Architecture of Exclusion:
The Struggle for Land and Legitimacy of Palestinians Under Israeli Law

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Doctoral Thesis

Law

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October 2016

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Dedicated to the Bright Memory of

Lian Abu Hussein

Declaration

I, Hadeel Abu Hussein, herby certify that this thesis is entirely my own work, and I have not obtained a degree in this University, or elsewhere, on the basis of this thesis.

Hadeel Abu Hussein

October 2016

Abstract

This research focuses on land law and provides an overview of the right to land under international law, followed by a background of the Israeli/Palestinian conflict. Subsequently, exploring the underpinning of the land regime in Israel, while focusing on land expropriation and forced housing eviction.

The land is one of the core resources of human existence, development and activity. Therefore, it is a basis of political power of social and economic status. Land regimes and planning regulations play a dynamic role in deciding how competing claims over resources will be resolved. According to the legal geography theory, law and space are significant aspects of one another, and they examine, among other things, how spatial ordering impacts legal regimes and how legal rules form social and human space. How did the law shape the development of social and political space? Examining the state of Israel provides an example for 'filling the gaps and silences in dominant historical narratives, and understanding of the historical background to the creation of the legal system towards empowering the ideologically strong nationalism domination of one ethnic group'. This superimposes a Jewish space into the state space and attempts to minimise those associated with the Palestinian presence.

Against this backdrop, this research endeavours to understand the spatial strategies adopted by Israel to organise the entire territorial expanse of the country as Jewish, while excluding Arab Palestinian citizens of Israel and residents of East Jerusalem from the landscape. The Examination of Israel land regimes' is necessary to highlight the events occurred to land belonging to the Palestinians as a result of the 1948 war and, later, the 1967 Six-Day War. In which cause this systematic nature of marginalisation, which is mapped out in various ways across the civil, political, and socio-economic landscape.

Acknowledgments

The path toward this thesis has been circuitous, and I would like to express my sincere gratitude to the special people of the Irish Centre for Human Rights who supported, challenged and stood by me along the way. I am privileged to have met Prof Ray Murphy, Dr. Shane Darcy, Prof William Schabas, Dr. Karen Da Costa, Dr. Ekaterina Yahyoui and each one of the staff members in the Centre, who I admire so highly. Their generosity and kindness spurred me to keep writing and researching during tough times. I thank them for their support.

Throughout all stages of this research, I have faced many obstacles that I would not have been able to overcome without the advice, contribution, assistance and encouragement of my supervisor, Dr. Kathleen Cavanaugh, who shared her immense knowledge with me. She always aimed at moving my research forward by providing thoughtful feedback and guidance. I want to firmly thank her for her incredible patience, resilience and the time she spent on reading, reviewing and evaluating my work, which was crucial to the completion of this thesis.

Also, I would like to thank and express my deepest gratitude to my colleagues and friends, who were my family in Galway, my second home. These friendships and discussions were pivotal in the development of this dissertation. This must start with firstly Josh Curtis, the first person to welcome me in his house when I first arrived in Galway. Jia Wang for being such an exceptional lifetime friend, John Reynolds and Nathan Derejko being my "Palestinian" friends abroad. Thamil Venthan my dear brother. I extend my thanks to Alexis Bushnell, for her help at the late stages of the PhD. Likewise; this includes Aiofe Duffy, Peter Fitzmaurice, Tanja Florath, Michelle Farrell and Mesenbet Assifa.

I am especially grateful to Wesam Ahmad who provided detailed comments and critique on the manuscript and also gave helpful suggestions to develop and improve the arguments in several cases. I would also like to thank Batool Sharaf, who supported me in every way possible.

My deepest respect and appreciation also goes to the Residents of Sheikh Jarrah in particular, for their resistance and their daily struggle, while still believing and

fighting on behalf of their rights, which is extraordinary. They opened their houses, granted me their resources and provided me with their invaluable time for conducting my research interviews. Notwithstanding their daily struggle losing their homes and never losing hope in their cause. Particularly Amal Al-Qassem a wonderful woman, who provided every update at any time; she is such a believer in her case and keeps up the hope for a better future towards a resolution.

My biggest debt of gratitude goes to my father, Saleh Husni, Abu Hussein, the person who has inspired me the most. His lifelong devotion and motivation, as a lawyer, to the noble cause of defending the Palestinian people's struggle for freedom has to lead me on the same path and it would already make me proud if I achieved a fraction of his accomplishments.

Special thanks are due to my family, who stood by me, assisted me and encouraged me during the lifetime of the research, especially my mother, Najah, by being a great inspiration and encouragement. My sister Nebal and my brother Makram Ramsis for their immeasurable and endless support and strength over the years by supporting my quest to gain further knowledge and opening their homes and hearts anytime and anywhere, to provide me with an optimal environment to focus and sharpen my ideas. This being said, I dedicate this research to my youngest sister, Lian, who passed away in the midst of this research project and whose unlimited brilliance and beautiful joyful, smile I daily miss her and feel privileged to have been her sister.

Last, but not least, my deepest gratitude to all my great friends, Anya Mahamid, Fidaa Hammami, Gen Sandar, Hadeel Hunati, Laurence Petrone, Riad Cheikh, Shadi Abu-Ayyash, Shaimaa Ibrahim and Suhaib Salawdeh, Wafaa Abu Hussein, Zayed Al-Ani and everyone else who supported me along the way.

Shukran Jazeelan

October 2016

Chapter 1: Introduction - Access Denied

Space, like law… has a direct bearing on the way power is deployed, and social life constructed… the geographies of law are not passive, or of random import, but in combination with their implied claims concerning social life, can be powerful, even oppressive.

Nicholas K. Blomley[1]

1.1. On Theory, Colonialism, Law, and the Ethnocratic State

'Colonial law' was used to wrench control from an indigenous population to the coloniser, by creating ambiguous language and rules and placing it within the realm of law.[2] Land was fundamental to colonial projects, in which a state's control of a territory was reached through legal tools. Therefore, law served to shape the power relationship between different social groups and between the rulers and the ruled.[3] Former European colonisers expropriated land for their benefit, shaping a hierarchy of spatial controls, as a mechanism to preserve and support their hegemony over indigenous populations. The colonisers evicted the indigenous population from their public and ancestral lands. Under colonial state rule, lands that were not in active use, were transferred, leased, or sold to individuals (typically members of the colonising group), in accordance to the Torrens system that guaranteed individual land titles in the registry.[4] This land was used to plan, establish, and build new settlements.[5] Indigenous populations were evicted. Some of the historical disputes that resulted from such evictions have resulted in recent legal challenges and a resort to human rights law in order to support their claims. Legal regimes were often constructed and designed in the 'post-colonial' state, as the modern state was inspired by former colonial legal regimes and inherited various exact laws within the

[1] Nicholas K Blomley, Law, Space, and the Geographies of Power. Guilford Press New York, 1994.
[2] Geremy Forman and Alexandre Kedar, Forman, Colonization and Land law in Mandate Palestine: the Zor al-Zarqa and Barrat Qisarya land disputes in historical perspective. Theoretical Inquiries in Law 4.2 (2003).
[3] Ibid.
[4] Stanhope Rowton Simpson, Land Law and Registration Vol. 14. Cambridge: Cambridge University Press, 1976.
[5] Robert Home, Of Planting and Planning: The Making of British Colonial Cities. Routledge, 2013.

modern system. The mechanisms through which states exercise power were often also borrowed from the colonial period. Professor Derek Gregory describes it in the following terms:

> While they (the colonial powers) may have displaced, distorted, and (most often) denied, the capacities that inhere within the colonial past are routinely reaffirmed and reactivated in the colonial present, despite the critics in colonialism, the postcolonialism is usually distinguished from these projects by its central interest in relations between culture and power.[6]

The colonial legal system is therefore present in various ways in the modern state. In some cases, it is adopted fully, as the laws and the legal structure are kept, and in some states it is partly adopted. In the latter case, this adoption is linked to the policy and the government goals. In particular, the use of land regimes is a prime example toward understanding the manifestation of the practices changed by policies linked with politics that have evolved over time, and this virtually defines the rule of law. As Nasser Hussain stated, 'the rule of law has emerged in our times as a powerful discourse of legitimacy'.[7] Max Weber debated that:

> In modern societies, the relationship between legality and legitimacy is […] one of virtual identity. Law not only provides the technical apparatus for exercise of state power but also the ideological foundation of authority.[8]

Land is one of the core resources of human existence, development, and activity. Therefore, it is a basis of political power as well as of social and economic status. Land regimes and planning regulations play a dynamic role in deciding how competing claims over resources will be resolved.[9] Joseph Singer drew attention to the great power granted by the legal system in cases of an individual's entitlement to property ownership. Singer demonstrated that:

> Property is a system of social relation between people.
> The failure to protect a set of interests as exclusive property rights leaves the people who assert those interests vulnerable to others. Both the creation and the failure to create property rights leaves people open to harm, either at the

[6] Derek Gregory, The Colonial Present: Afghanistan, Palestine, Iraq, Blackwell, 2004.
[7] Nasser Hussain, The Jurisprudence of Emergency: Colonialism and the Rule of Law, Ann Arbor University of Michigan Press, 2009.
[8] Cited in Roger Cotterrell, 'Legality and Political Legitimacy in the Sociology of Max Weber' in David Sugarman (ed) Legality, Ideology and the State Academic Press (1983).
[9] John Ratcliffe, 'Land Policy: An Exploration of the Nature of Land in Society' Built Environment Series. London: Hutchinson, 1976.

> hands of state or at the hands of other persons. A central question, therefore, is how the legal system goes about defining and allocating property rights.[10]

Consequently, states exercise their power by shaping land regimes, using government land policies and regulations. The guaranteeing and the protection of different groups' access to land will have significant implications. On the one hand, it will impose more restriction on access to land on the minority and disempowered groups, while it gives dominant majority groups' easier access to land. Blomley argues that space gets produced, invoked, pulverised, marked, and differentiated through particular and discursive forms of legal violence[11] and outlines how the specialisation of the boundary, the survey, and the grid function can be used to legitimise the violence of property law.

