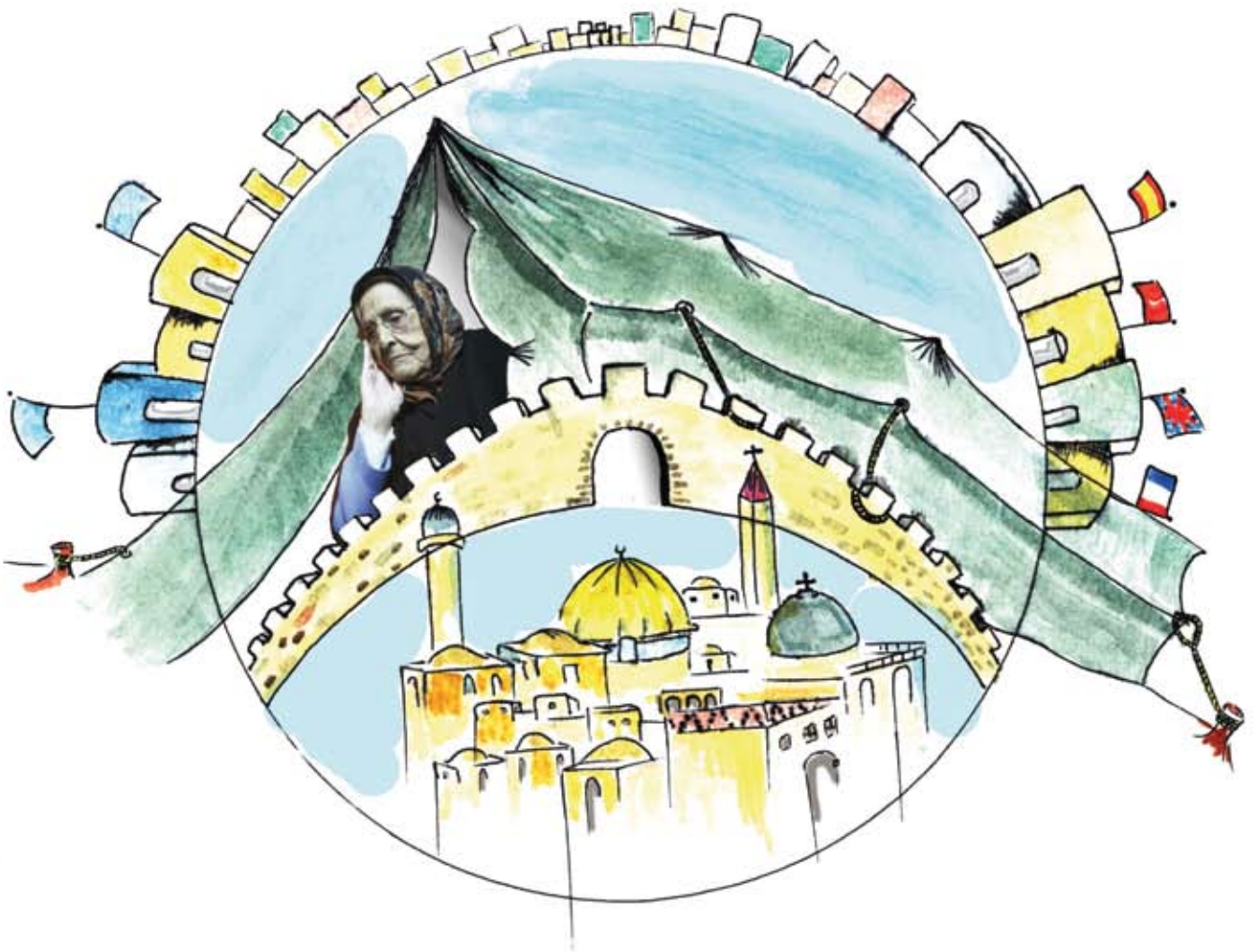


Dispossession and Eviction in Jerusalem

The cases and stories of Sheikh Jarrah



December 2009

DISPOSSESSION & EVICTION IN JERUSALEM

The cases and stories of Sheikh Jarrah

The Civic Coalition for Defending Palestinian Rights in Jerusalem

The Civic Coalition for Defending Palestinian Rights in Jerusalem is an independent, non-governmental, non-profit coalition of organizations, institutions, societies and individuals dedicated to the protection and promotion of Palestinian rights in Jerusalem.

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The Civic Coalition for Defending Palestinian Rights in Jerusalem

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EXECUTIVE SUMMARY

Sheikh Jarrah, a Palestinian neighbourhood in occupied East Jerusalem between the Old City and Mount Scopus, has become the site of a protracted legal battle whose implications range from the evictions of more than 25 families to the viability of a future Israeli-Palestinian peace agreement and the long term status of Jerusalem. Four Palestinian families have already been evicted from homes in which their families have lived for more than 50 years and an additional 23 live under precarious circumstances, awaiting various court dates and decisions that will determine their fates.

Their story began in 1956 when settled in Sheikh Jarrah by UNRWA and the Jordanian Government. The 28 families were promised property deeds to the homes they received as part of a humanitarian initiative however this never materialized. After the 1967 War, two Jewish groups (the Committees) sought to assume a primary form of ownership on the basis of a historical and religious claims to the land detailed by a dubious Ottoman era document. In part because this primary form of ownership can have no impact on third parties occupying the land, a 1974 attempt to evict four of the neighbourhood's families was denied.

The following years were quiet, but in 1982 possession of their properties were again challenged in a pivotal case that became the precedent for all subsequent actions. During the proceedings Yitzhak Toussia-Cohen, a lawyer representing 17 of the families, reached an agreement under which he did not challenge the validity of the Committees' ownership claims and instead accepted the status of "protected tenants" for his clients. This lapse created a situation where in future cases, the families could no longer contest the legality of the Committee's ownership and were required to pay rent to the Committees and seek their permission to carry out renovations, conditions of the agreement that the families learned only after it was approved by the court.

Beginning in 1999, the Committees began eviction proceedings against three families based on rent delinquency and illegal construction. Over the following ten years, numerous legal challenges were filed but because the majority of the families' lawyer unwittingly signed the 1982 agreement, they have been unable to formally challenge the Ottoman document that underlies the Committees' claim to the land despite the existence of numerous discrepancies casting doubt on its authenticity. The Sabbagh family, who are not a signatory to the 1982 agreement recognizing the Committees' right to the property, are still following their case through the courts. Because this case is not bound by the 1982 agreement, the family is hopeful that the courts will allow a challenge to the validity of the Committees' suspect documents.

The humanitarian suffering caused by both the tenuous nature of life during extended court battles, by the evictions themselves, and in their aftermath has been substantial. "It is impossible to plan for a future" says Mr. Hanoun, one of the evicted residents. "The eviction has destroyed our lives. To live on the street is so hard. It kills my family to watch strange faces living in the home in which we spent our lives." Hanoun, like the other evicted families, is currently living on the street, spending his days sitting beneath a solitary olive tree across from his home, hopeful that it will one day soon be returned to him.

In addition to the humanitarian issues palpable in these cases, there are significant international and humanitarian legal angles to be explored. Under international law, East Jerusalem is considered occupied territory and the international community has never recognized Israel's annexation of the area in question. Consequently, Israel is vested only with temporary powers of administration,

cannot impose domestic Israeli law, and perhaps most significantly, cannot transfer its own population to such an area. As discussed above, the Sheikh Jarrah cases have been adjudicated in domestic Israeli courts contrary to international law and as a result of the evictions, Jewish Israelis have moved into occupied territory.

Under international humanitarian law, three major areas protect the Palestinian residents of Sheikh Jarrah. Firstly, Israel is obligated to relate to Palestinians in East Jerusalem as Protected Persons afforded inalienable rights to life, family honour, private property, religious convictions and assured humane treatment as well as protection against threats or acts of violence. The protected tenancy status accorded the Sheikh Jarrah residents by the 1982 agreement can in no way deprive the Palestinian residents of Sheikh Jarrah of their status as Protected Persons, or relieve Israel's obligations towards them, and thus, holds no validity under international law.

Secondly, the residents are protected from confiscation and destruction of their private property. Several planning schemes currently in the approval process are predicated on the seizure and destruction of Palestinian homes. Due to their violation of the prohibition on confiscation and destruction, these plans are in violation of international humanitarian law.

Lastly, the Palestinian residents of Sheikh Jarrah are protected from deportation and forcible transfer, protections that have been violated by Israel's systematic efforts to forcibly evict the families. All told, these evictions have resulted in the displacement of over one hundred Protected Persons from and within occupied East Jerusalem.

In addition to violations of humanitarian law, the complementary application of human rights law sheds new light on this complex situation. Rights to housing and property, and the corresponding protections against forcible evictions are well established under the major human rights mechanisms. The four evictions to date demonstrate the absence of the right to legally secured tenure and thus violate the human right to housing.

After examining the humanitarian implications of the Sheikh Jarrah narrative, it is important to consider the cases in a broader context. Private Jewish non-profits have seized on Sheikh Jarrah as one of East Jerusalem's religiously and geographically strategic areas, ripe for renewed Jewish presence. While forced evictions and population transfer to occupied areas is troubling anywhere it occurs, it is especially pernicious in East Jerusalem as, ultimately, its implications could prejudice a negotiated peaceful resolution to the Israeli-Palestinian conflict predicated upon a division of Jerusalem.

1. OVERVIEW

To date, four Palestinian families have been forcibly evicted from their homes in Sheikh Jarrah where they have lived for three generations. Unable to find alternative accommodation and unwilling to be made refugees for a second time, the families remain on the streets. They sleep in small tents, hastily constructed from the remainder of their possessions, and wait. Many are aware of their stories but little about their precarious situation has changed.

Since the 1970's the Palestinian neighbourhood of Sheikh Jarrah has emerged as a focal point for private Jewish settler groups and organizations who seek to gain control of property they claim to have once been owned by Jewish communities prior to 1948, and, to additionally purchase new property in an attempt to facilitate the increase of private Jewish residency in strategically located areas of occupied East Jerusalem. Such initiatives have focused on a number of areas within Sheikh Jarrah including the Shepherd Hotel compound, the Karm Al-Mufti olive grove, and Karm Al-Ja'ouni (known in Hebrew as Shimon HaTzadik), the neighbourhood where the Hanoun, Al-Kurd, Al-Ghawi, and 25 other Palestinian families have lived for over half a century.^[1]

Progression of such initiatives, and the identities forwarding their development, varies among the areas of Sheikh Jarrah. In response to the evolution of the respective endeavors this report will focus primarily on the long series of events that have transpired within Karm Al-Ja'ouni as they pertain to the residency rights of the 28 Palestinian families. After more than three decades of legal proceedings, this neighbourhood represents the most developed of the complementary objectives however it must not be viewed in isolation. Due consideration must be given to Sheikh Jarrah in its entirety to demonstrate that the legal actions concerning the families are representative of an overall initiative and not mere disputes concerning the ownership of arbitrary plots of land.

At times intertwined and at others divergent, the stories of Sheikh Jarrah's Palestinian residents present a myriad of contentious issues. Beginning with an overview of the historical development of the land ownership disputes, this report aspires to develop both a domestic and international legal analysis of the Sheikh Jarrah housing evictions. Testimonies from the Al-Kurd, Hanoun, and Al-Ghawi cases demonstrate the humanitarian consequences of forced evictions while also serving to detail repeated violations of international humanitarian and human rights law. The Sabbagh, four families, and Hijazi cases will consequently be employed to exhibit serious and persistent legal inconsistencies that have become entrenched and decisive features of the Sheikh Jarrah dispute.

Building upon this basis the following will examine the recent evictions through an international legal framework and ultimately claim that while genuine questions pertaining to the legitimacy of land ownership have not been adequately addressed, a discriminatory legislative framework serves to undermine the equitable resolution of Palestinian land and housing claims in occupied East Jerusalem. The recent cases in Sheikh Jarrah are symptoms of an inherent legislative bias that renders adherence to international legal standards ineffectual.

^[1] Shragai, N., 'The US-Israeli Dispute over Building in Jerusalem: The Sheikh Jarrah-Shimon HaTzadik Neighbourhood', Jerusalem Issue Briefs, Vol.9, No.4, 27 July 2009.

WE WILL
NEVER LEAVE
OUR HOMES

PRESIDENT OBAMA,
YES WE CAN
STOP THE EVICTIONS & HOUSE DEMOLITIONS
IN EAST JERUSALEM
SHEIKH JARRAH
SILWAN - AL TUR - SUR BAKER - RAS KHAMIS



2. HISTORICAL DEVELOPMENT

Recently the Sheikh Jarrah neighbourhood of East Jerusalem has received increasing international attention as attempts to remove members of its Palestinian residents from their homes by various settler organizations, who claim entitlement to much of the land, have become an ingrained feature of the occupation's history. Competing ownership claims are central to the disputes in Sheikh Jarrah and as many of the varying positions revert to ancestral ownership and documentation, a brief overview of the area's history and legal developments as it affects contemporary property rights proves a necessary basis.^[2]

2.1. 1956 UNRWA-Jordan Agreement

In 1956, 28 Palestinian refugee families who had been registered under the auspice of the United Nations Relief and Works Agency (UNRWA) were selected to benefit from a humanitarian initiative in cooperation with the Jordanian government. A set of three independent contractual agreements defined the project's inception and underpinned the legal status of the families' residency in Sheikh Jarrah. The first agreement was between the Jordanian Custodian of Enemy Property and the Minister of Public Works and Housing through which the Custodian released the property to the Minister for a period of 33 years, allowing them to lease the land to the Palestinian refugees. In the second agreement, between the Minister for Public Works and Housing and UNRWA, the latter agreed to fund the construction of the homes in Sheikh Jarrah.^[3] The third and final agreement was between both the Minister of Public Works and UNRWA, and the 28 Palestinian families. The agreement stipulated that in exchange for nominal rental payments, adherence to various conditions, and the forfeiture of their refugee ration cards, the families would lease the homes for three years at which point they would then receive legal title to the property.^[4] After the indicated duration lapsed the families did not receive legal title to the homes despite having kept to the terms of the contract.

2.2. 1972 Jewish Committees' Ownership Claims

Upon conclusion of the 1967 War, and in accordance with the Law and Administrative Matters Law of 1970,^[5] the homes in Sheikh Jarrah fell under the authority of the Israeli General Custodian.^[6] The homes rested in limbo until 1972 when the Sephardic Community Committee and the Knesset Israel Committee sought to claim ownership rights on the basis of a historical and religious affiliation to the land. The Committees presented *koshan*, a form of legal title commonly

^[2] For a detailed and additional account of the history of legal and political developments in Sheikh Jarrah refer to: 'Evictions and Settlement Plans in Sheikh Jarrah: The Case of Shimon HaTzadik', Ir Amim Publications, June 2009.

^[3] "Agreement Between the Hashemite Kingdom of Jordan and the United Nations Relief and Works Agency for Palestine Refugees in the Near East for An Urban Housing Project at Sheikh Jarrah Quarter, Jerusalem", July 3, 1956.

^[4] The title and content of the three agreements are detailed in Civil Appeal 236/76 (District Court of Jerusalem), Civil Appeal 459/79 (Israeli Verdicts 35 (4)).

^[5] 1970 Legal and Administrative Matters (Regulation) Law (Consolidated Version), (1973) 27 *Laws of the State of Israel* 176. Article 5 of this law relates to issues concerning Jewish Property in East Jerusalem including the transfer of property to, and the release of property by, the Israeli General Custodian. For a further analysis of the scope and application of this law as well as the effects it has had on the realization of Palestinian housing rights please refer to sections 4.2.1; 4.2.4; 4.3.4 of this report.

^[6] The Administrator General department (also referred to as the General Custodian) is part of the Israeli Ministry of Justice, and is the sole body authorized to represent the State of Israel in all transactions where any property is bestowed on the State in any manner. The Department is responsible for administration of such property, with a number of laws entrusting additional duties. For an exhaustive list of the duties of this office see, the *Administrator General Law (1978)*.

used to convey ownership during the Ottoman era, as the basis of their claim. Such documents were used to claim rights over land in and around Jerusalem subsequent to 1967 but only provided for an initial or primary form of ownership registration.^[7]

The Jewish Committees' claim was based on an affinity to what they believe is the tomb of Shimon HaTzadik, a High Priest from the Second Temple Era. In the late 1800s a community of Sephardic Jews began to develop throughout Sheikh Jarrah. Their presence came about through an alleged transaction in 1875 between members of the community and an Arab landowner who held deeds to much of the land in the area. The resulting contract was the subject of the Committees' *koshan* document which was then amended and finalized in 1886.^[8]

Following the 1948 termination of the British Mandate of Palestine and the ensuing Arab-Israeli war the remaining Jewish community left the area before it fell under Jordanian Control. While most of the surrounding land was registered through Jordan's Planning Commission, several areas in Sheikh Jarrah were omitted.^[9]

The initial 1886 transaction and the related *koshan* documents have come to be the source of divergent interpretations through various ownership disputes. Subsequent issues regarding the original intent and authenticity of the document have become partly redundant due to procedural legal maneuvering, albeit while still raising essential legal questions. Despite this, the validity and intent of the *koshan* agreement remains central to contemporary claims and legal challenges attempting to ascertain ownership rights over the perennially disputed land.^[10]

Two main concerns exist in relation to the validity of the Committees' *koshan* document, the first of which raises doubt over its purported accuracy. The Committees' papers date back to the Ottoman era, before the introduction of scientific surveying capabilities became available in Palestine under the British Mandate. During the Turkish period valid land deeds contained a detailed description of the property as identified by its four borders so as to correspond with the veracity of the physical landscape. If a single border did not match then the deed was either invalid or related to another plot of land.

