financed by settler organizations, or in houses which have been expropriated by means of the Absentees’ Property Law; reclaimed on the basis of alleged prior Jewish ownership; or purchased from Palestinian

³⁴ Amirav Moshe, *Israel’s Policy in East Jerusalem since 1967* 18 (Stanford University Centre of Conflict and Negotiation, July 1992).

³⁵ *Id.* at 12.

³⁶ UN OCHA, *The Planning Crisis in East Jerusalem*, *supra* note 26, at 7.

³⁷ BTselem, ‘Policy of discrimination in planning, building and land expropriation’. Available at: http://www.btselem.org/english/Jerusalem/Discriminating_Policy.asp.

³⁸ UN OCHA, meeting with the delegation, 20 December 2010.

³⁹ This has been done in the case of the settlements of Ramot and Har Homa. See ARIJ, *Evolution of Spatial and Geo-Political Settings of Jerusalem*, *supra* note 31, at 60.

⁴⁰ Bimkom, meeting with the delegation, 19 December 2010.

owners.⁴¹

It is the view of the delegation that planning policy in East Jerusalem has been shaped by the Municipality's intention to engineer the demographic balance between Jewish and Palestinian occupants. A former director of the Municipality's Planning Policy Section, Israel Kimhi, stated in 1997: "A cornerstone in the planning of Jerusalem is the demographic question. The city's growth and the preservation of the demographic balance among its ethnic groups were decided by the Government of Israel. That decision, concerning the city's rate of growth, serves today as one of the criteria for the success of the process of Jerusalem's consolidation as the capital of Israel."⁴²

This policy of preserving a Jewish majority in the city is directly addressed in the Local Outline Plan for Jerusalem 2000.⁴³ Up until 2000 the desired ratio was 70:30 in favour of Jewish residents.⁴⁴ However, the percentage of Palestinian occupants has grown to around 36%.⁴⁵ In the new Outline Plan for Jerusalem, the planners recognised that desire was unfulfilled and stated that the new goal was for a ratio of 60:40 in favour of the Jewish population as of 2020.⁴⁶ Although the plan has been criticized widely for not sufficiently addressing the housing crisis in Palestinian areas in East Jerusalem,⁴⁷ it was approved by Jerusalem's Local Committee in 2006 and by the District Committee in 2008.⁴⁸ However, following a complaint by members of the Jerusalem City Council to the newly elected Minister of Interior Eli Yishai, claiming that the approved plan discriminated against the Israeli population in favour of the Palestinian population, the Minister ordered the head of the District Planning office to delay the deposit of the plan for public review.⁴⁹ Bimkom informed the delegation that despite the legal opinion of the District Planning Committee's legal advisor that such an intervention on the part of the Minister was contrary to the law and that he had overstepped his authority, the head of the District Planning Office has still not

⁴¹ UN OCHA, *East Jerusalem: Key Humanitarian Concerns*, *supra* note 8, at 53.

⁴² See Israel Kimchi, *Population of Jerusalem and Region: Growth and Forecasts*. As cited in Eitan Felner, *A policy of discrimination; Land Expropriation, Planning and Building in East Jerusalem* 46 (B'Tselem, January 1997).

⁴³ UN OCHA, *The Planning Crisis in East Jerusalem*, *supra* note 26, at 14.

⁴⁴ Human Rights Watch, *Separate and Unequal*, *supra* note 28, at 13.

⁴⁵ There are a number of reasons for this, as the delegation was informed in its various meetings: a higher birth rate amongst the Palestinian population, the necessity for Palestinians living in East Jerusalem to retain their permanent residence status, and a smaller than anticipated growth in the Jewish population, at least partly due to the fact that Jerusalem is poorer and therefore less attractive than other Israeli cities.

⁴⁶ *Local Outline Plan Jerusalem 2000, Report No. 4: The Proposed Plan and the Main Planning Policies*, August 2004.

⁴⁷ See, for an overview, UN OCHA, *East Jerusalem: Key Humanitarian Concerns*, *supra* note 8, at 32-33.

⁴⁸ UN OCHA, *The Planning Crisis in East Jerusalem*, *supra* note 26, at 14.

⁴⁹ Bimkom, 'Planning in Jerusalem: the implications of the new Outline Plan of Jerusalem for Palestinian Neighbor (sic)'. Available at:

<http://eng.bimkom.org/Index.asp?ArticleID=141&CategoryID=101&Page=1>

deposited the plan.⁵⁰ Consequently, the plan has not yet been officially approved. However, it has been used as the basis against which detailed local plans submitted for approval are being evaluated.⁵¹

Jeff Halper of the Israeli Committee Against House Demolitions (ICAHD) informed the delegation that zoning and planning policies serve to restrict the natural development of Palestinian areas in East Jerusalem “under the guise of the law”.⁵² These policies are enforced by a system of “house demolitions, arrests, fines and daily harassment” and are only a few of the tools used by the Municipality and the Israeli government in a “matrix of control”.⁵³ Another important tool is the revocation of residency rights. The Israeli human rights organisation HaMoked: Center for the Defence of the Individual reports that in 2008, the Ministry of Interior revoked the Israeli residency status of 4,577 residents of East Jerusalem, including 99 minors.⁵⁴ As such, the number of cases of revocation of residency in 2008 alone was equal to approximately one half of the total number of cases of residency revocation between 1967 and 2007.

Restrictive measures apply in relation to the residency status of Palestinians from East Jerusalem. Under Israeli law, Palestinian residents of East Jerusalem are neither Israeli citizens nor West Bank residents, but have residency permits allowing them to live in the city.⁵⁵ However, according to the Association for Civil Rights in Israel (ACRI), Israel treats the residents of East Jerusalem as foreigners whose permanent residency status can be revoked as “a matter of course”.⁵⁶ According to the Israeli “centre of life” policy, Palestinian Jerusalemite ID holders living or working outside East Jerusalem risk losing their ID and are required to regularly provide the Ministry of the Interior and the National Insurance Institute with proof of their “centre of life”. In 2009 a worrying trend of revocation of ID cards for East Jerusalemites studying or working abroad was identified; obtaining a study or work visa in a foreign country, including Europe, has reportedly led to investigations based on the policy of “centre of

⁵⁰ Bimkom, presentation to the delegation, 19 December 2010; *Id.*

⁵¹ The Palestinian community of Wadi Yasul in East Jerusalem, for instance, saw a detailed plan for the area rejected because it was incompatible with the Local Outline Plan. UN OCHA reports: “On 4 November 2008, in spite of the initial approval given, and after the community had dedicated years of work revising the plan and spent more than USD 50,000 on it, the District Planning Committee rejected it. According to the Committee, the proposed plan is incompatible with the Local Outline Plan for Jerusalem 2000, which maintains that the area should remain a ‘green area’, where no development is permitted. The community has now undertaken the additional financial burden of retaining a lawyer to appeal the committee’s decision.” UN OCHA, *The Planning Crisis in East Jerusalem*, *supra* note 26, at 12.

⁵² Jeff Halper, meeting with the delegation, 19 December 2010.

⁵³ *Id.*; See also Jeff Halper, ‘The Key to Peace: Dismantling the Matrix of Control’. Available at: http://www.icahd.org/?page_id=79

⁵⁴ HaMoked, ‘Update: 1.12.2009’. Available at: http://www.hamoked.org/Document.aspx?dID=868_update

⁵⁵ Human Rights Watch, *Separate and Unequal*, *supra* note 28, at 131.

⁵⁶ The organization calls this policy of *encouraging* residents of East Jerusalem who have lived there for many generations to uproot themselves and move elsewhere, “reprehensible”. The Association for Civil Rights in Israel (ACRI), *Human Rights in East Jerusalem: Facts and Figures* 44-45 (May 2010).

life".⁵⁷

In April 2011, HaMoked and ACRI jointly lodged a petition to the Israeli High Court of Justice, demanding an end to the policy of revoking the status of East Jerusalem residents due to prolonged residency abroad or the acquisition of status in a different country.⁵⁸

The organisations stated: "The penalty for leaving the city for a limited period or accepting foreign status effectively means the loss of one's home and the ability to return to one's native land. This policy fits into the overall policy of deliberate discrimination and maltreatment of East Jerusalem residents, targeted at pushing the Palestinians out and creating a Jewish majority in the city."⁵⁹

In his latest report, UN Special Rapporteur on the OPT Richard Falk, stated that Israel is carrying out "new punishments against Palestinians in Jerusalem, including threats of the revocation of Jerusalem residency rights of Palestinians living legally in Jerusalem", further adding that "[t]he revocation of residency permits, home demolitions and evictions, settlement construction, the separation of East Jerusalem from the rest of the West Bank and its annexation to Israel, and other Israeli measures to push Palestinian residents out of the city will cumulatively make the creation of a viable Palestinian state, with its capital as East Jerusalem, impossible".⁶⁰

4.3.3. The housing crisis

The Palestinians are suffering a severe housing crisis. UN OCHA reports the Israeli organisation Ir Amim as having calculated that natural growth among Palestinians in East Jerusalem requires the construction of 1,500 housing units per year, whereas in 2008 for instance only 125 building permits were issued, allowing for the construction of approximately 400 housing units only.⁶¹ The near impossibility of obtaining building permits, even in the 13% of East Jerusalem zoned for Palestinian construction, has created cramped conditions with numerous generations of family members living in one single house, unsafe building structures and a lack of proper or any infrastructure for water, electricity, gas and sewage. Additionally, much of the 13% of East Jerusalem that is zoned for Palestinian construction is already densely built upon with

⁵⁷ *EU Heads of Mission Report on East Jerusalem* 8 (para 23) (2 November 2009).

⁵⁸ HaMoked, 'Update: 7.4.2011'. Available at: <http://www.hamoked.org/Document.aspx?dID=Updates1092>

⁵⁹ *Id.*

⁶⁰ *Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, Richard Falk*, UN Doc. A/HRC/16/72, 10 January 2011.

⁶¹ Ir Amim, *A Layman's Guide to Home Demolitions in East Jerusalem* 4 (March 2009); UN OCHA, *The Planning Crisis in East Jerusalem*, *supra* note 26, at 12.

overcrowded houses.⁶² The ASF delegation observed that the housing conditions in the Palestinian communities in occupied East Jerusalem are in stark contrast to the housing conditions in both the Jewish neighbourhoods in West Jerusalem and the Israeli settlements in East Jerusalem. During the week of its visit, the delegation visited several Palestinian areas in East Jerusalem, including Sheikh Jarrah, Silwan, Beit Hanina, Anata, Shuafat and Qualandia, as well as several Jewish neighbourhoods in West Jerusalem and the Israeli settlements of Pisgat Zeev and Ma'ale Adumim in the occupied territory, and was astounded by the difference in living conditions.

There is an acute shortage of housing in East Jerusalem and a further shortage of affordable housing. Rents are disproportionately high, making this particularly hard for the many Palestinians who live below the poverty line.

Despite Palestinians constituting around 35% of the population of Jerusalem, and paying taxes, only about 10% of the municipal budget is spent in Palestinian areas. As a result, Palestinian areas are characterised by poor roads, little or no street cleaning, limited sewage infrastructure, have few public services and an absence of well-maintained public areas.⁶³ The delegation personally observed these stark differences in infrastructure and services on visits to the Palestinian areas of Beit Hanina, Anata and Shuafat, and the Israeli settlements of Pisgat Zeev and Ma'ale Adumim.⁶⁴ In particular, the delegation observed clear and highly visible differences in the available infrastructure for water supply between the houses in the Israeli settlement of Pisgat Zeev and the houses in the neighbouring Palestinian communities of Beit Hanina. The discrimination in infrastructure and services compounds the difficulties that Palestinians experience when they apply for permits, since the Building and Planning Act 1965 requires sufficient infrastructure for a permit to be granted. UN OCHA has made it very clear that: "East Jerusalem is overcrowded and the public services (e.g. roads, schools, parks etc) do not meet the needs of the Palestinian population."⁶⁵

The delegation cannot escape the impression that the aim here, it seems, is to push Palestinians out of East Jerusalem and into "affordable" housing further in the West Bank, so as to maintain a favourable demographic balance in Jerusalem.⁶⁶

⁶² The delegation was informed by Bimkom on 19 December that municipal limitations on the maximum heights and floors of buildings are themselves discriminatory, as they allow Israeli settlements in East Jerusalem to be built up to eight stories, and Palestinian buildings to two floors only.

⁶³ *EU Heads of Mission Report, supra* note 57.

⁶⁴ Tour of East Jerusalem conducted by Jeff Halper (ICAHD) and Rami Nasrallah (IPCC), 19 December 2010.

⁶⁵ UN OCHA, *The Planning Crisis in East Jerusalem, supra* note 26, at 11.

⁶⁶ The route of the Wall plays a key role in this. Many Palestinian Jerusalemites now live on the eastern side of the Wall, although they are Jerusalem residents and ID card holders, and pay taxes to the Municipality. See *infra* at "**4.5. The Wall**".

4.3.4. Building permits

In the last five years, only 600 Israeli-issued building permits have been granted to Palestinians, approximately 120 each year. Over the same period, approximately 1,800 permits were granted to residents of West Jerusalem or the settlements.⁶⁷

Meir Margalit, an elected member of the Jerusalem Municipality, and a member of Meretz, advised the delegation at a meeting on 23 December 2010, that the refusal of building permits is a tool used by the Municipality to prevent the growth of the Palestinian population in Jerusalem. "Less building means less Palestinians in the city", he stated.

There are enormous structural obstacles in the way of a Palestinian seeking to obtain a building permit from the Municipality.⁶⁸

First, the building must be in the appropriate zone: the 13% of East Jerusalem designated as Palestinian area. If the applicant lives in a green zone or an unplanned area, he or she must also apply to change the zoning of the area to "residential" before applying for a permit is even possible.

Second, the applicant must provide proof of ownership. The Planning and Building Law enables building by a private party on condition that the property is registered in that party's name in the Israeli Land Registry. If it is not registered, the law requires proof of connection between the applicant and the property in the form of sworn statements. However, in 2000, the planning authorities in Jerusalem introduced a more rigorous standard. A resident whose property ownership is not registered must prepare and have approved a Plan for Registration for Purposes before being able to register the land or apply for a permit. In 2009, the city decided that the applicant must also open a registration file with the land registry. Not only are these steps extraordinarily difficult and expensive, but the applicant also runs the risk that part of the property could be declared "absentee property" and so the state of Israel would become a co-owner of the property.⁶⁹ The Jerusalem Municipality also requires that

⁶⁷ Bimkom, presentation to the delegation, 19 December 2010.

⁶⁸ The delegation was informed of the details of these obstacles listed here during its meetings with Bimkom (19 December 2010) and Adv. Usama Halabi, Adv. Ghiath Nasser and Adv. Majd Bader (20 December 2010).

⁶⁹ The Law of Absentee Property 1950 states that if a person was in an enemy country at the time of the 1948 census, his or her property would be confiscated by the Custodian of Absentee Property without compensation or notification. In 1967, Israel applied this law to East Jerusalem stating that the relevant date would be the 1967 census. As a consequence, if during the registration process, any of the owners are proved not to have been physically present in the area annexed in 1967, the Custodian of Absentee Property will confiscate their share of the land. See Bimkom & Ir Amim, *Making*

applicants list all heirs to a piece of land on the permit application. If a joint heir is considered an “absentee” under the Absentees’ Property Law, the Custodian of Absentee Property can expropriate the land to the State of Israel. For this reason, many Palestinian families in occupied East Jerusalem are extremely hesitant to try to register their land. Moreover, the registration of land in East Jerusalem has been effectively frozen since 1967, as evidenced in case law.⁷⁰

Third, the detailed plan must be submitted to the Municipality's Planning Committee. Applications will not be approved if there is insufficient public infrastructure (which is not, of course, in the hands of the applicant). There are strict limits on the density of the area and the size of the structure; often the area or structure will already have exceeded those limits. The plan might be rejected for being insufficiently detailed.

Fourth, the applicant must wait. It can take several years for a decision to be made.

Fifth, the fees are considerable and for many Palestinians prohibitive. UN OCHA estimates that the cost of a permit for building a 100m square building on a 500 metre square plot would be 17,620 USD, and for a 400 m square building on the same plot size the fees would be 37,380 USD.⁷¹

Sixth, most applications are refused.

It is hardly surprising, therefore, that many Palestinians prefer to take the risk of building without a permit rather than engage in a time-consuming, difficult and expensive process that is unlikely to result in a permit actually being granted. The phenomenon of “illegal” construction is not limited to the 13% of East Jerusalem where Palestinians are permitted to apply for a permit, but also occurs in green zones or unplanned areas.

4.3.5. “Illegal” building and demolition orders

At least 28% of all Palestinian homes in East Jerusalem, housing around 60,000 residents, have been built in violation of Israeli zoning requirements.⁷² However, this

Bricks without Straw: the Jerusalem Municipality's New Planning Policy for East Jerusalem 5 (n3) (January 2010). Land handed to the Custodian has ended up in the hands of the Jewish National Fund and settler groups.

