

# PALESTINE LIBERATION ORGANIZATION

## NEGOTIATION AFFAIRS DEPARTMENT

### MEDIA BRIEF

## *“FABRIC OF NEIGHBORHOOD:”* NEW GUIDELINES FOR LAND CONFISCATION IN OCCUPIED EAST JERUSALEM

### ISRAELI ABSENTEE PROPERTY LAW

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#### Background

In 1950, Two years after the Nakba, Israel ratified the “Absentee Property Law” as an attempt to “legalize” the theft of Palestinian refugee property by the State of Israel. This measure has been extended by Israel since 2004 to property of Palestinians in illegally occupied and annexed East Jerusalem whose owners reside in the rest of the West Bank, the Gaza Strip or other Arab countries.

The Absentee Property Law gives the “Israeli Custodian of Absentee Property” the power to seize, administer and control property owned by persons defined as “absentees”. The Israeli Law defines an “Absentee” as any person who owns property in Israel and was at any time after November 1947 “in any part of the Land of Israel that is outside the territory of Israel” or in other Arab states. Refugee property seized under the law following 1948 was eventually transferred from the “Custodian” to the Israeli Development Authority or the Jewish National Fund for the construction of Jewish settlements, and in effect illegally confiscated rather than put under custody..

Following the occupation of East Jerusalem in 1967, Israel unilaterally expanded the municipal boundaries of Jerusalem to include the area of Occupied East Jerusalem and other areas of the West Bank and in total an area of 70 square kilometers. It then extended the application of Israeli law to this area, thus illegally annexing it.

The international community condemned the Israeli annexation of Occupied East Jerusalem and declared it legally null and void. UNSC Resolution 465 determines in this regard:

*“that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;”*

As a result of the illegal annexation of occupied East Jerusalem and the application of Israeli law to it, all Palestinians owning property in East Jerusalem who lived in the West Bank, Gaza Strip or other Arab Countries, were immediately considered “absentees” under the Absente Property Law. However, from 1968

onwards Israel refrained from using this law to seize control and confiscate such properties in East Jerusalem. This policy was changed in 2004 when Israel started implementing the law in East Jerusalem.

The effect of this change in policy was to confiscate Palestinian property in East Jerusalem classified as “absentee property”. Such confiscation is a violation of the Hague Regulations and the Fourth Geneva Convention applicable to occupied East Jerusalem. Furthermore, under article 147 of the Fourth Geneva Convention it is considered as a grave breach, or a war crime, subject to penal sanctions under international law.

### **Case Study - Cliff Hotel**

A recent guideline issued by Israeli Attorney General in response to a petition challenging the legality of applying the Absentee Property Law to East Jerusalem, the Attorney General opined that a property seized under the Law in East Jerusalem will not be released to its owner if Israel considers such owner “hostile” to it based on classified information or if the property is deemed required to maintain the “*fabric of a neighborhood*”, which could mean that the property is in proximity to Jewish settlements in occupied East Jerusalem.

A case in point is the case of the Iyad family from Abu Dis who been struggling for 10 years to reclaim their hotel. The hotel is located few hundred meters away from the family's home. The Israeli occupation authorities claimed that the hotel is positioned inside the so called Jerusalem municipal boundary. In 2003, Israel erected the Separation Wall in Abu Dis, annexing the hotel. The hotel was transferred then to the Custodian for Absentee Property despite the clear ownership of the Iyad family. The Custodian then rented the place to the Israeli military to be used a military base. Iyad family contested the matter in Israeli court; but a decision was not made on the case. Early this year an expropriation order by the Israel Ministry of Finance stated that the hotel is needed for “combating terrorism and preventing infiltration of terrorist activity into Jerusalem and Israel.” It Also announced that the Israeli Finance Ministry is willing to negotiate purchase of the property and consider compensation for the owners. The expropriation order was aimed at confiscating the property by other means to bypass the legal challenge mounted against its seizure under the Absentee Property Law. However, under the new guideline of the Attorney General, similar properties will continue to be seized under the Absentee Property Law.

The size of lands affected by the application of the Absentee Property Law is not clear as Israel considers this information classified. However the following data is available on land use in East Jerusalem:

- 35% of 72 square kilometers or 25 square kilometers has been expropriated by Israel for settlements and settlement expansion
- 22% or 16 square kilometers of undeveloped land designated as “Green Areas” where no construction is allowed
- 30% or 21.7 square kilometers are unplanned areas, most of which are in the south where Israel may seek to apply the Absentee Property Law for the expansion of the settlements of Gilo, Har Homa, and Givat Hamatos
- This leaves only 13% or 9.3 square kilometers of those 72 square kilometers for Palestinian use.

The extension of the Absentee Property Law to Occupied East Jerusalem is a blatant attempt to expand Israeli tools for the illegal expropriation of Palestinian land. This is creating yet another wave of dispossessing of Palestinians from lands in their capital with the aim of preventing the establishment of a sovereign Palestinian State.