The Committees' documents fail to meet this criterion as confirmed by the various expert testimonies that accompanied Suleiman Hijazi's land ownership challenge in 1997.^[11] A similar position was forwarded by the Hanoun family who attempted to demonstrate during their eviction proceedings that even if accepted as valid, the Committees' documents did not encompass the land upon which the family's home had been built.^[12]

^[7] According to the registration deeds, date 19 September 1972, the property was registered as a religious endowment (*heqdesh*) in the names of the two Committees, in equal parts, at the Land Registry Office in Jerusalem. See Volume 97, p.3 (Deed of Registry no. 1015 p.5877).

^[8] The claim purports that the Ashkenazi Chief Rabbi of Jerusalem, Meir ben Yitzhak, was the empowered trustee of the Jewish Community's religious endowment. He was the one who purchased the land in 1875 and it was temporarily registered in his name. According to the endowment deeds of the Ashkenazi Community and the Jewish Community, the deeds were then made, in 1886, in the name of Hakham Bashi, the Chief Rabbi appointed by the Ottomans, who as the endowment administrator was named as the purchaser.

^[9] Supreme Court Case 4126/05 (20 February 2006), background section. Reference is made to the failure to register the land while under Jordanian rule. For further information on the decision not register the land please refer to section 3.2.6 of this report.

^[10] A procedural tenancy agreement reached in 1982 between the lawyer for 17 of the Sheikh Jarrah families and the two Committees provided recognition of the Committees' ownership thus usurping the need for full inquiry. Questions relating to the validity of this agreement are raised in section 2.4.

^[11] For a detailed account of the Hijazi case please refer to sections 3.2.6 and 3.2.6.1 of this report.

^[12] For a detailed account of the Hanoun case please refer to section 3.2.4.1.

The second, and perhaps more damaging concern, regarding the document's validity relates to its authenticity. Traditionally such records are filed by date and location, however the lawyer representing Hijazi and the families carried out extensive investigations and obtained confirmation from officials at the Ottoman archives in Ankara that the alleged title deeds do not exist within their records.^[13]

Notwithstanding the later emergence of such concerns, the Israeli Land Registry Office did not require substantiation of the document the Committees employed to prompt their 1972 registration and claim economic rights over the land. In accordance with common practice regarding the establishment of legal rights derived from *koshan*, the Committees' claims were legally deemed to have been registered for 'primary purposes' by the Israeli Land Registry. In contrast to *tabo*, or final registration, primary registration (also referred to as deed registration) only allows for an initial form of ownership and contains safeguards to protect against the truncated nature of the process. As primary registration does not purport to substantiate the validity of the claim, it was established that the Committees' *koshan* should not carry any effect on the rights of third parties who inhabit the land and, significantly, the registration was deemed not to be proof of ownership for the purpose of subsequent land disputes.^[14]

Despite the evidentiary lack of an official survey or registry and despite explicit recognition that the initial registration should not affect the rights of third parties, 23 of the Palestinian families in Sheikh Jarrah began receiving a succession of correspondence from the Committees demanding rent payments. This triggered a long procession of separate, but interwoven, legal proceedings aimed at asserting or solidifying respective ownership positions in Sheikh Jarrah.

2.2.1. Information on the Committees

The Sephardic Community Committee and the Knesset Israel Committee are both religious and ideological. Little is known about these two organizations. However despite the former's name appearing on a number of the Sheikh Jarrah legal proceedings it appears that their direct role has been limited.

Approximately fifteen years ago the Committees authorized Nahalat Shimon International to act on their behalf. Unlike the Committees, Nahalat Shimon International is well-funded and more adept at facilitating the legal means necessary to contest landownership and advance the Jewish demographic presence in Sheikh Jarrah. The legal status of the group is unclear as are the identities of the individuals behind this organization.

Nahalat Shimon International has been described as settler organization and a real estate company. Their actions in Sheikh Jarrah appear to encompass both these descriptions. A source close to the group has labeled them as a business and as ideological and revealed that the settlers who have taken residence in the vacated Palestinian homes have been asked to live there but will be removed once Nahalat Shimon takes control of the entire area in order to allow for the construction of a 200 unit settlement.^[15]

^[13] Interviews with Advocate Saleh Abu Hussein, 25 August 2009; 3 September 2009.

^[14] According to Article 125 of the *Land Law, 5729-1969*, the primary registration is only *prima facie* proof of the content of registration.

^[15] A request to begin development on a 200 unit residential settlement was made by Nahalat Shimon International in 2005 through the Jerusalem Municipality, Town Planning Scheme 12705. For further information on this initiative refer to section 3.2 of this report.

2.3. *The Four Families*

The four families were the first of Sheikh Jarrah's Palestinian residents to appear in court facing direct action stemming from the Committees' 1972 ownership claim.^[16] Eviction proceedings were directed at three of the families while the fourth faced an order aimed at demolishing a section of their home. Due to similarities in the petitions and the Committees' claim that the families' presence amounted to an illegal trespass, the cases were heard concurrently.

Basing its decision on an assessment of the land in Sheikh Jarrah and referring to the tripartite agreement between Jordan, UNRWA, and the Palestinian refugees, the court rejected the Committees' case. On the aforementioned grounds the court held that the four families had been lawfully present based on 'prior and legitimate' agreements with the Jordanians.^[17]

The four families' judgment provided legal confirmation that the Committees' initial *koshan* registration could not adversely affect the rights of a third party and as such could have provided a useful precedent for other families in Sheikh Jarrah. Instead, the Committees later shifted their legal strategy and sought to solidify their initial annunciation of tenure through an out-of-court recognition of ownership.

2.4. *1982 Toussia-Cohen Agreement*

A protracted legal struggle began in 1982 after the Committees filed a joint civil suit against 23 of the families.^[18] During the proceedings Yitzhak Toussia-Cohen, a lawyer representing 17 of the families, reached an agreement under which he did not challenge the validity of the Committees' ownership claims but instead accepted the status of "protected tenants" for his clients. This ensured that the 17 families could remain in their homes without threat of eviction provided that they made regular rental payments to the Committees and adhered to strict regulations which restricted their ability to renovate or change the property. The Toussia-Cohen agreement was sanctioned by the Court making it legally binding and has since, instead of the four families' case, come to be regarded as the modern precedent for subsequent disputes in the Karm Al-Ja'ouni neighbourhood.

The 1982 Toussia-Cohen agreement underpins much of the contemporary controversy that surrounds Sheikh Jarrah. Its failure to address the legitimacy of the Committees' property claim was a significant omission, later highlighted through evidence questioning the foundational legitimacy of the assertion. In addition the agreement also appears to have been reached without the knowledge or consent of the 17 families represented by Toussia-Cohen.

Of the four families to have faced eviction, all were party to the Toussia-Cohen agreement. A legal analysis of the Al-Kurd, Hanoun, Al-Ghawi, and Rfqha Al-Kurd cases demonstrates how the agreement formed the legal basis for the court-ordered evictions and has effectively rendered subsequent, substantial inquiries into the legitimacy of the Committees ownership claims redundant from a domestic legal perspective.

^[16] The Auobi, Izat, Hamad, and Hosseni families were all party to the 1976 proceeding.

^[17] District Court Case 236/76, 18 November 1976.

^[18] Civil Court Case 3457/82. The families involved in this proceeding were: Hanoun, Al-Ghawi, Al-Kurd, Aweideh, Al-Fatyani, Al-Zayn, Abd Al-Fahim Ibrahim Ghawi, Mani, Aweideh, Zamiri, Ahjeji, Qasin, Al-Jawani, Al-Dajani, Al-Zahudi, Rfqha Abd Allah Al-Kurd, Diab Asad Al-Dajani, Nusseibeh, Al-Khatib, Atiyeh, Arafah, Sabbagh, Khoury.

While the contents of the agreement may appear to provide *prima facie* justification in support of the Committees' ownership claims, two important issues emerged concerning its validity. First, the Al-Kurd, Hanoun, Al-Ghawi, and Rfqha Al-Kurd families all strenuously deny consenting to the agreement. While Toussia-Cohen did serve as their attorney and as such was entrusted to seek a settlement to the property dispute, the arrangement which he eventually reached diverged greatly from the position held by his clients. The families have remained steadfast in their conviction that the homes in Sheikh Jarrah belong to them, a belief reinforced by the initial agreement they had reached in conjunction with UNRWA and the Jordanians. Testimonies from the families detail allegations of misrepresentation stemming from claims that Toussia-Cohen failed to inform his clients of the content or implications of the Hebrew documents that he signed on their behalf.^[19]

Only after the court approved the agreement did the families learn of its ramifications including the provision of rental payments equating to an inherent recognition of the Committees' ownership. In a demonstration of their unwillingness to accept a legal proclamation of the Committees' ownership the families refused to adhere to the contained conditions of the agreement.

The second issue concerning the agreement's validity relates to its premise, which predicates that the Committees hold entitlement to the land inhabited by the 28 families. Due to the court's general acceptance of the means by which the agreement was reached, this second point presents more intriguing questions from a legal perspective and may permit an appeal to this effect. The 1982 court decision which in effect affirmed the agreement also stipulated that the agreement can be challenged only if it is proven to have been reached on false grounds.^[20]

Previously detailed reservations regarding the accuracy and authenticity of the Committees' uncorroborated Ottoman document appear to satisfy such criterion and thus if it is determined that the document has indeed been fabricated or relates to an alternative plot of land, the entire rationale supporting the Toussia-Cohen agreement will become untenable.

It is impossible to ascertain with absolute certainty what motives Toussia-Cohen had when he signed the agreement on behalf of his clients. It is beyond debate however, that the terms of the agreement did not confer any additional benefit to the 17 families to which they were not previously legally entitled. Protected tenancy is a statutory status derived from the Tenant Protection Law of 1972.^[21] It is intended to provide, *inter alia*, protection from evictions and was applied to residents of East Jerusalem after the imposition of Israeli law.^[22] Recognition of the families' status did not require the acknowledgement of the Committees' ownership and an agreement predicated on such recognition only served to create an estoppel against future challenges to their purported position.

Despite this, the agreement has remained the legal standard against which contesting ownership claims are judged. The primary example of this became evident in 1997 with the emergence of Suleiman Hijazi, whose competing property claim in Sheikh Jarrah produced much of the relevant documentation that undermined the factual basis upon which the Toussia-Cohen agreement relies.

[19] Interviews and affidavits taken from Fawzyeh Al-Kurd; Fuad Al-Ghawi; Maher Hanoun; Rfqha Al-Kurd, 31 August 2009.

[20] Civil Court Case 3457/82

[21] Tenants Protection Law [Consolidated Version], 5732-1972.

[22] The District Court confirmed the protected tenancy status of the families in Civil Court Case 3457/82.

2.5. 1989 to 2001 - Land Ownership Challenges and Eviction Proceedings

Following the application of the Toussia-Cohen agreement, a seemingly perpetual series of legal actions commenced. These featured direct challenges to the Committees' purported ownership while the effect of the agreement was constantly applied to commence eviction proceedings against several of the Palestinian families in Sheikh Jarrah.

2.5.1. Challenge to the Committees' Ownership Claim

Persistent questions regarding the legitimacy of the 1886 document and the Toussia-Cohen agreement were reiterated in 1997 when Suleiman Hijazi challenged the authenticity of the Committee's ownership claims, asserting that he was the legal owner of 18 plots within the disputed area.^[23]

Over years of ongoing legal disputes, Hijazi produced 13 legal deeds from the Ottoman and Jordanian archives all of which comprehensively traced ownership over the land through different periods. Beginning with the Al-Sadi family, to whom Hijazi was related, and then to Hanna Al-Bandik who purchased the land from Al-Sadi in the 1930's while he was a high officer at the Land Registry Department during the British Mandate, Hijazi's documentation convincingly demonstrated his family's longstanding ties to the land. Hijazi wished to regain the land his family had sold and over several years purchased much of the property that had been obtained from the Al-Sadi family by Al-Bandik.

Suleiman Hijazi produced deeds confirming the transaction between himself and Hanna Al-Bandik. Despite the existence of a corresponding copy in the Amman archives having been stamped by the Israeli embassy in Jordan, the validity of the document was not accepted by the Court.^[24]

In 2002 Hijazi's appeal was rejected on the basis of the 1982 Toussia-Cohen Agreement. The Magistrate Court effectively confirmed the Committees' ownership claims holding that, "As long as the verdict that corroborated the deliberate agreement [the Toussia-Cohen Agreement] still stands, there is no place to doubt that the defendants have the ownership rights."^[25] The judgment was delivered despite Hijazi's provision of numerous documents detailing his ownership claim, and, without the Committees substantiating the documented foundation of their assertion.

A 2006 appeal to the Supreme Court saw Hijazi's claim rejected on the basis that the documents he produced were damaged and thus unverifiable. The decision, however, noted that the Committees' ownership claim was incomplete on the grounds that the 1972 Israeli Land Register had marked the registration as 'primary'. The Court stated that it was not the proper authority to rule on the validity of the Committees' ownership claims and such issues should be referred to the Magistrate Court.

2.5.2. Housing Evictions

Despite existing uncertainty over the Committees' ownership claims and the authenticity of the 1886 Ottoman document, in 1999, proceedings based on rent delinquency and construction contrary

^[23] Jerusalem Magistrate Court (Beit Mishpat Ha-Mehoz) 1465/97: Suleiman Darwish Hijazi vs. Sephardic Community.

^[24] Jerusalem Magistrate Court (Beit Mishpat Ha-Mehoz) 1465/97; Interview with Suleiman and Darwish Hijazi, 5 September 2009; and Darwish Hijazi, 27 November 2009.

^[25] Magistrate Court Case 1465/97

to the Toussia-Cohen agreement were initiated against three families.^[26] The actions resulted in a member of the Rfqha Al-Kurd family being forced from a newly renovated section of his home and two subsequent decisions ordering the Al-Ghawi and Hanoun families to vacate their property.^[27]

Over the following ten years similar legal challenges were initiated by the Committees, who continued to seek the eviction of the families on the grounds of rent delinquency and property renovations contrary to the Toussia-Cohen agreement. In 2001, the Civil Court ordered the evictions of the Al-Kurd and Hanoun families.^[28] The Hanoun eviction came despite documented arguments by their lawyer, Saleh Abu Hussein, asserting that their property did not fall within the area covered by the Committees' 1886 land ownership document. This claim reiterated the accuracy concern that had been detailed through expert testimony presented during the Hijazi ownership challenge.^[29]

The Committees continued advancing numerous legal actions aimed at evicting the families. Those, often recently renovated, sections of the homes that had been vacated as a result of court orders were almost immediately inhabited by settlers with affiliations to the Sephardic Community Committee, despite the existence of orders compelling the Al-Kurd family to demolish the newly renovated sections of their home. Local authorities failed to provide assistance in removing the settlers to allow the Al-Kurds fulfill their court sanctioned obligations.^[30]

2.6. Recent Developments:

Tensions in Sheikh Jarrah have escalated as efforts to remove its Palestinian residents continue. The most recent episode relates to two 1999 legal proceedings filed against the Rfqha Al-Kurd family, initiated by the Jerusalem Municipality and the Sephardic Community Committee. Both actions claimed respectively that an extension to the existing property was built without the requisite permit and constituted a violation of the terms contained within the 1982 Toussia-Cohen agreement. Following the initial decisions, the Court imposed a substantial fine, sealed the renovated section of the home, and took possession of the house's keys. Over the following years the family was party to several legal challenges until, in 2007, the Magistrate Court ruled that the Rfqha Al-Kurd family could not use the renovated rooms as, in accordance with the Toussia-Cohen agreement, they were not the legal owners of the land.

Subsequent appeals to the District Court were dismissed on similar ground and on 3 November 2009 dozens of settlers forcibly entered the sequestered section of the home. Nahalat Shimon International has since requested a further eviction order from the court that would remove the family from the remainder of the home they received in 1956. The case is scheduled to be heard in February 2010.

Legal confirmation that Rfqha Al-Kurd acted in violation of the 1982 Toussia-Cohen agreement solidifies the initial 1999 eviction of the family from the renovated segment of the home. Although the section in question had long been vacated and sealed, the recent events, adding to the Al-Ghawi, Hanoun, and Al-Kurd cases, now constitutes the fourth eviction from Sheikh Jarrah.

^[26] Jerusalem Civil Court Cases 6599/99 and 8041/99.

^[27] Rulings on Civil Court Cases 18901/98 and 18902/98.

^[28] Civil Court Case 18901/98 and 8041/99, cited in High Court Petition 6558/08

^[29] Civil Court Cases 6599/99 and 8041/99, cited in High Court Petition 6558/08.