⁷⁰ This was done, according to Meir Margalit, “(...) on the flimsy pretext that any such moves could be prejudicial to the rights of owners defined as absentees, who are unable to express opposition to the registration of a third party.” Meir Margalit, *No Place Like Home: House Demolitions in East Jerusalem* 21 (ICAH, March 2007).

⁷¹ UN OCHA, *The Planning Crisis in East Jerusalem*, *supra* note 26, at 9.

⁷² UN OCHA, meeting with the delegation, 20 December 2010.

is a conservative estimate and the actual percentage may be as high as 46%.⁷³ Bimkom estimates that there are currently about 20,000 housing units built all over East Jerusalem without Israeli-issued permits.⁷⁴ An “illegally” constructed building cannot connect to infrastructural services: sewage, water, and electricity. Of course, the owner also faces the possibility of a demolition order.

There are four different categories of house demolitions, the latter two most common in East Jerusalem.

- Clearing operations on the basis of what Israel calls “military needs”;
- Punitive or punishment demolitions: not a military necessity but a collective punishment of the occupants, usually the innocent family members of someone whom the Israeli government have called a “suspect”;⁷⁵
- Demolitions following an administrative demolition order;
- Demolitions following a judicial demolition order, either after a regular criminal procedure or after a short procedure without an individual conviction, the so-called “demolition orders without conviction”.⁷⁶

There are currently around 1,500 administrative demolition orders outstanding in East Jerusalem.⁷⁷ The orders, not always translated into Arabic, are usually glued onto a place on the building.⁷⁸ The orders last for 60 days. Anyone served with an administrative demolition order can appeal to the Local Affairs Court to have it cancelled, but only on one of two grounds: that the building does in fact have a permit or that the building does not meet the criteria for a demolition order (usually because it is not a new building).⁷⁹

Lawyers the ASF delegation met with who act in these cases described administrative demolition orders as “draconian”.⁸⁰ Fewer administrative demolition orders are issued than judicial demolition orders; however the majority of demolitions are as a result of administrative demolition orders.

⁷³ *Id.*

⁷⁴ Bimkom, meeting with the delegation, 19 December 2010.

⁷⁵ For a while punitive demolitions were suspended in East Jerusalem, but the EU notes two occasions in January and April 2009 when they were used. *EU Heads of Mission Report, supra* note 57.

⁷⁶ Demolition orders “without conviction” are issued against a building and not against an individual because there are obstacles to reach the “offender”. Majd Bader, meeting with the delegation, 20 December 2010.

⁷⁷ UN OCHA, meeting with the delegation, 20 December 2010.

⁷⁸ Meir Margalit, meeting with the delegation, 23 December 2010. The delegation understands that the practice is not always complied with and occupants can be evicted without having had notice. See, for instance, the case of Aida Risheik in: *The Women’s Centre for Legal Aid and Counselling (WCLAC), Forced Evictions: Assessing the Impact on Palestinian Women in East Jerusalem* 13 (November 2010).

⁷⁹ Majd Bader, meeting with the delegation, 20 December 2010.

⁸⁰ *Id.*

The Municipality has stated: "Administrative demolition orders are issued according to identical criteria throughout the city. The Jerusalem Municipality does not and shall not have a policy which aim is to discriminate between the various sectors living and residing in Jerusalem."⁸¹ However, the Israeli organisation Bimkom informed the delegation that houses in settlements built without permits may receive demolition orders but are never demolished.⁸²

Judicial demolition orders are issued by the Magistrates Court, Local Affairs Court or Supreme Court, following an indictment and criminal process. The offender is fined, subject to a written obligation not to repeat the offence and a demolition order is made, suspended for 12 months (with the possibility of a further 12 month suspension). The idea is that the offender can obtain a permit during those 12 months. However, it is almost impossible to obtain a permit. The effect is that at the end of the 12 months, the occupant has committed another offence of not adhering to the court order. Ultimately, if someone is convicted three times, he or she could be sent to prison.

At each stage, the Palestinian occupant is subject to severe financial penalties. Court fines and municipal charges can amount to tens of thousands of US dollars. The costs levied on the occupant include the Municipality's costs of undertaking the demolition itself, as well as all the costs of the administrative process.⁸³ If the costs are unpaid, a prison sentence could result. None of these penalties exempt the occupant from the continuing need to obtain a building permit, although this is often the perception of the person(s) paying the fine.

In a case study quoted by UN OCHA,⁸⁴ the fine for building without a permit was 32,000 NIS (around 8,500 USD). The total legal, surveyor and share of the planning fees were significantly less: 14,300 NIS (3,850 USD).

According to Human Rights Watch, Israel has demolished a disproportionate number of Palestinian homes on the grounds that they violate building codes: whereas in the period 1996-2000, more than 80% of recorded building violations were in West

⁸¹ Statement from 21 May 2009. As quoted in *EU Heads of Mission Report*, *supra* note 57.

⁸² Bimkom, meeting with the delegation, 19 December 2010. See the case of Beit Yehonatan, *infra* at "6.4.1. Introduction".

⁸³ The delegation was told by one witness that the costs of the demolition orders were never enforced. However, none of the other witnesses confirmed this and the general viewpoint was that Palestinian occupants were charged all of these costs, including the costs of demolition. Even if it might be the case that some costs do not get collected in certain cases, the point is that the Palestinians understand that they will have to pay the costs of demolition.

⁸⁴ See "Case Study IV: the displacement of the Jum'a family from As Sawahira Al Gharbiya", in: UN OCHA, *The Planning Crisis in East Jerusalem*, *supra* note 26, at 15.

Jerusalem, 80% of actual demolition orders issued by Israeli authorities were against buildings in Palestinian areas in East Jerusalem.⁸⁵

4.4. Area C of the West Bank

In order to properly understand the situation in East Jerusalem, the delegation deems it necessary to also consider the legal and planning processes in the rest of the Occupied Palestinian Territory, in particular Area C of the West Bank. The delegation was given a detailed account of the situation in Area C at a meeting with Bimkom on 19 December 2010, with UN OCHA on 20 December 2020 and with JLAC on 22 December 2010. The delegation also visited the village of At-Tuwani, in Area C, after visiting Hebron, on 22 December 2010, and witnessed the sharp contrast between levels of development in At-Tuwani and the neighbouring Israeli settlement of Ma'on.

Following the interim agreements between Israel and the PLO (Oslo II) in 1995, the West Bank has been divided into three administrative areas, A, B and C. Whereas since 1967, the military courts established in the West Bank had gradually expanded their jurisdiction at the expense of the local courts (as, for instance, cases involving traffic offences were tried, as well as cases of murder and other serious crimes committed by Palestinians against other Palestinians), the 1995 interim agreements restored to a certain extent Palestinian civil and criminal jurisdiction over parts of the West Bank.⁸⁶

In terms of legal jurisdiction, Oslo II stipulates that the jurisdiction of the Palestinian Authority covers all offences committed by Palestinians and/or non-Israelis in Areas A and B of the West Bank as defined by the Agreement, i.e. excluding the Israeli settlements and military locations there.⁸⁷ As such, Israel retained sole criminal jurisdiction over offences committed by Israelis in Area A and B, comprising approximately 18% and 22% of the West Bank respectively.⁸⁸ Additionally, with regards to Area B, Israel retained "the overriding responsibility for security for the purpose of protecting Israelis and confronting the threat of terrorism".⁸⁹ Area C on the other hand, comprising the remaining 60% of the West Bank falls exclusively under Israel's military justice system, except for criminal offences committed by Palestinians and non-Israelis "against Palestinians or their visitors", again provided that these

⁸⁵ Human Rights Watch, *Separate and Unequal*, *supra* note 28, at 136.

⁸⁶ Raja Shehadeh *Occupier's Law: Israel and the West Bank* 85 (Institute for Palestine Studies, Washington DC, 1985).

⁸⁷ Protocol Concerning Legal Affairs, Annex IV to The Interim Agreement on the West Bank and the Gaza Strip, September 1995, art. I 1(a).

⁸⁸ Protocol Concerning Legal Affairs, art. I 2(2).

⁸⁹ The Interim Agreement on the West Bank and the Gaza Strip, September 1995, 36 International Legal Materials 551 (1995), art. XIII 2(a).

offences are “not related to Israel’s security interests”.⁹⁰

In planning terms, Areas A and B are subject to the control of the Palestinian Authority with regard to physical planning and construction, as these areas were transferred to full Palestinian administration under Oslo II. In Area C on the other hand, planning authority rests exclusively with the Israeli Civil Administration. Area C is currently home to around 150,000 Palestinians and is the only contiguous Area within the Occupied Palestinian Territory in the West Bank.⁹¹ A comprehensive system of restrictions to the freedom of movement of Palestinians is in place in the West Bank, comprised of physical obstacles such as checkpoints, roadblocks and most recently the Wall, as well as administrative measures such as prohibited roads and age restrictions.⁹² According to UN OCHA, by the end of March 2010 there were 505 obstacles blocking internal Palestinian movement and access throughout the West Bank, including 65 permanently staffed checkpoints, 22 partial checkpoints and 418 unstaffed obstacles including earth mounds, earth walls, road gates and trenches.⁹³

Whilst planning and building in Area C are subject to a 1966 Jordanian law,⁹⁴ Israel has made comprehensive changes to the structure of the planning system by military order.⁹⁵ Local and District Planning Committees were abolished in 1971 by Order 418,⁹⁶ with their powers being transferred to the Israeli Civil Administration’s Higher Planning Council and its subcommittees, resulting in an exclusion of Palestinian democratic input into planning and building decisions.⁹⁷ At the same time, Order 418 created a separate planning system for Israeli settlers in the Occupied Palestinian Territory with their own Local Committees and representation onto the subcommittees of the Civil Administration’s Higher Planning Council.⁹⁸ The delegation considers these differential planning systems as being a further unjustifiable asymmetry in the treatment of Palestinians and Israelis by the Israeli state.

The planning regime and enforcement policy in Area C has led to a severe restriction on the development of Palestinian villages and saw 1,626 buildings, many of them

⁹⁰ Protocol Concerning Legal Affairs, art. I 1(b).

⁹¹ Bimkom, *The Prohibited Zone, Israeli Planning Policy in the Palestinian Villages in Area C* 7 (June 2008).

⁹² UN OCHA, *West Bank Movement and Access* 4 (Special Focus, June 2010).

⁹³ *Id.*

⁹⁴ Towns, Villages and Buildings Planning Law (Temporary Law), Law No 79, 1966.

⁹⁵ Despite the fact that such change is forbidden by international law save where there is an absolute military or humanitarian need for such changes. See Article 43 of the Regulations Concerning the Law and Customs of War on Land (annexed to 1907 Hague Convention).

⁹⁶ Order concerning Towns, Villages and Buildings Planning Law (Judea and Samaria), No 418, 1971.

⁹⁷ Bimkom, *The Prohibited Zone*, *supra* note 91, at 44.

⁹⁸ *Id.* at 44-45.

homes, demolished during the period 2000 to September 2007.⁹⁹ Nir Shalev and Alon Cohen-Lifshitz have identified the following factors as leading to a dramatic fall in the number of building permits issued to Palestinians in Area C, and thus to building taking place without permission and to consequent house demolitions: a harsh and mistaken interpretation of the Mandatory Plans;¹⁰⁰ a refusal to allow for land subdivision (meaning only one residential building per plot, despite many plots measuring several hectares); a refusal to approve relaxations from the Mandatory Plans and a strict enforcement policy.¹⁰¹ Since Area C is the only contiguous area within the occupied West Bank, and Areas A and B are “islands” surrounded by Area C, the restrictive planning policies in relation to Area C can also prevent the setting up of vital infrastructure to serve Palestinian communities which lie within Areas A and B.¹⁰²

UN OCHA notes that the restrictive planning regime in Area C leaves tens of thousands of Palestinians having no choice but to carry out unauthorized construction to meet their housing needs. In 2009 it recorded the demolition of 180 Palestinian owned buildings in Area C and the consequent displacement of 319 Palestinians including 167 children. It concludes that Israel’s planning regime directly contributes to the poor living conditions confronting many Palestinian residents of the West Bank.¹⁰³

4.5. The Wall

Israel started construction of the Wall in June 2002. According to UN OCHA, once completed the Wall will be 709 km long, only 15% of which will run along the Green Line (the 1949 armistice line) with the remainder within the Occupied Palestinian Territory.¹⁰⁴

Whilst the Israeli justification for the wall is security, the delegation considers that supposed justification to be ill-founded. The route of the Wall is planned in such a way that it is built around the major Israeli settlements and areas designated for settlement in the Occupied Palestinian Territory. For example, it extends 22 km east of the Green Line to encompass the settlement at Ariel and 15 km east of the Green

⁹⁹ Civil Administration Spokesperson in response to a Freedom of Information Law request submitted by Nir Shalev on 19 November 2007. See Bimkom, *The Prohibited Zone*, *supra* note 91, at7(n1).

¹⁰⁰ These plans were prepared during the British Mandate period during the 1940’s and still apply to the majority of Palestinian communities in Area C.

¹⁰¹ Bimkom, *The Prohibited Zone*, *supra* note 91, at 35-47.

¹⁰² Bimkom, presentation to the delegation, 19 December 2010.

¹⁰³ UN OCHA, *Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank 2-3* (Special Focus, December 2009).

¹⁰⁴ UN OCHA, *West Bank Wall Projections 1* (July 2009).

Line to encompass the largest settlement, Ma'ale Adumim.¹⁰⁵ Like Professor John Dugard, former UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories,¹⁰⁶ the ASF delegation considers that the real reason behind the construction of the Wall is to lead to the further annexation of occupied Palestinian land into the state of Israel.

Indeed, whilst the construction of the Wall does not play a direct role in the legal proceedings concerning the evictions in Sheikh Jarrah, the ASF delegation considers that the Wall nevertheless forms an intractable part of the legal-political context in which these cases have been played out and will continue to play out, as its construction not only severely impacts the human rights situation in the Occupied West Bank, including East Jerusalem, and in particular the housing rights situation, but also plays a key role in Israeli plans to keep the demographic balance of Jerusalem in favour of a Jewish majority.

Due to the construction of the Wall within the Occupied Palestinian Territory, many Palestinians will be in an area between the Wall and the Green Line known as the "Seam Zone".¹⁰⁷ This area amounts to approximately 10% of the West Bank and has been designated a closed military zone for Palestinians.¹⁰⁸ Palestinians are required to obtain special permits to allow them to enter the Seam Zone and those who have land inside the Zone are required to obtain visitor permits and can only access their land at designated times and through designated checkpoints in the Wall. Inside the Jerusalem Municipality, the Wall has separated Palestinians in Kafr Aqab, Anata and Shuafat refugee camp from East Jerusalem, requiring those residents to obtain permits to enter Jerusalem. At a meeting with the delegation on 19 December, Dr. Rami Nasrallah, director of the IPCC, described the policy of the Israeli authorities to confine Palestinians to these over-crowded areas as "human warehousing".¹⁰⁹

The physical separation of areas such as Kafr Aqab, Anata and Shuafat refugee camp from Jerusalem has resulted in a number of developments that may have serious

¹⁰⁵ Bimkom, *The Prohibited Zone*, *supra* note 91, at 19.

¹⁰⁶ "(...) the main purpose of the Wall is the annexation, albeit by de facto means, of additional land for the State of Israel." *Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967*, UN Doc.E/CN.4/2004/6/Add.1, 17 February 2004.

¹⁰⁷ Adv Ghiath Nasser delivered a presentation on the route of the Wall to the delegation on 20 December.

¹⁰⁸ Bimkom, *The Prohibited Zone*, *supra* note 91, at 19.

¹⁰⁹ Similarly, Chatham House (the Royal Institute of International Affairs) in a recent study observes that "current Israeli policies of segregation and exclusivity", combined with disparities in economic opportunities, access to health, education and other municipal services, are "leading to the 'warehousing' of Palestinian residents" of Jerusalem. Mick Dumper & Wendy Pullam, *The Cost of Failure* 1, 12 (Chatham House, February 2010).

repercussions for the residency status of Palestinian Jerusalemites.¹¹⁰ In a recent report, the Palestinian human rights organisation Al-Haq warns that the facts on the ground indicate that the Wall could in the future become the new Israeli municipal boundary for East Jerusalem.¹¹¹ According to the organisation, Palestinian Jerusalemites who have moved to areas located on the eastern side of the Wall and inside the Israeli defined Jerusalem Municipality, and are found to have consistently used Israeli government services located there over a prolonged period of time will be at serious risk of losing their Israeli-granted right to reside in East Jerusalem, if Israel at any point in the future decides to unilaterally redraw the Municipal boundary.

In 2004, the International Court of Justice stated that the sections of the Wall that ran inside the West Bank, including East Jerusalem, together with the associated gate and permit regime, violated Israel's obligations under international law. It called on Israel to cease construction of the wall, including in and around East Jerusalem, to dismantle those sections already completed, to make reparations for the requisition and destruction of homes, businesses and agricultural holdings and to return the land, orchards, olive groves and other immovable property seized.¹¹² Israel has failed to comply with those calls and the construction of the Wall and its detrimental effect on Palestinians continues.¹¹³

¹¹⁰ Al-Haq, *The Jerusalem Trap: The Looming Threat Posed by Israel's Annexationist Policies in Occupied East Jerusalem 2* (October 2010).