According to legal geographers,[12] law and space are significant aspects of one another and they examine, among other things, how spatial ordering impacts legal regimes and how legal rules form social and human space.[13] A critical approach within legal geography examines this dynamic:[14]

> […] the importance of legalities, broadly defined, in the imposition of control by Europe over its various "others": how law was "the cutting edge of colonialism, an instrument of the power of an alien state and part of the

[10] Joseph William Singer, 'Sovereignty and property'. Nw. UL Rev. 86 (1991): 1.

[11] Nicholas Blomley, 'Law, Property, and Geography of Violence: The Frontier, the Survey and the Grid', Annuals of Association of America Geographers 93 no. 1 (2003): 121-41.

[12] Legal geography is a new field of research that recognises the inherent relationship between law and geography. See: Alexandre (Sandy) Kedar, 'On the Legal Geography of Ethnocratic Settler States: Notes Towards a Research Agenda'. Current Legal Issues 5 (2003): 401-41. As late as 1994, Nicholas Blomley opened his study Law, Space, and the Geographies of Power with a lament for the scarcity of research on the subject. See: Nicholas Blomley, Law, Space, and the Geographies of Power. Guilford Press New York, 1994. Additionally, several academic gatherings have focused on legal geography and the new field has recently been the subject of considerable published scholarship. It was the theme of a special issue of Historical Geography (Hist Geography 28, 2000). In 2001, three leading legal geographers (Nicholas Blomley, David Delaney and Richard Ford) edited a fundamental anthology entitled The Legal Geographies Reader. Blackwell Oxford, 2001. In addition, the fifth issue of Current Legal Issues (2003) was dedicated to 'Law and Geography'.

[13] Nicholas Blomley David Delaney and Richard Ford, 'Preface: Where is Law?' in The Legal Geographies Reader: Law, Power and Space. Blackwell Oxford, 2001. In addition, the fifth issue of Current Legal Issues (2003), 6.

[14] The Critical Legal Studies movement influences critical legal geographers. For details: Alexandre (Sandy) Kedar, 'On the Legal Geography of Ethnocratic Settler States: Notes Towards a Research Agenda'. Current Legal Issues 5 (2003): 401-41; David Delaney provides an explanation of the importance of critical legal geography in 'Of Minds and Bodies and the Legal-Spatial Constitution of Sanctuary' 28 Hist Geography 25 (2000): 37 Benjamin Forest, 'Placing Law in Geography'. 5 Hist Geography 12(2000); Nicholas Blomley and Joel Bakan, 'Spacing Out: Towards a Critical Geography of Law' 30 Osgoode Hall LJ,(1992): 661; David Delaney, Race, Place and Law: 1836-1948. University of Texas Press 1998 [hereafter Delaney, Race, Place and Law].

> process of coercion" [...] how it became a "tool for pacifying and governing ... colonized peoples".[15]

Colonial states legitimised power relations by constructing land regimes, and property systems such as land tenure and land administration thereby legitimising relationships within the colonised region. Thus, legal systems in such hegemonic systems played a fundamental socio-spatial power function to facilitate and institutionalise the transfer of land from indigenous population to settlers.[16]

Mandate land regulations provided an array of legal instruments to capture and control land for Israel. These regulations were inherited and modified from the British legal system that operated through the Mandate period, which was in turn modified under the Land Code during Ottoman rule. Hence, Israel's land regime was constructed based on the British colonial experience and its style of law thereby contributing to the building and reshaping of the control over the land in the newly established state in 1948. As Strawson observes, 'Jewish nationalism develops the womb of British colonialism'.[17] This legacy is evident in the Planning and Building Law (1965)[18] that adopted the British-styled mechanism of a development plan managed by the local authorities and the creation of a national Planning and Building Board.[19] Similarly, the Land Acquisition (Validation of Acts and Compensation) Law (1953) was rooted in the Land (Acquisition for Public Purposes) Ordinance (1943) from the Mandate period, which allowed the state to expropriate land with minimal compensation. In turn, this law was drawn from the Ottoman Land Code, which allowed compulsory purchase, within the expropriation procedure adopted in the Land Ordinance of 1924.[20] As Ronen Shamir highlighted:

> Too little attention has also been given to the basic fact that the British, aided by their colonial experience elsewhere, created and installed a functioning

[15] John L Comaroff, 'Symposium Introduction: Colonialism, Culture, and the Law: A Foreword' [2001] 26 Law & Soc. Inquiry 305, 306.

[16] Joseph Singer, 'Sovereignty and Property' [1992] 86 Nw UL Rev 1, 3; Joseph Singer, 'Well Settled?: The Increasing Weight of History in American Indian Land Claims', 28 Ga L Rev (1994): 481-82.

[17] John Strawson, 'Reflections on Edward Said and the legal narratives of Palestine: Israeli settlements and Palestinian self-determination'. Penn St. Int'l L Rev. 20 (2001): 363.

[18] Planning and Building Law (1965), amended in 1990 [Hebrew] available: http://www.sviva.gov.il/English/Legislation/Documents/Planning%20and%20Building%20Laws%20and%20Regulations/PlanningAndBuildingLaw1965-Excerpts.pdf

[19] Antony G Coon, 'Development plans in the West Bank' Geo Journal 21, no. 4 (1990): 363-73.

[20] Frederic Goadby and Moses Douchan, 'The Land Laws in the State of Israel 1952', Tel Aviv: Gaunt Shoshani Printing Co. reprinted Holmes Beach, 1998 by Guant, 1935; Jacques Kano,' The Problem of Land Between Jews and Arabs (1917-1990)', Tel Aviv: Sifriat Poalim Publishing House (1992) [Hebrew].

> state in Palestine: a rather advanced web of administrative apparatuses and governmental departments, a sound infrastructure and, of course, a fully-developed, ready-to-use legal system.[21]

Examining the state of Israel provides an example of 'filling the gaps and silences in dominant historical narratives, and understanding of the historical background to the creation of the legal system towards empowering [the] ideologically strong nationalism domination of one ethnic group'.[22]

Against this backdrop, this thesis endeavours to understand the spatial strategies adopted by the state of Israel to organise the entire territorial expanse of the country as Jewish, while excluding the Palestinian Arab citizens of Israel[23] and residents of East Jerusalem from the landscape. In this research, it is important to deal with space and land within the state of Israel itself, to highlight what happened to land belonging to the Palestinian refugees as a result of the 1948 war and later in the 1967 Six-Day War. The experiences of Palestinians living in Israel as citizens as well as those of residents of East Jerusalem after the Annexation in 1967[24] are distinctive because they live within architecture of exclusion rooted within the socio-legal framework in Israel.[25] How did the law shape the development of social and political space? How were legal tools crafted to reach this goal? The spatial strategy of exclusion was embedded through a discourse of legitimacy, which provides the dominant Jewish majority sole rightful claims to access land. This superimposes a Jewish space onto the state space and attempts to minimise the spaces associated with Palestinian presence.

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[21] Ronen Shamir, The Colonies of Law: Colonialism, Zionism and Law in Early Mandate Palestine. Cambridge University Press, 2000: 11.

[22] Dianne Otto, 'Subalternity and International Law: the Problems of Global Community and the Incommensurability of Difference'. Social & Legal Studies 5, no. 3 (1996): 337-64.

[23] The terminology used to describe Palestinians living in Israel is highly politicized. Amongst these are: Israeli Arab, Arab Israeli, Palestinians, Palestinians in Israel, Israeli Palestinians, the Palestinians of 1948, Palestinian Arabs, Palestinian Arab citizens of Israel or Palestinian citizens of Israel. For our purposes, the term used to describe Palestinian Arab citizens in Israel will be Palestinian Arabs.

[24] Despite the fact that this thesis does not deal with the Palestinians living in the Occupied Territories (Gaza Strip and West Bank) or Golan Heights, which were occupied by Israel in 1967, it has pursued many similarities between Israel's land policies and regulation within the Green Line. For more details, see: B'Tselem. A Policy of Discrimination: Land Expropriation and Planning in East Jerusalem. B'Tselem- The Israeli Information Centre for Human Rights in the Occupied Territories, 1995; Antony Coon, Town Planning under Military Occupation: An Examination of the Law and Practice of Town Planning in the Occupied West Bank, Dartmouth Publishing Company, 1992; and Al-Haq's report on planning as strategy for Judaization in the Occupied Territories, Al-Haq 1986.

[25] Joshua Castellino and Kathleen A Cavanaugh, Minority Rights in the Middle East, Oxford University Press, 2013.

The tactic of controlling space based on ethnic origin is not new. Political and cultural changes demand new spatial policies to fulfil the successful embedment of an ideologically constructed pure space/architecture over a lived hybrid one. This thesis seeks to illustrate that the construction of the land regime in Israel has involved a dynamic architecture strategy that was begun by the former coloniser - the Ottomans, followed by British rule - building and regulating the land law to maintain the space within control and power. It begins by undertaking a critical historical reading of the history of the land regime in the state of Israel, from the Ottoman through the Mandate period, and finally within the Israeli legal regime. As this thesis will detail, this architecture allowed Israel to exert control over the landscape and erase the Palestinian presence from various areas.

This thesis is based on a precise tracing of the laws since the establishment of the state of Israel, in 1948. It also indicates that the roots of land laws have a long history that can be tracked to the fact that Israel was at one point a post-colonial territory and colonial state,[26] which adopted the idea that Zionism is a colonial settler project. Ilan Pappe's emphasis is that 'Zionist settlers - indeed, Zionist thought and praxis - were motivated by national impulse, but acted as pure colonialists'.[27] Brauch Kimmerling views Zionism as a mixture of territorial nationalism with colonialism, and Geshon Shafir illustrates early Zionism as a clear variant of colonialism.[28] However, such arguments have been controversial, with others arguing that Zionism is a purely national movement, not including any colonial qualities, and that the only motivation was to accomplish a national project that was not imbued with any colonialist desire.[29]

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[26] Joseph Massad, 'The Post-Colonial Colony: Time, Space, and Bodies in Palestine/Israel'. The Pre-occupation of Postcolonial Studies, Duke University Press (2000): 311-46; Patrick O. Gudridge, 'Emergency, Legality, Sovereignty: Birmingham, 1963'. Sovereignty, Emergency, Legality, Cambridge University Press (2010): 72-119.