^[30] Court of Local Affairs Case 2353/03, Mohammed Al-Kurd vs. State of Israel.

In an earlier development the Sabbagh family, who had not been party to the 1982 Toussia-Cohen agreement, received court papers indicating the intention of Nahalat Shimon International to assert their claim over the land. The case raises several interesting points as the Sabbagh family is the first who are not party to the agreement to have their ownership status challenged since the unsuccessful attempt against the four families in 1974.^[31]

3. CONTEMPORARY CONTEXT

3.1. Israeli Development Plans for Sheikh Jarrah

Upon first inspection, the Al-Kurd, Hanoun, Al-Ghawi, and Rfqha Al-Kurd evictions are presented as isolated actions stemming from the individual family's failure to comply with the terms of their tenancy agreement. Closer examination reveals that these families are four of the 28 families who arrived in Sheikh Jarrah through a humanitarian initiative after having been forced to flee their homes in 1948. Their attempted removals go beyond the purported apolitical terms of the 1982 Toussia-Cohen agreement and have been the focus of a long-term legal strategy developed and implemented by the Committees and Nahalat Shimon International.

In viewing the developments in Sheikh Jarrah from a broader perspective it appears that the apolitical measures employed to facilitate the removal of the Palestinian families from the Karm Al-Ja'ouni neighbourhood only relate to one of a number of complementary initiatives undertaken by both public and private actors intent on creating, and maintaining, a Jewish demographic majority throughout occupied East Jerusalem.

At present four town planning schemes in Sheikh Jarrah are undergoing different stages of the approval process at Jerusalem's Local Planning Commission. The largest of these is TPS 12705 which was submitted by Nahalat Shimon International in August 2008 and will be applied directly to the land where the Palestinian families now live. If approved, the scheme would provide for the construction of 200 new residential units for Jewish families and lead directly to the eviction of nearly 500 Palestinian residents, allowing for the destruction of their homes.^[32] If implemented Nahalat Shimon International would be permitted to begin development of this new settlement, Shimon HaTzadik, however recent accounts indicated that this scheme has been closed pending further action.

Additional development initiatives in Sheikh Jarrah concern the building that at one time operated as the Shepherd Hotel. The recently approved town planning scheme 2591 provides for the destruction of the hotel to allow for the construction of 20 residential units. Town planning scheme 11536 was introduced in 2005 to further expand upon the then pending development project by building an additional 90 residential units, along with a kindergarten and synagogue. At present the 2005 plan is in the preliminary stages of the approval process.

A forty dunam olive grove known as Karm Al-Mufti, near the site of the Shepherd Hotel was discovered to have been the subject of a covert and controversial lease agreement between the Israel Land Administration (ILA) and the Ateret Cohamin organization despite acknowledgment by Israeli authorities that the land belongs to the Arab Hotel Company who had previously requested permission to commence commercial development.

^[31] A detailed consideration of the Sabbagh case is proved in sections 3.2.5 and 3.2.5.1 of this report.

^[32] Jerusalem Municipality, Town Planning Scheme 12705.

Finally, adjacent to the Shepherd hotel lies the future site of the Glassman campus, a conference center whose development is being funded by Canadian philanthropists Max and Gianna Glassman. Plan 2639 was introduced in the 1980s and has designated the land for public building.

Collectively the various development initiatives in Sheikh Jarrah are intended to advance the creation of Israeli strongholds in the holy basin surrounding the Old City with Sheikh Jarrah to the north, Silwan to the south, and the Mount of Olives to the east. Sheikh Jarrah is situated between the Old City and Mount Scopus which is home to the Hebrew University and Hadassah Hospital. In order to establish continuity through this valued corridor linking West Jerusalem with locations of strategic, historical, and religious significance to the Jewish population, a succession of Israeli neighbourhoods were built to link West Jerusalem and Mount Scopus.^[33]

As he led a tour through Sheikh Jarrah, former Israeli politician Binyamin Elon^[34] stated, “Our strategic plan for the city is one – a belt of Jewish continuity from East to West.”^[35] Elon later provided further clarity on the various developments in East Jerusalem, saying that they were designed to create a Jewish continuum surrounding the Old City. “Building Jewish neighbourhoods next to open areas will prevent invasions and illegal construction by Palestinians who live near the Old City.”^[36]

These remarks echo earlier statements from Jerusalem’s former mayor, Uri Lupolianski, who referred to building initiatives in Sheikh Jarrah as a way “to strengthen the connection between the Jewish neighbourhoods [in East Jerusalem].”^[37] The intent of the complementary development initiatives clearly goes beyond the purported regularities of a tenancy dispute. The 28 Palestinian families in Sheikh Jarrah are viewed as an impediment to a loaded means of development that seeks to achieve a clearly stated political end.

3.2. Shimon HaTzadik Plan (Karm Al-Ja’ouni neighbourhood)

Consequential humanitarian concerns stemming from the forcible evictions have made the area of land that houses the 28 Palestinian families the most contentious area of Sheikh Jarrah. It also represents the most evolved of the complementary initiatives facilitating the development of Jewish settlements throughout this sector of occupied East Jerusalem. Unlike efforts concerning the Karm Al-Mufti olive grove, the Shepherd Hotel, and the Glassman Campus, the advancement of this settlement initiative did not begin through the local planning process and only reverted to such measures after attempts to remove the Palestinian residents were well underway.

Town planning scheme 12705 was introduced by Nahalat Shimon International in 2005, over thirty years after several of the 28 families began to receive the first in a long succession of rental demands. Although it does not appear to be under consideration at present, Plan 12705 represents the enduring objectives of the settlement enterprise in Sheikh Jarrah. The contained proposal seeks to construct 200 residential units on land that has been home to the 28 families since 1956.

^[33] Shragai, *supra*.

^[34] Binyamin Elon served as a member of the Knesset between 1996 and 2009. He is the former chairman of the Moledet Party which formed part of the National Union Party. Additionally he served two terms as Minister of Tourism.

^[35] Lefkovits, E., ‘MK Benny Elon Promises ‘Jewish Continuity’ in Jerusalem’, Jerusalem Post, 24 April 2002.

^[36] M. Rapoport, “Jewish group to build 200 new housing units in Occupied East Jerusalem”, Haaretz, 3 August 2009

^[37] *Ibid.*



In order to advance the stated intent of Plan 12705, the Committees, and later Nahalat Shimon International, commenced with the attempted removal of the Palestinian families, an objective they relentlessly pursued through the Israeli judicial system. Although the individual evictions have been presented as common tenancy disputes, the settlement of Jewish Israelis into the homes vacated by the Al-Kurd, Al-Ghawi, Hanoun, and Rfhqa Al-Kurd families, and the inherent objectives purposed within Plan 12705 strongly suggests that the advancement of efforts in this area are tinted with political overtures aimed at achieving the further development of Jewish settlements.

Despite the purported intent of these efforts and the possible political and legal consequences that such actions may carry, it has been the aforementioned families who have borne the brunt of these initiatives as they have been forced to the street - their lives transformed and their futures compromised.

3.2.1. The Four Families Case – Legal Analysis^[38]

The joint proceeding was the first to be initiated by the Committees. The initial eviction attempt was dismissed by the Magistrate Court before the Committees appealed to the District Court and then the Supreme Court.

The Committees claimed to have owned the property in Sheikh Jarrah for many generations citing their 1972 *koshan* registration. Asserting that the families had ‘invaded’ the buildings that had been erected on their property at an unknown point between 1947 and 1967, the Committees argued that the four families were using the property illegally for residential purposes.

The District Court rejected the claims on the basis of the three prior agreements involving Jordan, UNRWA, and the 28 families that provided the legal basis for the latter’s presence in Sheikh Jarrah. Following an analysis of the agreements, the Court held that the resident’s presence in Sheikh Jarrah was legal and rejected the claim that the four families had ‘invaded’ the homes built by UNRWA.

The case did not discuss the question of ownership but instead accepted and began from the position that the Committees owned the property on the basis of their initial *koshan* registration.

3.2.2. The Al-Kurd Family - Personal Testimony^[39]

Fawzyeh Al-Kurd was born in Jerusalem’s Old City shortly after her family had become refugees in 1948. In need of a new home they were relocated to Sheikh Jarrah through the Jordan-UNRWA initiative. She grew up in this home, the only one she had ever known, and it is here where she recalls her first childhood memories.

In 1970 Fawzyeh married Mohammed Kamel Al-Kurd. They began a family and raised their six children in her family home. Two years later, Al-Kurd recalls first learning that her family had been named in a court cases demanding rent. “At the time I was young; I did not think about the consequences and lived my life normally.”

^[38] The following information is a translated summary and analysis of Civil Appeal 236/76 (District Court of Jerusalem), Civil Appeal 459/79 (Israeli Verdicts 35 (4)).

^[39] The information contained in the following narrative was taken from interviews with Fawzyeh Al-Kurd on 25 August 2009 and 21 October 2009.

Years passed and on-going legal proceedings began to dominate the lives of the Al-Kurds. During this time her children aged, married, and began families of their own. Fawzyeh and Mohammed became the proud grandparents of six but despite the joy that this brought her family, they were now 14 living within one home.

The Al-Kurds sought permission to renovate, but after this was refused by the Jerusalem Municipality, necessity prevailed and they were forced to make modest refurbishments in an attempt to provide conditions that met the growing needs of her family.

Mounting hardships compounded by continuous legal proceedings generated feelings of “fear and uncertainty” that spread throughout the Al-Kurd family. As the two Committees and later Nahalat Shimon International produced documents to assert ownership rights over the Al-Kurd home, then Knesset Member and former Minister of Tourism Binyamin Elon, in 2001, personally offered the Al-Kurd’s \$15,000,000 (USD) for their home. Such an offer only confirmed the Al-Kurd’s steadfast belief that the land and home in which they raised four children and six grandchildren was their own.

After years of additional proceedings and legal challenges, on 9 November 2008, Police entered the home of Fawzyeh and Mohammed Al-Kurd. In the middle of the night, the front door of the house was broken in. Police, masked and heavily armed, quickly filled the residence after having surrounded and locked down the neighbourhood.

Mohammed Al-Kurd, who had fallen ill several years prior, was confined to a wheelchair. Ailing and handicapped he was thrown to the sidewalk in front of a neighbour’s home. Fawzyeh was driven into a wall before reuniting with her husband on the street in front of their home. By this time however the trauma of the eviction had caused her husband to suffer a heart attack.

When an ambulance arrived police blocked its entrance to the home but neighbours and onlookers assisted in carrying Mohammed to the waiting vehicle. He passed away just over a week later after suffering a second heart attack. “My husband was too sick to understand what had happened to our family.”

Fawzyeh, devastated by the loss, took up residence in a protest tent near her home where she remains mourning the loss of her husband. Over the following months the tent was repeatedly destroyed by the police.

Her grandchildren have become scared and aggressive, constantly acting out and requiring behavioural therapy.

Confused, concerned, and uncertain, Fawzyeh reflects on her case and the loss of her husband. “Many people, organizations, and governments know of my case, yet the world has remained silent.”

3.2.2.1. The Al-Kurd Cases - Legal Analysis^[40]

In two separate law suits filed in 1999 to the Jerusalem Magistrate Court, the Committees demanded that the Al-Kurd family be evicted from their home in Sheikh Jarrah due to rent delinquency and building violations derived from the Tenant Protection Law.

^[40] The following information is a translated summary and analysis of Civil Case 3460/82; Civil Appeal 166/89; Civil Case 6599/99; Civil Appeal 2417/01, Muhammad Kamal Al-Kurd vs. Sephardic Community Committee Sephardic Community Committee vs. Al-Kurd; and Civil Appeal 4126/05.

The family claimed that they had recently discovered the property in which they resided was owned by the Hijazi family who granted them permission to build upon the premises and that the Committees are not the legal owners of the property as there had yet to be an official ruling on the question of ownership.

The Magistrate court accepted the position of the Committees and issued an eviction order for the family. Rejecting the claim regarding the question of ownership, the Court based its decision on a 1989 Civil Appeal ruling and the Committees 1972 *koshan* registration. The Court accepted the position that the Al-Kurd family had built illegally and without the permission of the Committees and held that once the Al-Kurd family had signed the Toussia-Cohen agreement they were effectively prevented from questioning the legitimacy of the Committees' ownership. Based on the family's refusal to pay rent the Committees were exempt from requirements to send a notice of intent to the residents before filing the lawsuit. From the behavior of the family, the Court held that the Al-Kurds were in contempt of court and acting in violation of the Committees' rights.

The judgment also stated that if the family had objected to the Committees' payment demands they were required to act in a more appropriate manner by paying the rent to a court fund until the question of ownership had been clarified.

The decision of the Magistrate was appealed to the Jerusalem District Court where the Al-Kurd family objected to the validity of the Toussia-Cohen agreement, requesting the Court to nullify the 1982 decision that sanctioned the agreement. The Court rejected the argument on the grounds that the family failed to demonstrate an alleged basis to claim they had been misled by their lawyer and that the delay in bringing the claim forward effectively undermined the validity of their position.

In 2008 the family filed a suit with the Supreme Court in which they requested a declaratory judgment under which the Toussia-Cohen agreement and the verdicts from the two 1999 Civil Court cases would be voided. Ultimately the petition was rejected by the Magistrate and District Court through a motion to appeal to the Supreme Court. The family claimed that the Committees held no rights to the property in Sheikh Jarrah despite their unknowing acknowledgement of those rights in the disingenuous Toussia-Cohen agreement. The basis of the claim was that only after the agreement had been signed it had become clear that the Committees held no rights over the property and it was for this purpose that the Civil Court had refused to acknowledge the Committees' rights of ownership during a 2005 Civil Court appeal. This position was supported by the fact that the Land Settlement Officer had instructed the Chief Inspector in the Jerusalem Land Registry Office to delete the notes according to which the rights over the land were registered in the name of the Committees.

The Supreme Court rejected the family's claim against the Committees' purported ownership, determining that the Al-Kurds failed to meet the requisite burden of proof.

3.2.3. The Al-Ghawi Family – Personal Testimony ^[41]

Fuad Al-Ghawi was 32 years old when his father received the first court notice challenging the ownership of his family's home in Sheikh Jarrah. At the time, he recalls, "we had some hope

^[41] The information contained in the following narrative was taken from interviews with Fuad and Nasser Al-Ghawi on 25 August 2009 and 21 October 2009.

because we all knew that we had UN[RWA] documents but we soon became worried about the future.” Fuad shared the family home with 34 others. When the legal proceedings commenced his nieces and nephews were preparing to attend school.

“At the time they were too young. They did not understand what was happening.”

The process accelerated in 1999 when a court decision ordered the extended Al-Ghawi family to vacate their home. “Since then we have lived under constant pressure. Every minute of every day we expected a soldier to come to our home.”

The looming inevitability of eviction carried undue economic and emotional ramifications. “When I would have to leave for work I felt the family would not be safe. We were always waiting to hear bad news.”

The first instance occurred in 2002. On the same night that the Hanoun family was initially evicted scores of police filled Sheikh Jarrah. Al-Ghawi’s home was stormed, “It was very violent; the adults were beaten with sticks. The police were very strong.”

“The children were uncontrollable during the eviction. After we were removed from our house they eventually feel asleep and we began to build a tent.”

Fuad and his family remained in the tent for six months until eventually returning to their home. Legal proceedings recommenced and again they faced a daunting wait.

In August 2009, after receiving a final eviction notice, the door to the Al-Ghawi residence was detonated with a small explosive. Police rushed in and a familiar scene commenced. After the family members had been removed their possessions followed, although most belongings were destroyed during the eviction.

Sitting in a small tent erected across from the family home Fuad reflects, “The reaction of the children has been terrible. They are afraid and unable to forget that they once lived in that house.”

Returning to the streets in Sheikh Jarrah has proven an unwelcomed reminder of the disheartening challenges and bleak reality facing the Sheikh Jarrah residents. “The children have been able to stay in school but return to a tent after their classes. Now the men are unable to work when their children are on the street.”

Fuad’s steadfast principles remain unmoved. However mounting disenchantment bred through the harshness of street life has led him to consider seeking alternative accommodation. “We are waiting for someone to help us.”

“I am struggling to stay in Jerusalem. Our options are limited; the cost of a new house here is very high. I don’t know what we are going to do, but we won’t leave, or else we will never be allowed back.”

3.2.4. The Hanoun Family – Personal Testimony^[42]

Maher Hanoun recalls the day, 37 years ago, when he and his younger brothers first learned that their father had received a court order disputing ownership of the family home. Although only thirteen years of age Hanoun remembers, “I was afraid of the consequences of the occupation.

[42] The information contained in the following narrative was taken from interviews with Maher Hanoun on 25 August 2009 and 21 October 2009.

The whole family was worried and scared that we would lose our home as we waited to hear news from our father.”

Soon after his 18th birthday, his father died and Hanoun felt it his responsibility to represent the family. He began attending court proceedings and liaising with the representatives and land owners from the local community. “I have grown up with the case; it’s always been a part of my memory.”

Suffering, compounded by uncertainty, has been a constant feature of the Hanoun family’s life. “It is impossible to plan for a future” says Mr. Hanoun.

Years of legal proceedings and the associated costs led to relentless destitution and a sustained belief, that they would be forced to leave their home.