¹¹¹ *Id.*

¹¹² ICJ, Advisory Opinion, 9 July 2004, *supra* note 23, para 152-153.

¹¹³ HRC, *Concluding observations: Israel*, UN Doc. CCPR/C/ISR/CO/3, 3 September 2010, para 17.

5. Legal Proceedings and Evictions – The Case of Sheikh Jarrah

5.1. Introduction

Sheikh Jarrah is a Palestinian area situated in occupied East Jerusalem, a walk northwards of perhaps ten minutes from the Damascus Gate, the entrance to the Muslim Quarter of the Old City.

Due to its strategic location, the area, which is home to approximately 2,800 Palestinian residents, has been the focus of long-standing and persistent efforts by Israeli settler organisations to acquire land and property. According to the United Nations (see map below), settler efforts have been directed at all the main areas in Sheikh Jarrah: the Kubaniyat Im Haroun area to the west; the Karm Al Ja'ouni area to the east; and Karm El Mufti area to the northeast.¹¹⁴

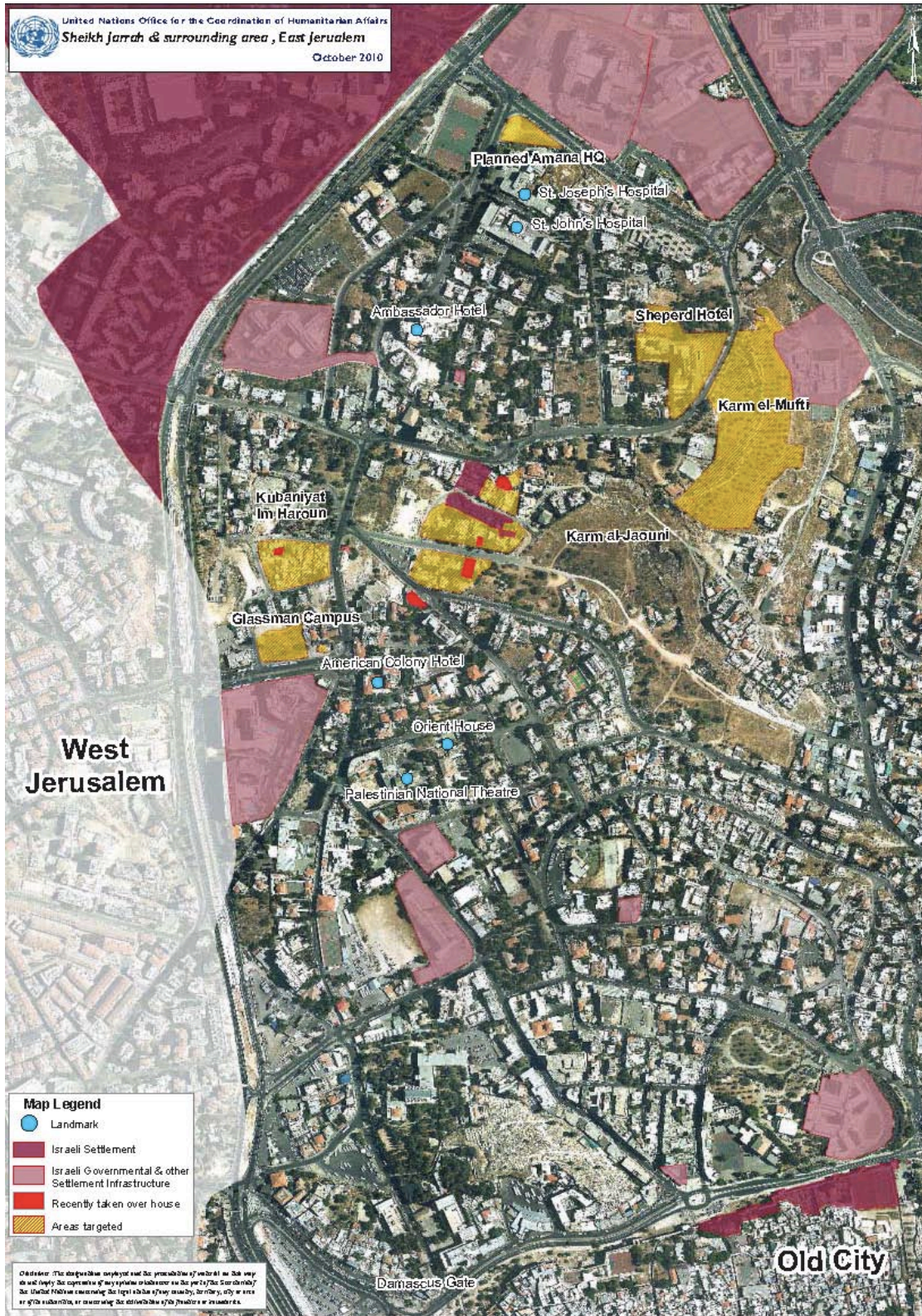
In November 2008 and August 2009 53 Palestinians, all members of the Mohammad Al-Kurd, Hanoun and Al-Ghawi families, were evicted from their homes in the Karm Al Ja'ouni area of Sheikh Jarrah. Furthermore, members of the Rifqa Al-Kurd family were evicted from an extension to their home (situated on the same land as the main house). All of the said homes and property were immediately occupied by settlers.

It is estimated that at present another 500 people in Sheikh Jarrah remain at risk of forced eviction due to current and potential legal proceedings advanced as a consequence of settler activity and the assertion of claims to ownership of land and property.¹¹⁵

The evictions and displacement of the families were – and remain – the subject of great controversy and have received significant publicity. The delegation is of the view that the families' situations represent very starkly key aspects of the crisis of Palestinian housing generally, and within East Jerusalem in particular.

¹¹⁴ UN OCHA, *The Case of Sheikh Jarrah* 3-4 (updated version, October 2010); See also Ir Amim, *Evictions and Settlement Plans in Sheikh Jarrah*, *supra* note 11.

¹¹⁵ UN OCHA, *The Case of Sheikh Jarrah*, *supra* note 114, at 1.



Map of Sheikh Jarrah, detailing Israeli settlement expansion. The houses of the four evicted families are in the Karm Al Ja'ouni area (highlighted in red). ©UN OCHA

In seeking to understand the issues facing families in Sheikh Jarrah, the delegation visited the neighbourhood on 19 and 21 December 2010. On the second occasion the delegation was invited into the home of the Rifqa Al-Kurd family, who face eviction proceedings. Members of other families who have already been evicted from their homes were also present. Earlier in the day the delegation met with lawyers acting for the families in legal proceedings that are ongoing. Although requests were made to meet with representatives of settler groups and lawyers representing their interests, in the end no such meetings materialised notwithstanding the availability of the delegation.

5.2. Historical and legal developments: 1948-1967

The presenting and urgent difficulties faced by Palestinian families in the Karm Al Ja'ouni area of Sheikh Jarrah are rooted in long-standing and complicated disputes associated with the refugee crisis generated by the 1948 war, the addressing of humanitarian need in its aftermath, the occupation and annexation of East Jerusalem in 1967, and since the 1970s, organised action on the part of settler organisations in the neighbourhood.

Many of the Palestinian families now living in Sheikh Jarrah became refugees in 1948 having been displaced from Haifa, Jaffa and West Jerusalem. They were supported at the time by the United Nations Relief and Works Organisation (UNRWA). In 1956 UNRWA selected 28 families, according to specific criteria, to benefit from an agreement with the Jordanian government who were occupying East Jerusalem.¹¹⁶

The initiative involved the building of residential units in Sheikh Jarrah and the signing of individual agreements by the families with the Jordanian government whereby nominal rental payments would be made and various conditions complied with.

The basis upon which families were selected included the absence of any ownership of land in East Jerusalem and the fact of self-sufficiency, specifically that one member of the family was engaged in employment.

In return, the families agreed to relinquish their refugee ration cards, although not their refugee status. It was further agreed that after leasing the built properties for

¹¹⁶ The agreement between UNRWA and Jordan, of which the delegation has a copy, states: "An urban housing project consisting of housing accommodation for twenty eight families now in receipt of Agency relief will be undertaken as a means of enabling these refugees through savings in rent to become self-supporting members of the community".

three years for a nominal rent, the legal title would pass to the families, a matter which never in fact materialised.

5.3. Historical and legal developments: 1967-2011

Following the 1967 occupation of the West Bank, the Israeli government passed legislation that unilaterally annexed East Jerusalem.¹¹⁷ Additionally, the Legal and Administrative Matters (Regulation) Law 1970 was introduced to bring all property the government considered to have been owned by Jews before 1948 and thereafter confiscated by the Jordanian authorities, under Israeli jurisdiction. This law led to much of the land in Sheikh Jarrah, including the land on which the 28 Palestinian families had constructed homes under the 1956 UNRWA sponsored scheme, coming under the auspices of the Israeli General Custodian, who had the competence to release this property to the alleged previous Jewish owners.

Following the 1970 Legal and Administrative Matters (Regulation) Law, a clear asymmetry emerged in the way the Israeli courts treat the question of pre-1948 property rights. It will be seen below that whilst the courts have been willing to uphold claims by Jewish organisations in relation to property in Sheikh Jarrah allegedly owned by Jewish families before 1948, similar ownership claims by the Palestinian residents of Sheikh Jarrah to lands which are located in what is now considered by the Israeli government as part of Israel, are not admitted by the courts. This is due to the Legal and Administrative Matters (Regulation) Law, which specifically permitted pre-1948 Jewish owners to claim property previously owned in East Jerusalem, and the absence of a similar piece of legislation allowing the Palestinian population to reclaim property lost after 1948. The delegation considers such asymmetry to be unjustifiable.

In 1972, two Jewish committees – the Sephardic Community Committee and the Knesset Israel Committee (“the Committees”) – laid claim to ownership of land in Sheikh Jarrah on the basis of affiliations dating back to the Ottoman era during the 19th Century.

Documentation relating to transactions between a community of Sephardic Jews and an Arab landowner in 1886 was produced and used by the Committees (in 1972) to establish a primary registration with the Israeli Land Registry.

¹¹⁷ See supra at “4.1. The history”.

The validity of the documents produced has been the subject of much dispute in protracted legal proceedings that have taken place, but in any event it has been established by the courts that primary registration does not substantiate the validity of a claim and specifically, proof of ownership with regard to land disputes.

Nevertheless in the 1970s, 23 of the families party to the agreements with UNRWA and Jordan began to receive correspondence from the Committees demanding rental payments for residence, and in some cases legal proceedings were initiated.

In 1976, four families faced court proceedings based upon the Committee's 1972 claim to ownership. Eviction was sought against three families; the fourth faced an order seeking the demolition of part of their home.

The claims failed, the court finding that based upon the agreements made with UNRWA and Jordan, the families had been lawfully resident on the land.¹¹⁸ Although the court was invited to declare that the families had title, this was refused on the basis that Jordan had had no right to confiscate the property and transfer it to the families.

In 1982 the Committees initiated legal proceedings for eviction against a further 23 of the families. Fourteen of the families were represented by an Israeli lawyer, Yitzhak Toussia-Cohen. Mr Toussia-Cohen did not challenge the ownership claims that were asserted and instead reached an agreement ("the Toussia-Cohen agreement") with the Committees.

The terms of the Toussia-Cohen agreement were such that the families would accept the status of "protected tenants" and against whom eviction would not be sought in return for rent payments and compliance with restrictions relating to the renovation and alteration of their properties.

"Protected tenancy" status is derived from the Israeli Tenants Protection Law 1972, applied in East Jerusalem after the occupation and annexation of 1967. The confirming of that status did not in fact require the acknowledgement of the Committees' claim to ownership and the agreement did not in effect confer any additional benefits to the families.¹¹⁹

¹¹⁸ The lawyers representing the families confirmed at the meeting with the delegation on 21 December 2010 that the land in question had been empty land in 1948 and from which no one had been displaced.

¹¹⁹ The Civic Coalition for Defending Palestinians' Rights in Jerusalem (CCDPRJ), *Dispossession and Eviction in Jerusalem: The Cases and Stories of Sheikh Jarrah* 14 (December 2009).

The Toussia-Cohen agreement was validated by the court and is considered legally binding under Israeli law. However, the families have always denied giving their lawyer the consent to reach such agreement.¹²⁰ Moreover, despite the failure of the 1976 claim for ownership by the Committees and other evidence that questions that assertion,¹²¹ the Toussia-Cohen agreement has acted as the legal basis for the Israeli court-ordered evictions and has indeed effectively rendered subsequent and substantial inquiries into the legitimacy of the Committees ownership claims redundant from a domestic legal perspective.¹²²

In 1997 a separate case challenging the Committees' assertion of ownership of land in the Karm Al Ja'ouni area of Sheikh Jarrah was brought by Suleiman Hijazi, based upon transactions of land that had taken place between his family - not a party to the UNRWA/Jordanian agreements - and another family in 1961 and flowing from the Hijazi family's long-standing ties to the area and documented evidence in relation to title deeds going back to the 18th and 19th centuries.

The case, which sought a declaration of ownership, was dismissed on procedural grounds, but also after hearing evidence concerning moves to register the land by the Committees in 1946 and 1972, the lack of such moves by the Hijazi family, and the absence of evidence of actions such as payment of taxes for plots of land which would accord with ownership.

The Committees' evidence was directed at disproving the Hijazi claim for a declaratory decision as to ownership. The District Court held that there was no need to decide upon the question of whether the Committees indeed had ownership.

The Supreme Court rejected an appeal on the basis that further information presented in support of the question of ownership did not provide any basis by which the case could be held to be exceptional, thereby enabling the court to interfere with the original decision.¹²³

In October 2009, the Hijazi family commenced further proceedings seeking a declaration that the land was in its ownership, or in the alternative, was not owned by the Committees.¹²⁴ During the meeting arranged with the Palestinian lawyers, those specifically working on the case informed the delegation that in December 2009 they had found Ottoman-period land title documents in the archives in Ankara which cast

¹²⁰ See infra at "**5.4. The cases of the families evicted in 2008-2009**".

¹²¹ See, for example, the Hijazi case referred to below.

¹²² CCDPRJ, *Dispossession and Eviction in Jerusalem*, supra note 119, at 13.

¹²³ Civil Case 1465/97 (Jerusalem); Civil Appeal 4126/05.

¹²⁴ Civil Case 3148/09 (Jerusalem).

serious doubt upon the Committees original primary registration in 1972 and the accuracy of the documents used in that registration.

In April 2010, two weeks after the death of Mr Hijazi, the District Court found that the claim had already been adjudicated on in the original 1997 case, that the new documents did not reach the relevant threshold to reopen the case whilst further noting that the new material would not lead to a different result from that originally determined by the court.

Mr Hijazi was also involved in an ownership claim over land in the Kubaniyat Im Haroun area on the western side of Sheikh Jarrah. A protracted legal battle over this land came to an end in September 2010 when the Israeli Supreme Court ruled that the Custodian General and others claiming ownership, including settler representatives, succeeded in proving they had owned the property before 1948.¹²⁵

According to the Civic Coalition for Defending the Palestinians' Rights in Jerusalem (CCDPRJ), the court failed to consider documents that provided proof that the Jewish people who had been living on the land before 1948 were in fact leasing the land from Arab land owners, and as such did not own the land.¹²⁶

The Supreme Court's ruling significantly increases the likelihood of the future eviction and displacement of the 200 Palestinians living in this area, most of whom are refugees, and the likelihood of the establishment of a new Israeli settlement.¹²⁷ Speaking at a press conference two weeks after the Supreme Court ruling, Aryeh King, one of the leaders of the settlement movement in East Jerusalem, announced that settler organizations intended to settle ten new Jewish families in Kubaniyat Im Haroun, as they would "continue the policy of returning Jews to the area".¹²⁸

5.4. The cases of the families evicted in 2008-2009

The Mohammad Al-Kurd, Hanoun, Al-Ghawi and Rifqa Al-Kurd families were all party to the Toussia-Cohen agreement. However, each of the families have nevertheless repeatedly and consistently stated – including to the delegation – that they did not

¹²⁵ Nir Hasson, 'Dozens of Arab families may be evicted from East Jerusalem neighborhood under court ruling', Haaretz, 28 September 2010. Available at: <http://www.haaretz.com/print-edition/news/dozens-of-arab-families-may-be-evicted-from-east-jerusalem-neighborhood-under-court-ruling-1.316055>

¹²⁶ CCDPRJ, 'Land confiscation continues in Sheikh Jarrah'. Available at: http://www.aidajerusalem.org/uploadss/04_10_101281090610.doc

¹²⁷ UN OCHA, *The Case of Sheikh Jarrah*, *supra* note 114, at 3-4.

¹²⁸ Nir Hasson, 'Rightist plans to settle 10 new Jewish families in East Jerusalem neighborhood', Haaretz, 15 October 2010. Available at: <http://www.haaretz.com/print-edition/news/rightist-plans-to-settle-10-new-jewish-families-in-east-jerusalem-neighborhood-1.319185>

consent to the agreement and that it was only after approval by the court that they became aware of its implications. As such, the families have since refused to pay rent to the Committees or seek permission to renovate or extend buildings for their expanding families, as stipulated under the Toussia-Cohen agreement, claiming they are the legal owners.