[27] Ilan Pappe, 'Zionism as colonialism: A comparative view of diluted colonialism in Asia and Africa', South Atlantic Quarterly 107, no. 4 (2008): 611-33.

[28] Brauch Kimmerling, Zionism and Territory: The Socio-Territorial Dimensions of Zionist Politics Research Series, Berkeley Institute of International Studies, University of California Press, 1983; Geshon Shafir, 'Land, Labour and the Origins of the Israeli-Palestinian Conflict, 1882-1914'. Cambridge University Press, 1987; Amir Ben-Porat, 'They did Not Sit on the Fence: Opportunity, Longing, and the Breakthrough to Palestine', Iyunim be'Tkumat Israel 4 (1994): 278-98 [Hebrew].

[29] Anita Shapira, 'The Elusive Struggle: Hebrew Labor, 1929-1939', Amoved (1977) [Hebrew]; Ran Aronson, 'Philanthropy and Settlement-YKA? And Its Activity in Eretz Yisrael', Studies in Geography of Eretz Israel 2 (1990): 95-107 [Hebrew]; John J Mersheiimer and Stephen M Walt, 'The Israel Lobby and U.S. Foreign Policy', Farrar, Straus and Giroux, (2007).

In order to show the special architecture policies and strategies that have been a central part of Israel's' political project since its establishment in 1948, this thesis draws a detailed analytical examination of several socio-economic policies and their impact on Palestinians. An examination of education, language and employment policies reveal the extent of discrimination. Palestinians' exclusion from socio-economic and decision-making institutions is well documented. However, within the land-specific policies, the exclusion is particularly acute, and a historical narrative has been developed to justify land expropriation. Ethnocratic lenses can be used to examine the broader concept of the debate. Ethnocratic regimes are defined as those:

> [w]hich may operate on both a state-wide and urban scale with clear links between the two. Ethnocracy is a distinct regime type established to enhance the expansion and control of a dominant ethnonation in multi ethnic territories. In such regimes, ethnicity, and not citizenship, form the main criteria for distributing power and resources. As a result, they typically display high levels of uneven ethnic segregation, and a process of polarizing ethnic politics. Ethnocratic regimes can be found in states such as Sri Lanka, Estonia, Latvia, Serbia, apartheid South Africa, 19th-century Australia, and Israel/Palestine. They combine a degree of political openness and formal democratic representation with political structures that facilitate the seizure of contested territory by a dominant ethnonation. During this process, the dominant group appropriates the state apparatus and control over capital flows, and marginalizes peripheral ethnic and national minorities.[30]

To support this argument, critical geographers make claims such as the following:

> Dominant groups construct 'legal belief structures' that justify racial and spatial inequalities through complex professional discourse, claiming to be objective and impartial. By reconstituting settlers' cultural biases and power relations into formalized rules such as property arrangements, law plays a significant role in the legitimation and endurance of ethnocratic settlers' regimes.[31]

The ethnocratic regime prefers one ethnic nation in a multi-ethnic territory. Allowing these ethnic nations to become dominant.[32] Therefore, the main criteria for the distribution of power and resources is ethnicity-Jewish, in the case of Israel, where the legal structure and public norms enable the control of an expanding ethnic

[30] Oren Yiftachel, and Haim Yacobi, 'Urban Ethnocracy: Ethnicization and the Production of Space in an Israeli 'Mixed City'', Environment and Planning D: Society and Space 21 no. 6 (2003): 673-93.
[31] Alexander Sandy Kedar and Oren Yiftachel, 'Land Regime and Social Relations in Israel, Swiss Human Rights Book 1 (2006): 127, 130.
[32] Oren Yiftachel, ''Ethnocracy': The politics of Judaizing Israel/Palestine Constellations 6, no. 3 (1999): 364-90.

nation.[33] Normally, ethnocratic settler societies include three social groups: the first group is made up of the founders, immigrants are a second group, and lastly there are the natives.[34] This classification impacts the distribution of land, and therefore the founders control and receive wide access over most of the land; immigrants are usually provided with narrow access, and, the natives are not entitled to a fair share.[35] Ethnocratic societies involve building new land regimes and are frequently involved in a violent dispossession of the natives. Therefore, any violent acquisition is translated into a legal regime that likely represents the ethnocratic power, which obscures the dispossession. Kedar stipulated that:

> Law generally, and the Supreme Courts specifically, play a crucial role in these hegemonic projects. Settlers' law and courts attribute to the new land system an aura of necessity and naturalness that secures the founders' interests. Intricate legal tools and convention serve as central instruments in defining and altering laws concerning natives' rights. These laws, saturated with a heavy dose of professional, technical, and seemingly scientific language and methods, conceal the violent restructuring with an image of inevitability and neutrality.
>
> Procedural rules, questions of jurisdiction, rules of evidence, such as burdens of proof, manipulation of precedents and of legal categories, selective deference to legislator, the channelling of these issues to remote and boring confines of the legal landscape, and similar legal constructs have the effect of dispossessing indigenous populations and simultaneously silencing the fundamental question behind the ethnocratic land regime […] [I]n order for the legitimation project to work, it must deliver some of its promises for 'equal justice under law'. Thus, a tension exists between judges' professed commitments to universal values, such as 'equal justice under law', and their attributes as 'Courts of conquerors' forming part of the ethnocratic project.[36]

Ronen Shamir also indicates that the 'conceptualist framework [of the modern Western legal system] renders it highly effective in denying counterclaims [...] [and] [t]he strict application of the rule of law permits judges to deny rights, history,

[33] Oren Yiftachel and Haim Yacobi, 'Urban ethnocracy: ethnicization and the production of space in an Israeli 'mixed city'' [2003] Environment and Planning D: Society and Space 21 6, 673-693.
[34] Alexander Sandy Kedar and Oren Yiftachel, 'Land Regime and Social Relations in Israel, Swiss Human Rights Book 1 (2006): 127, 130.
[35] Walker Connor, Ethnonationalism, John Wiley & Sons 1994; John McGarry, 'Demographic engineering': The State-Directed Movement of Ethnic Groups as a Technique of Conflict Regulation, Ethnic and Racial Studies 21, no. 4 (1998), 613-38.
[36] Alexandre Kedar, 'On the Legal Geography of Ethnocratic Settler States: Notes Towards a Research Agenda' Current Legal Issues 5 (2003): 401-41.

culture, and context to a constructed other'.[37] An examination of the land regime establishment in Israel suggests that Israeli law, similar to that of any other settler society, has provided a collection of legal tools and techniques to facilitate the dispossession of Palestinians from land that they once held. One of these, as mentioned, were eventuality procedural rules to decrease the chances for Palestinian owners to retrain their land.[38] Kedar argues that:

> While playing a crucial role in facilitating the transfer of land from native populations to control of the settlers, the legal system simultaneously conceals the dispossession and legitimates and de-politicizes the new land regime. The exercise of ethnic power through law to dispossess locals usually has 'been cloaked with justificatory arguments'. Typically, the legal system attributes to the new land arrangement an aura of necessity and naturalness that protects the new status quo and prevents future redistribution.[39]

The application of an ethnocratic model to the idea of spatial control can contribute to the understanding of settler societies in general, and in the Israeli/Palestinian context, 'it draws particular attention to the impact of geographical dynamics (including immigration, settlement, dispossession and struggle) to produce social structures and to the special role of law in shaping these dynamics'.[40]

Using an ethnocratic approach, the control (and transfer) in Palestine was done by transferring land ownership into Jewish-Israeli land,[41] following the broad land and settlement policy similar to other settler states.[42] This 'Judaization' project is defined as:

> premised on a hegemonic myth cultivated since the rise of Zionism, namely that 'the land' (ha-aretz) belongs to the Jewish people, and only to the Jewish people. An exclusive form of settling ethno-nationalism developed in order

[37] Ronen Shamir, 'Suspended in Space: Bedouins under the Law of Israel', Law and Society Review (1996): 231-57.
[38] Oren Bracha, 'Unfortunate or Perilous: The Infiltrators, the Law and the Supreme Court 1948-1954' Tel Aviv University Law Review 21 (1998), [Hebrew].
[39] Alexandre Kedar, 'Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967', The NYUJ Int'l L & Pol. 33 (2000): 923; Duncan Kennedy, 'Freedom and constraint in adjudication: A critical phenomenology', Journal of Legal Education 36 4 (1986): 518-562.
[40] Alexander Sandy Kedar and Oren Yiftachel, 'Land regime and social relations in Israel', Swiss Human Rights Book 1 (2006): 127, 130.
[41] Oren Yifachel and Alexandre Kedar, 'Landed Power: The Making of Israeli Land Regime', Teorya ve-Beekorett no. 16 (2000): 78, [Hebrew].
[42] Alexandre Kedar, 'Minority Time, Majority Time: Land, Nation, and Law of Adverse Possession in Israel' [1998] 21 Tel Aviv University Law Review, 665, 681-682 [Hebrew].