After having been evicted once in 2002 only to return months later, the Hanoun family’s worst fear again became a reality on 2 August 2009. In the year preceding Hanoun was unable to continue his job as a salesman. The pending certainty of the eviction forced him to prioritize the imminent safety and assurance of his family above their economic needs. Plagued by trepidation, Hanoun, his wife, brothers, and their children waited.

As the children sat outside, scores of police descended upon the home, flooding the street and surrounding the neighbourhood. Within minutes, officers dressed in black and heavily armed, had climbed upon the garage and shattered the front windows before entering the house.

Mr. Hanoun was grabbed and aggressively driven from the home. During his final seconds inside he witnessed police pressing a gun against the head of his young niece Sharehm. His son and daughter, Rami and Janna, screamed as officers moved towards their mother. Rami’s attempts to intervene and shield his mother from force were quickly overwhelmed by the police.

37 years of fear, uncertainty, and reluctant lingering culminated within twenty harrowing minutes. As the family gathered on a nearby street the totality of their possessions were removed from the home and placed in a truck. The family were given a short time to reclaim these pieces of their past but most of the items had been destroyed during their hasty removal.

Today Maher sits beneath a solitary olive tree adjacent to his home. He remains eager to meet and talk with passers-by and speaks of the hardships that accompany his new life on the street. “We refused to accept a tent from the UN or Red Cross; we will not become refugees for a second time.”

The mounting days since the eviction have undeniably taken their toll. “The eviction has destroyed our lives. To live on the street is so hard. It kills my family to watch strange faces living in the home in which we spent our lives.”

The youngest children spend most nights with their grandmother and have managed to remain in school but the evictions brought damaging consequences. “It has been impossible for them to study for their exams. We are all so worried for the children, they are afraid; they jump if they hear a loud noise or someone yell. They were removed from their home by force and watched their father get arrested.”

Indisposed by his ordeal Maher Hanoun remains committed to achieving an equitable conclusion for his family and the Palestinian residents of Sheikh Jarrah. He derives his motivation from the home in which he spent his entire life. “This same house contains the history, memories, and dreams of my family.”

3.2.4.1. The Al-Ghawi and Hanoun Cases – Legal Analysis^[43]

In two separate lawsuits filed against each of the families respectively, the Committees' requested a verdict for dispossession and eviction. The claims were based on violations of the Toussia-Cohen agreement including both rent delinquency and renovations carried out in absence of the necessary approval.

The families denied the validity of the Committees' ownership claims citing the absence of a final ruling on the issue. On this basis they claimed that the Committees are not due any such payments nor had they requested any be made.

The Magistrate Court accepted both claims in their entirety. Regarding the question of ownership, the Court determined that on the basis of the relevant documentation and the conduct between the parties, the Committees possessed the right of ownership. The Court based its decision on the 1989 District Court verdict which held that the relationship between the two parties is that of landlord and protected tenant as provided by the Toussia-Cohen agreement. The Court continued to quote the agreement extensively to demonstrate the families' recognition of the Committees' ownership rights.

The Court accepted the Committees' claim regarding rent delinquency, ruling once again that if the families wished to disagree with the credibility of ownership they should have deposited the rent in a court fund until the matter was fully resolved.

3.2.5. The Sabbagh Family – Personal Testimony^[44]

Mohammed Sabbagh's family had been living in their home since 1956 when first named in the initial 1972 cases against the residents of Sheikh Jarrah. Ten years later, however, when many of the residents attained the services of Advocate Toussia-Cohen, Sabbagh's father steadfastly refused.

As their neighbours faced seemingly perpetual legal proceedings culminating in eventual evictions, the Sabbagh family lived according to the benefit of this decision, never fully content, but with little interference.

In June 2009, the status and aspirations of Mohammed's family were suddenly transformed upon receipt of a court document seeking to challenge the ownership of their land. This was a familiar occurrence and one that Mohammed had become intimately familiar with as he watched the fate of his neighbours devolve over the long years in Sheikh Jarrah.

In contrast to others, Sabbagh's case is in its infancy. "It must have been our turn. This is a step-by-step process," referring to Nahalat Shimon International's ambitions for the area. "It began with the four families, then the Al-Kurds, Al-Ghawis, and Hanouns."

Since first appearing in court Mohammed has joined Maher Hanoun under the lone olive tree everyday in a display of solidarity - but also in an exercise of pragmatism. "I am preparing for myself and my family to be like Hanoun. I feel afraid."

^[43] The following information is a translated summary and analysis of Civil Court Cases 18901/98 and 18902/98. The judgments in both cases were similar in content and as such are presented collectively.

^[44] The information contained in the following narrative was taken from an interview with Mohammed Sabbagh on 21 October 2009.

Despite the pending uncertainty, a sense of optimism emerges. Working closely with the Advocate Abu Hussein the Sabbagh case has, perhaps inadvertently, taken on a role of great significance. “This case is very important for the neighbourhood. Because it is new it will allow us to introduce new documents which refute the ownership claims of Nahalat Shimon International.”

Hesitation, uncertainty, anxiety, and belief all mix as the Sabbagh family await their next court proceeding.

3.2.5.1. The Sabbagh Case - Legal Analysis^[45]

As evidenced throughout the Al-Kurd, Hanoun, and Al-Ghawi proceedings, demonstrating the legal grounds necessary to obtain an eviction order was simplified after the conclusion of the Toussia-Cohen agreement. This succeeded in limiting the courts’ scope of inquiry to rent delinquency and unlicensed construction by acknowledging the Committees’ ownership, rendering the need to provide further elucidation on the matter legally redundant.

Factually, the Sabbagh case alters the legal paradigm. Not party to the Toussia-Cohen agreement, Sabbagh can be distinguished from the others and thus cannot be bound by the acknowledgement of the Committees’ purported ownership.

As seen from the family’s statement of defense, they have argued against the Committees’ assertion of ownership and now, in accordance with practice, it appears that the Committees’ will be compelled to fully substantiate their assertion.

The Committees’ initial statement of claim against the Sabbagh family ignores the fact that the family is not party to the Toussia-Cohen agreement, and is based on violations to rental conditions including delinquency in payment and illegal construction.

Early indications from the preliminary hearing point to a willingness to consider the ownership issue. The judge requested that both parties submit all relevant documentation for consideration. This is the first time that the Committees’ have been required to submit their ownership claim for scrutiny, having only previously offered such documented evidence in efforts aimed at discrediting competing claims and for the purpose of their initial 1972 registration.

Since receiving the request, the Sabbagh case has twice convened and on both occasions lawyers representing the Committees requested a delay in proceedings and were unable to offer the Court the requested documents.

3.2.6. Suleiman Hijazi - Personal Testimony^[46]

Hijazi’s family has held ties to Sheikh Jarrah and East Jerusalem for many generations. A branch of his family, the Al-Sadis, owned much of the land between Damascus Gate and Beit Hanina. Suleiman Hijazi became a land merchant after having grown up hearing stories of his relatives’ land ventures. Today, after having lost much of his land through occupation, he remains a formidable authority on the history of Arab landownership in and around Jerusalem.

^[45] The following information is a translated summary and analysis of Civil Case 19795/08.

^[46] The information contained in the following narrative was taken from an interview with Suleiman and Darwesh Hijazi, 5 September 2009; and Darwesh Hijazi, 27 November 2009.

Hijazi recounts a blood feud that occurred in the 1930s between Al-Sadi and neighbouring families. Forced to pay compensation, Al-Sadi sold several parcels of land to Hana Elis Al-Bandak who then served as head of the Jerusalem Department in the British Land Registration Office. The advantageous nature of Bandak's position allowed him to continue increasing his landholdings through several purchases from the Al-Sadi family throughout East Jerusalem.

After leaving school in 1947, Hijazi worked as a messenger for Bandak and eventually became a land merchant during the period of Jordanian rule. He began to purchase parcels of land that his family had sold to Bandak and in 1961 Bandak, who planned to settle in Amman, sold Hijazi the majority of his remaining properties in Jerusalem.

During this period, under the Jordanian Custodian for Enemy Property, all lands owned by Jerusalem's Jewish population or deemed to be for their 'benefit' was expropriated and regulated for public use. Such areas were referred to as 'Al-Yahoodia', an epithet that literally translates to 'Jewish gathering'. The term did not confer ownership or residency rights but instead came to connote a geographic location. When the Jordanian government began parceling land in Sheikh Jarrah in the late 1950s the property around Karm Al-Ja'ouni and the Shimon HaTazidk tomb was deemed to be one such area and was not registered but instead came under the auspice of the Jordanian Custodian.

Hijazi had bought many parcels of property that had been rendered inaccessible due to the alternating political climate and divisions present in Jerusalem. He viewed much of this land as a long-term investment, the benefits of which would be realized when a sense of normalcy returned to Jerusalem. Following the 1967 War and the ensuing Israeli annexation of East Jerusalem, Hijazi's land parcels in Sheikh Jarrah became long-term investments. Although Hijazi did not envision the occupation continuing until today he turned his attention from these holdings to focus on several other pending land claims after having initiated a series of legal challenges intended to prove his ownership over various other parcels of land confiscated after 1967.

Hijazi's legal struggles against the aggressive Israeli land policy in Jerusalem came to dominate his life, creating a significant burden on both his time and resources. He was forced to strategically prioritize his pursuits, so when he learned of the situation in Sheikh Jarrah he took interest but ultimately opted not to press his claim as the situation initially centered on their status as derived from the agreement with Jordan and UNRWA.

After it became apparent that the families' legal endeavors were ineffectual, Hijazi came forward to assert his position against that of the Jewish Committees in 1997.

Upon enlisting the services of two experts, Rassem Khamaisi and Prof. Adel Manna, both of whom had gained eminent reputations as a urban planner and historian respectively, Hijazi pushed to demonstrate the validity of his various ownership documents.^[47] Khamaisi and Manna, after studying the relevant documents, each testified that from both a surveying and historical perspective the Hijazi documents matched the physical reality of the land in question while the Jewish Committees' documents did not.

^[47] Dr. Rassem Khamaisi obtained a M.Sc. in Town and Regional Planning from the Israeli Institute of Technology and a PhD. in geography from Hebrew University and is currently a lecture in the Department of Geography at the University of Haifa. His field of expertise includes Town and Regional Planning. Dr. Khamaisi has written extensively on urban planning issues in Jerusalem. Dr. Abel Manna is the head of the Department for Arab Society in Israel at the Van Leer Jerusalem Institute. As a noted historian Dr. Manna has been widely published on various issues concerning the history of Palestine during the Ottoman Period.

Despite presenting qualified evidence from Khamisee and Manna, the Court deemed Hijazi's document to be unverifiable, openly questioning its authenticity. Their concern related to the title deed that Hijazi had purchased from Bandak. Police arrested and questioned Hijazi on this matter in 2001 despite the facts that his document bore the stamp of the Jordanian Land Department and a corresponding copy, endorsed by the Israeli embassy, existed in the Amman archives.

3.2.6.1 The Hijazi Cases - Legal Analysis^[48]

Under Section 43 of the Land (Settlement of Title) Ordinance 1969 the primary procedure for ruling on ownership disputes that are in the process of land settlement is to transfer the dispute to the District Court. In relation to Sheikh Jarrah, despite the existence of conflicting claims, the Land Settlement Officer failed to meet this requirement.

Accordingly, in 1997, Suleiman Hijazi first moved to challenge the legality of the Committees' ownership claims in Sheikh Jarrah before the District Court in Jerusalem. Hijazi's attorney objected to the Committee's ownership registration and requested the recognition of legal rights over 75 per cent of the contested property within Sheikh Jarrah. The assertion was based on the 1961 sales agreement between Hijazi and Al-Bandak.

Hijazi's family's long-standing ties to the area were detailed through titled deeds issued by the Sharia Court in 1787 and 1858 respectively, and through *Koshan* no. 169 in 1879. The documents traced the events through which the family first gained ownership of the land in Sheikh Jarrah.

The District Court rejected Hijazi's claim on two grounds. Firstly, on a procedural basis, even if the ownership claims based on the 1961 purchase had been accepted, more than 36 years had passed between the time when the land had been acquired and the action had been filed. The court stated that even if they began in 1967 when Israeli law was first applied in East Jerusalem, Hijazi's claim still failed to fall within the fifteen-year allowance provided by Section 5(2) of the Statute of Limitations.

Despite the initial ruling, the Court continued to reject the claim on its merits, ruling that Hijazi failed to substantiate his ownership. Holding that in order to prove property rights based on *koshan*, the borders stated in the document must identically match those claimed in the suit. The Court concluded that the *koshan* document had been altered and therefore its professed borders could not be considered accurate. In addition the Court stated its belief that the 1961 agreement between Hijazi and Al-Bandak had also been altered and as such its authenticity was questionable.

The court cited evidence including a Hebrew inscription found within a cave in Sheikh Jarrah, the fact that lands were vested under the Jordanian Custodian of Enemy Property between 1947 and 1967, and the Committees' 1972 registration as factors supporting a Jewish ownership claim. Despite this the Court stressed that its ruling did not concern the legitimacy of the Committees' ownership and although this issue could have been discussed as part of the proceedings such a request had not been made by the Committees' as the evidence they produced was only intended to disprove Hijazi's claim.

^[48] The following information is a translated summary and analysis of Civil Case (Jerusalem) 1465/97 and Civil Appeal 4126/05.

The ruling was appealed to the Israeli Supreme Court who rejected Hijazi's petition after considering that the case could not be considered 'exceptional' for the purposes of justifying interference with the factual findings of the first instance court.

The Supreme Court held that Hijazi's documents referred to an area of unknown land that does not appear in maps and that he had failed to disprove concerns regarding the authenticity of the original *koshan* and the 1961 sales agreement.

In rejecting the appeal the Court cited the Committees' evidence however they noted perceived inconsistencies with their document but decided not to interfere with the findings offered through an expert opinion provided by the Committees. According to this, but in contradiction to the evidence provided by Khamisee and Manna, the area described in the *koshan* document provided by the Committees matched that in Sheikh Jarrah. Finally the Supreme Court added that it would be hard to refute the Committees' claims since the area of "Shimon HaTzadik" had been known to be Jewish for generations.

3.3. The Shepherd Hotel

Entrenched in Jerusalem's modern history, The Shepherd Hotel was once a Palestinian landmark within the contested city. Built in the 1930's by Haj Amin Al-Husayni, the Mufti of Jerusalem who led the Arab-Palestinian movement against the British, the property fell under the control of the British government where it functioned as a military outpost before being expanded into a hotel under Jordanian rule. Today the Shepherd Hotel rests among occupied East Jerusalem's abandoned buildings, slated for demolition in order to facilitate the construction of a residential neighbourhood.

In 1967 the hotel, along with the rest of Sheikh Jarrah, fell under the control of the State of Israel who used the property first as a courthouse before leasing it to the District Police in 1987. Since the expiration of the lease the building has remained vacant although it has come to represent a symbol of Israeli expansion into East Jerusalem.

The building's dilapidated façade masks an ambitious development initiative that dates back to the proposal of Town Planning Scheme 2591 in 1982. Three years later the Shepherd Hotel and surrounding land were purchased from the Israeli Government by C and M Properties.^[49]

Plan 2591 was approved by the Jerusalem District Committee of the Interior Ministry and included development provisions for all of Sheikh Jarrah including residential and recreational areas, public buildings and institutions, and transportation infrastructure. Upon receiving the appropriate zoning requirements the land that encompassed the Shepherd Hotel was designated for residential use.^[50]

In November 2008, C and M Properties submitted Building License Request 08/787 which sought permission to commence construction on the Shepherd Hotel property. In July 2009 the Local Planning Committee of the Jerusalem Municipality approved the license, allowing for the destruction of the existing buildings to facilitate the construction of two residential buildings that will include 20 apartments and associated amenities.^[51]

^[49] C and M Properties is company associated with Irving Moskowitz, the well-known American business mogul who has been active in purchasing property in occupied East Jerusalem for the past two decades in order to increase the Jewish demographic presence in all areas of the city.

^[50] Communication from the Department of Building Licensing and Enforcement at the Municipality of Jerusalem, 19 July 2009. Available from the Israeli Ministry of Foreign Affairs.

^[51] *Ibid.*

Four years prior, in 2005, C and M Properties submitted a further request to expand upon Plan 2591 to the Jerusalem Municipality which was registered as Town Planning Scheme 11536. If approved the plan would allow for the development of 90 additional housing units, a kindergarten, synagogue, and dormitories. The file has only recently been opened for consideration by the Municipality and remains in an early stage of the approval process. At present there has been no official recognition of when or if this scheme will be approved.

Should such development commence it would further the initiative taken by Plan 2591 by not only facilitating the construction of residential units in Sheikh Jarrah but by additionally expanding the permanent nature of the Jewish settlements in occupied East Jerusalem through the creation of 'facts on the ground'.

Reaction to the approval of a building license for the Shepherd Hotel property in July 2009 demonstrated the potential severity and political undertones that surround the area's development. The international community has been vocal in their disapproval of construction in occupied East Jerusalem however the Shepherd Hotel initiative warranted a direct call for cessation from the White House.^[52] This underlines a political significance that stems from the proposed development and transcends well beyond the affirmed intent of the relevant planning schemes.