Eviction proceedings were originally commenced against four families – the Hujeed, Nusseibeh, Hanoun and Al-Ghawi families - in 1994 and 1995. Legal argument was successfully advanced in the Magistrates Court by the lawyer representing the Hujeed and Nusseibeh families that there was no clear evidence of ownership by the Committees. The proceedings were frozen pending the furnishing of relevant evidence, specifically a judgment from the District Court confirming ownership by the Committees. The Committees did not seek to pursue the claims.

In the case of the Hanoun and Al-Ghawi families however, the court upheld the Toussia-Cohen agreement by which the court recognised ownership by the Committees such that the eviction proceedings were deemed legitimate.

The Mohammad Al-Kurd family

Proceedings placing reliance on the Toussia-Cohen agreement, and specifically breaches associated with protected tenancy status, were commenced against the Mohammad Al-Kurd family in 1999.¹²⁹

In November 2001 the extension to the Mohammad Al-Kurd family home was broken into and occupied by settlers. This led to legal action on behalf of the family in the Court of Local Affairs seeking an order to evict the settlers. An order was obtained, but ignored by the settlers.

The family then received a court order to seal and demolish the extension, leading to fresh legal action on their behalf in May 2007 seeking assistance in evicting the settlers. Despite criticism by the court of the police and the Jerusalem Municipality for failing to take enforcement action against the settlers, the family were forced to take further action in the High Court against the Minister of Public Security for the failure to enforce the order.

¹²⁹ Civil Case 6599/99; Civil Appeal 4126/05.

Mr Mohammad Al-Kurd died in November 2007 and in July 2008 a final eviction order was issued by the Jerusalem Magistrates Court. In November 2008 the family were evicted from their home.

The Al-Ghawi family¹³⁰

The Al-Ghawi family were party to the Toussia-Cohen agreement and proceedings were brought in 1998 on the basis of failures with regard to rent and building renovations carried out without the necessary permission.¹³¹

The family were eventually served with an eviction order in 1999, following the court's finding that rent had not been paid. Although the claims relating to unauthorised construction were not established, default of rent payment was sufficient for eviction to be ordered against the family who by then comprised seven family units.

In 2002, the family were evicted, but after legal proceedings were re-instated after six months. Further eviction proceedings were commenced and in August 2009 the family were again evicted after a final eviction order was obtained.

The Hanoun family

The Hanoun family faced similar eviction proceedings brought on the basis of breaches of the Toussia-Cohen agreement.¹³² An eviction order was obtained and the family were evicted in 2002. After a successful challenge the family were able to return to their home several months later. However in August 2009 the family was evicted for a second time.

The Rifqa Al-Kurd family

The Rifqa Al-Kurd family faced proceedings initiated in 1999 in relation to their use and occupation of an extension to their main home, stated to have been built without permission and in breach of the Toussia-Cohen agreement. In 2002, the extension was sealed, a substantial fine imposed and the court took possession of the keys.

¹³⁰ Members of the Al-Ghawi family, as well as the Hanoun family, were present at a meeting with the delegation held at the home of the Rifqa Al-Kurd family on 21 December 2010. See, for their personal testimonies, infra at "**6.3. Personal testimonies from Sheikh Jarrah**".

¹³¹ Civil Case 18901/98.

¹³² Civil Case 18902/98.

After further legal challenges, the court ruled that the family had no right to use the extension and in November 2009 settlers unlawfully entered and occupied that section of the home.

The family are now engaged in legal proceedings in relation to the main home.

Recent Developments

Legal proceedings have flowed as a consequence of the evictions in 2008-2009. Maher Hanoun and others for example challenged their eviction on the basis that the Toussia-Cohen agreement should be cancelled, asserting that the agreement had been signed on the mistaken assumption that the land had been properly and lawfully registered by the Committees.¹³³

The application was dismissed by the Magistrates Court, the decision being upheld in the District Court on 11 November 2010. Other arguments questioning whether the Committees ownership documents pertained to the plots of land involved were also rejected.

Majid Hanoun, the brother of Maher Hanoun, and others brought a claim that they were unlawfully evicted on the basis that although they were living in the same building, they were not named in the court order demanding their eviction.¹³⁴ It is further asserted that in any event, the claims of ownership by the Committees were invalid. Directions in the proceedings were set down and the matter was heard on 7 April 2011, although at the time of writing judgment has not yet been given.

The protracted legal proceedings faced by the four families and culminating in their eviction, starkly demonstrate the on-going problems faced by families who originally settled in Sheikh Jarrah as part of the original agreements made with UNRWA and Jordan over 50 years ago.

In view of the legal action taken by the Committees and its successor¹³⁵ over many decades and through to the present day, it is highly likely that new proceedings will continue to be issued against the remainder of the families.

¹³³ Civil Case 1472/08.

¹³⁴ Civil Case 8783/09.

¹³⁵ See *infra* at "**5.5. Current proceedings for eviction**".

This will inevitably lead to further protracted conflicts and attendant distress, the type of which was clearly conveyed to the delegation by families currently affected.¹³⁶

5.5. Current proceedings for eviction

The delegation was informed during its visit of 8 sets of further and on-going proceedings for eviction being taken against families, some party to the Toussia-Cohen agreement, and others not.¹³⁷ The delegation has since learned that a further set of proceedings seeking the eviction of another family was issued in early 2011.

During the 1990s the Committees sold their rights to the Nahalat Shimon Company, an organisation that has been variously described as a settler organisation and a real estate company.

The eviction proceedings currently lodged against families, all brought in the name of the Nahalat Shimon Company, principally involve allegations of non-payment of rent and the building of structures/extensions without the requisite permission.

The latest three sets of proceedings however have also cited allegations that the families have been responsible for disturbance and threatening behaviour to neighbours.¹³⁸

It is highly likely that the latter allegations reflect increasing tensions in the Karm Al'Ja'oumi neighbourhood in a context where Palestinian families have been evicted followed by immediate occupation of vacated homes by ideologically motivated Israeli settlers, many of whom it has been observed are young, from abroad and who receive regular visible support from settler networks.¹³⁹ Upon attending the home of the Rifqa Al-Kurd family the delegation observed young male settlers entering and leaving the

¹³⁶ See the family testimonies set out below.

¹³⁷ Civil Cases 6629/09, 9979/09, 9940/09, 9938/09, 6639/04, 19795/08, 34421/10 and 34600/10. Case 6629/09 concerns proceedings involving the main home of the Rifqa Al-Kurd family.

¹³⁸ Article 131 of the Tenant Protection Law 1972 states: "Despite what is said in each contract or agreement, although without rebuking the provisions of another law, only the following are grounds for eviction: (...) (5) the tenant, or another person with the authority of the tenant persists to bother or anger his neighbours, including his landlord who is his neighbour". It would appear that claims are now seeking to place reliance on this ground, which is likely to be a highly contentious area should the matter reach final determination by the courts.

¹³⁹ The delegation was informed by Meir Margalit on 23 December that settlers active in East Jerusalem or the rest of the OPT receive support and funding from organisations abroad and/or international networks. See *also*, for instance, a recent New York Times article, reporting on the case of HaYovel, a "Tennessee-based charity", which is "one of the many groups in the United States using tax-exempt donations to help Jews establish permanence in the Israeli-occupied territories - effectively obstructing the creation of a Palestinian state, widely seen as a necessary condition for Middle East peace". Jim Rutenberg, Mike McIntire & Ethan Bronner, 'Tax-exempt funds aid settlements in West Bank', The New York Times, 5 July 2010. Available at: <http://www.nytimes.com/2010/07/06/world/middleeast/06settle.html>

extension built by members of the Rifqa Al-Kurd and which is defaced with pro-settler graffiti.

It is to be noted that during the course of the protracted legal proceedings, the Nahalat Shimon Company has indicated that it is prepared to negotiate a compromise with the families whereby ownership by the Company is accepted and rights to otherwise assert ownership are waived.

In return, and in accordance with the status of "protected tenants" under the Tenant Protection Law 1972, the Company would house the families in comparable accommodation in apartments it intends to build in the area on Palestinian land, an offer that the families have rejected for obvious reasons.

The delegation has been made aware through its meeting and discussions with lawyers representing the families in Sheikh Jarrah of the legal approaches being taken in claims brought against the families, be they party to the Toussia-Cohen agreement, or otherwise.

Whilst it may be observed that the families party to the Toussia-Cohen agreement face a significant hurdle in persuading the courts to challenge the agreement, it is apparent that the recent documentation obtained in the Hijazi case informs the determined approach being taken.

By way of contrast, the delegation also heard a perspective expressed by practitioners not directly involved in the cases that the most pragmatic approach to be taken by some families may in fact be to comply with the conditions required of protected tenants.

Such an approach would ensure the preservation of residence in homes of many decades and would preclude eviction on the basis of arguments of the type already successfully advanced by the Committees.

However, it would be also an acknowledgement of ownership by the Committees, contrary to the families' understanding from the 1956 Jordan-UNRWA agreement. Whilst obtaining protected tenant status may provide immediate security for the family involved, the ownership of the land would remain in the hands of the Committees and could be used for settler activity in the long-term.

Moreover, it cannot be overemphasized that, until today, East Jerusalem remains Occupied Territory under international law, as confirmed by the International Court of

Justice in 2004.¹⁴⁰ Under international humanitarian law, the general applicability of Israeli law in Occupied Territory and the use of Israeli courts are impermissible.

Although, under international law, Israeli jurisdiction is not applicable to East Jerusalem, the Israeli legal system nevertheless represents the most immediate and only domestic recourse to “justice” for Palestinians in East Jerusalem, including the families in Sheikh Jarrah. While the Palestinian lawyers working on the Sheikh Jarrah cases were generally pessimistic about the level of “justice” that could be achieved through the Israeli court system, they also emphasized the importance to exhaust domestic remedies, a strategy which for many families they represent has proven successful to delay their forced displacement (including eviction) for many decades.

Similarly, it must be recalled that even when Israeli law in reality is applied in occupied East Jerusalem, differential treatment between Israelis and Palestinians is apparent. It was demonstrated above that whilst Israeli law recognises that claims by Jewish individuals or groups to land owned pre-1948 may exist and be pursued, equivalent claims by Palestinian refugees to land and property owned by them and which have been part of Israel since 1948 are systematically denied. In a meeting with the delegation on 23 December, the Israeli human rights lawyer Daniel Seidemann asked the following rhetorical question: “How can we discuss a waiver of a Palestinian right of return when we are implementing a right of return for Jews to East Jerusalem, and Sheikh Jarrah in particular?”

Along with former Attorney General Michael Ben-Yair, Daniel Seidemann is part of a group of jurists who recently proposed that the Israeli state should confiscate properties in Sheikh Jarrah that have been claimed by alleged pre-1948 Jewish owners.¹⁴¹ The moral argument that the group is putting forward is exemplified by the personal story of the former Attorney General. According to Ben-Yair, his family lived in Sheikh Jarrah until 1948 when they were ordered to evacuate their house. After one month his parents received two apartments in West Jerusalem, which belonged to Palestinians who had fled to East Jerusalem. His grandmother also received a grocery store that belonged to Palestinians, to compensate for the loss of her own store in Sheikh Jarrah. In 1972 Ben-Yair turned down the Custodian General's offer to regain ownership of his grandmother's house in Sheikh Jarrah because his family had already been compensated with property of Palestinian refugees in West Jerusalem. In the Israeli daily Haaretz, Ben-Yair stated that “[e]very Jew without exception who lived in

¹⁴⁰ See infra at “**7. Relevant International Law**”.

¹⁴¹ See Nir Hasson, ‘Leftists urge Israel to repossess settler’s homes in East Jerusalem’, Haaretz, 12 November 2010. Available at: <http://www.haaretz.com/print-edition/news/leftists-urge-israel-to-repossess-settlers-homes-in-east-jerusalem-1.324237>

this neighbourhood in 1948 was compensated with properties on the western side. So the whole story is nonsense”, referring to settler groups seeking to resettle Jews in Sheikh Jarrah.¹⁴² Citing previous legal opinions that indicate that the Israeli state is authorized to confiscate private land if activities on it could have grave implications on public order, the group of Ben-Yair demands that the Israeli government repossess houses in Sheikh Jarrah and elsewhere in East Jerusalem occupied by settlers in order to prevent a disruption of the existing social fabric and to set the stage for a peace agreement with the Palestinians.¹⁴³

¹⁴² *Id.*

¹⁴³ *Id.*; See also Yitzhak Reiter & Lior Lehrs, *The Sheikh Jarrah Affair*, *supra* note 14, at 32; ‘Editorial: Israel’s government can restore order to Sheikh Jarrah’, Haaretz, 17 November 2010. Available at: <http://www.haaretz.com/print-edition/opinion/israel-s-government-can-restore-reason-to-sheikh-jarrah-1.325118>

6. The Human Side of Forced Evictions and House Demolitions: Testimonies from Sheikh Jarrah and Silwan

6.1. How are evictions and demolitions carried out?

In occupied East Jerusalem the delegation visited the Palestinian communities of Sheikh Jarrah and Silwan. In these places, the members spoke to a number of Palestinian families whose homes had been demolished or who had been evicted. It was evident that there were common elements in their personal testimonies:

- 1) Very short notice is given of an eviction or demolition, if at all, and, in the main, any such notices are in Hebrew (not the first language of Jerusalemite Palestinians). Palestinians do not have home mail delivery so such (final) demolition or eviction orders are distributed in haphazard manner – leaving them under stones near houses, posted on a door at night or giving them to small children at the house.
- 2) The demolitions and evictions occur very quickly – often within minutes after arrival of the authorities, giving people barely enough time to collect essential belongings.
- 3) The Israeli police attends evictions and demolitions in massively disproportionate numbers, closing off roads and access points. Any people resisting the eviction or demolition are forcibly removed.
- 4) In many cases settlers have occupied the homes of evicted Palestinian families almost immediately, within minutes after the eviction.
- 5) No assistance is provided by the Israeli occupying authorities to assist families who are rendered homeless.

6.2. Economic and psychological impact

The delegation observed the economic and psychological impact of forced evictions and house demolitions on Palestinian families. Many of the families the mission spoke to had witnessed their most personal possessions ruined, broken or thrown outside. Approximately 70% of Palestinian families live below the poverty line and many Palestinian families can simply not afford to replace the items lost or damaged in demolitions or evictions.

Additionally, families who are living under the threat of eviction or demolition invariably feel helpless and anxious about their future - not knowing when or how the authorities will evict them or demolish their homes. With so many administrative demolition orders made by the Jerusalem Municipality, only a proportion is executed. The Municipality decides which orders to execute, and when. Occupants subject to a demolition order may live for years in their home, not knowing if they will suddenly be evicted. As a result, a huge number of Palestinian households live with constant fear and uncertainty.¹⁴⁴

Since 1967, more than 3,200 houses have been demolished in East Jerusalem. In East Jerusalem and Area C of the West Bank, a total number of 431 structures were demolished in 2010.¹⁴⁵ UN OCHA reports that while the number of people displaced slightly decreased from 2009, the number of people affected by demolitions, mainly due to the loss of a structure related to their livelihood, significantly increased.¹⁴⁶ The organisation recorded the demolition of 78 structures in East Jerusalem, including 24 residential structures, in 2010, affecting 289 people, 116 of whom were children.

The alternative to the Municipality executing a demolition order is that the occupant self-demolishes, in other words destroys the family home personally. The number of self-demolitions is increasing. The psychological effect on the occupants of having to demolish their own house is tremendous.

The ASF delegation endorses the words of Jeff Halper, director of ICAHD, whom the delegation met. He calls a house demolition "one of the most wrenching experiences that can ever happen to a person".¹⁴⁷

There are many signs of trauma and stress amongst the evicted families. In particular, the delegation heard many accounts of children being scared and having trouble sleeping and mothers who felt entirely helpless and unable to protect them.

When families are evicted or their homes are demolished, they usually move to stay in the houses of relatives, which are likely already to be overcrowded. In the process, families lose any autonomous family life. The effects on children and their education,¹⁴⁸ and women (loss of privacy), are particularly serious.¹⁴⁹

¹⁴⁴ See also WCLAC, *Forced Evictions*, *supra* note 78. (containing a series of interviews with Palestinian women in East Jerusalem who have been subject to demolition orders.)

¹⁴⁵ UN OCHA, *The Humanitarian Monitor* 3-5 (December 2010).

¹⁴⁶ *Id.*

¹⁴⁷ Jeff Halper, *An Israeli in Palestine* 20 (London: Pluto Press/ICAHD, 2010).