> quickly to 'indigenize' immigrant Jews, and to conceal, trivialize, or marginalize the Palestinian past.[43]

This project involved the demolition of Arab villages, towns and neighbourhoods,[44] an increase of Jewish settlements, and limiting the development of Arab settlements. The Israeli Land regime was shaped as:

> [a] national-collectivist regime that rapidly implemented the principles of ethnic territories expansion and control. At the conclusion of this phase [1948-1967], approximately 93% of Israeli territory (within the pre-1967 borders) was owned, controlled, and managed by either the Israeli State or Jewish nation (through the Jewish National Fund) [This land regime developed during the first two decades and crystallised by the 1960s. It eventually remained in this form until the 1990s].
>
> The new land regime was based on 1) nationalization and Judaization[45] of the land 2) centralized control of this land by the state and Jewish institutions (mainly the Jewish National Fund), and 3) selective and unequal allocation of possessory land rights to Jews in ways that mainly favored the 'founders'.[46]

Hence, the land regime in Israel is an ethnically divided space, which creates a legal geography of power that serves to legitimise the dispossession of Arab land into Jewish hands. As mentioned earlier, ownership of approximately 93% of Israeli territory resides with the State, Jewish Agency or the Jewish National Fund. These are Zionist institutions that contribute to enlarging the discrimination gap and maintaining the inequality, which causes the exclusion of the Palestinian Arab citizens of Israel and prevents their access to land. Since these institutions act only in the interest of Jewish citizens,[47] unequal access is ensured through practice.

This thesis sets out to interrogate the status of Palestinian Arab citizens of Israel and the residents of East Jerusalem, as a community that is dependent on Israel's politics and economy. While Israel Israel's authorities denied access to land this had an

[43] Oren Yiftachel, ''Ethnocracy': The politics of Judaizing Israel/Palestine Constellations 6, no. 3 (1999): 364-90.
[44] Miron Benvenenisti, 'The Hebrew Map', 1Te'oreyah ve-Beekoret 11, (1997): 7-29 [Hebrew]; Oren Yiftachel and Alexandre Kedar, 'Landed Power: The Making of Israeli Land Regime', Teorya ve-Beekorett no. 16 (2000): 78, [Hebrew].
[45] Ghazi Falah, 'Israeli 'Judaization' Policy in Galilee and its Impact on Local Arab Urbanization', Political Geography Quarterly 8 no. 3 (1989): 229-53.
[46] Alexandre Kedar, 'Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967', The NYUJ Int'l L & Pol. 33 (2000): 923, 947.
[47] The Palestinians are denied from access to the public land, in accordance with Section 1 of the Basic Law: Israel Lands of 1960, which states that lands owned by the state, the Development Authority and the Jewish National Fund are to be known as 'Israeli Lands'.

adverse influence on the Palestinian Arab citizens of Israel who are made up an agriculture community that has lost its main resource - land - and has been forced into poverty and a lack of economic development.[48] Palestinian Arab citizens of Israel and the residents of East Jerusalem face discrimination through the systematic nature of marginalisation that is mapped out in various ways across the civil, political, and socio-economic landscape. This thesis is an attempt to explore the underpinnings of the land regime, and focuses on land expropriation and housing eviction. It reflects on the ethnic division that still exists in the state of Israel, the concept of ethnicity defining not only land that is inaccessible to some, but also violations that can be found regarding who is included and excluded from socio-economic and decision-making institutions.[49] According to the report from the International Growth Centre:

> Substantial discrimination in terms of the distribution of economic resources, particularly regarding housing and allocation; education; budget for local authorities; the maintenance of holy places; and employment as a result of preferences given to those who serve in the army. Secondly, they seek better opportunity to express their national identity in the cultural, educational, linguistic and other realms.[50]

Despite the fact that the Palestinian Arab citizens of Israel and residents of East Jerusalem should formally receive protection under Israeli law, as a result of ethnocratic practice,[51] Gazi Falah argues that 'laws and orders were passed very often to consciously block the progress of the Arab population and to satisfy the ideological ends of the now majority ethnic group in the states' citizenry-the Jewish'. [52] Spatial inequalities occur in ethnocratic regimes; Israel is not an exception. Biases in the land relocation arrangements are a general practice in the State of Israel.[53] Furthermore, the state's protection of the minority is limited.[54]

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[48] Asis Haidar, 'The Arab Population in Israeli Economy', International Centre for Peace in the Middle East, 1990.
[49] Orr Commission, Report of the State Commission of Inquiry into the Clashes between the Security Forces and Israeli Citizens in October 2000. Israel State, 2003.
[50] International Growth Centre Report of 2012, IGC.org.
[51] Oren Yiftachel, ''Ethnocracy': The politics of Judaizing Israel/Palestine Constellations 6, no. 3 (1999): 364-90.
[52] Ghazi-Walid Falah, 'Dynamics and Patterns of the Shrinking of Arab Lands in Palestine', Political Geography 22 no. 2 (2003): 179-209.
[53] Alexander Sandy Kedar and Oren Yiftachel, 'Land Regime and Social Relations in Israel, Swiss Human Rights Book 1 (2006): 127, 130.
[54] As' ad Ghanem, 'State and Minority in Israel: The Case of Ethnic State and the Predicament of its Minority', Ethnic and Racial Studies 21, no. 3(1998): 428-48.

Hence, the ethnocratic characteristics of the Israeli regime are largely stratified in accordance with an ethno-class configuration.[55] This may explain the on-going struggle in Arab areas, and in East Jerusalem in particular, which suffers from a lack of development and limited access to land, causing crowded towns and poor infrastructure.[56] Finally, Giorgio Agamben has claimed that 'political communities are formed by exclusion, not inclusion; the sovereign is the agent with the right to exclude'.[57] Despite the growth of the Palestinian-Arab population in Israel and East Jerusalem, land expropriation and housing evictions continue, and no future planning schemes have been proposed. Hence, the land is used as a tool of control and power. Palestinians are excluded from various sites of power through the legal architecture that has been built, which has created a system of lawful discrimination under Israeli law.[58]

Finally, although international human rights law and international humanitarian law will be engaged in this thesis, the primary focus of this research is on Israeli domestic law. The emphasis on the use of the domestic legal architecture is central to understanding how land law is constructed and applied. Therefore, interrogating the historical backdrop to the legal architecture reveals the contestation between the State of Israel and Palestinian Arab Citizens of Israel highlights the intricate and often ambivalent interactions between the colonisers and colonised and how law is read and how it plays out in reality. By focussing on the domestic legal system, what emerges is the role played by colonisers' legal systems in depriving indigenous groups and the extent to which these native groups were able to use this law to further their own interests. In addition, when reviewing the legal architecture in East Jerusalem, this thesis, necessarily, concentrates on Israeli Basic Law. In 1967, Israel annexed East Jerusalem and adopted the Law and Administration Ordinance

[55] Gershon Shafir and Yoav Peled, 'Citizenship and Stratification in an Ethnic Democracy', Ethnic and Racial Studies 21no. 3 (1998): 408-27.
[56] Orr Commission, Report of the State Commission of Inquiry into the Clashes between the Security Forces and Israeli Citizens in October 2000. Israel State, 2003.
[57] Derek Gregory, The Colonial Present: Afghanistan, Palestine, Iraq, Blackwell, 2004: 62; Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life. Stanford University Press 1998.
[58] But not under international human rights law; State of Israel as National State of the Jewish People was introduced in 2014 in The Nation-State bill declares that "the Land of Israel is the historical homeland of the Jewish people…' and that "the State of Israel is the national home of the Jewish people, in which it fulfills its aspiration for self-determination'. See: Hassan Jabareen, 'The Real Debate Over Israel's 'Jewish Nation-State' Bill The Nation Magazine, New York, 29 January 2015.

(Amendment No.11) Law on 27 June 1967,[59] furthermore, in Basic Law: Jerusalem Capital of Israel, Israel declared an undivided Jerusalem as the united capital of Israel.[60] Article 1 stipulated that 'Jerusalem, complete and united, is the capital of Israel'. Whilst the international community has contested the annexation, for residents of East Jerusalem, the Ordinance remains the sole legal pathway for resolve of on-going land and housing law.

1.2. Methodology

The methodological approach used in this work is qualitative. This thesis drew from archival research conducted in Israel (Archives in Jerusalem, Sharia' Court, the Archive in Tel Aviv University, research centres and the Israel State Archive) and Turkey (Ottoman documents, inclusive with the translations from the Turkish Archive in Ankara). These repositories housed diaries, archived documents, newspapers, and court documents in Arabic, Hebrew and English. Additionally, access to the full files of the residents of Sheikh Jarrah was permitted (both by the families themselves and by a team of lawyers). These included documentation of experts opinions, the original Tabu registry[61] (from several residents, and translation was an important primary resource), official old Sharia' Court decisions, and a collection of original historical documents, such as maps. These documents reveal the legal architecture of the Israeli state building project by mapping out the legal regime that has assisted to transform land ownership within Israel and East Jerusalem.[62]

A second implemented method was semi-structured interviews that captured the oral histories of residents in Sheikh Jarrah, a neighbourhood in East Jerusalem. These interviews were collected during four field studies undertaken in August 2014,[63] July-August 2015,[64] and finally in May 2016.[65] A representative from each of the

[59] Sefer Ha-Chukkim No. 980 of the 23rd Av, 5740 (5th August, 1980), 186, 21 L.S.I 75 (1967).
[60] Published in Sefer Ha-Chukkim No. 980 of the 23rd Av, 5740 (5 August 1980), p. 186; the Bill and an Explanatory Note were published in Hatza'ot Chok No. 1464 of 5740: 287.
[61] Tabu refers to the Ottoman land registry offices and final registration 'Tabu' is proof of ownership for the purpose of subsequent land disputes. See: Halil İnalcık, and Donald Quataert. An economic and social history of the Ottoman Empire, 1300-1914. Cambridge University Press, 1994.
[62] A copy of these documents saved in the research file.
[63] 10-3- August 2014.
[64] 20 July- 20 August 2015.
[65] 5-8 May 2018.

twenty-eight families that were affected by forced evictions in Sheikh Jarrah, both those who have already been evicted from their house and others who were under the risk of evection, were interviewed. These were the lived experiences of those who became embedded in the legal apparatus of the State, courts and planning departments. Interviews were semi-structured [66] 'in depth interviewing [...] based on an interview guide, open-ended questions, and informal probing to facilitate a discussion of issues in a semi-structured or unstructured manner'. [67] This methodological choice allowed the subjects to detail their experiences, both during the process of the eviction as well as the impact that the eviction had on their family. The majority of the interviews were one-on-one interviews, while a small number were conducted with the interviewee accompanied by a group, or by another person. The semi-structured nature of the interviews included a number of basic questions that were asked to all those interviewed.[68]

According to the testimonies of the families, they are prohibited from renovating or building additional extensions to their houses.[69] This data collection employed the use of some audio tapes[70] and extensive handwritten notes, with additional updates received via Skype from the female representative of the family resistance group as well as one of the attorneys.