3.4. The Karm Al-Mufti and Glassman Campus Plan

Karm Al-Mufti is an olive grove near the site of the Shepherd Hotel in Sheikh Jarrah. Like the land upon which the hotel now lays vacant Karm Al-Mufti once belonged to Haj Amin al-Husseini. In 1961, Israeli and Jordanian documents confirm that the property was purchased by the Arab Hotel Company of East Jerusalem from the Al-Husseini family years after the Mufti had been deported during the British Mandate period.^[53] After the 1967 War the Israeli Ministry of Finance indicated its intention to expropriate. However, this action was never completed and the Palestinian owners continued to cultivate the land.

From 1997 an individual trespassed on the land that the Arab Hotel Company had held since 1961. After ten years of litigation, the company was granted the right to evict the trespasser from their property however by that stage he had built a home from the ruins of an old building that were used during the British Mandate to harvest the olive yield.

On the day of the eviction, in 2007, the ILA claimed that the property was vested to the Custodian of Absentee Property who had in turn leased the property to the ILA. Based on their rights to the property they demanded that the trespasser be allowed to remain. It later emerged that the trespasser had been receiving assistance from Ateret Cohanim.^[54]

In March of the same year Avraham Hirschson, then the Israeli Minister of Finance, signed an order vesting the land to the State of Israel. The following day he resigned from office to face allegations of corruption for which he was ultimately convicted of embezzling nearly 2,000,000 NIS.

^[52] Issacharoff, A. 'U.S. tells Israel to halt Occupied East Jerusalem Building', Haaretz, 19 July 2009.

^[53] Rapoport, M., 'ILA leasing Arab-owned land in Jerusalem to Ateret Cohanim', Haaretz, 20 August 2007; Interview with Attorney Elias Khoury, 24 November 2009.

^[54] Ateret Cohanim is a right-wing Jewish Yeshiva and organization dedicated to facilitating and increasing Jewish presence in East Jerusalem. The group holds significant financial ties in the United States, having received large amounts of funding from Irving Moskowitz. Settlers associated with Ateret Cohanim have been found to forcibly and illegally evict Palestinian residents from their homes in East Jerusalem to allow for their personal use. For further information regarding the funding and financial ties of this organization refer to: Blau, U. 'U.S. group invests tax-free millions in East Jerusalem land', Haaretz, 18 August 2009.

The move appeared to be an attempt to legitimize prior confidential agreements that had been signed between Ateret Cohanim and the ILA, however the existence of these agreements did not become public until years after the Arab Hotel Company had submitted a request to develop a hotel and conference center on the land. The proposed scheme was well-received by the District Planning Commission who confirmed the hotel company's ownership rights over the property. Based on an accepted interest in the land, furtherance of the development was encouraged.^[55]

Soon after, the conflicting plan between Ateret Cohanim and the Israeli Land Authority was exposed. Despite confirmations that the land was owned by the Palestinian company, the ILA had entered into a multiple contracts with the Jewish organization under which it first leased them the land in 1991 for 'security purposes' and again in 2004 for 'agricultural purposes'.^[56]

Legal proceedings were summarily commenced before the Local Planning and Building Committee during which the Arab Hotel Company argued that the scheme submitted by Ateret Cohanim should be dismissed as they were not the owners of the land. Their claim is currently being heard by the High Court and alleges irregularities in the decision to publicly expropriate the land before leasing it to Ateret Cohanim without having published a tender. Lawyers from the Arab Hotel Company have recently obtained copies of documents from Jordan that confirms their land holdings after the initial copies that were with the Israeli authorities disappeared.^[57]

Town Planning Scheme 2639 designates a parcel of land near the Shepherd Hotel for public building. It is the least developed of the complementary building initiatives in Sheikh Jarrah. Despite having been introduced in the 1980s the land lay dormant until recently. It now appears that the land has been purchased by a pair of Canadian philanthropists who intend to build a conference center on the site. Little was known about this initiative until a sign reading 'The Max and Gianna Glassman Campus' was erected in the summer of 2009.

4. INTERNATIONAL LEGAL OVERVIEW

The right to housing and property, protection against forced evictions, and provisions concerning the right to reparations all exist through various branches of international law. Early incarnations of the right to housing and property long predates its common formation most frequently associated with both International Humanitarian Law and International Human Rights Law.^[58] As the scope, applicability, and enforcement of these rights range between bodies of law, they have evolved to become a consistent tenet of international law and are of direct relevance to those individuals who have lost their homes, property, and possessions in Sheikh Jarrah.

After a brief evaluation of the legal status of Jerusalem, the following two sections will address a series of persistent violations through an international legal framework. First, through the lens of international humanitarian law, the report will seek to demonstrate that based on the legal obligations and legislative competences of an occupying power, actions pertaining to the seizure or destruction of private property, facilitating the forcible transfer of a population, or the evictions of residents under occupation, constitutes flagrant violations of international humanitarian law.

^[55] Rapoport, *supra.*; interview with Attorney Elias Khoury, 24 November 2009.

^[56] *Ibid.*

^[57] High Court of Justice Case 6716/07

^[58] de Vattel, E., 'The Law of Nations or the Principles of Natural Law in Four Books (1758)'. Lonang Institute, Electronic edition, 2003. Book 1, Chapter 20.

From the perspective of human rights law the second section will address violations to several of Israel's international commitments and will ultimately assert that the documented cases in Sheikh Jarrah are the inevitable by-product of a domestic legal and administrative system that renders the realization of Palestinian housing rights ineffectual.

4.1. Legal Status of East Jerusalem

Under the partition plan attached to United Nations General Assembly Resolution 181, Jerusalem was to be internationalized as a *corpus separatum* – a separated body, and placed under a special international regime to be administered by the United Nations Trusteeship Council.^[59] However, rather than the political will of a majority of its residents, the international community, or the principles of international law, the fate of Jerusalem was determined through military conquest. As such, international law holds that the imposition of Israeli control, claims to sovereignty, and the application of Israeli law are not valid in East Jerusalem.

During the 1948 Arab-Israeli war, Israel expanded its territorial control to include a significant amount of the land allotted to the Arab state under the Partition Plan and the western sector of Jerusalem that had been slated for internationalization. At the same time, East Jerusalem, including the holy sites within the walls of the Old City, and the West Bank came under the control of Jordan.^[60]

The position of the international community regarding the legal status of Jerusalem is evident from subsequent General Assembly and Security Council Resolutions that followed and repeatedly called for the immediate and unconditional 'demilitarization' and 'internationalization' of Jerusalem.^[61]

Two decades later, upon the conclusion of the 1967 war, the entire territory of historic Palestine fell under the effective control, and therefore belligerent occupation, of the Israeli Defense Forces. As opposed to the rest of the West Bank and Gaza Strip Israel proceeded to annex East Jerusalem proclaiming, "the Israeli Defense Forces have liberated Jerusalem. We have reunited the torn city, the capital of Israel. We have returned to this most sacred shrine, never to part from it again."^[62]

The Israeli government began to consolidate its hold on East Jerusalem through the passage of the Law and Administration Ordinance (Amendment No. 11) of 1967, which provided for the extension of its law, jurisdiction, and administration into now occupied East Jerusalem.^[63]

Further legislative measures were enacted and served to enlarge the municipal boundaries of East Jerusalem, encompassing 71 square-kilometers of Palestinian land that included Sheikh Jarrah.^[64] First through military conquest and then with the imposition of its national law and the extension of its political jurisdiction, Israel had, *de facto*, annexed East Jerusalem into the State of Israel.

^[59] UN General Assembly, *Future government of Palestine*, 29 November 1947, A/RES/181.

^[60] The *de facto* division of Jerusalem was first acknowledged in the Israel-Jordan Armistice Agreement of 1949 but was not intended to establish the rights, interests, or claims of either party. For the complete text of the agreement refer to: 'The Question of Palestine and the United Nations (Revised Edition), United Nations, Department of Public Information, 2008, p.10.

^[61] For example refer to: UN General Assembly, *Palestine-Progress Report of the United Nations Mediator*, 11 December 1948, A/RES/194; UN General Assembly, *Palestine: question of an international regime for the Jerusalem area and the protection of the Holy Places*, 9 December 1949, A/RES/303.

^[62] Statement by Israeli Defense Minister Moshe Dayan, 7 June 1967. Available from the Israeli Ministry of Foreign Affairs.

^[63] The Laws of the State of Israel: Authorized English Translation of Israeli Legislation (S.H.) Publications by the Ministry of Justice, 75 (9167).

^[64] Municipalities Ordinance (Amendment No. 6) Law, (1967) 21 Laws of the State of Israel 75; Hodgkins, B., *The Judaization of Jerusalem*, 6 Palestinian Academic Society for the Study of International Affairs, 1996

Both the Security Council and the General Assembly have declared the entirety of “measures taken by Israel to change the status of the city to be invalid.”^[65] Israel was called upon to immediately and unconditionally “rescind all such measures already taken and to desist forthwith from taking any further actions which tends to change the status of Jerusalem.”^[66]

The apex of Israeli legislative attempts to consolidate this ‘unification’ came with the passing of the Basic Law: Jerusalem, Capital of Israel in 1980 wherein it was declared that “Jerusalem, complete and united, is the capital of Israel.”^[67] The enactment of the Basic Law on Jerusalem marked the *de jure* annexation of East Jerusalem to the State of Israel.

Following Israel’s continued noncompliance with Security Council and General Assembly resolutions, the UN Security Council again reiterated the position of the international community, strongly rebuking the enactment of the Basic Law and refusing to recognize it and other Israeli actions that sought to alter the character or status of Jerusalem. Resolution 478 states that the enactment of the Basic Law constitutes a violation of international law and does not affect the continued application of the Geneva Convention as it relates to the protection of civilians in times of war.^[68]

Both the United Nations Security Council and the General Assembly have reiterated their positions that East Jerusalem is occupied territory^[69] and that the acquisition of territory through military conquest is inadmissible.^[70] As confirmed on numerous occasions by both bodies and explicitly stated by the International Court of Justice,^[71] East Jerusalem, together with the West Bank and Gaza Strip, is occupied Palestinian territory, rendering Israel as the Occupying Power.^[72] Therefore, any Israeli claim to sovereignty over East Jerusalem holds no validity under international law.

Israel, as the occupying power in East Jerusalem, is vested only with temporary powers of administration.^[73] It possesses no general legislative competence, and any changes in the law of the occupied Palestinian Territory will be contrary to international law unless required for the legitimate needs of occupation.^[74] Israel has an obligation to respect, unless absolutely prevented, the law which was in force at the time when the Palestinian territories were occupied, and any new legislation introduced must fall under exceptions listed in Article 64 of the Fourth Geneva Convention and Article 43 of the Hague Regulations. General application of Israeli laws to the occupied Palestinian Territory is impermissible. In spite of the clearly expressed will of the international community, the Palestinian residents of Sheikh Jarrah continue to be governed through the imposition of domestic Israeli law.

^[65] UN General Assembly, *Measures taken by Israel to change the status of the City of Jerusalem*, 4 July 1967, A/RES/2253; UN Security Council, *Resolution 252 (1968) of 21 May 1968*, 21 May 1968, S/RES/252 (1968)

^[66] *Ibid.*, Resolution 2253.

^[67] 1980 Basic Law: Jerusalem, Capital of Israel, passed by the Knesset on the 17th Av, 5740 (30th July, 1980) and published in Sefer Ha-Chukkim No. 980 of the 23rd Av, 5740 (5th August, 1980), at 186.

^[68] UN Security Council, *Resolution 478 (1980) Adopted by the Security Council at its 2245th meeting, on 20 August 1980*, 20 August 1980, S/RES/478 (1980).

^[69] UN Security Council, *Resolution 672 (1990) Adopted by the Security Council at its 2948th meeting, on 12 October 1990*, 12 October 1990, S/RES/672 (1990).

^[70] Security Council Resolution 478, *supra*.

^[71] *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004, Para. 77.

^[72] *Ibid.*, para 78.

^[73] McNair, A., and Watts, A.D., “The Legal Effects of War (1966)”, in Lauterpacht, H., (ed.), *Oppenheim’s International Law, Vol.2: Disputes, War, and Neutrality* (1952), at 436-8

^[74] C. Greenwood, “The Administration of Occupied Territory in International Law”, in E. Playfair (ed.) *International Law and Administration of Occupied Territories* (1992), 241 at 247

4.2. International Humanitarian Law

4.2.1. Legal Obligations and Legislative Competence of the Occupying Power

Together, the Hague Regulations^[75] and the Geneva Conventions^[76] form the core body of occupation law under international humanitarian law. Both treaties regard belligerent occupation as a temporary, *de facto* situation, the period between the cessation of hostilities and the subsequent signing of a peace treaty.^[77] Thus, the law of belligerent occupation is founded upon the basis that the Occupying Power is vested solely with temporary powers of administration and never possesses political sovereignty of the territory it occupies.^[78] The overall responsibility of the Occupying Power within the territory it occupies is expressed within Hague Regulation 43, which states that, “the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”^[79]

Two fundamental precepts of the law of occupation can be drawn from Regulation 43. First, it imposes an obligation on the Occupying Power *vis-à-vis* the occupied civilian population to ensure “public order and safety.” Second, Regulation 43 is predicated on the fear that any legislative or institutional changes introduced by the Occupying Power risk becoming a *fait accompli*, an accomplished and presumably irreversible fact, thereby prejudicing the possible return to the *status quo ante bellum*, or the state of things before the war.^[80] These requirements embody both positive and negative obligations for an Occupying Power within the territory it occupies and can in no way be exploited by the Occupying Power to justify its inaction and ‘legitimate’ neglect towards the welfare of the occupied population.^[81]

The legislative competence of the Occupying Power to restore and then ensure public order and safety is further clarified in the Fourth Geneva Convention which requires that the laws of the occupied territory shall remain in force, only permitting a suspension of the requirement in cases that constitute a threat to the security of the Occupier or an obstacle to the application of the convention.^[82]

The duality of obligations and rights contained within both provisions effectively prevents the occupying power from ignoring political or economic deterioration and ensuing societal chaos within the territory it occupies.^[83] Accordingly, Article 64 provides three legitimate grounds for interfering with the *status quo ante bellum* and introducing, subject to strict limitations, legislative and institutional amendments in the territory that it occupies. The grounds for such legislative

^[75] International Conferences (The Hague), *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907.

^[76] International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, Article 53.

^[77] Benvenisti, E., *The Security Council and the Law on Occupation: Resolution 143 on Iraq in Historical Perspective*, 1 *Israeli Defense Forces Law Review*, 19, 20 (2003).

^[78] Pictet, J. (ed.), *Commentary to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (1958), p. 275.

^[79] Hague Convention, *supra.*, Article 43.

^[80] Gerson, A., *Trustee Occupant: The Legal Status of Israel's Presence in the West Bank*, 14 *Harvard International Law Journal*, 1, 40 (1973).

^[81] Roberts, A., *Prolonged Military Occupation: The Israeli-Occupied Territories 1967-1988*, in *International Law and the Administration of Occupied Territories*, in E. Playfair (ed.) *International Law and Administration of Occupied Territories* (1992), p.33.

^[82] Fourth Geneva Convention, *supra.*, Article 64(2).

^[83] Dinstein, Y., *The International Law of Belligerent Occupation*, Cambridge University Press, 2009, p. 89.

and institutional changes are limited to those necessary for the fulfillment of obligations under international humanitarian law; the maintenance of orderly government, and the security interests of the Occupying Power.^[84]

Although the legitimate grounds for introducing new legislation into occupied territories are explicit, the exact scope of this legislative competence allows for interpretation. What is beyond debate however is that in absence of permissible legislative changes intended to fulfill obligations under international humanitarian law including the provision and maintenance of orderly government and insurance of the Occupier's security, any additional legislative or institutional changes must be for the exclusive benefit of the occupied civilian population. Accordingly, any legislative or institutional changes introduced by the Occupying Power must not deprive the civilian population of the rights and protections afforded to them under the Convention itself and may not prescribe any measures that are prohibited under international humanitarian law such as collective punishment, forcible transfer, or the unlawful confiscation or destruction of private property not justified by absolute military necessity.^[85] Finally, any legislative and institutional changes introduced cannot seek to evade, or in any way relieve, the Occupying Power of its obligations *vis-à-vis* the civilian population.^[86]

The primary example of domestic Israeli legislation of relevance to the residents of Sheikh Jarrah is the Legal and Administrative Matters Law of 1970.^[87] This legislation was enacted in order to bring all property deemed as having been owned by the Jewish population before 1948 and confiscated by Jordanian authorities thereafter under Israeli jurisdiction. After the enactment of the law, authority over such property was vested in the Israeli appointed Administrator General, who received the competence to release such property to the previous owners.^[88] Although the language of the legislation does not explicitly refer to 'Jewish' property, a closer reading of the law reveals that its application is intended to primarily benefit Jerusalem's Jewish population.^[89] Couple this with the absence of a similar or corresponding piece of legislation that allows the Palestinian population to reclaim the property they lost in West Jerusalem, as was the case with the majority of the 28 families in Sheikh Jarrah, and it appears that the intended application of the Legal and Administrative Matters Law represents a discriminatory form of legislation that fails to benefit the occupied civilian population and as such cannot be justified by the limited exceptions allowed under the Hague Regulations and the Fourth Geneva Conventions.^[90]

^[84] Fourth Geneva Convention, *supra.*, Article 64(2).