¹⁴⁸ See Save the Children UK, *Broken Homes: Addressing the Impact of House Demolitions on Palestinian Children and Families* (April 2009). See also Nadera Shalhoub-Kevorkian, *The Political Economy of Children's Trauma: A Case Study of House Demolitions in Palestine*, 19 *Feminism &*

6.3. Personal testimonies from Sheikh Jarrah

In Sheikh Jarrah, the delegation met a number of Palestinian families who had been evicted, or who were facing the threat of eviction. As stated above, the delegation was invited into the home of the Rifqa Al-Kurd family, having observed the settlers now squatting in the extension to their property's front. Members of the other families were present in the Rifqa Al-Kurd house, including members of the Al-Ghawi family who lived on the street opposite their home for many months after being evicted in August 2009, as well as members of the Hanoun family. The delegation heard testimonies about their connection to their homes in Sheikh Jarrah, the legal processes, and the manner of their eviction from their home and the current situation in the neighbourhood. It was clear that members of all families present had experienced violence, provocation and intimidation from the Israeli settlers living in Sheikh Jarrah. Credible accounts of intimidation by settlers and their supporters were articulated, as well as accounts of inaction on behalf of the police when complaints have been raised. The close knit community has documented the actions of the various evictions and of on-going intimidation by settlers and their supporters.

From the personal testimony of Mariam Al-Ghawi

"There are 3 families in our large house [the house is separated into three sections], 38 individuals and 4 generations in total. When they came to evict us it looked like a war zone. There were hundreds of IDF [Israeli Defense Forces] soldiers. It was 04:45 in the morning. I was sleeping so I had my nightgown on and was not wearing the headscarf. Before I could open the door, it had flown open. We knew an eviction was coming up but we did not know the exact day.

My 24-year-old son was attacked. My 9-year-old boy was very disorientated. He did not know what was going on. All 38 residents were evicted within 30 minutes. The police put plastic handcuffs on the children and plastic covers on the neighbours' doors so they could not leave either.

After about 30 minutes, trucks came and they loaded the trucks with our goods and took them to the UN. At the same time, the settlers' belongings arrived, their clothes etc. Within the hour, the settlers were occupying our house, using our belongings, which we were not able to take with us.

Psychology 335 (2009). The delegation met with Dr. Shalhoub-Kevorkian on 20 December 2010 in Jerusalem.

¹⁴⁹ See WCLAC, *Forced Evictions*, *supra* note 78.

The large house had three main entrances but they welded two of the entrances and kept only one door open. The soldiers came in and broke the internal walls so that everyone had to use the one entrance. We had to walk over the rubble to leave.

After the eviction, we put up a tent under a fig tree opposite our house for eight months. The Municipality of Jerusalem then came and confiscated everything in the tent because they did not like the disturbance that the settlers claimed we were causing. Settlers would regularly say to us: "This is a present from God."

Settlers would close their curtains and would either ignore us or hassle us. When we would complain to the police, we are punished for causing trouble. When they talk to us they are very rude - they swear at us, they call the Prophet Mohammed a pig and they tell us to go to Jordan. We can do nothing.

The impact on my 9-year-old son has been great. We now rent in Shuafat and he still cannot go to sleep alone. But the adults have suffered so much too. We need help ourselves. How can we help our children when we need emotional help ourselves? We live in fear. One woman who was evicted was pregnant and, when she returned from hospital, she did not return to her home but to a tree. All the new baby's clothes were in the house and the settlers took them all.

On the second day after the eviction, my 22-year-old son was walking past a soldier's car on our road. His arm hit the wing mirror of the car and the soldiers jumped out, pushed him to the floor and pepper sprayed him in the eyes. They then pepper sprayed me. It was a horrible nightmare. I went to all the hospitals to try and find my son but he was not there and the police did not tell me where they were taking him. I then went to the police station and I saw my son handcuffed in a cell. He looked very unwell, had not received any medical treatment and his eyes were clearly affected by the pepper spray. I asked for medical assistance. They allowed this, but on condition that he would not return to the neighbourhood. All because he touched the soldier's car wing mirror! The soldiers were outside our house for 15 days. Thereafter, a private security company was contracted."



Israeli settlers enter the house of the Al-Ghawi family in Sheikh Jarrah on 9 August 2009. The Al-Ghawi family was forcibly evicted from the house one week earlier, in the early morning of 2 August 2009. ©Atef Safadi

Rifqa Al-Kurd and her family live in their home in Sheikh Jarrah. Like others, they received their home under the 1956 UNRWA sponsored housing scheme. In the past, the Rifqa Al-Kurd family had built an extension to their house in order to accommodate their expanding family. Following legal proceedings the Court evicted the family from the extension in 2001 and imposed a substantial fine. In November 2009, Israeli settlers moved into this building and have occupied it ever since.

From the personal testimony of Rifqa Al-Kurd

"I am 89 years of age. I am a 1948 refugee from Haifa. My husband was a prisoner for 9 months after the 1948 war. There was an exchange of prisoners after 1948. The Jordanian government gave us this house. In 1963 my husband died. In 1973 I was served papers in Hebrew and was asked to sign. I asked someone to translate them to me in Arabic. I was told by the Israeli government, this house is not yours. Our Palestinian lawyer obtained the services of an Israeli lawyer, Mr Toussia-Cohen. Mr Toussia-Cohen was representing others and me as a Power of Attorney and he signed documents on our behalf stating that we only rented the property. He signed without our knowledge.

Just before the 1967 war broke out, we were going to get the deeds from the Jordanian government. In 1948 UNRWA gave people ration cards. Some people gave up these cards in return for the houses. Until 1973, we thought everything was ok. Until the paper from the government came, stating we were renters, not owners.

I was living with my son and daughter and the family was expanding. We wanted to build an extension in front of our main house but they wouldn't give us a permit. My son built the house with his own hands. In 2001, the extension we built in front of our main house was sealed and we were evicted from it. They said that we also had to pay 10,000 Shekels. We have made that payment. One day [after November 2009, when settlers moved into the extension], I saw that all the furniture from the house was outside. I was so upset that I grabbed the settler and said that the furniture was from my son. The settler hit me and I fell and I was in a coma for two days."

From the personal testimony of Nabil Rifqa Al-Kurd, who showed the delegation the extension of the house from which his family had been evicted and which settlers now occupy:

"In 2001 the Court issued an eviction order and closed the extension and took the keys. However, settlers took the key from the Court and entered the house. I built that house with my own hands. These settlers have no personal connection with it, their families have never lived there - they are merely young men.

This is the front garden. You will see that the settlers have dogs. They know that us Muslims, we do not like dogs. One of them bit my neighbour seriously. The settlers allow their dogs to foul the front garden. We have to live next to this garden and we pass it all the time. They don't care. They think nothing of us. They are rude to our women. They make gestures. We had to cover the back of the house so they couldn't see us."



An Israeli settler enters (the extension of) the house of the Rifqa Al-Kurd family, covered with graffiti, on 21 December 2010. ©ASF delegation

The Hanoun family also lives in Sheikh Jarrah. When evicted in August 2009, three nuclear families, consisting of 17 persons in total, were living in the house. At present, they are all separated, renting in different areas. The delegation spoke to the Hanoun family about their experiences.

From the personal testimony of Hawla Hanoun

"Our family occupied three parts of the house [each family having a separate section and a separate entrance]. In total, there were about 17 members of our family living in the house. We had lived next to each other for years. On 2 August 2009, the Israeli soldiers came to our home in the early hours of the morning. There were hundreds of soldiers. They surrounded our house and closed off the street. They told us to vacate the premises. We refused to do so.

They broke the lock on our front door. They took my husband [Majed Hanoun] out of the house first and then the rest of us. They took the phones of my son and daughter.

It was very early in the morning and we did not have any proper clothes on. There was no opportunity to bathe or to even put our shoes on and I had to walk bare foot on the floor, which was covered with broken glass. We asked the soldiers to wait for ten minutes or so to give us the opportunity to gather our personal belongings. I had my nightgown on and asked them to wait, just so I could put my clothes on.

The amount of people, the early hours and the speed of the eviction were all an attempt to scare us. It was like a war scene. The soldiers then went to my brother in law's house. They threw a bomb and opened the main door. My sister in law had previously undergone surgery on her eye and they refused to wait for her to put her clothes and head cover on. They forced her out. My sister in law started to feel faint and the soldiers started to mock her. At the time, there were some international people staying with us. They were also evicted. As a result of the eviction, the children in our family are now traumatised."

From the personal testimony of Majed Hanoun

"The last eviction order had been issued six months before. Two days before [that the eviction took place], police officers came to the house, clearly planning the eviction – so we knew that it would happen soon. That Sunday morning, they broke the gate and the windows and kicked us all out. They arrested the international people staying with us in solidarity. There was no respect for the hijab. There were 17 people in the house. The neighbourhood was blocked so people couldn't get to school. The settlers came one hour after we were evicted.

For five months we lived under a nearby tree. The men even slept under that tree. We did this in order to let our voice reach the world, so that the real face of settlement could be seen. We were offered tents by the Red Cross, but we refused them. Settlers don't care how we live. How can they sleep on my children's beds? They even played football with the kids' football!

We don't know what will happen, from day to day. They asked us for 13,000 Shekels for the cost of the eviction.

Part of the strategy is to make life difficult for us. After the eviction they brought 100 settlers for a support visit. Settlers and the police occupied the

neighbourhood. The settlers are from all over the world, particularly from the US.

Court orders demanding people to stay away from the neighbourhood are easily obtained in the courts. They can for instance order a 16 or 17 year old to be excluded from the area for four weeks [i.e. an "exclusion order"]. One student lost a place at a University as a consequence. Two nieces were also affected [i.e. their education] by these orders."



Um Fadi Hanoun stands in front of her house in Sheikh Jarrah, from which she was evicted in 2009 and which was subsequently taken over by Israeli settlers. ©ASF delegation

6.4. Personal testimonies from Silwan

6.4.1. Introduction

Members of the delegation visited Silwan, a Palestinian village within East Jerusalem, located on the southern slopes of the Old City. The village is only 400 metres south of the Haram al Sharif or Temple Mount. Silwan has been one of the flashpoints of settler activity in recent years. The settlers claim that, just underneath the City walls, lies the original "City of David", where King David may have established his capital

3,000 years ago.¹⁵⁰ In 1997, a settler organisation, El'ad, forcibly took over various properties allowing it to take control of the City of David tourist and archaeology site. Since then, settler activity has expanded.

As with the whole of East Jerusalem, whilst Israel insists that it has “annexed” the area and therefore that domestic Israeli law applies, the international community does not recognise the annexation. Under international law, Silwan, like the whole of East Jerusalem and the West Bank, is occupied territory. There can be no legal justification for the demolition of a family home or confiscation of land in occupied territory, because there is no military necessity to demolition orders.¹⁵¹

However, the Israeli government refuses to adhere to its international legal obligations. It also refuses to acknowledge the political battle between Israeli settler groups, aiming to create “facts on the ground”, and Palestinian residents facing displacement from their homes. The government insists that this is merely a private matter of people buying homes and moving in. As many as 55,000 Palestinians live in Silwan, as well as 500 armed settlers, the latter supported by police and armed guards.

The Municipality, despite receiving taxes from the Palestinians, does not invest in schools, or sewage and sanitary infrastructure. The delegation observed that the roads in Silwan are damaged and neglected and that rubbish is not collected.

The area is zoned as a “green area” which means that it is practically impossible for Palestinians to obtain permits to build houses or extensions. In the area of Wadi Hilweh for instance, only 20 such permits have been granted since 1967.¹⁵²

The settlers acquire property mainly through use of the Absentees’ Property Law, even when some of the owners of the buildings may still be in occupation. They also acquire property through claims on behalf of alleged pre-1948 Jewish owners (as is the case for the settlers in Sheikh Jarrah) or through “shady transactions”, whereby houses might be bought from Palestinians “through a process which involved, according to witnesses and accomplices – and according to Israeli court rulings –

¹⁵⁰ Archaeology cannot escape a political context in Israel and the OPT. The archaeological debate around the City of David is reviewed at Moaz Al-Za'tari & Jonathan Molony, *House Demolitions in Silwan: The Judaization of East Jerusalem* 32 (Al-Maqdese for Society Development, July 2010). See also, for other reviews of the political implications of archaeology, Keith W. Whitelam, *The Invention of Ancient Israel: The Silencing of Palestinian History* (London: Routledge, 1996); Israel Finkelstein & Neil Asher Silberman, *The Bible Unearthed: Archaeology's New Vision of Ancient Israel and the origin of its sacred texts* (New York: Touchstone, 2001).

¹⁵¹ See infra at “**7. Relevant International Law**”.

¹⁵² Al-Za'tari & Molony, *House Demolitions in Silwan*, supra note 150, at 26.

threats, false depositions, forged documents, and posthumous witness signatures".¹⁵³

Wadi-Hilweh

The Wadi-Hilweh residential area was the first part of Silwan to be subject to aggressive settler activity ostensibly to explore and preserve archaeological remains and relying on this disputed archaeology to establish Jewish presence in the area, and displace Palestinians. Even if the ruins can be dated to the time of David, that is no reason to displace existing residents today. Meir Margalit, a member of the Jerusalem Municipality who the delegation met, has summarised the issue as a struggle based on whose rights take precedence - those who lived in the area 3,000 years ago or those who live in the area today, concluding that the presence of Israeli settlements in East Jerusalem is "a classic case example of colonialism".¹⁵⁴

Settlement activity started in 1991 when the settler company El'ad began to acquire property with the full support of Ariel Sharon, then Minister for Construction and Housing. El'ad (a Hebrew acronym for "City of David") is a private settler organisation founded in 1986 with the goal of redeeming land, strengthening the Jewish connection to Jerusalem, particularly around the City of David.

One property, the Musa Abbasi family home, was declared "absentee property" even though Mr Abassi and his family were living in the house. After litigation, it was declared that the property was jointly owned by Mr Abassi and the Custodian of Absentee Property. It remains occupied by settlers, not by the Abassi family.¹⁵⁵ Another property, the Guzman or Glass House, was acquired by El'ad from the Jewish National Fund (JNF), claiming pre-1948 Jewish ownership. JNF sued the Palestinian occupants, describing them as "trespassers", although the family had lived in the house for over one hundred years. The courts rejected the Guzman family's claim of ownership and they were evicted in 2006. Three settler families now live in the house.¹⁵⁶

In November 2010, the Israeli daily Haaretz published a detailed report which showed how the Israeli state has used the Absentees' Property law to transfer Palestinian property in East Jerusalem to right-wing settler organisations such as El'ad and Ateret

¹⁵³ Meron Rapoport, *Shady Dealings in Silwan* 11 (Ir Amim, May 2009).

¹⁵⁴ Meir Margalit, *Seizing Control of Space in East Jerusalem* 152 (Tel Aviv: Sifrei Aliat Gag, 2010); See also Human Science Research Council, *Occupation, Colonialism, Apartheid? A Re-assessment of Israel's Practices in the Occupied Palestinian Territories under International Law* (May 2009).

¹⁵⁵ Al-Za'tari & Molony, *House Demolitions in Silwan*, *supra* note 150, at 28-29.

¹⁵⁶ Nir Hasson, 'Full Haaretz expose / How the state helped right-wing groups settle East Jerusalem', Haaretz, 3 November 2010. Available at: <http://www.haaretz.com/print-edition/features/full-haaretz-expose-how-the-state-helped-right-wing-groups-settle-east-jerusalem-1.323312>

Cohanim, without a tender and at very low prices.¹⁵⁷ From the investigation it appears that the role played by the Israeli Custodian of Absentee Property has been “extremely flawed”. For instance, it is clear that the Custodian has confiscated Palestinian houses on the basis of affidavits submitted by settler organisations, without either verifying the reliability of the people who made the affidavits or checking whether anyone was living in these houses.

In 1997, the Israeli Land Administration (ILA) gave El'ad responsibility for the preservation and maintenance of the City of David national park, i.e. the Wadi Hilweh neighbourhood of Silwan. Israeli lawyer Daniel Seidemann has described putting an ideologically motivated settler group in charge of excavations as the equivalent of “outsourcing the fire department to a pyromaniac”.¹⁵⁸

Nowadays the archaeological excavations are conducted with (at best) disregard for the existing residents, alternatively in order to render Palestinian life there impossible. The excavations use horizontal tunnels, a practice apparently now disparaged by archaeologists, and those tunnels extend under Palestinian homes, damaging them and rendering them unsafe. Buildings have collapsed as a result.

The settlers live in the area surrounded by armed guards, paid for by El'ad. Like in Sheikh Jarrah, clashes between Palestinians, the settlers and their guards are becoming more frequent and more violent.¹⁵⁹ The ASF delegation has observed that these are not clashes between two equally-placed communities. The settlers have the full force of private security guards and the police behind them and deliberately respond disproportionately to any incident. In both Silwan and Sheikh Jarrah, the added security attendant on a sustained settler presence restricts the freedom of movement of Palestinian residents and their visitors.¹⁶⁰ In Silwan, the delegation was shown army issued gas canisters that had been thrown at the Palestinian residents by Israeli settlers.

In a recent report, the UN High Commissioner for Human Rights observes that violence committed by Israeli settlers in the West Bank, including East Jerusalem, is escalating.¹⁶¹ The report describes the case of Samer Mahmoud Ahmad Sarhan, who was shot and killed on 22 September 2010 by a private security guard employed by

¹⁵⁷ *Id.*

¹⁵⁸ As quoted in Al-Za'tari & Molony, *House Demolitions in Silwan*, *supra* note 150, at 29. The delegation met with Daniel Seidemann on 23 December 2010.