Interviews were also conducted with attorneys who served at the interface with the legal system and who had represented the residents of Sheikh Jarrah for decades. The interviews provided an overview of the legal architecture and how lawyers negotiated this space. Finally, in order to map out the demographic and geographic changes in Jerusalem, and to assess the expansion of Jewish settlements in East Jerusalem, an interview was also conducted with a geography expert and head of the Mapping and Geographic Information Systems Department of the Arab Studies

[66] Hilary Arksey and Peter Knight, 'Interviewing for Social Scientists': An Introductory Resource with Examples, Review of Educational Research vol. 53 London: Sage (1999): 159-199.
[67] Fiona Devine, 'Qualitative Methods', Theory and Methods in Political Science 2, Hampshire: Palgrave Macmillan (2002):197-215.
[68] List of the questions kept in the research file.
[69] According to the 'protected tenant' agreements.
[70] Audio taping is the most useful method for recording qualitative interviews, according to Hilary Arksey and Peter Knight, 'Interviewing for Social Scientists': An Introductory Resource with Examples, Review of Educational Research vol. 53 London: Sage (1999): 159-199.

Society in Jerusalem.[71] This was supplemented with on-site visits to the neighbourhood to map the changes in the demographics. Finally, several Court proceedings on land related issues were observed, and meetings with local activists and NGOs engaged in the Sheikh Jarrah neighbourhood were also undertaken during the course of the case study.[72]

The decision to focus on Sheikh Jarrah as a case study was based on a number of considerations. Firstly, given the centrality of its location - very central and close to the Old City of Jerusalem the neighbourhood had become a key site of contestation. Secondly, the case of Sheikh Jarrah and land-related issues in East Jerusalem cannot be disconnected from the broader Israel/Palestine conflict, and therefore, is key to future peace initiatives. Therefore, the dispute in Sheikh Jarrah is not simply a land dispute; the picture is much broader than that, as political actors secretly shape the architecture of who to include or exclude.

The unique powers of the state are the secret fingers that push the vehicle toward evicting more Palestinians while replacing them with settlers, in order to maintain the demographic balance that the Israeli governments have historically set.[73] This dimension cannot be dismissed. It is indeed present when residents describe the situation. Therefore, they try to reach justice outside of the legal system as well, by campaigning to the international community in various ways, such as by maintaining solidarity groups in tents that they might occupy after the eviction, or by organising weekly demonstrations. The situation is complicated, as this is the residence of Sheikh Jarrah's second or third generation, including all the family members under that roof that they lost, or might lose soon. Therefore, they are willing to use all the feasibly open paths - courts, activism, and diplomacy. Their stories highlight another significant dimension - a refusal to become refugees for a second time, as many were

[71] Interview with Mr Khalil Tufakji, the head of the Mapping and Geographic Information Systems Department of the Arab Studies Society in Jerusalem; the interview took place at the Arab Study society offices in El-Ram, Jerusalem, on 7 May 2016, at 10:00 am.
[72] Several Interviews with Mr. Saleh Abu Hussein, the main attorney in the attorneys' team currently representing the residents of Sheikh Jarrah, at Abu Hussein Law Firm, Um El Fahem, Israel, on 5 August, 2016, at 4:15 pm 8 August 2016, at 17:00 and 5 May 2016 16:30; meeting with the Executive Director of the Civic Coalition for Defending Palestinians' Rights in Jerusalem on at the Organization offices in El-Ram, Jerusalem, on 7 May, 2016, at 8:30 am. Attending several court hearing in the district court of Jerusalem, January 2015.
[73] Reaching Jewish majority.

expelled from their original home, after the 1948 War. They do not want to go through similar human tragedy again.

1.3. Chapter Outline

Chapter 2 provides a review of land rights in a context of international law. Although a definition and explicit inclusion of a right to land are not included in the international human rights framework, it can be linked with other aspects of human rights that have been recognised at both the international and regional levels. This chapter presents land-related issues, including rights to property, women rights and indigenous people's rights, all of which are found in different branches of international law. These are examined while specifically focusing on violations related to land expropriation and forced evictions. Section 2.2 deals with land rights as property rights. Section 2.3 examines land rights as cultural rights for indigenous people. Section 2.4 describes the land rights as an issue of gender equality and section 2.5 discusses the right to housing. The main international rights with respect to land issues that are further recognised within international humanitarian law, under The Hague Regulation and the Geneva Conventions as well as Rome Statute, which are detailed in section 2.6. After reviewing the obligations linked with land rights, the chapter turns to the limitation of land rights in section 2.7. In section 2.7.1 land expropriation and deprivation of property are discussed, followed by the conditions in which states shall respect to minimise violations and maintain lawful expropriation. Section 2.7.2 moves onto forced eviction and its limitations. Finally, Section 2.8 examines regional human rights systems' protection of the right to land. A specific reference to the three main regional functioning systems is made. These include the European Convention situated within the Council of Europe, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights for the protection and promotion human rights in the Americas and the African Commission on Human and Peoples' Rights established by the African Charter. This section illustrates regional treaties and judicial opinions on the right to land-invoked issues that reflect the importance of the topic in relation to this thesis.

Chapter 3 provides a historical backdrop to the Israeli-Palestinian conflict, specifically focusing on the construction of architecture of exclusion of Palestinian

Arab citizens of Israel.[74] An examination of the history leading up to the current Israeli-Palestinian conflict provides a useful backdrop to the current status of Palestinian Arab citizens of Israel. Today's Palestinian Arab citizens of Israel are Palestinians who have remained within the "Green Line" after being physically separated from Palestinians living in the West Bank and Gaza Strip. It is estimated that they make up approximately 1,770,000 residents, which comprises of 20.8% of the entire population.[75] They belong to three religions: Muslim 82%, Christian 9.5% and Druze 8.5%.[76] These Israeli citizens are trapped between their Palestinian ethnicity and their civic Israeli identity. Therefore, they live within a unique process of 'Palestinisation' on the one hand, as well as 'Israelisation' on the other.[77] There is significant literature that examines the backdrop to the Israeli-Palestinian 'meta conflict'. These historical narratives are rarely uncontested. The history-building project of the Israeli state competes for space with the Palestinian search for recognition and identity. Section 1 provides a brief historical overview of the conflict and the demographic changes that occurred as a result of the war. The second part of the chapter turns to the status of the Palestinian Arab citizens of Israel, and demonstrates the architecture of exclusion that they Israel face, focusing on discrimination in various fields, such as citizenship, the Arabic language, political participation, education, and employment. It then turns to land and property rights, with a full observation of the legal regime in Israel in the next chapter.

[74] This community is also referred to as Palestinian citizens of Israel, Israeli Arabs or Palestinian-Israelis, Arabs in Israel, the Arabs of 1948, Israeli Arabs, and the Palestinians in Israel. For a better understanding of these different designations and the different contexts in which they are used, and the analytical position associated with the various terminologies, see: Dan Rabinowitz, 'Eastern Nostalgia: How the Palestinians Became the 'Arab of Israel', Theory and Criticism 4, (1993): 141-51, [Hebrew].

[75] According to the media release published by the Central Bureau of Statistics, 'Israel Population on the Eve of 68th Independence Day - 2016', the population of Israel amounted to approximately 8.52 million people on the eve of Israel's 68th Independence Day. At the time of the establishment of the state, it numbered 806,000 residents. The Jewish population numbers approximately 6,377,000 residents (74.8% of the total population); the Arab population numbers approximately 1,771,000 residents (20.8%); and the population of "others" (referring to non-Arab Christians, members of other religions, and persons not classified by religion by the Ministry of the Interior) numbers about 374,000 (4.4%). See: 'Israel Population on the Eve of 68th Independence Day - 2016' <www.cbs.gov.il> accessed 18 May 2016; media release published on 9 May 2016 available: http://www.cbs.gov.il/www/hodaot2016n/11_16_134e.pdf.

[76] Israeli Central Bureau of Statistics (CBS), 'Statistical Abstract of Israel, No. 60', Tables 2.2, 2.8, 2.10; this figure excludes the residents of East Jerusalem or the Golan Heights.

[77] Dan Rabinowitz, 'The Palestinian Citizen of Israel: The Concept of Trapped Minority and the Discourse of Transnationalism in Anthropology', Ethnic and Racial Studies 24, no.1 (2001): 64-85.

Chapter 4 examines how the law and legal mechanisms were used to establish the current land regime in Israel. By displacing Palestinian Arabs, land ownership was rearranged by law to facilitate the transfer of land from Palestinian refugees and the Palestinian Arab population of Israel to Jewish organisations and state institutions, such as the Jewish Fund. The infrastructure that led to the establishment of Israel's laws was partly adopted from previous colonial rule by Britain. By tracing the creation and evolution of land law, the chapter demonstrates how the state of Israel used the law to exercise control over land, and thereby shifted the balance of power toward the new Israeli population. Specifically, following the 1948 war, laws were passed that were designed to facilitate the transfer of lands previously under Palestinian Arab ownership to the newly established state of Israel. The transfer was gradually implemented using legal structures and methods that allowed the Israeli State to normalise the transfer, as well as to both seize and expropriate Arab lands, as well as to optimise results in order to achieve the State's goals. The legal methods that were used created a unique structure for the Israeli land regime, as a way of legalising the acts carried out by the authorities and to impose a new, de facto reality, framing it within a legal mechanism that empowered the Jewish population and established it as the dominant group within the state. An understanding of how the legal land regime in Israel was created and how it evolved is useful to assess the current Jewish domination of land in the state.