^[85] Sossoli, M., *Legislation and Maintenance of Public Order and Civil Life by the Occupying Power*, 16 *European Journal of International Law*, 2005, p. 675.

^[86] Fourth Geneva Convention, *supra.*, Article 47.

^[87] 1970 Legal and Administrative Matters (Regulation) Law (Consolidated Version), (1973) 27 *Laws of the State of Israel* 176

^[88] *Ibid.*, Article 5(a) & (b)

^[89] Article 5 of the law references property that was confiscated by Jordanian authorities after 1948. This inherently applies to land in East Jerusalem that was vacated by the Jewish population as a result of the events of 1948 and subsequently came under the control of the Jordanian Custodian of Enemy Property. The land in Karm Al-Ja'ouni is an example of this despite that fact that its use prior to 1948 was only deemed for beneficial purposes and not residency as detailed through section 3.2.6. The 1970 Legal and Administrative Matters Law is specifically intended to exclusively address the question of Jewish property with no similar mechanism envisioned to address Palestinian claims in the western part of the city.

^[90] Hague Regulation, *supra.*, Article 43; Fourth Geneva Convention, *supra.*, Article 64.

4.2.2. Inviolable Rights and Non-Derogable Obligations

Present in occupied territory, the Palestinian residents of East Jerusalem are Protected Persons as defined under Article 4 of the Fourth Geneva Convention.^[91] The overall responsibility of an Occupying Power concerning Protected Persons is set forth under Article 29 of the Fourth Geneva Convention which states that, “the party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.”^[92]

International humanitarian law places extensive, and in some cases extremely detailed, obligations upon Israel *vis-à-vis* Protected Persons including provisions ensuring, *inter alia*, respect for the right to life, family honor, and private property, as well as religious convictions, practices, and customs.^[93]

Mirroring some of the most fundamental guarantees now enshrined under international human rights law, Article 27 of the Fourth Geneva Convention presents a series of entitlements, to which, and under all circumstances, Protected Persons are guaranteed. These include provisions prohibiting any adverse distinction based on race, religion, or political opinion and assurances of humane treatment as well as protection against acts or threats of violence.^[94]

Although qualified provisions, the obligations of the Occupying Power in respect of Protected Persons permits no derogation.^[95] It follows that Protected Persons may under no circumstances relinquish the rights secured to them by the Convention or be deprived of such rights by the Occupying Power.^[96]

Enshrined through Article 47 of the Fourth Geneva Convention and further elucidated by the authoritative ICRC commentaries, the fundamental principle that an “occupying power continues to be bound to apply the Convention as a whole even when, in disregard of the rules of international law, it claims during a conflict to have annexed all or part of an occupied territory”, is intended to ensure the absolute protection of civilians under occupation.^[97]

Israel’s unilateral annexation of East Jerusalem and the consequent policies and practices that deny the Palestinian residents of Sheikh Jarrah their collective and individual rights as Protected Persons holds no validity under international law. The “protected tenant” status derived from the 1982 Toussia-Cohen Agreement and its subsequent adjudication and affirmation by the Israeli judicial system can in no way deprive the Palestinian residents of Sheikh Jarrah of their status as Protected Persons, or relieve Israel’s obligations towards them, and thus, holds no validity under international law.

^[91] Fourth Geneva Convention, *supra.*, Article 4 states that, “those who, at a given moment and in any manner whatsoever, find themselves, in the case of a conflict or occupation, in the hands of a Party to the Conflict or Occupying Power of which they are not nationals.”

^[92] Fourth Geneva Convention, *supra.*, Article 29.

^[93] Hague Convention, *supra.*, Article 46.

^[94] Fourth Geneva Convention, *supra.*, Article 27.

^[95] The sole provision of the Fourth Geneva Convention which explicitly delineates possible derogations is Article 5.

^[96] Fourth Geneva Convention, *supra.*, Article 8; Fourth Geneva Convention, *supra.*, Article 47 states that, “protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as a result of the occupation of a territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by annexation by the latter of the whole or part of the occupied territory.”

^[97] Fourth Geneva Convention, *supra.*, Article 47; ICRC Commentaries, *supra.*

4.2.3. Seizure and Destruction of Private Property

The confiscation and proposed destruction of Palestinian homes in Sheikh Jarrah for the construction of Jewish settlements breaches the limited exceptions under which the seizure and destruction of private Palestinian property is permitted under international humanitarian law. Privately owned property is provided explicit protection within occupied territory and receives a degree of preferential treatment to that of state-owned property in order to limit the effects of belligerent occupation on the civilian population.^[98]

Hague Regulation 46 proclaims that private property must be respected and cannot be confiscated^[99] while Regulation 47 explicitly extends this prohibition from the Occupying Power to its agents by formally forbidding the practice of pillage during belligerent occupation.^[100] During situations of armed conflict and belligerent occupation, the confiscation or destruction of private property is limited exclusively to situations of military operations during which prevailing circumstances demand such action on the basis of absolute military necessity.

The requisitioning of private homes and property for temporary possession by the Occupying Power for ‘absolutely necessary’ military purposes is permitted under Regulation 52, provided that compensation is paid as soon as possible for the use of the property.^[101] Similarly, the Occupying Power is permitted to expropriate private lands within the territory it occupies if it is done for the exclusive benefit of the occupied population and in accordance with the local law on expropriation for public needs in force at the outset of the occupation.^[102]

Article 53 of the Fourth Geneva Convention^[103] confirms that the destruction of private property, not justified by military necessity, is explicitly prohibited under international humanitarian law during the conduct of hostilities^[104] and the administration of territory during belligerent occupation.^[105]

The prevailing situation of belligerent occupation in Sheikh Jarrah invalidates any recourse to military necessity as the basis of the seizure and proposed destruction of private property.^[106]

^[98] This distinction extends even further to include movable and immovable property. See, Dinstein, *supra*.

^[99] Hague Convention, *supra*, Article 46.

^[100] Hague Convention, *supra*, Article 47; It should be noted, that the scope of the wording of this provision extends beyond the more explicit prohibition against confiscation as contained within the second paragraph of Hague Regulation 46. As delineated within the judgment of the Krupp Trial, “respect for private property” under Hague Regulation 46 is not limited to protection from loss of ownership: for a breach to occur it is enough if the owner is actually prevented from exercising his rightful prerogatives. See, Krupp Trial, (Karuch et al.) (US Military Tribunal, Nuremberg, 1948), 10 LRTWC, paras. 137-8. In support of such an interpretation, in the *Loizidou* case, the European Court of Human Rights held that the continuous denial of access to land means effective loss of ownership rights over it. See, *Loizidou v. Turkey*, 40/1993/435/514, Council of Europe: European Court of Human Rights, 23 February 1995.

^[101] Lauterpacht, H., (ed.), *Oppenheim’s International Law, Vol.2: Disputes, War, and Neutrality* (1952), p. 411.

^[102] Feilchenfeld, E.H., *The International Economic Law of Belligerent Occupation*, Carnegie Endowment for International Peace, 1942, p. 50; Perhaps one of the most important insights derived from the *I.G. Farben* judgment is that the payment of money in consideration for private property does not *per se* relieve an act of confiscation of its unlawfulness, if it is carried out against the will of the owner. See, *I.G. Farben Trial* (Karuch et al.) (US Military Tribunal, Nuremberg, 1948), 10 LRTWC1, para. 44.

^[103] Fourth Geneva Convention, *supra*, Article 53 states that, “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”

^[104] Hague Regulations, *supra*, Article 23(g).

^[105] Rule 50, International Committee of the Red Cross, *Customary International Humanitarian Law, Volume1: Rules*, 2005. See, also Article 3(b), Statute of the International Criminal Tribunal for the former Yugoslavia.

^[106] The absolutely necessary military operations reservation can be understood from the ICRC Commentary as including, “the movements, maneuvers, and actions of any sort, carried out by the armed forces with view to combat.” See, ICRC Commentary, *supra*, on the additional protocols, 1987, Paragraph 2191.

Stemming from the recent evictions, the proposed destruction of Palestinian homes are presented as the adjudicated results of the resident's failure to fulfill the conditions of a tenancy agreement. Their removal serves as a prerequisite to Nahalat Shimon International's planning scheme requesting the construction of a 200 unit Jewish settlement.^[107] The organization's ambitions constitute just one in a series of Israeli development plans for Sheikh Jarrah which all entail the confiscation and destruction of Palestinian property to facilitate the production of Jewish settlements throughout the area. Such development plans will fragment the continuity of existing Palestinian neighbourhoods and further isolate East Jerusalem from the remainder of the West Bank.

The "extensive destruction [of property belonging to Protected Persons within occupied territory] and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" is described in Article 147 as a grave breach of the Fourth Geneva Convention.^[108] Directly derived from this text, Article 8(2)(a)(iv) of the Rome Statute qualifies such destruction and appropriation as a war crime.^[109]

The proposed destruction of Palestinian homes in Sheikh Jarrah to make way for the construction of Jewish settlements would breach the limited exceptions under which the seizure and destruction of private Palestinian property is permitted under international humanitarian law and constitute a war crime that may amount to a grave breach of the Fourth Geneva Convention. Furthermore, the construction of Jewish settlements in Sheikh Jarrah equates to a violation of Israel's obligations under international humanitarian law. Article 49(6) of the Fourth Geneva Convention states explicitly that the "Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."^[110] The Rome Statute of the International Criminal Court considers this practice a war crime.^[111] The unlawful nature of the Israeli settlement enterprise throughout the occupied Palestinian territory, and in particular East Jerusalem, has been repeatedly and explicitly confirmed by the UN Security Council, General Assembly and the International Court of Justice.^[112]

^[107] Jerusalem Municipality, Town Planning Scheme 12705.

^[108] Fourth Geneva Convention, *supra.*, Article 147; In *Blaskic*, the Trial Chamber of the ICTY clarified the meaning of 'extensive' and held that "the notion of extensive is evaluated according to the facts of the case – a single act, such as the destruction of a hospital, may suffice to characterize an offence under this count." See, *Prosecutor v. Tihomir Blaskic (Appeal Judgement)*, IT-95-14-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 29 July 2004.

^[109] UN General Assembly, *Rome Statute of the International Criminal Court (last amended January 2002)*, 17 July 1998, A/CONF.183/9.

^[110] The Fourth Geneva Convention, *supra.*, Article 49(6).

^[111] Rome Statute, *supra.*, Article 8(2)(b)(viii).

^[112] The UN Security Council called upon Israel 'to abide scrupulously by the 1949 Fourth Geneva Convention, 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', see UN Security Council, Resolution 446 (1979) Adopted by the Security Council at its 2134th meeting, on 22 March 1979, 22 March 1979, S/RES/446 (1979); and also to cease 'the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem', see UN Security Council, Resolution 452 (1979) Adopted by the Security Council at its 2159th meeting, on 20 July 1979, 20 July 1979, S/RES/452 (1979); UN Security Council, Resolution 465 (1980) Adopted by the Security Council at its 2203rd meeting, on 1 March 1980, 1 March 1980, S/RES/465 (1980); UN Security Council, Resolution 471 (1980) Adopted by the Security Council at its 2226th meeting, on 5 June 1980, 5 June 1980, S/RES/471 (1980). The General Assembly reiterated demands 'for the immediate and complete cessation of all Israeli settlement activities in all of the Occupied Palestinian Territory, including Occupied East Jerusalem', see UN General Assembly, Resolution 61/118 Adopted by the UN General Assembly: Israeli settlements in the Occupied Palestinian Territory, including Occupied East Jerusalem, and the occupied Syrian Golan, 15 January 2007, A/RES/61/118; also reaffirming that 'the Israeli settlements in the Palestinian territory, including Occupied East Jerusalem are illegal and an obstacle to peace and economic and social development', see UN General Assembly, Resolution 62/108 Adopted by the UN General Assembly: Israeli settlements in the Occupied Palestinian Territory, including Occupied East Jerusalem, and the occupied Syrian Golan, 10 January 2008, A/RES/62/108.

4.2.4. Forced Eviction as Forcible Transfer

Under the initiative of the settler organization Nahalat Shimon International and with the approval of the Israeli judicial system, the Israeli authorities have begun systematically evicting the Palestinian residents of Sheikh Jarrah. The four evictions have displaced over one hundred residents from Sheikh Jarrah through a practice that is explicitly prohibited under international humanitarian law.

Both conventional and customary international humanitarian law prohibits the deportation or forcible transfer of Protected Persons from or within occupied territory.^[113] Article 49(1) of the Fourth Geneva Convention provides, “individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”^[114]

Existing jurisprudence has clarified both the meaning and scope of the crime of deportation and forcible transfer as set forth under international humanitarian law. Several judgments from the International Criminal Tribunal for the Former Yugoslavia have confirmed that deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside.^[115] Additionally case law has defined the scope of deportation and forcible transfer to include, “the forcible displacement of persons from the area in which they are lawfully present, without grounds permitted under international law.”^[116]

The crime of deportation and forcible transfer involves the simultaneous existence of two elements. First, the deportation or transfer must be involuntary (forced).^[117] Secondly, involuntary deportation or transfer must also be unlawful, in that the movement, relocation, or displacement occurred without grounds permitted under international law.^[118]

The principle factor distinguishing between voluntary and involuntary deportations or transfers is whether the concerned individuals exercised an individual or collective ‘genuine choice’ for their movement or relocation. The existence or absence of genuine choice is necessarily dependent upon a multitude of prevailing circumstances of any specific situation.^[119] The term

^[113] Customary international humanitarian law prohibits the “parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand.” See rule 129, Doswald-Beck, L., and Henckaerts, J.M., Customary International Humanitarian Law – Volume 1: Rules, Cambridge University Press, p.457.

^[114] Fourth Geneva Convention, *supra.*, Article 49(1).

^[115] The terms deportation and forcible transfer presume the transfer beyond State borders and displacement within a state respectively. See, *Prosecutor v. Radislav Krstic (Trial Judgement)*, International Criminal Tribunal for the former Yugoslavia (ICTY), 2 August 2001. See also, *Prosecutor v. Blagoje Simic et al. (Trial Judgement)*, IT-95-9-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 17 October 2003. At para. 122 the Chamber held that “deportation is defined as the forced displacement of persons by expulsion or other coercive acts from the area in which they are lawfully present, across a national border, without lawful grounds. Forcible transfer has been defined as a forced removal or displacement of people from one area to another which may take place within the same national borders.”

^[116] *Prosecutor v. Momcilo Krajisnik (Trial Judgment)*, IT-00-39-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 27 September 2006.

^[117] *Ibid.*, para. 724.

^[118] *Ibid.*, para. 723.

^[119] *The Prosecutor vs. Vidoje Blagojevic and Dragan Jokic (Trial Judgment)*, IT-02-60-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 15 March 2002, para. 475.

'forcible' is not limited to physical manifestation of force and may also include, *inter alia*, the threat of force or coercion.^[120]

The second constitutive element relates to the legality of the deportation or forcible transfer. International humanitarian law provides two exceptions to the "otherwise absolute prohibition"^[121] on deportation and forcible transfer and permits an 'evacuation' of a given area only "if the security of the population or imperative military reasons so demand."^[122] The prevailing situation in Sheikh Jarrah does not fulfill either exception.

Forced displacement entails inherently traumatic consequences including the abandonment of one's home and possessions when under duress. The severity of such acts is underscored by the inclusion and categorization of both deportation and forcible transfer as a grave breach of the Fourth Geneva Convention and its First Additional Protocol.^[123] The International Criminal Court qualifies both acts as war crimes, and additionally, as crimes against humanity when carried out as part of a widespread and systematic attack against a civilian population.^[124]

The forcible eviction of Palestinian residents from their homes in Sheikh Jarrah resulted in the displacement of over one hundred Protected Persons from and within occupied East Jerusalem. The evictions occurred on a pretext derived from the 1982 Toussia-Cohen agreement which, *de facto*, removed the residents' Protected Persons status and replaced it with the legal standing of 'protected tenants' in an attempt to provide a thin veil of legitimacy through the application of Israeli law.

The agreement's legitimacy is indirectly predicated upon the Law and Administrative Matters Law of 1970. Article 5 of this law vested authority in the Israeli General Custodian to control and subsequently release the property in Sheikh Jarrah to the Committees upon their *koshan* registration. The application of Israeli law in itself and the resulting indirect effects of its function constitute flagrant violations of Israel's obligations under international humanitarian law as an Occupying Power. Moreover, both laws collectively and independently hold no validity under international law.

The eviction of the four Palestinian families unequivocally occurred against the will of the Protected Persons thus fulfilling the 'forcible' or 'involuntary' requirement. Furthermore, the application of Israeli law, in particular the Law and Administrative Matters Law of 1970, has visibly contributed to the benefit of the Jewish Israeli population, the corresponding results coming to the direct detriment of Sheikh Jarrah's Palestinian residents. Such events extend all associated legal and administrative measures far beyond the legislative competence of an occupying power.