¹⁵⁹ This is the case, especially, in Sheikh Jarrah, “where the settlers’ entry is conditioned on having Palestinian families thrown out, literally, onto the streets”. Ir Amim, ‘October-09 Update’. Available at: <http://www.ir-amim.org.il/eng/?CategoryID=327&ArticleID=661>

¹⁶⁰ UN OCHA, *East Jerusalem: Key Humanitarian Concerns*, *supra* note 8, at 60.

¹⁶¹ *Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council Resolutions S-9/1 and S-12/1*, UN Doc. A/HRC/16/71, 3 March 2011.

the Ministry of Housing to provide security for settlers living in Silwan.¹⁶² The High Commissioner observed that conflicting information exists with regard to the circumstances surrounding the incident, namely whether the victim had been throwing stones at the vehicle of the guard. She also pointed out undue delays in medical and police intervention, as well as indications that the police did not investigate the incident thoroughly and instead accepted the guard's version of events.

Al-Bustan

The residential area of Al-Bustan, within Silwan, has been designated by the Municipality as a "green area", for the construction of a national park beneath the City of David site. As with the City of David, the reasoning relies on dubious archaeological claims that the Al-Bustan is an area known in David's time as "the King's Garden". The Municipality's plan is to demolish 88 Palestinian homes, displacing 1,500 residents.

In clear sight of the Al-Bustan residents are the new Israeli settler buildings that have never received building permits but which have remained untouched by the courts and/or the Jerusalem Municipality for years.

The Municipality's plan originated in November 2004, when the Municipal engineer ordered "the evacuation of illegal houses in the King's Valley".¹⁶³ In 2005, the Municipality published a plan to demolish all 88 houses in the Al-Bustan neighbourhood. As a result of international protest, the plan was initially suspended, but two alternative plans put forward by residents were considered, and rejected in 2008 and 2009.

The current plan, approved 21 June 2010, involves the demolition of 22 homes. However, UN OCHA reports that the urban planner assisting the residents has disputed this number provided by the Municipality, instead maintaining that the plan's implementation would require the complete demolition of more than 40 homes and the partial demolition of at least 13 others, displacing some 500 Palestinian residents.¹⁶⁴

Beit Yehonatan

¹⁶² *Id.* at para 43.

¹⁶³ Memo quoted in Al-Za'tari & Molony, *House Demolitions in Silwan*, *supra* note 150, at 40.

¹⁶⁴ UN OCHA, *The Humanitarian Monitor* 4 (June 2010).

Beit Yehonatan, a settler building on the slopes above Al-Bustan, represents the most extreme example of selective application of the planning laws. The building was built by Ateret Cohanim, another settler organisation operating principally in the Old City, in 2002. It consists of seven stories and towers over neighbouring properties, in an area where buildings of more than two floors are not permitted. Eight settler families live in the property.

Despite the building having been built without a building permit and that situation continuing for 9 years and despite numerous demolition orders having been issued by the courts on the building, no attempt to evacuate, seal or demolish the building has been made. Whereas State Attorney Moshe Lador has described the building as having total disrespect for planning and construction rules, and in January 2007 the Local Affairs Court ordered that the building be sealed and the tenants evicted (a ruling which since then has been confirmed by every level of the Israeli court system, including the Supreme Court) Jerusalem Mayor Barkat has refused to execute the demolition order.¹⁶⁵ In fact, the delegation witnessed armed Israeli soldiers surrounding and protecting this building.

6.4.2. Personal testimonies

A mile away from Al-Bustan, in the Palestinian area of Ras Al-Amud, the delegation attended the site where a house demolition had occurred two days earlier, rendering a family of nine homeless (including three children under the age of 5).¹⁶⁶ The Musar Subuh family occupied a large house that they had built on land that they own and, when the delegation visited them on 23 December 2010, Mr Subuh spoke of the demolition:

"On 19 August 2010 a court order was obtained ordering us to demolish our home. We did not know of this order until 20 December 2010, when it was nailed to the gate of our house. It was in Hebrew and we do not understand Hebrew. We were ordered to demolish our house ourselves or to pay the cost of the demolition, which was 150,000 Shekels. The order states that the demolition should not take place within the first 7 days but should not be carried out later than 60 days. It was made against unknown occupiers.

¹⁶⁵ Al-Za'tari & Molony, *House Demolitions in Silwan*, *supra* note 150, at 113-114.

¹⁶⁶ See also UNRWA, 'The United Nations Relief and Works Agency, UNRWA, condemns Jerusalem home demolitions and assists affected families', 23 December 2010. Available at: <http://unispal.un.org/UNISPAL.NSF/0/B53BFF9D4D35DC5E8525780200530CC7>

We were scared and started to try to demolish what we could and to collect our belongings. On 21 December, at 8 AM, bulldozers and Israeli soldiers with dogs arrived and surrounded the area. We eagerly attempted to gather our stuff before the bulldozers started. Given the number of soldiers and dogs, we were too scared to argue. We were not asked if we had anywhere else to go. We were not provided with any assistance and our belongings were left outside. Last night we slept in a tent provided by the Red Cross."



(left) Site of the demolished house of the Subuh family in Ras Al-Amud, East Jerusalem. (right) Subuh family members sit at the site where their house was demolished two days earlier, on 21 December 2010. ©ASF delegation

The delegation spoke to one family member who was a lawyer and she did not know of any "official document" sent before the actual demolition order was nailed to the gate of the house. However, six months before the eviction took place, the army attended the premises without notice and broke through the gate. They interrogated her father as to why he and others were living at the premises. They did not mention their intention to seek an order.

The delegation was shown the family's tents. The children were staying with their mothers and the other women whilst the men shared a separate tent. Two of the baby's toys were recovered following the demolition. When the delegation was leaving, the family were preparing to create a small fire to cook their evening meal and warm the milk for the two-year-old child.

7. Relevant International Law

The starting point for any discussion of the international law applying in East Jerusalem and Area C of the West Bank must be the Advisory Opinion of the International Court of Justice of 9 July 2004. The International Court of Justice (ICJ) is the judicial organ of the United Nations, and its advisory opinions are authoritative interpretations and definitions of international law, and cannot be challenged by UN member states. Advisory opinions are an important source of international law, in particular of customary international law, which is binding on all states without exception.

7.1. Status of East Jerusalem and Area C

The ICJ held (para 78) that "the territories situated between the Green Line and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan." This is referred to by the Court as the Occupied Palestinian Territory. Under customary international law, this was therefore occupied territory in which Israel had the status of an occupying power. Subsequent events in these territories did nothing to alter this situation. All this territory (including East Jerusalem) remains occupied territory where Israel has had and continues to have the status of an occupying power.¹⁶⁷

The ICJ found as a fact that from 1967 onwards, Israel took a number of measures in the Occupied Palestinian Territory aimed at changing the status of the City of Jerusalem. The Security Council (UNSC) had already insisted several times on "the principle that acquisition of territory by military conquest is inadmissible". On 25 September 1971 the UNSC condemned Israel's new measures. Resolution 298 (1971), which was passed by 14 votes to none against, Syria abstaining, confirmed - according to the ICJ "in the clearest possible terms" - that "all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status".

On 30 July 1980 Israel adopted the Basic Law making Jerusalem the "complete and united" capital of Israel. In response, on 20 August 1980, the UNSC adopted, by 14 votes to none, the US abstaining, resolution 478 (1980). This stated that the enactment of that Law constituted a violation of international law and that "all

¹⁶⁷ ICJ, Advisory Opinion, 9 July 2004, *supra* note 23, para 78.

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". The UNSC further decided "not to recognize the 'basic law' and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem".¹⁶⁸

Accordingly, the ICJ held, by thirteen votes to two, that:

All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention (...) have in addition the obligation (...) to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

Similarly, the ICJ held, by fourteen votes to one, that:

The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion.

Furthermore, in the view of Professor Paul J. I. M. De Waart, shared by the delegation, "[i]t is now beyond doubt that Israel has to withdraw from the Palestinian territory it occupied in 1967".¹⁶⁹ However, action by the UNSC pursuant to the ICJ's advice is extremely unlikely in view of the power of veto held by the United States.

7.2. UN human rights law

On 3 October 1991 Israel ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) both of 19 December 1966, which came into force in 1976, as well as the United Nations Convention on the Rights of the Child (CRC) of 20 November 1989, which came into force on 2 September 1990. It is therefore a party to these three treaties and is obliged to comply with their provisions, as interpreted by the relevant Treaty Bodies.

¹⁶⁸ ICJ, Advisory Opinion, 9 July 2004, para 75.

¹⁶⁹ Paul J. I. M. De Waart, *International Court of Justice Firmly Walled in the Law of Power in the Israeli-Palestinian Peace Process*, 18 *Leiden Journal of International Law* 486 (2005).

In the view of the ICJ, the ICCPR is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory, and therefore applies in East Jerusalem and Area C.¹⁷⁰ The ICJ also observed that the Occupied Palestinian Territory had for over 37 years been subject to Israel's territorial jurisdiction as the occupying power. In the exercise of the powers available to it on this basis, Israel is bound by the provisions of the ICESCR. Furthermore, it is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities. The CRC contains Article 2 according to which "States Parties shall respect and ensure the rights set forth in the (...) Convention to each child within their jurisdiction (...)". Therefore the CRC is applicable within the Occupied Palestinian Territory.¹⁷¹

Article 17 of the ICCPR places the following obligations on Israel:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

This means that any interference with a person's home and private life must not be arbitrary, that is, it must be based on clear law, must not discriminate and must give the person a fair hearing in challenging any interference with these rights. Interference must be for legitimate reasons and be strictly proportional, that is, the minimum necessary for achieving that aim. Eviction and destruction of family's home require very strong justification. The UN Human Rights Committee, the "treaty body" for the ICCPR, has declared that the relevant domestic legislation on interference with the right to a home "must specify in detail the precise circumstances in which such interferences may be permitted".¹⁷²

Article 11 of the ICESCR places the following obligation on Israel:

1. The States Parties to the present Covenant 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

¹⁷⁰ ICJ, Advisory Opinion, 9 July 2004, *supra* note 23, para 111.

¹⁷¹ *Id.* para 112.

¹⁷² HRC, *General Comment 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17)*, 8 April 1988.

improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

In its General Comment 4 of 1991,¹⁷³ "Right to Adequate Housing", the Committee on Economic, Social and Cultural Rights (CESCR), the treaty body for the ICESCR, stated that "[t]he right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity". It stated that forced evictions "can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law". The Committee's General Comment 7 of 1997,¹⁷⁴ "The Right to Adequate Housing; Forced Evictions", declared that where otherwise lawful, such evictions should be carried out only on the basis of clear laws, should not render people homeless, and should only use force as a last resort. Unlawful forcible evictions should be punished.

In July 2010, the Human Rights Committee concluded that Israel's policies in the OPT discriminated against Palestinian residents. It criticised Israel's "frequent administrative demolition of property, homes, as well as schools in the West Bank and East Jerusalem due to the absence of construction permits, their issuance being frequently denied to Palestinians". It also noted that Israel imposed "discriminatory municipal planning systems, in particular in 'area C' of the West Bank, as well as East Jerusalem, disproportionately favouring the Jewish population of these areas".¹⁷⁵

In the view of the Human Rights Committee, whose members are independent and authoritative international experts, Israel's policies amount to violations of the rights to non-discrimination, to privacy and a home, and to a family life.

Unfortunately, Israel has not ratified the relevant Optional Protocols which would make possible complaints to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights for violation of the rights set out above.

¹⁷³ CESCR, *General Comment 4: The right to adequate housing (Art. 11 (1))*, 13 December 1991.

¹⁷⁴ CESCR, *General Comment 7: The right to adequate housing (Art. 11 (1)): forced evictions*, 20 May 1997.

¹⁷⁵ HRC, *Concluding observations: Israel*, UN Doc. CCPR/C/ISR/CO/3, 3 September 2010, para 17.

7.3. Humanitarian Law

Article 46 of the 1907 Hague Regulations states that the occupying power must respect private property, which cannot be “confiscated”. Israel accepts that the Hague Regulations are customary international law, and so binding on all states including Israel.

Israel signed the four Geneva Conventions of 1949 on 8 December 1949, and ratified them on 6 July 1951. However, unlike the Hague Regulations of 1907, the applicability of which the Israeli authorities have accepted due to their status as customary law, Israel contests the applicability of the Fourth Geneva Convention to the OPT. Israel refuses to recognise its *de jure* applicability on the grounds that this would amount to recognising that the West Bank and Gaza Strip were respectively part of the territory of Jordan and Egypt prior to 1967. Israel has concluded that the OPT could not be considered as the “territory of a High Contracting Party”.¹⁷⁶ Israel claims that it is present in the OPT as an “administrator” only, thereby relieving it of obligations as a belligerent occupier under the Fourth Geneva Convention, and has declared that it will only abide by the “humanitarian provisions” of the Convention. However, Israel has never defined what these “humanitarian provisions” are.¹⁷⁷

In December 2001, the Conference of the High Contracting Parties to the Fourth Geneva Convention, adopted a Declaration which stated that “[t]he ICRC has always affirmed the *de jure* applicability of the Fourth Geneva Convention to the territories occupied since 1967 by the State of Israel, including East Jerusalem”.¹⁷⁸ It must be noted that the position of the International Committee of the Red Cross (ICRC) with respect to application of the Fourth Geneva Convention, of which it is the Guardian, is authoritative and should therefore be “recognized and respected at all times” by the parties pursuant to Article 142 of the Convention. The 2001 Declaration further reiterated the requirement of full respect for the provisions of the Fourth Geneva Convention.

Finally, the ICJ, in its Advisory Opinion of 9 July 2004, declared:

¹⁷⁶ Israel’s official position regarding the applicability of the Geneva Conventions was explained by Attorney General Meir Shamgar. See Meir Shamgar, *The Observance of International Law in the Administered Territory*, 1 Israel Yearbook of Human Rights (1971).

¹⁷⁷ See, for example, HCJ 1748/06, *Mayor of Dahriya v. IDF Commander*; HCJ 5488/04, *Elram Local Council v. Government of Israel*. As discussed in David Kretzmer, *Israel*, in: *The Role of Domestic Courts in Treaty Enforcement: A Comparative Study* 237 (David Sloss & Derek Jinks, eds., Cambridge University Press, 2009). See also Al-Haq, *Legitimising the Illegitimate? The Israeli High Court of Justice and the Occupied Palestinian Territory* (November 2010).

¹⁷⁸ Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention, Geneva, 5 December 2001, para 3.

The Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties. Israel and Jordan were parties to that Convention when the 1967 armed conflict broke out. The Court accordingly finds that that Convention is applicable in the Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel, there being no need for any enquiry into the precise prior status of those territories.¹⁷⁹

Article 53 of the Fourth Geneva Convention states that “destruction” by the occupying power of private property is prohibited, unless “absolutely necessary” in military operations. An occupying power may only carry out total or partial “evacuation” of an area if “the security of the population or imperative military reasons so demand”. In any event, any population so evacuated must be transferred back to their homes as soon as the hostilities in the area have ceased, and in the meantime the occupying power must ensure those evacuated have “proper accommodation”.

Article 27 of the Fourth Geneva Convention enshrines the fundamental guarantees of protected persons in occupied territory, including the right to honour, security of the person, family life, stating, “[p]rotected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity”.

7.4. Israeli settlements

The Jerusalem Municipality and the Israeli government insist that the situation in Sheikh Jarrah is a strictly legal matter for the domestic Israeli courts to decide upon as purely a dispute of local property ownership between Jewish and Arab residents of Jerusalem.¹⁸⁰ However, the delegation disagrees and observes that the situation in Sheikh Jarrah forms an integral part of Israel’s illegal settlement policy in the OPT. Settler activity in Sheikh Jarrah is not random, but forms part of a plan to create a “ring of settlements” around the city that will intensify the segregation of East

¹⁷⁹ ICJ, Advisory Opinion, 9 July 2004, *supra* note 23, para 101.

¹⁸⁰ UN News Service, ‘Israel’s evictions in Jerusalem violate international law, says senior UN official’, 10 December 2009. Available at: <http://www.unhcr.org/refworld/docid/4b29ee022.html> (quoting Karen AbuZayd, the Commissioner General of UNRWA as saying that the UN “rejects Israel’s claims that these cases are a private matter to be dealt with by municipal authorities and domestic courts”).

Jerusalem from the rest of the West Bank, while precluding the possibility of East Jerusalem serving as the future Palestinian capital.¹⁸¹

As regards Israeli settlements in the OPT, the ICJ noted that Article 49, paragraph 6, of the Fourth Geneva Convention provides: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". That provision prohibits not only actual deportations or forcible transfers of population, but also any measures taken by an occupying power in order to organize, facilitate or encourage transfers of parts of its own population into the occupied territory.