Chapter 5 presents a detailed case study of the Sheikh Jarrah neighbourhood in East Jerusalem, where a legal struggle over housing rights has taken place for nearly five decades. Through a review of legal cases in Israeli courts, supported by interviews with people who have been victims of, or live with, the daily threat of eviction, as well as interviews with attorneys involved in legal cases, geography experts and NGO's representative; the picture of the legal struggle of the residents facing a threat of eviction is reflected. This chapter sheds light on the legal tools that Israeli authorities use to maintain control and power over housing rights in Sheikh Jarrah by detailing the procedure that the families need to go through in the case of eviction, prior to the eviction, on the day of the eviction, and the day after. This chapter demonstrates how the law has been used to shape the political struggle over Jerusalem in favour of Israel. As Jewish settlements continue to increase in Arab neighbourhoods in East Jerusalem, it has been revealed how law has become a useful

tool for authorities to maintain power and spatial control. The final section of this chapter evaluates the usefulness of the current legal system to protect Palestinian residents facing forced eviction. Following the detailed legal events in the cases of the Sheikh Jarrah neighbourhood chronologically discloses how the law applies differently, depending on the ethnicity and identities of the parties in particular cases. The ownership claims by Palestinian residents stand in sharp contrast to the claims of Jewish settlers in East Jerusalem. The authorities support the claims of the latter, and the courts dismiss cases at the outset before even examining the original documents that the residents of Sheikh Jarrah provide, which indicate their ownership rights. This discrimination and inequality indirectly supports the Israeli government's policy and political agenda and has long-term implications with respect to the favouring of one ethnic group over another. Indeed, legal decisions are establishing a reality on the grounds that it will affect the status quo and the demographic balance of East Jerusalem by excluding Palestinian residents from East Jerusalem. This, in turn, will directly affect any future proposed resolution. The very sensitive question of Jerusalem is linked to this development and is crucial to the Israeli-Palestinian conflict. The status of Jerusalem is important for a possible future solution to this conflict, and it is at the core of the peace process. Former Israeli Prime Minister Ehud Olmert was responsible for overseeing a commitment that obligated Israel to freeze all settlement activity, according to the United States Road Map for Peace in the Annapolis Conference in November 2007.[78] Despite all of the international commitments, the expansion of Jewish settlements in the heart of the Palestinian neighbourhoods in Jerusalem is narrowing any possibility of future peace.

This thesis concludes in chapter 6, which links the nature of the Israeli land regime to the implications for the imposed exclusion of the Palestinian Arab citizens of Israel and residents of East Jerusalem. The Israeli project has, since its inception, created architecture of exclusion framed in ideological and political terms to construct the land regime. Moreover, all other aspects of the economic and social fields, and efforts to construct and empower the dominant Jewish citizens, have required advanced methods to control the public space and recraft it in legal terms to

[78] Quartet Support, Roadmap for Peace in the Middle East: Israel/Palestine Reciprocal Action, U.S. Department of State Bureau of Public Affairs, 16 July 2003, Phase I.

favour the Jewish population. These strategies and policies have been conducted by broad and progressive encroaching mechanisms such as land expropriation and forced housing evictions. While inextricable with ethnocratic motives, which are reflected in major aspects of Palestinians' lives - not just pertaining to the question of land - the suggestion of this thesis is that control over land and exclusion from the territory have substantial consequences far greater than narrow land issues such as, preventing any possible future permanent peace solution that includes East Jerusalem as result of sketching borders on ground post eviction or demolitions houses. The Palestinian presence in Israel's state policies remains under focus.

Despite the centrality of land issues in the Israeli/Palestinian negotiation, the denial of access to land for the Palestinian Arab citizens of Israel is often neglected during Israeli/Palestinian peace negotiations, except among some right-wing Parliament/Knesset members. Recently, the Israeli Defence Minister, Avigdor Lieberman, suggested transferring the Palestinian Arab citizens in the Israel population outside of the Israeli state, and redeeming the land from those that are not Jewish. So long as Israel remains an ethnocratic state, these calls will continue to shape the dominant narratives within Israeli civil society, and in turn, shape how Israeli governmental policies are adopted and constructed. By excluding the 'other', Israel cannot continue to claim it is a democratic state practising equality among its citizens, while at the same time being an ethnic state that relies on oppression. Consequently, land is an essential geopolitical reality, and it continues to be the core question of the Israeli/ Palestinian conflict. The mere fact that the Palestinian Arab citizens of Israel and the residents of East Jerusalem, like any other population, is growing naturally and demanding fair access to land, requires future planning schemes and respect for their equal housing rights.

Chapter 2: A Review of Land Rights in International Law Context

It is People being demolished, not buildings.

Residents of Kibera settlement[79]

It is impossible to plan for the future; we are three families who were evicted from the house, including 17 members; the eviction destroyed our lives.

Mr Maher Al-Hanoun,
Evicted resident of Sheikh Jarrah [80]

2.1.Introduction

This chapter provides a review of land rights in the context of international law. No definition or explicit inclusion of a right to land was included in the primary sources of international human rights framework that is derived from treaties, conventions, protocols and covenants,[81] as well as from customs. However, it has been recognized on both the international and regional levels that several fundamental human rights are intricately linked with the right to land. This chapter examines land-related issues including rights to property, women's rights and indigenous peoples' rights, all of which are inscribed in different branches of international human rights law, specifically focusing on violations related to land expropriation and forced evictions. Land rights refer to the rights to use, exploit, control, and transfer a plot of land. Included under the umbrella of land rights are the rights to: use land and resources, to enjoy or occupy it; to exclude or restrict others from the land; sell, loan grant or transfer; rent or sublet and develop or improve.[82] Land rights are a central matter for the protection and promotion of justice and equality. Nonetheless, international

[79] Centre on Housing Rights and Evictions, 'listening to the Poor: Housing Rights in Nairobi, Kenya, 2004 Consultation Report, (Geneva: Centre on Housing Rights and Evictions, 2005 at chapter 3).
[80] Interview with Mr. Maher Al-Hanoun, evicted resident, in front of the house from which he was evicted, in Sheikh Jarrah, on 9 August 2015, at 12:00 pm.
[81] Antonio Cassese, International Law, Oxford University Press (2005): 170.
[82] Food and Agriculture Organization of the United Nations (FAO), 'Land Tenure and Rural Development', FAO Land Tenure Studies, 3, (2002).

human rights law does not clearly refer to land rights and does not codify it in specific provisions in any of the main international human rights instruments. As Jeremie Gilbert has rightly argued:

> No human rights treaty has recognised land rights as being a core human rights issue. Out of the nine core international human rights treaties, land rights are only marginally mentioned once, in the context of women's rights[83] in rural areas.[84]

This remains the case despite several initiatives and requests by a number of international actors, comprising special rapporteurs of the Human Rights Council,[85] non-governmental organisations[86] and international governmental bodies,[87] who have pressed for an acknowledgment of the right to land under international human rights law.[88] For instance, the Special Rapporteurs of the Human Rights Council on Adequate Housing, as a component of the right to an adequate standard of living, recommended that the Human Rights Council '[r]ecognise the right to land as a human right and strengthen its protection in international human rights law'.[89]

Although as it currently stands, an international right to land is not explicitly stipulated within the international legal framework and is not wholly defined, there are aspects or components to the right to land embedded within international law. Indeed, land rights are invoked in a number of key areas including property rights,[90] women's rights and the right to housing, as well as rights related to access to food and water, which are fundamental human rights for indigenous people. This chapter

[83] Article 14 of The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) dedicated to the rights of rural women states that women should 'have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes'.

[84] Jérémie Gilbert, 'Land Rights as Human Rights: The Case for a Specific Right to Land', SUR International Journal on Human Rights 10, NO.18 (2013): 117.

[85] Millon Kothari, Report of the Special Rapporteurs of Human Rights Council on Adequate Housing as a Component of the Right to an Adequate Standard of Living, 31,33, UN Doc. A/HRC/4/18 (5 Feb 2007).

[86] International Land collation 2009 Conference, Kathmandu Declaration: Securing Rights to Land for Peace and Food Security. 23 April 2009, available at: http://www.landcoalition.org/sites/default/files/documents/resources/09_Katmandu_declaration_E.pdf.

[87] Economic and Social Council, Development Cooperation Forum, Annual 2008 High-Level Segment Ministerial Declaration, Implementing the Internationally Agreed Goals and Commitments in regard to sustainable development, draft declaration, UN Doc. E./2008/L.10, 28 (July 3, 2008).

[88] Roger Plant, 'Land Rights in Human Rights and Development: Introducing a New ICJ Initiative', International Commission of Jurists Revue, Geneva, Switzerland, no. 51 (1993): 10-30.

[89] Millon Kothari, Report of the Special Rapporteurs of Human Rights Council on Adequate Housing as a Component of the Right to an Adequate Standard of Living, 31, 33, UN Doc. A/HRC/4/18 (5 Feb 2007).

[90] Theo RG. Van Banning, The Human Rights to Property. Intersentia (2002): 91-104.

engages with these areas within international legal frameworks, human rights law and humanitarian law, especially focusing on violations related to forced evictions and land confiscation or expropriation.

Although there is no explicit reference to land rights within international human rights law instruments, as mentioned above, the interconnectedness between land rights and civil and political rights is clear. Land rights are a key pathway through which adequate food, housing, water and health are accessed. Access to land plays a crucial role in social development, poverty improvement and economic growth[91] and, therefore, the failure to insure equitable distribution and protection of land can easily lead to economic insecurities. This link between land rights and access to other rights, such as property, is noted in a number of international human rights instruments. Under Article 17 of the Universal Declaration of Human Rights, 'Everyone has the right to own property alone as well as in association with others.'[92] As well, the Declaration on the Rights of Indigenous Peoples states that 'indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired'[93] and the Convention on the Elimination of all forms of Discrimination Against Women, obliges that state parties 'shall ensure women the right to . . . equal treatment in land and agrarian reform as well as in land resettlement schemes'.[94] These references clearly suggest that despite not having a direct provision:

> [l]and rights have nonetheless been examined by both international human rights monitoring bodies and international and national courts. Indirect protection of land rights has been included under the umbrella of other protected rights such as property rights or the right to food, for example.[95]

[91] See Alain de Janvry, Access to Land and Land Policy Reforms, in Access to Land, Rural Poverty, and Public Action 1, 17 (Alain de Janvry et al. eds., 2001)

[92] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc A/ RES/217(III) (Dec. 10, 1948)

[93] Declaration on the Rights of Indigenous Peoples, United Nations, art. 26(1), Sept. 13, 2007, available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf [Hereinafter Declaration on the Rights of Indigenous Peoples]. The Declaration was adopted by the General Assembly but is not legally binding on state parties.