^[120] Prosecutor v. Milorad Krnojelac (Trial Judgment), IT-97-25-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 15 March 2002, para. 475, and Krstić, *supra.*, para. 529 (both quoting the Report of the Preparatory Commission for the International Criminal Court, Finalized Draft Text of the Elements of the Crimes, UN Doc PCNICC/2000/INF/3/Add.2, 6 July 2000, p. 11); Additionally the ICTY held In Krajišnik, *supra.*, para. 732, that through "such measure as house searches, arrests, physical harassment, and the cutting off of water, electricity and telephone services, the Serb authorities created severe living conditions for Muslims and Croats which aimed, and succeeded, in making it practically impossible for most of them to remain." The Chamber held this to constitute, with regard to those who departed to other areas within the same territory, forcible transfer.

^[121] ICRC Commentary, *supra.*, p.279.

^[122] Fourth Geneva Convention, *supra.*, Article 49(2).

^[123] Fourth Geneva Convention, *supra.*, Article 147; Additional Protocol I, Article 85(4)(a).

^[124] As war crimes see Rome Statute, *supra.*, Article 8(2)(a)(vii) and Article 8(2)(b)(viii). As a crime against humanity see Article 7(1)(d).

Finally, the imposition of Israeli legal and judicial authority over occupied East Jerusalem amounts to the *de jure* annexation of this territory and is in conflict with Article 2(4) of the United Nations Charter which prohibits the acquisition of territory through the use of force.^[125] Cumulatively these measures enabled the forcible eviction and resulting displacement of Protected Persons within and from occupied East Jerusalem without grounds permitted by international law, amounting to the crime of forcible transfer as defined under humanitarian law.

4.3. International Human Rights Law

As stated above the relevant application of Israeli law in occupied East Jerusalem does not fall within the limited exceptions permitted under humanitarian law. The following human rights analysis is not intended to legitimize the application of Israeli law contrary to the provisions of humanitarian law but instead recognize the reality in which the cases in Sheikh Jarrah have transpired within the domestic sphere. Humanitarian and human rights law have become complementary bodies that allow for simultaneous application.

4.3.1. General Foundations

Human rights law directly addresses the issue of housing and property rights and provides for the right to reparations in the event that the former rights have been violated. The majority of the major international instruments afford for the protection of the right to property and housing, however often these rights are subject to various predefined limitations or forms of interference.^[126]

The foundational Universal Declaration of Human Rights (UDHR) provides, under Article 17, a right to own property and protection against its arbitrary deprivation.^[127] Continuing from this basis a number of binding international instruments have expanded upon this early formulation.

The International Covenant on Civil and Political Rights (ICCPR) captures, albeit indirectly, the wider implications of the denial of such rights through Article 17(1) which ensures protection against arbitrary or unlawful interference with one's home or family.^[128] The strongest proclamation of this right, however, falls within the sphere of social and economic rights. The complementary International Covenant on Economic, Social, and Cultural Rights (ICESCR) allows a direct approach through the positive obligations contained in Article 11(1) that specifically addresses the right to housing.^[129]

While the UDHR, ICCPR, and the ICESCR either directly or indirectly address the right to housing and property, non-discrimination clauses found in all three afford the most pertinent

^[125] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Article 2(4).

^[126] van Banning, T.R.G., *The Human Right to Property*. Intersentia (2002), pp. 91-104.

^[127] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

^[128] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

^[129] UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

and widely endorsed standards relevant to the cases in Sheikh Jarrah.^[130] Article 2 of the ICCPR is the strongest of the international treaties in this regard, echoing the language of the UDHR in guaranteeing the rights contained within to all individuals, “without distinction of any kind.” The Article goes further obliging parties to, “adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”^[131]

Several of the thematic treaties directly address issues of property and housing rights as well as providing a link to the universal values of non-discrimination. The Convention on the Elimination of all Forms of Racial Discrimination (CERD)^[132], the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)^[133], and the 1951 Convention Relating to the Status of Refugees (1951 Convention)^[134] all include direct reference to housing or property rights through the framework of non-discrimination.

Major international treaties that address property or housing rights do so in a broad fashion allowing the further development of more specified interpretations and applications of the overarching principles. Through such accounts several issues pertinent to the residences of Sheikh Jarrah have emerged. Applying the framework of international human rights law the following sections will address the issues related to the denial of the right to housing in the Karm Al-Ja’ouni neighbourhood.

4.3.2. Forced Evictions

The term forced evictions refers to the direct or indirect involvement of a government in the involuntary removal of persons from their land or home. The practice of forced eviction has been widely condemned by a number of human rights bodies and instruments and while it represents a violation of fundamental human rights in itself, it often also facilitates the violation of several other rights.

The 28 families in Sheikh Jarrah have long lived under the looming threat of eviction and as documented, four families have forcibly been removed from their homes. Evictions in themselves do not constitute a violation of one’s rights, however as the cases in Sheikh Jarrah demonstrate, forced evictions can equate to a “gross violation of human rights.”^[135]

The international human rights framework addresses the issue of forced evictions through a number of means. The act of forcible removal is demonstrative of the absence of legally secure tenure, which has been confirmed as an essential element of the right to adequate housing. Adequate housing is in itself recognized in Article 25 of the UDHR and guaranteed through Article 11(1)

^[130] Based on Article 2 of the UNHR both the ICCPR and the ICESCR contain through Articles 2(1) and 2(2) respectively, the requirement that states party to each Covenant guarantee the rights contained within “without distinction/discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

^[131] ICCPR, *supra.*, Article 2(2).

^[132] UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, Article 5(e)(iii).

^[133] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, Articles 15(2) and 16(1)(h).

^[134] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 13.

^[135] *UN Commission on Human Rights, Resolution 1993/77 on Forced Evictions, 10 March 1993, E/CN.4/RES/1993/95.*

of the ICESCR.^[136] Further interpretation of the right to adequate housing was the subject of General Comment 4 from the Committee on Economic, Social, and Cultural Rights (CESCR), the group of independent experts charged with monitoring the implementation of the ICESCR. The Committee found that adequate housing, *inter alia*, required the existence of legally secure tenure and that the legislation and policies of States Parties should not be designed to benefit already advantaged social groups at the expense of others.^[137] The Committee concludes its Comment by definitively stating that the practice of forced evictions is, “*prima facie* incompatible with the requirements of the Covenant [ICESCR] and can only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law.”^[138]

The Committee returned to exclusively address the issue of forced evictions through its General Comment 7, stating that, “forced eviction and house demolition as a punitive measure” are both inconsistent with the Covenant and a state’s obligations under the Fourth Geneva Convention. The essence of Comment 7 ensures protection through the requirement that states establish a protective legal framework at the domestic level.^[139]

The relevant international framework makes clear that all evictions, even those which appear forced in nature, are not conclusively a violation of human rights and under certain conditions are permissible. General Comment 7 lists the persistent non-payment of rent as one such condition and as the evictions of the families were rendered in part on such grounds, it is necessary to analyze any potential human rights violation on a case-by-case basis irrespective of concerns regarding the legitimacy of the agreement which imposed this requirement.

A legal interpretation of what constitutes an ‘exceptional circumstance’ under the ICESCR is left unaddressed by earlier mechanisms but is identified as a ‘critical issue’ by the CESCR in General Comment 7. The Committee states that, “whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.”^[140]

The occurrence or threat of a housing eviction provides at least, *prima facie*, evidence of the absence of security of tenure - the inability to live without fear of eviction. The Palestinian families in Sheikh Jarrah have long lived in absence of this fundamental assurance. After initially residing in their respective homes through the Jordan-UNRWA agreement, the families had received full assurances that after three years they would receive legal title to the home.

When the contract was not honoured the families were placed in a precarious position from the onset. Although neither the Jordanians nor UNRWA could have foreseen the shift in the legal and political paradigms that followed the 1967 War and the ensuing annexation of East

^[136] UDHR, *supra.*, Article 25, “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood...”; ICESCR, Article 11(1), “The States Parties ... recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions...”

^[137] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23, para. 8(a) and 11.

^[138] *Ibid.*, para.18.

^[139] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate: forced evictions housing (Art. 11(1) of the Covenant)*, 20 May 1997, E/1998/22, para. 9 and 12).

^[140] *Ibid.*, para. 11.

Jerusalem, their failure to provide any legal certainty beyond the three-year term contained in the final contract left the families susceptible to future violations and should place a moral and legal onus upon both to now assist in ensuring the long-term security of the families.

The vulnerability of the families was accentuated when the Israeli authorities failed to recognize or enforce the families' standing under the Tenant Protection Law 1972. Due to the distinctive circumstances prevalent in occupied East Jerusalem, and in accordance with Israeli legislation, the Palestinian families in Sheikh Jarrah qualified for the status of 'protected tenants' long before the contestable Toussia-Cohen agreement afforded it in exchange for the recognition of the Committees' purported ownership.^[141]

Intended to afford statutory protection to those who had been present in annexed property prior to 1967, the Tenant Protection Law failed to effectively provide the families with a level of secured tenure sufficient to shield them from the persistent actions of the Committees. The families were further stripped of this protection when a succession of Israeli Courts accepted the Committees' tenuous ownership claim without any governmental body or agency having ever engaged in a comprehensive evaluation of its validity.

From inception the 28 families in Sheikh Jarrah lacked any degree of secure tenure as it is understood to form a core element of the right to adequate housing under international law. Testimonies from the evicted families detailed the daily trepidation induced by the tentative reality that has persisted from 1972 to present. Even absent an eviction, the lack of legally secure tenure represents a virtually perpetual violation of the right to adequate housing, the ultimate effects of which were experienced by the Al-Kurd, Hanoun, Al-Ghawi, and Rfqha Al-Kurd families. It has also facilitated the occurrence of several breaches of human rights law that directly and adversely impact the lives of the Palestinian residents.

4.3.3. Other rights violated by forced evictions

Forced evictions inevitably encompass a multitude of either direct or indirect human rights violations beyond the denial of housing rights. Due to the induced susceptibility and eventual corollary, housing issues remain the focus of legal and political discourse, however an adequate evaluation of forced evictions must provide due consideration to all potential effects.

Oftentimes, both the rights to freedom of movement and to choose one's residence become compromised through the reductive effect of an eviction. Individuals who had built residency and community ties through personal, social, and economic endeavors are no longer able to live in the neighbourhoods in which they formally resided. The right to freedom of movement is widely accepted and guaranteed. The ICCPR instills that those lawfully within a state hold the right to liberty of movement and the freedom to choose residence.^[142]

The majority of the impacted individuals can only ever remember living in Sheikh Jarrah. It is the home where they were raised, where they raised their children, their families grew, and their lives developed. Rooted in their community, the recent evictions have carried unforeseen consequences. All of the families to have lost their homes have remained, constructing tents near their homes.

Relegated to the street, the families have been equally as reluctant as they are unable to find

^[141] Tenants Protection Law [Consolidated Version], 5732-1972.

^[142] ICCPR, *supra.*, Article 12(1), "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

alternative accommodation. Obtaining a home elsewhere in Jerusalem has been rendered impossible by unyielding economic realities. Additionally the families believe that leaving Sheikh Jarrah would be tantamount to leaving Jerusalem, a position which they begrudgingly refuse to accept knowing that such surrender would surely diminish the likelihood of a return to the city that represents their past as much as their future.

The right to security of the person, closely related to contemporary conceptions of liberty and guaranteed under the ICCPR, is often compromised through forced evictions.^[143] The uses of physical force, psychological violence, or intimidation exercised by agents of the state or private actors whom the state fails to constrain are commonplace violations.

Manifestations of physical violence and intimidation have been regular features of the Sheikh Jarrah narrative. The Al-Kurd, Hanoun, and Al-Ghawi evictions demonstrated overwhelming displays of aggression disproportionate to the objective sought.

The most tragic victim was Mohammed Al-Kurd who succumbed to his longstanding frailty only days after he and his family had been cast from their home. The use of such force to storm the house of an elderly couple and their children must not go unmentioned. As Mohammed Al-Kurd had been ill for years and confined to a wheelchair, misery was compound with calamity when he suffered a heart attack and an ambulance was prevented from reaching him. The Hanoun and Al-Ghawi evictions also demonstrated scenes of disproportionate aggression marked by baton attacks against adults and the forceful removal of children from their homes at gunpoint.

Incidents of violence and harassment have been well documented in Sheikh Jarrah however concerns relating to the denial of the right to security of the person also extend to the state's failure to protect the Palestinian families from the actions of private citizens. On a number of occasions settlers illegally entered homes in Sheikh Jarrah, often establishing their presence for lengthy periods. The most recent incident involved a sealed off section of Rfqha Al-Kurd's home that was overtaken by settlers claiming authority from a court order. During this event police were present in the neighbourhood but failed to interfere until after furniture and possessions from the home had been thrown to the street.

Years earlier the Al-Kurd family, who had been subject to a longstanding court order to demolish a renovated section of their home could not follow through because the renovated portion of their home had been occupied by settlers. Despite numerous requests to the police to evict the settlers their calls went unanswered^[144]

^[143] ICCPR, *supra.*, Article 9(1), "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

^[144] Evictions and Settlement Plans in Sheikh Jarrah: The Case of Shimon HaTzadik, Ir Amim, p.6; Interviews with Advocate Saleh Abu Hussein, 25 August 2009; 3 September 2009.

Access to education^[145], employment^[146], or health services^[147] do not only represent significant rights crucial to the empowerment and overall well-being of individuals but are also severely compromised through forced evictions.

Faud Al-Ghawi and Maher Hanoun were forced to leave their jobs. Instead of seeking new employment, their lives are consumed by the responsibility of caring for large families that have been exiled to the street. The children have been able to maintain their studies only through great sacrifices by the parents even though anything more than basic attendance has proven to be too much.

Sheikh Jarrah's forced evictions have carried far reaching consequences that go well beyond the common headlines that often only capture the direct, albeit devastating, effects of such actions. Forced evictions are clear human rights violations in and of themselves and serve to demonstrate the absence of the requirement of legal secure tenure. Despite this, extraordinary circumstances do exist which limit the right, the most relevant of which involves the persistent non-payment of rent. To allow the limitation of the right however the state must be able to demonstrate that the associated safeguards contained within the international human rights framework have been met.

4.3.4. Discriminatory Application

The denial of the right to adequate housing through the absence of legally secured tenure as well as direct and indirect human right violations suffered by various members of the Al-Kurd, Hanoun, and Al-Ghawi families have transpired through the forced evictions in Sheikh Jarrah. Despite this, and as prescribed through the international legal framework, it is necessary to evaluate the legitimacy of the justifications presented as the legal basis for the various evictions.

Persistent non-payment of rent and home renovations contrary to the 1982 Toussia-Cohen agreement has consistently provided the legal basis for the Sheikh Jarrah evictions. As noted, the accepted international justifications permitting forced evictions are limited to 'exceptional circumstances'. This has been interpreted to include the "persistent non-payment of rent and damage to rented property."^[148]

Complementing this prescription General Comment 7 provides legal safeguards intended to ensure that such justifications are only applied in situations that truly represent exceptional circumstances. The Comment provides that justified evictions must be, "carried out in a manner warranted by a law which is compatible with the Covenant [ICESCR] and that all legal recourses and remedies are available to those affected."^[149]

The legal basis for the Sheikh Jarrah evictions was gained in an indirect manner. Individual court orders were themselves fixated on either rent delinquency or illegal construction, while

^[145] ICESCR, *supra.*, Article 14, "Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.;"

^[146] UDHR, *supra.*, Article 23 states that, "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."

^[147] ICESCR, *supra.*, Article 12(1), states that, "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

^[148] General Comment No. 4, *supra.*, para. 18.

^[149] General Comment No. 7, *supra.*, para. 11.

the purported ownership agreement that provided for the requirement to pay rent and refrain from construction was derived from the Committees' 1972 *koshan* registration. This in turn was facilitated by the Law and Administrative Matters Law of 1970.

The relevant section of this law permits Jewish Israelis to reclaim land in East Jerusalem that they alleged to have once been theirs. Under Israeli law Palestinians are prohibited from making similar claims in West Jerusalem regardless of their ability to prove ownership prior to 1948.^[150] The Law and Administrative Matters Law vested control of the land in Sheikh Jarrah with the Israeli General Custodian who in turn enabled the recognition of the Committees' *koshan* registration.

Events stemming from the adoption of the 1970 law raise two serious inconsistencies regarding Israel's compliance with fundamental human rights standards as derived from its commitments under the ICESCR. Firstly, in relation to the general right to adequate housing and the specific issue of forced eviction, the Convention and interpretive General Comments state that the exceptional circumstance upon which a forced eviction may legitimately be predicated must be, "carried out in a manner warranted by a law which is compatible with the Covenant [ICESCR]."^[151]

The inherently discriminatory nature of the Law and Administrative Matters Law of 1970 does not withstand the scrutiny of the non-discrimination clause prescribed through Article 2(2) of the ICESCR.^[152] The singular nature of the legislation's intent to facilitate the acquisition of Jewish land in occupied East Jerusalem coupled with the absence of a corresponding piece of legislation allowing Palestinians to make similar claims in West Jerusalem equates to a failure to guarantee the rights enunciated in the Convention in a non-discriminate manner.