In 1979 the UN Security Council¹⁸² took the view that such policy and practices "have no legal validity". It has also called upon "Israel, as the occupying Power, to abide scrupulously" by the Fourth Geneva Convention and "to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories", in accordance with its obligations under Article 49(6) and Article 47 of the Fourth Geneva Convention, which prohibits any changes to be made in the status of occupied territory.¹⁸³

The Security Council reaffirmed its position in resolutions 452 of 20 July 1979¹⁸⁴ and 465 of 1 March 1980.¹⁸⁵ Indeed, in the latter vote, which was unanimous – the US voted in favour, it determined that "all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity." It further described "Israel's policy and practices of settling parts of its population and new immigrants in [the occupied] territories" as a "flagrant violation" of the Fourth Geneva Convention.

For these reasons, the International Court of Justice concluded that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, have been established in breach of international law.¹⁸⁶

¹⁸¹ See Ir Amim, 'October-09 Update', *supra* note 159.

¹⁸² By 12 votes to none, with 3 abstentions (Norway, United Kingdom and United States).

¹⁸³ UN Security Council Resolution 446 (22 March 1979).

¹⁸⁴ By 14 votes to none, with 1 abstention (United States).

¹⁸⁵ UN Security Council Resolution 465 (1 March 1980), para 5. (no abstentions – the US voted in favour)

¹⁸⁶ ICJ, Advisory Opinion, 9 July 2004, *supra* note 23, para 119-120.

It is arguable that the creation of unbearable living conditions as a result of systematic practices of evictions and demolitions, and the facilitation of the transfer of the Israeli settlers into occupied territory, as well as the ensuing incidents of violence and harassment perpetuated against the local Palestinian population by the settler population, result in the indirect forcible transfer of the local population inside or outside of occupied territory, thereby amounting to a violation of Article 49(6) of the Fourth Geneva Convention. The next section shows how such actions could amount to “grave breaches” of the Convention, carrying criminal liability with universal jurisdiction.

7.5. Remedies under international humanitarian law

The law relating to universal jurisdiction gives State Parties to the Geneva Conventions of 1949 the obligation to arrest and prosecute those responsible for “grave breaches” of the Conventions.

Art. 146 provides:

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article. Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. (...)

Art. 147 provides:

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

States parties to the Geneva Conventions are obliged to enact legislation providing for the punishment of "grave breaches" of the Geneva Conventions, including wanton and unlawful destruction and appropriation of property, not justified by military necessity. Such legislation often contains appropriate enabling rules with regard to statutes of limitation, requirements that the alleged perpetrator(s) be present on the territory, so that the state can open an investigation, issue an arrest warrant; and for executive consent.¹⁸⁷

The United Kingdom, for example, has enacted the Geneva Conventions Act 1957, according to which a grave breach committed anywhere in the world must be prosecuted in the UK as if committed in the UK. Proceedings may only be instituted by the Director of Public Prosecution (DPP). A person convicted of a "grave breach" is to be punished by a term of imprisonment of up to 30 years. It is presently possible for a private person or group to apply for a warrant of arrest. The prosecution must then be continued by the Attorney-General. A refusal by the Attorney-General to pursue such a prosecution could be challenged by way of an application for judicial review.

In 2005 the UK based NGO Lawyers for Palestinian Human Rights sought and obtained an arrest warrant against Major General Doron Almog, the former head of Israeli forces in the Gaza Strip, for a grave breach of the Fourth Geneva Convention, namely the bulldozing of more than 50 houses in the Rafah refugee camp in the Gaza Strip, when Major General Almog was head of Israel's Southern Command. Although the El Al plane carrying General Almog had landed in the UK, as the result of a tip-off, he was able to evade arrest.¹⁸⁸

While the bulldozing of more than 50 houses, as in the case of the 2005 arrest warrant against Major General Doron Almog, would amount to "extensive destruction", the demolition of one or two houses would not. Substantial evidence would be required, capable of proving the grave breach(es) beyond reasonable doubt. It would also be necessary to identify the Israeli official or officials responsible for

¹⁸⁷ See Human Rights Watch, *Universal Jurisdiction in Europe: The State of the Art* (June 2006); Amnesty International, *Universal Jurisdiction: The Duty of States to Enact and Implement Legislation, Chapter 4 Part A (War Crimes: State Practice at the national level) (Algeria to Hungary)* (September 2001); *Chapter 4 Part B (War Crimes: State Practice at the national level) (India to Zimbabwe)* (September 2001). Redress, *Legal Remedies for Victims of "International Crimes": Fostering an EU approach to Extraterritorial Jurisdiction: Final Report* (March 2004). See also International Committee of the Red Cross, 'International Humanitarian Law: Implementing Laws and Regulations – By State'. Available at: <http://www.icrc.org/ihl-nat.nsf/WebLAW!OpenView&Start=1&Count=300&Collapse=10#10>.

¹⁸⁸ 'Israel general "avoids UK arrest"', BBC news, 12 September 2005. Available at <http://news.bbc.co.uk/1/hi/uk/4237620.stm>

approving and executing the “extensive destruction” of homes. In the case of General Almog this was relatively clear: he had given the orders.

In the case of house demolitions in East Jerusalem, it is likely that this will be a senior official in the Municipality. It might be possible to gather sufficient evidence to seek to prosecute the Mayor. See for example a story in The Times, entitled ‘Mayor of Jerusalem Nir Barkat plans to demolish Palestinian homes for park’.¹⁸⁹ However, it would be necessary to have evidence going far beyond a newspaper article.

And of course it would be necessary for the Mayor to travel to the UK or another state (for example Germany or Belgium) where it is possible to initiate a prosecution, and where there are lawyers competent and willing to take such a case.

Lawyers for Palestinian Human Rights together with the relevant NGOs and human rights defenders in Israel and the Occupied Palestinian Territory are actively seeking to identify perpetrators and to collect the substantial evidence required.

7.6. Human Rights Council special procedures

The UN Human Rights Council (HRC), created in 2006, has 47 member states, including the US and UK. Its “special procedures” do not contain judicial or quasi-judicial mechanisms for hearing individual or collective complaints, but can be a useful means of bringing issues to international public opinion and UN attention. In the final analysis, for action to be taken there would need to be not only a majority in the HRC, but also a majority and no veto in the UNSC. It is therefore the case that lobbying of special procedures and ultimately the HRC and UNSC is undertaken for the purpose of influencing public opinion, rather than achieving a “result” in the short term.

Relevant procedures include:¹⁹⁰

- Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (1993, Mr Richard Falk, United States);
- 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 (2000, Ms Raquel Rolnik, Brasil);

¹⁸⁹ Sheera Frenkel, ‘Mayor of Jerusalem Nir Barkat plans to demolish Palestinian homes for park’, The Times, 3 March 2010. Available at:

http://www.timesonline.co.uk/tol/news/world/middle_east/article7047411.ece

¹⁹⁰ See Office of the United Nations High Commissioner for Human Rights, ‘Special Procedures assumed by the Human Rights Council’. Available at:

<http://www2.ohchr.org/english/bodies/chr/special/themes.htm>

- Independent Expert on minority issues (2005, Ms Gay McDougall, United States);
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (1993, Mr Githu Muigai, Kenya).

Most “special procedures” receive information on specific allegations of human rights violations and send urgent appeals or letters of allegation to governments asking for clarification. In 2010, a total of 604 communications were sent to governments in 110 countries; 66% of these were joint communications of two or more mandate holders.

Mandate holders also carry out country visits to investigate the situation of human rights at the national level. They typically send a letter to the government requesting to visit the country, and, if the government agrees, an invitation to visit is extended. Some countries have issued “standing invitations”, which means that they are, in principle, prepared to receive a visit from any special procedures mandate holder. As of 31 December 2010, 73 States had extended standing invitations to the special procedures. After their visits, special procedures mandate-holders issue a mission report containing their findings and recommendations.

A recent report of Special Rapporteur Richard Falk, dated 7 June 2010, contained the following with regards to the authority of the Human Rights Council concerning Israel’s violations of international law in the Occupied Territory:¹⁹¹

28. Israelis argue that the eviction of Palestinian occupants was to restore the homes of Jews that had been seized during the period 1948–1967 when East Jerusalem was occupied and administered by Jordan. Yet in 2009 more Palestinians were stripped of their residency rights than in any year between 1967 and 2007. In the course of the year, according to Israeli figures, 4,577 Palestinians were deprived of residency status.

Palestinians interpret this pattern as an effort to alter the demographic balance in East Jerusalem so as to strengthen Israeli claims to the whole of Jerusalem. There are now approximately 200,000 Jewish settlers in East Jerusalem, which brings the respective populations in

¹⁹¹ *Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, Richard Falk, UN Doc. A/HRC/13/53/Rev.1, 7 June 2010.*

Jerusalem to about 65 per cent Jewish (500,000) as compared to 35 per cent Palestinian (250,000).

Attention was given to a statement made by European Union (EU) Foreign Ministers on the Middle East peace process in early December, especially the paragraph pertaining to East Jerusalem. (...) The statement was much more supportive of the Palestinians in relation to demolitions and evictions, which were condemned as violations of Palestinian rights under occupation and as Israeli violations of international law. The Human Rights Council possesses the authority to insist on Israel ending its occupation of the entire Occupied Palestinian Territory, including East Jerusalem, both as the basis for a just, lasting, and comprehensive peace and in view of the persistent failure of Israel to uphold its legal duties as the occupying Power, as these are specified by international humanitarian law.

The Human Rights Council must be urged to exercise its authority. This means that every opportunity must be taken to lobby the HRC.

7.7. Conclusion

It was made very clear to the delegation that the local lawyers are anxious to investigate international avenues of legal appeal or prosecution, since there is very little chance that they can obtain justice in local Israeli courts. It should never be forgotten that Israeli jurisdiction over East Jerusalem is not legitimate in the context of the occupation and illegal annexation of East Jerusalem.

It is, sadly, plain that there are no international remedies directly accessible by the local lawyers representing the Sheikh Jarrah families and other victims of one-sided planning laws, forced eviction and house demolition. There is no international court of appeal.¹⁹² This is the direct result of Israel's obstruction and obduracy in refusing to ratify the relevant optional protocols as noted above, or even to recognise the *de jure* application of the Fourth Geneva Convention to the Occupied Palestinian Territory.

¹⁹² The delegation has considered the litigation brought by Cypriot owners displaced from their properties in Northern Cyprus and specifically the cases of *Loizidou v Turkey* (23 February 1995, 15318/819, European Court of Human Rights) and *Apostolides v Orams* ([2010] EWCA Civ 9, CA). Neither of these cases is applicable because they were determined in European courts: the European Court of Justice and the European Court of Human Rights. Israel is not a member of the European Union nor a signatory to the European Convention on Human Rights.

However, the local lawyers should be aware of the possibility of the exercise of universal jurisdiction for grave breaches of the Fourth Geneva Convention, and of the precedents including that of General Almog. They could actively seek to identify Israeli officials and officers with overall control of housing and land use policy in East Jerusalem and Area C, and could collect relevant evidence. Criminal prosecutions will be a very effective deterrent.

Member states of the European Union, especially the United Kingdom with its historic role in the creation of the present situation, are deeply complicit in the present state of affairs, and dissemination of accurate information, in this report and others, is of vital importance in lobbying and indeed shaming the relevant governments, where necessary. This is the responsibility also of the members of this delegation.

8. Comparative framework

8.1. Introduction

In this section, using their experience as housing lawyers in England, the delegation compares the Israeli planning regime and legal framework for evictions and demolitions with the regime in Britain. The delegation believes that such comparison highlights that Israel's failure to comply with international legal standards and its obligations as an occupying power is compounded by overt discrimination within the Israeli domestic system itself.

The Israeli government characterises the evictions and demolitions as the ordinary consequences of the enforcement of planning regulations and legal processes of eviction. The delegation disagrees with this characterisation and finds profound and serious failings within the Israeli domestic system as compared to the British system.

In Britain, as everywhere else, inevitably people are evicted from their homes and very occasionally buildings, or part of buildings, can be demolished by the state for breach of planning laws.

Crucially the operation of the British legal system is not disputed politically. There is no area of Britain that is considered occupied under international law. The courts have political legitimacy.¹⁹³

Evictions and the occasional demolition are carried out for legitimate purposes, authorised by the courts. There is, generally, no underlying political motivation, such as trying to create particular demographic balances. Even the oppressive evictions and demolitions carried out against the Gypsy and Traveller community, whilst tainted by racism, cannot be viewed in the same light as those experienced by Palestinians.

There has been only one recent English example of a local authority attempting to engineer a particular demographic balance in its area, based on perceptions of voting intentions. In the late 1980s, Westminster City Council, led by the Conservative politician Shirley Porter, maintained a policy of selling off council housing to private buyers in marginal wards. The aim was to reduce the number of Labour voting council tenants and increase the number of Conservative voting owner-occupiers. The

¹⁹³ The legal process described below and the statistics quoted refer to the law in England and Wales. Scotland and Northern Ireland are separate jurisdictions, with their own Courts and separate legislation. They have similar legal protection for tenants and occupiers.

House of Lords¹⁹⁴ found that the policy was unlawful and amounted to wilful misconduct. The surcharge imposed by the council's auditor of over £26,000,000 was upheld by the House of Lords. It is seen that the Jerusalem Municipality's overt policy of using planning measures to maintain a particular demographic balance would not be allowed in the English legal system.

8.2. Evictions of tenants

It is a criminal offence to evict a residential occupier except by process of law.¹⁹⁵ The law requires that the owner wishing to obtain possession must first obtain a possession order in all but a few specified instances.¹⁹⁶

In the private rented sector, occupants holding tenancies granted on or after January 1989 have little security of tenure. A landlord is usually entitled to obtain a possession order – which permits subsequent eviction – any time after the first six months of a tenancy, simply by proving that the landlord has served a minimum of two months' notice.¹⁹⁷

In the social rented sector, and for private rented tenancies granted before January 1989, landlords must usually show a reason for wanting to obtain possession and often also have to show that it would be reasonable to obtain a possession order.¹⁹⁸ The landlord's reasons, or grounds, usually relate to some fault on the part of the tenant: rent arrears, breaches of the tenancy agreement or anti-social behaviour. If the reasons are commercial and do not involve any allegation of fault upon the tenant, the landlord will be required to show that there is suitable alternative accommodation available.¹⁹⁹ In most cases, the court has the power to suspend possession orders, so that the tenant might be given a chance to remedy any fault, to repay any arrears or to comply with conditions preventing anti-social behaviour.²⁰⁰

Even in cases where the landlord has a right to possession, and there is no domestic provision for consideration by the court of the tenant's circumstances, the Supreme Court has recently held that a court should still consider whether it is proportionate to

¹⁹⁴ Porter v Magill [2002] 2 AC 357.

¹⁹⁵ Protection from Eviction Act 1977, s 1.

¹⁹⁶ Protection from Eviction Act 1977, ss 3 and 3A.

¹⁹⁷ Housing Act 1988, s 21.

¹⁹⁸ Rent Act 1977, s 98; Housing Act 1985, s 84 and Schedule 2; Housing Act 1988, s 7 and Schedule 2. Similar provisions are provided under the Mobile Homes Act 1983 where an owner seeks the termination of an agreement which entitles an individual to station and occupy a mobile home as his/her only or main residence on a specified site.

¹⁹⁹ Rent Act 1977, s 98; Housing Act 1985, s 84 and Schedule 2; Housing Act 1988, s 7 and Schedule 2. For a recent example see Whitehouse v Lee [2009] EWCA Civ 375, CA.

²⁰⁰ Rent Act 1977, s 98; Housing Act 1985, s 85; Housing Act 1988, s 9.

evict the tenant, having regard to the right to respect for a person's home under Article 8 of the European Convention on Human Rights.²⁰¹

Where a landlord has obtained an outright possession order, enabling him/her to enforce possession of the property, the tenant can only be evicted by obtaining a warrant of possession from the court. Once a warrant is obtained, the occupier receives notice of when the landlord might bring bailiffs in order to obtain possession of the property. The period of notice is usually three or four weeks, sometimes longer. In the social rented sector, and for private rented tenancies granted before 1989, a tenant may still then apply to the court to exercise its discretion to suspend the warrant.

At any of the stages involved, the tenant or occupier has the opportunity to leave the property before facing eviction by bailiffs.

The tenant would normally be ordered to pay the landlord's costs incurred in going to court and instructing the bailiffs. However, many tenants simply do not defend the possession proceedings. Those that do often have the benefit of legal aid and will not in practice be required to pay the landlord's costs. Once the tenant has been evicted, he or she will move away from the property and it is rare for a landlord to pursue the former tenant in order to obtain costs where they have been awarded.

In 2009, 136,000 claims for possession were issued at court by landlords, 38,000 by private landlords and the remainder by social landlords. A total number of 24,961 outright or immediate possession orders were granted to private landlords, and an additional 938 orders were suspended in their enforcement. Social landlords were granted 23,730 outright possession orders and 43,210 suspended orders, so around a third of all possession claims issued by landlords ultimately resulted in tenants being evicted. Of the 48,691 outright possession orders made, most of those (around 41,000) were then enforced by bailiffs.²⁰²

8.3. Mortgage repossession cases

Homeowners will not be subject to eviction unless either their ownership is successfully disputed in court or they owe money to their mortgage lender.