[94] Convention on the Elimination of All Forms of Discrimination Against Women, art. 16(h), G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 2, 1981

[95] Jérémie Gilbert, 'Nomadic territories: A human rights approach to nomadic peoples' land rights', Human Rights Law Review (2007): ngm030: 78-83.

As well, in a 2007 report, Miloon Kothari, the then United Nations Special Rapporteur on adequate housing with the Human Rights Council, argues that 'the Human Rights Council should consider devoting attention to the question of the human right to land', and that 'the right to land as a human right be recognized and strengthened'.[96]

Yet despite the recognition that land rights are interconnected with other human rights, as well as an emerging consensus within the international community to focus on land rights as a human right,[97] its placement in the international human rights framework is still ambiguous.

There are a number of reasons proffered as to why the international framework omitted the land rights from its lexicon-post-war territorial disputes and the pressures of economic restructuring, militarisation and a financial crisis. As well, it has been argued that including land as human rights could affirm unjust land rights (e.g. those acquired through force) and obstruct justifiable redistribution.[98] Whatever the justification, land rights remain under the primary domain of domestic law. To the extent that international instruments have a role, it is to endeavour to influence land legislation and reforms at the national level[99] and this gap in the force of international instruments leaves the question of land rights and policies to the governmental and private bodies.

Against this backdrop, the following sections will examine the land rights that can be protected through indirect human rights resources-in other words, how land rights emerge-as well as the essential elements for the recognition of other human rights such as property rights,[100] indigenous people's rights, women's rights, discrimination and, finally, the right to housing.

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[96] Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, 31, 33, UN Doc. A/HRC/4/18 (Feb. 5, 2007):2.

[97] Roger Plant, 'Land rights in human rights and development: introducing a new ICJ initiative. International Commission of Jurists Revue, Geneva, Switzerland', no. 51(1993) 10-30; For example: International Land Coalition; Economic and Social Council, Development Cooperation Forum.

[98] Poul Wisborg, 'Human rights against land grabbing? A reflection on norms, policies, and power', Journal of agricultural and environmental ethics 26.6 (2013): 1199-1222.

[99] The development related to indigenous people's right to land might indicate that the international community will re-discuss land rights, make them the fundamental rights of all and include them directly in the treaties, because it is important to ensure the recognition of cultural and economic value of land under human rights law, as the right to land is a fundamental right.

[100] The right to property has created much debate since its inscription in the Universal Declaration of Human Rights in 1948, to the extent that the right to property was not included in the two main human rights treaties of the 1960s, the two international covenants that form the main basis of international human rights law. The controversy was particularly on if property rights should be

2.2. Land Rights as Property Rights

The right to property is codified in both international and regional human rights instruments including the right to property. The right to property can be found in Article 17 of the Universal Declaration for Human Rights (UDHR) of 1948, which states that '[e]veryone has the right to own property alone as well as in association with others', and that '[n]o one shall be arbitrarily deprived of his property'.[101] Persistent controversies were raised as this article was drafted.[102] The main debate concerned the necessity to include the right to property among the panoply of human rights, and the limitations of national laws in this regard. The right to property does not distinguish between collective or individual ownership. In the final form of the article, unlike in the initial draft, there is no explicit indication regarding the limitation to the right to property, yet this right is not absolute.[103] Additionally, in 1951, the Convention Relating to the Status of Refugees adopted articles dealing with the rights to the movable and immovable properties of refugees.[104] The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) adopted Article 5 in 1965,[105] which states: 'the right to own property alone and in association with others'.[106] Furthermore, article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979 provides in section (h) a protection of 'the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration'.[107] This indicates

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reflected on an individual basis following the Western view that consider a property as an individual and when it comes to land rights, it is predominately about protection of individual title to the land in a very settled manner or through a more collective approach following Soviet approach collective approach toward the property; Jérémie Gilbert, 'Nomadic territories: A human rights approach to nomadic peoples' land rights', Human Rights Law Review (2007): ngm030.

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

[102] William A Schabas, 'The Omission of the Right to Property in the International Covenants', Hague Yearbook of International Law, v. 4, (1991): 135-60.

[103] Article 17, Alfreðsson, Guðmundur S., and Asbjørn Eide, 'The Universal Declaration of Human Rights: a Common Standard of Achievement', Martinus Nijhoff Publishers, (1999): 359-78, 346.

[104] Convention relating to the Status of Refugees adopted in 1951, Articles 13, 18, 19, 29 and 30.

[105] UN General Assembly, the Convention on the Elimination of all Forms of Racial Discrimination, 21 December 1995, United Nations, Treaty Series, vol.660, p.195. Article 5 (e)(iii).

[106] UN General Assembly, the Convention on the Elimination of all Forms of Racial Discrimination, 21 December 1995, United Nations, Treaty Series, vol.660, p.195. Article 5 (e)(iii).

[107] Article 16 of UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Serious, vol. 1249:13, Articles 15(2) and 16(1)(h).

that land rights are relevant and covered by various provisions within the legal edifice of international human rights law.

2.3. Land Rights as Cultural Rights: Indigenous People

The indigenous peoples' right to land has been discussed widely in a number of seminal texts.[108] This section briefly engages with land rights as a fundamentally essential aspect of indigenous peoples' rights. This section highlights additional aspects that should be considered within a calculated balance between land rights, as international human rights law confirms that indigenous peoples are entitled to land invoked from the protection over the indigenous peoples' collective rights.

Land, for indigenous people, is an aspect of identity that connects them to their history and culture. Jérémie Gilbert describes this unique link between indigenous people and land rights as follows:

> From the most diverse and often remote places of the globe, from the frozen Arctic to the tropical rainforests, indigenous peoples have argued that their culture will disappear without a strong protection of their right to land. While indigenous communities are most diverse, most of them share a similar deep-rooted relationship between cultural identity and land. Many indigenous communities, as we shall see below, have stressed that territories and lands are the basis not only of economic livelihood but are also the source of spiritual, cultural and social identity.[109]

Cultural rights are covered in Article 27 of the ICCPR. Article 27 of the ICCPR states:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.[110]

The Human Rights Committee's interpretation of this article holds that indigenous peoples' chosen ways to use land resources shall be protected as an exercise of cultural rights:

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[108] Jérémie Gilbert,' Indigenous Peoples' Land Rights Under International Law: From Victims to Actors, Transnational Publisher, 2006; Benjamin J. Richardson, Shin Imai, Kent McNeil. Indigenous Peoples and the Law Comparative and Critical Perspectives, First Edition, Hart Publishing, Oxford, 2009.

[109] Jrémie Gilbert, 'Land Rights as Human Rights: The Case for a Specific Right to Land', SUR International Journal on Human Rights 10, NO.18 (2013): 117.

[110] U.N. General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Serious, vol. 999, p.171.

> With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.[111]

This article confirms cultural rights for minorities, describing the link between land rights and cultural rights. Based on article 27 and General Comment No. 23, it is arguable that with respect to indigenous peoples, the right to choose certain ways to use land resources is a right that emanates from cultural rights.

Protection of indigenous peoples' rights under international human rights law can be found in Part 2, article 13 of the International Labour Organization's Convention No. 169, concerning Indigenous and Tribal People in Independent Countries,[112] as it stipulates:

> Governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.[113]

Additionally, the International Covenant on Civil and Political Rights (ICCPR)[114] and article 25 of the UN Declaration on the Rights of Indigenous Peoples, adopted in 2007, have strengthened this jurisprudential evolution. Land rights were considered to be essential human rights with regards to indigenous people when dealing with this issue and the impact of specialised standards on indigenous land rights.[115] According to article 25:

> Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied

[111] Human Rights Committee (HRC). General Comment No. 23, 1994b: the rights of minorities (Art. 27), UN Doc. CCPR/C/21/Rev.1/Add.5, available on: http://www.unhchr.ch/tbs/doc.nsf/0/fb7fb12c2fb8bb21c12563ed004df111.

[112] A small state number is party to the indigenous rights under international law, in the International Labour Organization Convention No. 169, concerning Indigenous and Tribal People in Independent Countries. Nevertheless, it also represents states with larger indigenous populations. Therefore, the Convention has become an important legal instrument when it comes to land rights for indigenous people.

[113] The Indigenous rights under international law, in the International Labour Organization Convention No. 169, concerning Indigenous and Tribal People in Independent Countries, available at: http://www.galdu.org/govat/doc/ilomanual.pdf.

[114] International Covenant on Civil and Political Rights, available on: http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

[115] Jérémie Gilbert, Cathal Doyle, 'A New Dawn over the Land: Shedding Light on Collective Ownership and Consent, Hart Publishing, 2011. Reflections on the UN Declaration on the Rights of Indigenous Peoples.

> and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.[116]

The Declaration on the Rights of Indigenous Peoples reflects the international recognition of the significance of the human rights approach to land rights for indigenous peoples.