Secondly, the interpretative expansion of the right to adequate housing under General Comment 4 provides that the legislation and policies of state parties should not be designed to benefit already advantaged social groups at the expense of others.^[153]

Sheikh Jarrah serves as a microcosm of the aggressive Israeli land policies in East Jerusalem. It provides a documented example of the diversity of forces, public and private, engaged in cementing Israel's claim to sovereignty over greater Jerusalem. The legislation and policies to this end are now a matter of public record having been well documented.^[154] Sheikh Jarrah emerges as a poignant case study that serves to highlight the destructive effects of such initiatives as Government agencies including the ILA and the General Custodian have acted under a legislative authority to affect clear policies, the intent of which are only advantageous to Jerusalem's Jewish Israeli population.

The plight of the Al-Kurd, Hanoun, Al-Ghawi, and Rhfqa Al-Kurd families and the precarious position in which Sheikh Jarrah's Palestinian population remain provide clear examples of the destructive nature of forced evictions and the associated rights violations that they carry. More than three decades of legal proceedings have provided little redress to date which, when one considers the strong claims of the families and the dubious nature of the Committees' documents, raises further concerns.

^[150] For a detailed account of the restrictions preventing Palestinians from reclaiming land in Jerusalem refer to: Benvenisti, E. and Zamir, E., 'Private Claims to Property Rights in the Future Israeli-Palestinian Settlement', (1995) 89 American Journal of International Law 295.

^[151] General Comment No. 7, *supra.*, para. 11.

^[152] ICESCR, *supra.*, Article 2(2); "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

^[153] General Comment No. 4, *supra.*, para. 11.

^[154] Refer to section 4.1 of this report.

The provision of safeguards intended to ensure the exceptional nature of evictions contains a requirement that “all legal recourses and remedies are available to those affected.”^[155] While the Israeli judicial system provides a theoretical fulfillment of this requirement, the Sheikh Jarrah cases raise alternative questions concerning the practical effectiveness of this. Such questions would become relevant to the satisfaction of admissibility requirements should any of the cases aspire to seek international adjudication on the aforementioned grounds.

4.3.5. Ineffectiveness and Exhaustion of Domestic Remedies

Under international law the well established rule of requiring potential applicants to first exhaust all available domestic remedies before pursuing international adjudication exists through the relevant international complaint mechanisms to allow states the opportunity to redress an alleged violation through its domestic legal system.^[156] The application of this rule ensures the formative principle that a state’s responsibility for assuring the rights of its population remains paramount. Despite the clear prioritization, the establishment of exceptions has emerged in recognition that the successful application of such remedies may be elusive.

An overview of the relevant jurisprudence demonstrates the flexible nature of the rule’s application and can be interpreted as meaning that the rule relates to the exhaustion of domestic measures which are, *inter alia*, available, effective, adequate, and sufficient.^[157]

There can be no doubting that remedies exist through the Israeli legal system and that they are reasonably accessible without difficulty or impediment. Despite having access one must consider the prospect of success offered by such a form of redress as access alone is rendered moot if it is not followed by at least the possibility of rectification. The series of cases relating to the Palestinian residents of Sheikh Jarrah do not allow for an overarching conclusion to be reached concerning the validity of the Israeli legal system as it relates to the totality of Palestinian land claims. These cases however offer considerable insight by providing a detailed example of the seemingly insurmountable obstacles that Palestinians face in achieving an affirmative ruling in a case concerning a competing land claim.

Difficulties that effectively nullify the prospect of success precede the court process. Administrative bodies including the ILA and the General Custodian are afforded the necessary legislative competence to address land claims, institutionalizing measures that prejudice future Palestinian land claims.

The willingness to grant the Committees *koshan* request without submitting the relevant land in Sheikh Jarrah to a survey or validating the accuracy of their 1886 documents placed the 28 families in a precarious position from which the effects of any future efforts aimed at seeking redress or forwarding a competing claim were undermined. These prejudicial events occurred haphazardly,

^[155] General Comment No. 7, *supra.*, para. 11.

^[156] Trindade, C., *The Application of the Rule of Exhaustion of Local Remedies in International Law: Its rationale in the international protection of individual rights*, Cambridge University Press, 1983, p.1.

^[157] A wealth of international jurisprudence has defined the scope of the necessary requirements. Stating that domestic remedies must exist without difficulties or impediments, offer a reasonable prospect of success, and prove capable of redressing the alleged violation in a specific case. See, D’Ascoli, S. and Scherr, K.M., *The Rule of Prior Exhaustion of Local Remedies in the International Law Doctrine and its Application in the Specific Context of Human Rights Protection* (February 2007), p.12-18; *Open Door and Dublin Well Woman v. Ireland*, 64/1991/316/387-388, Council of Europe: European Court of Human Rights, 23 September 1992; *Keegan v. Ireland*, 16/1993/411/490, Council of Europe: European Court of Human Rights, 19 April 1994.

without the knowledge of the families thus denying them or any external Palestinian interests the opportunity to query the Committees' foundational claim.

Although the initial *koshan* registration was not intended to affect the rights of third parties who hold an interest in the land or serve as conclusive evidence for the purposes of future land disputes, the 1982 Toussia-Cohen agreement succeeded in nullifying these intended assurances. The Civic Court's endorsement of this agreement in 1982 effectively precluded any form of redress for the 17 families who were party to the agreement despite the merits of their claim and the consequent weaknesses of the Committees' documentation.

Ramifications of the Toussia-Cohen agreement managed to permeate the Magistrate Court's reasoning in the Hijazi appeal when it held that as long as the agreement still stood there could be no doubting the Committees' ownership. This occurred despite Hijazi offering ample documentation and expert opinions to at least create uncertainty over the premise upon which the agreement is predicated.

Circumstances, such as the exclusive effect of the Toussia-Cohen agreement have been purposefully manufactured throughout the Sheikh Jarrah narrative by private actors holding a direct interest. Such actions have however been facilitated by an administrative system, clearly designed to advantage the land claims of one of Jerusalem's demographic groups over another.

This raises legitimate concerns regarding the effectiveness of domestic remedies for the purposes of the legal requirement of exhaustion should any of the past or future Sheikh Jarrah cases attempt to proceed to international adjudication.

Recently the Sabbagh case has provided a cautious sense of optimism by requiring the Committees' to present their 1886 documents for further evaluation. While the results of this may have far reaching consequences for the Palestinian families in Sheikh Jarrah it has taken nearly four decades and countless failed legal efforts to reach this point. Such duration would surely be considered unreasonably prolonged for the purposes of establishing the effectiveness of domestic remedies under international law.

5. CONCLUSION AND RECOMMENDATIONS

After nearly four decades of legal proceedings, mounting insecurity, and perpetual apprehension, the 2008 eviction of the Al-Kurd family first permeated the consciousness of the international community and Israeli society. What had previously been cloaked as a land ownership dispute, veiled in a purported sense of legitimacy derived from an adherence to strict legal formalities, the story of Sheikh Jarrah finally emerged as a humanitarian narrative.

Alongside the suffering, uncertainty, and trepidation surfaced, in juxtaposition, a political dialogue that has enveloped the enduring divisions driving the occupation and predisposing the resumption of the peace process.

Recognizing both the political hindrances and humanitarian consequences that Sheikh Jarrah has come to signify, the international community broke their silence. The recent evictions have sparked widespread condemnation from a multitude of international actors. The US Department of State

has expressed its concern that the evictions constitute impediments to the peace process,^[158] while the UN Special Coordinator for the Middle East Peace Process labeled the events in Sheikh Jarrah as ‘deplorable’ and ‘totally unacceptable’ also indicating that, “[t]he United Nations rejects Israel’s claims that [the evictions are] a matter for municipal authorities and domestic courts.”^[159] The UN Secretary General noted that such “provocative actions create inevitable tensions, undermine trust, often have tragic human consequences and make resuming negotiations and achieving a two state solution more difficult”.^[160] The Presidency of the European Union expressed its “serious concerns” over the “unacceptable evictions” in Sheikh Jarrah and recalled that Israel’s actions are illegal under international law.^[161]

The collective voice of the international community has placed Sheikh Jarrah at the epicenter of the Israeli settlement enterprise within occupied East Jerusalem and through its various development initiatives it provides a vivid examples of Israel’s attempts to further consolidate ‘facts on the ground’.

Such is the importance of the status of Jerusalem to the prospect of Middle East peace that the consequential essence of such actions as those that continue to occur in Sheikh Jarrah has long been, and remains, at the core of the Israeli-Palestinian peace process. The Oslo Interim Agreement provides that, “neither side shall initiate or take any step that will change the status of the West Bank or the Gaza Strip pending the outcome of permanent status negotiations.”^[162] The US-endorsed Road Map for Peace lists the “freeze [of] all settlement activity”^[163] as a primary obligation of the Israeli authorities, a commitment that was subsequently renewed by former Prime Minister Ehud Olmert at the November 2007 Annapolis Conference.

Despite the commitments and ensuing rhetoric, East Jerusalem appears to be in a constant state of exclusion. A recent proposal by Prime Minister Netanyahu aimed at implementing a 10-month settlement freeze in the West Bank pointedly omits East Jerusalem from a potential moratorium.^[164]

The existence and continuous expansion of Jewish settlements throughout the occupied Palestinian territory, in particular East Jerusalem, is fast foreclosing any future possibility of a viable Palestinian State with East Jerusalem as its capital, and therefore a just and lasting resolution to the conflict.

In defiance of the stated will of the international community and the inalienable right of the Palestinian people to self-determination, settlement development continues unabated throughout occupied East Jerusalem. While such actions may succeed in prejudicing final status negotiations by strengthening Israeli’s claim to sovereignty over the divided city the Al-Kurd, Hanoun, and Al-Ghawi families will again sleep on the forsaken streets of Sheikh Jarrah.

^[158] Statement by the US State Department spokeswoman Megan Mattson, cited in Wess, E., “US condemns eviction of east J’lem families”, YNet News, 3 August 2009.

^[159] Statement by Robert H. Serry, United Nations Special Coordinator for the Middle East Peace Process, following evictions in the Sheikh Jarrah neighborhood in Occupied East Jerusalem, Jerusalem, 2 August 2009.

^[160] Statement by the UN Secretary General Ban Ki-Moon delivered by Richard Miron, spokesperson for the UN Special Coordinator for the Middle East Peace Process at the Sheikh Jarrah eviction site, Jerusalem, 01 December 2009.

^[161] Statement by the EU Presidency on evictions in Occupied East Jerusalem, 3 August 2009.

^[162] The Palestinian-Israeli Interim Agreement on the West Bank & the Gaza Strip, Washington D.C., 28 September 1995, Article XXXI(7).

^[163] Roadmap For Peace in the Middle East: Israeli/Palestinian Reciprocal Action, Quartet Support, U.S. Department of State, Bureau of Public Affairs, 16 July 2003, Phase I.

^[164] PM Netanyahu to Propose Ten-Month Suspension of New Construction Permits & Construction Starts in Judea and Samaria, 25 November 2009.

In light of the above the Civic Coalition calls upon:

Israel:

To engage their legal obligations as an occupying power and cease forthwith both the construction of Jewish settlements throughout the occupied Palestinian territory, and in particular in occupied East Jerusalem, and the transfer of its own civilian population into these settlements;

To cease forthwith all evictions of Palestinian families and subsequent confiscation of their homes within occupied East Jerusalem, in particular, within the neighbourhood of Sheikh Jarrah;

To provide appropriate police protection for Sheikh Jarrah residents from non-state actors intent on personally evicting the Palestinians in the Karm Al Ja'ouni neighbourhood and seizing their homes for personal use;

To ensure that the entirety of documents held by all associated parties, including Suleiman Hijazi and the Jewish Committees, are given due consideration during the upcoming Sabbagh case; and

To consider the results of any findings and associated expert testimonies as they affect the foundational validity of the 1982 Toussia-Cohen agreement.

The United Nations and the International Community:

For the High Contracting Parties to the Geneva Convention of 1949 to fulfill their obligations under common Article 1, to respect and ensure respect for the provisions of the Conventions under all circumstances by taking appropriate measures to compel Israel to abide by its obligations under international humanitarian law; and

To press for a permanent extension to the recently announced ten-month settlement freeze and to widen the scope of its applicability to include developments in occupied East Jerusalem as is consistent with Article 31 of the Oslo Interim Agreement, the Road Map for Peace, Article 49(1) of the Fourth Geneva Convention, Security Council Resolution 471, and General Assembly Resolution 61/118.

The Palestinian Authority:

To aid the families in Sheikh Jarrah in the alleviation of their immediate humanitarian needs as well as their long-term legal costs by providing sufficient financial and material support.

The European Union:

For Member States to make effective use of the European Union Guidelines on promoting compliance with international humanitarian law (2005/C327/04) to ensure that Israel complies with the relevant standards of humanitarian law under paragraph 16(b), (c), and (d) of these guidelines, including the adoption of immediate restrictive measures and sanctions;

To reiterate calls on the European Council, Commission, and the international community including the Quartet, to make possible efforts to protect Palestinian residents in the Sheikh Jarrah neighbourhood and other areas of occupied East Jerusalem, and again call on the Quartet to play a more active role in this direction as dictated through the resolution of 20 November 2008 on the case of the Al-Kurd family; and

To further reinforce its calls that occupied East Jerusalem is not subject to the jurisdiction of Israeli courts under international law and to halt any expansion of settlements.

United Nations Relief and Works Agency:

To continue to provide protection through advocacy efforts, financial, and material support to the Palestinian residents of Sheikh Jarrah;

To disseminate up-to-date information and developments concerning Sheikh Jarrah to the international community.

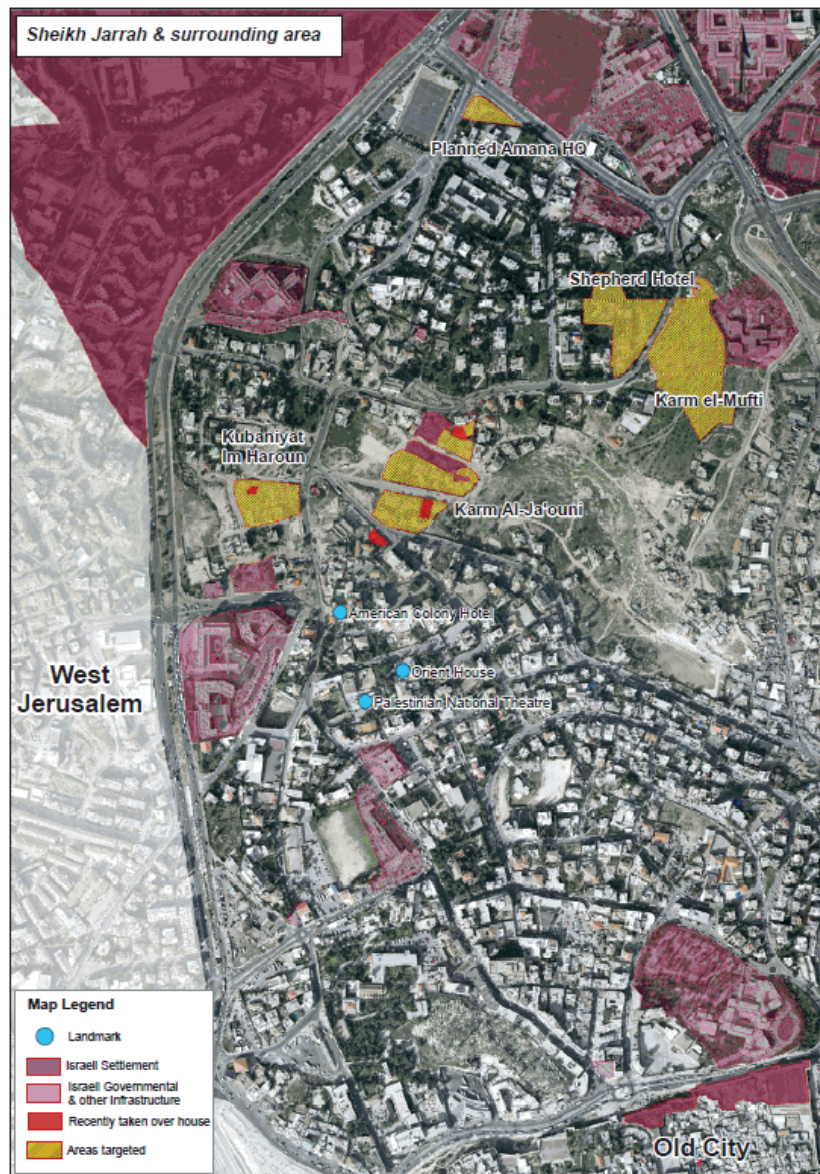
Jordan:

To facilitate access to the relevant land ownership documents held in the Amman archives that pertain to the duration of Jordanian control over East Jerusalem between 1948 and 1967.

Turkey:

To grant full access for relevant parties to the Ottoman archives and assist in locating the pertinent land ownership documents when required.

ANNEX 1 – MAP OF THE SHEIKH JARRAH NEIGHBOURHOOD



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This book was supported by



**THE REPRESENTATIVE OFFICE OF NORWAY
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