²⁰¹ Manchester City Council v Pinnock [2010] UKSC 45, 3 November 2010.

²⁰² See Ministry of Justice, *Judicial and Court Statistics 2009* (revised, October 2010). Available at: <http://www.justice.gov.uk/publications/docs/jcs-stats-2009-211010.pdf>

It is rare for there to be disputes as to the actual ownership of a property. There may be disputes between family members as to who is the owner of a property (for example, during a divorce or after the death of the home-owner). However, if there were a dispute as to who had title to the property, normally the details of ownership registered at the Land Registry would be conclusive.

The common scenario whereby homeowners face eviction from their home is where arrears have accrued under a mortgage agreement. If arrears have accrued, the lender cannot simply step in and take possession of a residential property. As with rent arrears owed to the landlord, the lender must first obtain a possession order. However, provided that there are arrears (and that the original agreement between lender and debtor provides for the lender to obtain possession if arrears accrue), the lender will normally be entitled to a possession order. The court has the power to refuse possession orders, or to make a suspended possession order, if it is satisfied that the debtor can repay the arrears within a reasonable time, which may be as long as the remainder of the term of the mortgage.²⁰³

In 2009, there were 94,000 claims for possession due to mortgage arrears issued by lenders. A total number of 39,289 outright or immediate possession orders were made by the courts and 32,946 suspended orders. So just over a third of the claims resulted in the occupants being evicted from their homes.

Once the order has been granted, the eviction process is the same as that conducted by landlords.

The British government has taken steps to try to reduce the number of mortgage repossessions since the recession first loomed in 2008. It has schemes offering "mortgage rescue" and "mortgage support" whereby a homeowner who has accrued arrears can apply for financial assistance. The schemes are limited and have not prevented all repossessions as a result of mortgage arrears, but have helped some homeowners stay in their homes.

8.4. The eviction itself

When a landlord does execute a warrant in order to obtain possession, it must ensure that no criminal offences are committed during the eviction, such as assaulting the tenant or causing damage to the tenant's possessions. Usually a landlord will obtain the assistance of specialist court-registered bailiffs to carry out the eviction.

²⁰³ Administration of Justice Act 1970, s 36; *Cheltenham & Gloucester BS v Norgan* [2006] 1 WLR 343, CA.

In attendance at the eviction will be the landlord and bailiffs. The landlord may also arrange for a police officer to be present but the police are not allowed to assist the eviction. Whilst the bailiffs are permitted to evict the occupants, they may be subject to civil proceedings if they fail to protect the occupant's possessions. The police may intervene in order to prevent anyone committing a criminal offence and so tenants resisting eviction may be arrested. The landlord's intention is to remove the people living there and to change the locks so that they cannot re-enter.

The bailiffs may not remove possessions.²⁰⁴ Usually the landlord will allow the possessions to remain at the property for a short period even though the locks have been changed. That period allows the tenant to make arrangements for the possessions to be stored elsewhere. If the tenant has applied to the local housing authority for emergency accommodation under homelessness duties, the local housing authority may have a duty to store the possessions.²⁰⁵

The landlord does not have any duty to find emergency accommodation for the tenant who has been evicted. However, if the tenant has children or is vulnerable in any way, then the local housing authority will usually have a duty to provide emergency accommodation and often longer-term accommodation to the family.²⁰⁶ For families with children, the safety net is that local authorities must always provide accommodation to children who are in need of accommodation either with or without their parents.²⁰⁷ The children should never be left to sleep on the streets and it would be extremely rare for a family to be left on the streets.

Of course, the loss of one's home in any circumstances is a deeply harrowing experience, whether the occupant is forcibly removed by bailiffs or not. But this process, with plenty of notice to the occupier and an opportunity to leave in advance, is profoundly different to that experienced by Palestinians living under the shadow of demolition orders.

8.5. Breach of planning conditions

Local authorities have the function in England and Wales of determining applications for planning permission. For there to be any "development" on a piece of land, the developer must first obtain permission. The local authority will decide whether or not

²⁰⁴ Except in certain cases where the tenant owes the landlord money and the landlord has been able to obtain a warrant of execution against the possessions as well as a warrant of possession.

²⁰⁵ Housing Act 1996, s 211.

²⁰⁶ Housing Act 1996, part 7 "Homelessness Duties".

²⁰⁷ Children Act 1989, ss 17 and 20.

to grant permission according to its local planning policy and to whether the proposed development is consistent with that policy.

It would be unlawful for any planning policy to contain any sort of demographic balance, and none do. It is unlawful for a public authority (or anyone else) to discriminate on the grounds of race.²⁰⁸

“Development” would include the construction of any new building, the siting of caravans, or any non-minor extensions to existing buildings.

If permission is refused, the applicant can appeal to the Secretary of State (the government minister responsible for planning) who will designate an inspector to investigate. The inspector may consider the appeal in writing, at a public hearing or following a full-scale inquiry. At all stages the applicant must pay fees but the sums involved are nothing similar to the court costs described elsewhere in this report with regard to Palestinians in the OPT. If the applicant is legally represented, he or she will also pay legal costs.

Once the inspector has made his or her decision, the only challenge to it is to the High Court on a point of law.

If development is carried out without the grant of the required planning permission, the local authority may issue an enforcement notice setting out steps that the developer must take to comply with the planning decision. If immediate action is required, the local authority can also issue a stop notice requiring the developer to cease work that contravenes planning control immediately. There are procedures permitting appeals against the issue of these notices.

Where any steps required by an enforcement notice are not taken within the period for compliance with the notice, the local authority may enter the land and take those steps. It can also recover from the owner of the land the cost of doing so.

In 2008-2009, just over 500,000 applications for planning permission were made in England, of which 388,000 were successful. A total number of 5,521 enforcement notices were issued (about 1.5% of total applications). In practice, rather than taking direct action, most local authorities resort to the courts and obtain an injunction requiring a developer then to take action to comply with conditions. Around 72

²⁰⁸ Equality Act 2010.

injunctions were made in England in 2009.²⁰⁹ It is not possible to find statistics as to the number of times when local authorities took direct action and forcibly destroyed buildings built in breach of planning control.

It is clear from these statistics that most applications for planning permission succeed. Where applications are refused, landowners or developers tend to comply. Enforcement is quite rare and direct action – forcible entry onto the land and destruction of buildings – even more so.

8.6. Gypsy and Traveller cases

The position of Gypsies and Travellers is probably the most analogous to that of Palestinians in East Jerusalem. Gypsies and Travellers regularly experience racism and hostility from the rest of the public and this can be reflected in public statements expressed in the media or by politicians.²¹⁰ They experience discrimination in the provision of public services such as health, education and social services, and also discrimination at the hands of the police.

The European Court of Human Rights has recognised the importance to Gypsies in maintaining their ethnic identity and key to that can be the importance of maintaining a travelling lifestyle.²¹¹ Traditionally they would camp on common land, moving from one area to another. The Caravan Sites and Control of Development Act 1960 gave local authorities the power to close the commons to Travellers, along with a concomitant power to open caravan sites in order to house those displaced from common land.²¹² The power subsequently became a duty²¹³ but most local authorities failed to comply. In 1994, the duty to provide caravan sites was repealed.²¹⁴

The effect is that, whilst some caravan sites are available for Gypsies and Travellers, the numbers are wholly inadequate. Even where sites are available, the provision of facilities may be inadequate or the site may be very poorly located. Around one in four Gypsy or Traveller families do not have a legal place to park their caravan. In the absence of permission to live on an authorised site, Gypsies and Travellers park on

²⁰⁹ See Department for Communities and Local Government, 'Planning applications statistics'. Available at:

<http://www.communities.gov.uk/planningandbuilding/planningbuilding/planningstatistics/statisticsplanning/>

²¹⁰ See Sarah Cemlyn et al., *Inequalities Experienced by Gypsy & Traveller Communities: A Review* (Equalities and Human Rights Commission, 2009).

²¹¹ *Chapman v UK* [2001] 33 EHRR 399, EctHR.

²¹² Succinctly summarised by Sedley J in *R v Lincolnshire County Council ex parte Atkinson* (1996 8 Admin LR 529, QBD). The legal background and current legal position is best described in: Chris Johnson & Marc Willers, *Gypsy & Traveller Law* (Legal Action Group, 2006).

²¹³ Caravan Sites Act 1968.

²¹⁴ Criminal Justice and Public Order Act 1994.

unauthorised encampments, which may be private land, or lay-bys next to the highway (owned by the local authority). Legally, they are trespassers. A landowner usually requires a possession order to forcibly remove them and will be entitled to a possession order on proving to the court that the occupiers are trespassers, staying on the land without permission. The recent Supreme Court case of *Manchester City Council v Pinnock*²¹⁵ allows the Court to consider the proportionality of making a possession order, i.e. consideration of the Gypsy/Traveller's personal circumstances, lack of alternative accommodation etc. However, the prevailing law is that the landowner's property rights will normally prevail. Gypsies and Travellers are forced into a cycle of moving from one unauthorised encampment to another.

For Gypsies and Travellers living on authorised sites, some security of tenure akin to that enjoyed by local housing authority tenants has very recently been introduced after a long political campaign.²¹⁶ However, in the context of a national shortage of local authority provided authorised sites, this change has not benefitted many Travellers. Government policy is to relax the very limited requirements on local authorities to provide authorised sites.

Gypsies and Travellers therefore face the possibility of eviction far more often than tenants or homeowners. There is evidence that evictions are carried out much more violently, causing fear and sometimes injury to those being evicted, including children.²¹⁷

Gypsy and Traveller communities have practised self-help in recent years by buying plots of land, intending then to park caravans on it. They then come up against planning regulations. The placing of caravans on any land, including that privately-owned, is considered "development" and requires planning permission. If a land-owner "develops" the site, or places caravans on it, without the requisite planning permission, the local authority can ask the court to make an injunction requiring the land-owner to remedy the breach of planning control by removing the caravans.

When Gypsies/Travellers apply for planning permission, to enable them to park caravans on their land, the planning authority is required to take into account national government policy which recognises the specific constraints on Gypsies and Travellers. However, most rural or Green Belt land will contain presumptions against allowing any new development, including caravan sites. Inquiries into planning

²¹⁵ [2010] UKSC 45, SC.

²¹⁶ Mobile Homes Act 1983, s 5. As amended by Housing and Regeneration Act 2008, s 318 (in force from 30 April 2011).

²¹⁷ See Sarah Cemlyn et al., *Inequalities Experienced by Gypsy & Traveller Communities: A Review* Chapter 2 (Equalities and Human Rights Commission, 2009).

applications are held in public and an application by a Gypsy/Traveller for permission to park caravans is often met with substantial local opposition and hostility. If planning permission is refused, the landowner will be ordered to remove any caravans and any injunction granted by the court requiring the removal of caravans is ultimately backed up by penalties of fines or imprisonment for contempt of court.

The local authority can also issue stop notices and then enforcement notices against any breach of planning conditions, such as parking caravans on a site without permission. If the landowner does not comply, he or she may be prosecuted. The local authority can also, at that stage, take direct action to enforce compliance with planning conditions by going onto the land and removing the caravans itself.

Gypsies/Travellers may find that they and their caravans are effectively evicted even from land that they own.

The most high-profile case in Britain is currently at Dale Farm Essex. Ninety-six Gypsy families – around 1,000 people – live in the area. There has been a long legal battle over the local authority's refusal to give them planning permission to park caravans on that site. The families lost that legal battle and now face eviction by the local authority. Although they own the site (individuals own small plots making up the whole of the site), forcible removal of their caravans is in effect an eviction.

In June 2010, six families who were away from the site were evicted in their absence. The council attended with bulldozers, and bailiffs used sledgehammers. The remaining families have received 28-day notices to remove their caravans and are waiting for the bailiffs to attend to remove them forcibly. After exhausting their legal defences, they plan to resist, non-violently and with the help of human shields.²¹⁸

The situation faced by the gypsy community in Britain and by the Roma elsewhere in Europe has been the subject of the attention of the UN treaty bodies, the European Commission and the European Court of Human Rights. It is a common practice of the UN treaty monitoring bodies to issue recommendations and suggestions as to how to protect Roma/Gypsy/Sinti in their concluding observations on states' reports. The Committee on Economic, Social and Cultural Rights (CESCR) has noted its concerns about the lack of sites available to the Gypsy Community in the UK and recommended

²¹⁸ See Grattan Puxon, 'MPs want Dale Farm eviction called off'. Available at: <http://dalefarm.wordpress.com/>

that “the State party ensure the provision of sufficient, adequate and secure stopping sites for Roma/Gypsies and Irish Travellers”.²¹⁹

Although the sometimes violent eviction of Travellers could be considered most closely analogous to the evictions described elsewhere in this report regarding the evictions of Palestinians, the circumstances are still not the same. As identified by the CESCR, the issue is largely over the extent of the duty of the government to provide homes or sites to the Gypsy community. This is quite different from the situation in East Jerusalem where the Israeli authorities are an occupying power, seizing Palestinian homes and, therefore, actively violating their rights and destroying their way of life.

8.7. Conclusion: comparisons with East Jerusalem

Most significantly, no planning policy in Britain could possibly include a goal of maintaining or achieving a certain demographic balance on the basis of race, nationality, ethnic origin or anything else. Such a policy would be unlawful under the Equality Act 2010 and previous anti-discrimination legislation. The delegation was struck by the insistence on a demographic balance in the Jerusalem Municipality's various plans. The delegation believes that there is no similar demographic goal in municipal plans elsewhere.

Secondly, the British courts play a legitimate role in deciding on whether an occupant should be evicted and considering breaches of planning policy. Overall, the legitimacy of the courts is politically accepted. This is profoundly different of the role of the courts in East Jerusalem, which are applying Israeli law in the context of an illegal annexation.

Thirdly, there is no suggestion that the British courts discriminate between litigants on the grounds of their ethnicity, race or national origin. Again, any such discrimination would be unlawful.

Fourthly, the process of eviction, even the more confrontational evictions experienced by Gypsies or Travellers, is much less potentially violent than those in the OPT. The army does not attend.

Fifthly, there is no equivalent process of settlers ready to move into houses whose occupants have just been evicted.

²¹⁹ CESR, *Concluding Observations: United Kingdom*, UN Doc. E/C.12/GBR/CO/5, 12 June 2009, para 30.

This comparison leads the delegation to the conclusion that Israeli government claims that its actions are the ordinary consequences of enforcing a planning regime are false. Rather, the delegation concludes that the actions are the consequence of inbuilt and structural discrimination against the Palestinian population.



Former US president Jimmy Carter and former Irish President Mary Robison visit the weekly demonstrations against house evictions in Sheikh Jarrah, 22 October 2010. Speaking at the demonstration, Carter stated that "the eviction of Palestinians from their homes in Sheikh Jarrah is against international law".²²⁰ ©Atef Safadi



Palestinian children and Israeli peace activists at the weekly demonstration in Sheikh Jarrah. ©ASF delegation

²²⁰ See Nir Hasson, 'Carter: Sheikh Jarrah evictions are against international law', Haaretz, 22 October 2010. Available at: <http://www.haaretz.com/news/diplomacy-defense/carter-sheikh-jarrah-evictions-are-against-international-law-1.320676>

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Civic Coalition for Defending the Palestinians' Rights in Jerusalem (CCDPRJ)

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Rami Saleh

Women's Centre for Legal Aid and Counseling (WCLAC)

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Bimkom – Planners for Planning Rights

Efrat Cohen-Bar

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Karel Van Hecke, Consul Political Affairs

British Consulate-General, Jerusalem

Sir Vincent Fean, Consul-General

Palestinian Authority

Hussein Al-Araj, Chief of Staff President's Office

Ahmad Rwaidy, Head of Jerusalem Unit
Suhil Mea'ry, Jerusalem Unit Fund Director

Other

Nadera Shalhoub-Kevorkian, Mada al-Carmel, women studies project coordinator; Hebrew University, lecturer

Hind Khoury, former Delegate-General of the PLO in France; former Minister of Jerusalem Affairs, PA

Assaf Sharon, Sheikh Jarrah Solidarity Movement

Note 1: In seeking to understand the issues facing families in Sheikh Jarrah, the delegation visited the neighbourhood on 19 and 21 December 2010. On the second occasion the delegation was invited into the home of the Rifqa Al-Kurd family, who face eviction proceedings. Members of other families who have already been evicted from their homes were also present, including member of the Hanoun and Al-Ghawi families. Their testimonies are recorded in this report.²²¹

Note 2: Many requests were made prior to and during the visit of the delegation, for meetings with members of the Jerusalem City Council and representatives from the Jerusalem Mayor's Office. Unfortunately no positive response was received and no one from these bodies made themselves available to meet with the delegation. The delegation did meet with one elected member of the Municipality, Meir Margalit, also a leading member of ICAHD. Requests for meetings were also made to representatives from settler groups and lawyers defending these groups before the courts, but despite receiving some short replies, no one made themselves available to meet with the delegation.

²²¹ See supra at "6.3. Personal testimonies from Sheikh Jarrah".

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