The Convention on the Elimination of Racial Discrimination prohibits[117] any racial and ethnic discrimination, arbitrary removal and forced eviction. In addition, it preserves the rights of minorities to maintain their lifestyles, and recognizes indigenous people and entitles them to their rights in communal traditional land with the liberty to use and develop the land. An important argument regarding the question of the right to self-determination can be raised due to the varied interpretation of the protection of minorities' lifestyles. When the right to self-determination is disputed, all of these elements should be taken into considerations by courts in each case regarding indigenous people.[118]

The on-going case of *the African Commission on Human and Peoples' Rights v. the Republic of Kenya* at the African Court on Human and Peoples' Rights is a valid example. The applicant claimed that the Kenyan State had for many years committed a series of acts and omissions, such as harassment, and had arbitrarily forced evictions of the Ogiek,[119] without consultation or compensation, from the Mau Forest, their ancestral home, where they had lived constantly and which is crucial for their very survival as an indigenous people. The Kenyan State has denied the applicant's charges and further claimed that the court lacked jurisdiction in the case. The Kenyan State also alleged that the Ogiek community had not exhausted the national local remedial process. No final decision had been reached at the time that this thesis was written.[120]

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[116] The UN Declaration on the Rights of Indigenous people and its draft have exposed the impact of specialised standards of indigenous land rights, available on: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

[117] Please note that the discrimination elements under The Convention on the Elimination of Racial Discrimination are not specific to indigenous people.

[118] The Convention on the Elimination of Racial Discrimination, available on: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx.

[119] The Ogiek are an ethnic group that live in in the deep forest as hunter-gatherers. The majority of them grow vegetables, keep livestock and some live only through hunting and gathering.

[120] African Court on Human and Peoples' Rights Concludes Hearing of Application Concerning Kenya's Ogiek Community Land Rights, press announcement, available at: http://www.african-court.org/en/index.php/news/latest-news/564-african-court-on-human-and-peoples-rights-concludes-hearing-of-application-concerning-kenya-s-ogiek-community-land-rights.

The African Commission on Human and Peoples' Rights landmark decision, adopted by the African Union on 2 February 2010, in the case of *The Centre for Minority Rights Development, Minority Rights Group International and the Endorois Welfare Council (on behalf of the Endorois Community) v. Kenya*, is a case that highlights indigenous peoples' land rights.[121] This case dealt with the Endorois Community, who are semi-nomadic pastoralists. In the 1970s, the Endorois faced eviction from their ancestral land, which is located around Lake Bogoria in Kenya's Rift Valley in order to create a national park. The case challenged the lack of consultation or compensation for forcibly displacing the Endorois, and the lack of protection afforded the Endorois their traditional way of life. The Minority Rights Group International and the Endorois Welfare Council (on behalf of the Endorois Community) claimed violations of multiple articles of the African Charter, including article 8, which states the Endorois' rights to non-discrimination and rights to religious, article 17 which stipulates right to cultural and the protection of right to life, and article 21 which confirms the right to property and access to natural resources. The African Commission acknowledged that the eviction of the Endorois from their ancestral lands was illegal, and that their forced eviction was in violation of article 14 of the African Charter.[122]

The Government had failed to provide sufficient compensation or alternative grazing land following their eviction, to grant restitution of their land, to include the community within the relevant development processes, and to protect the Endorois' ancestral land rights. The African Commission awarded full remedy to the Endorois community and the commission further made a series of recommendations for the Kenyan government to follow in order to foster a better understanding of indigenous collective rights in Africa. The case has created a judicial precedent by recognizing the right of an African indigenous people to traditionally owned land.

Any discussion about indigenous people would be incomplete without reference to the Palestinian people. There is significant political contestation over Palestinian national identity. The question of identity is not simply confined to academic debate but has direct implications over rights to land, self-determination, and other attendant

[121] AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS (ACHPR). 2010. Communication 276/2003, Centre for Minority Rights Development (CEMIRIDE) and Minority Rights Group International (MRG) (on behalf of the Endorois) v Kenya (decision of Feb 2010).
[122] Ibid.

rights-based claims. The Israeli narrative opposes the categorisation of Palestinians as indigenous. This analysis is based in part on the "time-priority" of the Jewish described in the Bible, which is the ancient Jewish connection to Palestine, alongside Jewish claims to heritage in the land of Israel that are supported by abundant archaeological pieces and historical records. The counter-narrative is based on the perspectives of Palestinians who argue that they belong to the indigenous population of historical Palestine and that they have a right to self-determination in historical Palestine, which is being impeded by a colonial power that has tried to undermine the indigenous status of those who lived in historical Palestine for generations, especially prior to the establishment of the State of Israel. Accordingly, all Palestinians are native to historical Palestine (both in occupied territories and within the Israel State). Nonetheless, the discussion of whether Palestinians as a whole group meet the definition of indigenous peoples according to international law is beyond the scope of this thesis, which states no intention to deal with its implications, such as the question of self-determination and sovereignty. However, it is important to highlight that this debate exists. In fact, the international law of indigenous people takes the State as a given legal and political framework and explicitly states that indigenous rights are not intended to challenge territorial integrity and sovereignty. Therefore, the dominant view is that the Palestinians as a whole group do not tend to meet the definition of indigenous peoples.

Unsurprisingly, this question of indigeneity/land context and natural belonging also arises when we look to the Palestinian Bedouin in Al-Naqab-Negev.[123] Much like the question of Palestinian identity, the indigenous status of the Bedouin in the Naqab-Negev is contested by Israel.[124] The UN Declaration on the Rights of Indigenous Persons[125] suggests that:

> …[t]he longstanding presence of Bedouin people throughout a geographic region that includes Israel, and observes that in many respects, the Bedouin

[123] Al-Naqab-Negev located in South Israel.
[124] An expert opinion submitted to Beer-sheva District Court in Israel, from Rodolfo Stavenhagen, former UN Special Rapporteur on the Rights of Indigenous in the Al-Uqbi case, confirming the indigenous status of the Bedouin community in the Naqab; in an exchange between Professor James Anaya and the Israeli government, Anaya confirms the indigenous status of the Bedouin.
[125] The Declaration on the Right of Indigenous Peoples adopted in 2007. Articles such as 25, 26, 33, etc.; Jérémie Gilbert, 'Indigenous rights in the making: The United Nations declaration on the rights of indigenous peoples', International Journal on Minority and Group Rights 14.2/3 (2007): 207.

> people share in the characteristics of indigenous peoples worldwide, including a connection to lands and the maintenance of cultural traditions that are distinct from those of majority populations. Further, the grievances of the Bedouin, stemming from their distinct cultural identities and their connection to their traditional lands, can be identified as representing the types of problems to which the international human rights regime related to indigenous peoples has been designed to respond. Thus, the Special Rapporteur considers that the concerns expressed by members of the Bedouin people are of relevance to his mandate and fall within the ambit of concern of the principles contained in international instruments such as the United Nations Declaration on the Rights of Indigenous People.[126]

That being said, the contestation over the recognition of indigeneity is not just a question of identity but is directly linked to questions of traditional ownership and usage rights over land of the Bedouin.[127] In the Al-Uqbi case,[128] which examined the question of land in the unrecognised Bedouin village of Al-Araqib under Israel's Land Acquisition (Validation of Acts and Compensation) Law 1953,[129] for example, the Supreme Court decided that the Al-Uqbi tribe did not have any rights in the

[126] Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, August, 2011: 24-31. UNGA Doc. A/HRC/18/35/Add.1

[127] Whilst Israel disproves this indigenous status of the Bedouin, there is a sufficient factual and legal basis with reference to the anthropological and cultural material available that the criteria set out in the Declaration and the writings of experts, such as the Special Rapporteurs on Indigenous Rights, can be used to draw the conclusion that the Bedouin can be considered an indigenous people. The Bedouin may be entitled to the protections of indigenous groups, if they can be recognised as such. The rights of indigenous persons are established by an emerging body of soft law, including the UN Declaration on the Rights of Indigenous Persons and also by domestic and international jurisprudence. Such rights comprise the right to recognition of land rights, including traditional ownership and usage as well as the right to enjoy and preserve their culture, tradition, and livelihood. The land rights context of the Bedouin identifies land as an essential source for living and as a central and fundamental right to cultural identity. Denial of land and/or housing tenure and displacement continue to violate the Bedouin's cultural rights. Moreover, their unique relation with the land and property, despite the fact that they are a nomadic group, and their nomadic life preclude permanent attachment to particular lands, which means that those lands become an essential element in Palestinian Bedouin life, given their significance for tribal substance. Therefore, Israel must accommodate special needs in relation to the traditional lands and livelihood of the Bedouin community in Naqab-Negev, and the Human Rights Committee is concerned that:

> …[at] allegations of forced evictions of the Bedouin population based on the Public Land Law (Expulsion of Invaders) of 1981 as amended in 2005, and of inadequate consideration of traditional needs of the population in the State Party's planning efforts for the development of the Negev, in particular the fact that agriculture is part of the livelihood and tradition of the Bedouin population. The Committee is further concerned at difficulties of access to health structures, education, water and electricity for the Bedouin population living in towns, which the State Party has not recognized (arts. 26 and 27). In its planning efforts in the Negev area, the State Party should respect the Bedouin population's right to their ancestral land and their traditional livelihood based on agriculture. The State Party should further guarantee the Bedouin population's access to health structures, education, water and electricity, irrespective of their whereabouts on the territory of the State Party;

Human Rights Committee, Concluding Observations: Israel, U.N. Doc. CCPR/C/ISR/CO/3, 2010.

[128] CA 4220/12 Al-Oqabi v. State of Israel, 14 May 2015.

[129] Land Acquisition (Validation of Acts and Compensation) Law, 1953, Laws of the State of Israel number 122, 20 March, (Hebrew);

requisitioned land and therefore were not entitled to a remedy.[130] The Court rejected the tribe's ownership claim based on Bedouin traditional law. Referring to the applicable Ottoman and British Mandate land laws, it opined that the land in question is Mawat land,[131] which, at the time of the requisition, belonged to the State and was not privately owned. The Court rejected this argument, explaining that Israel did not approve the Declaration either by voting or incorporating it into Israel's legal system; additionally, the Court's decision emphasised that the Declaration is nonbinding and does not form customary international law. Given the Court's decision that the Declaration does not confer land rights, it did not address the question of whether the Bedouin are an indigenous people.[132] A second ruling deals with the forced eviction of the unrecognised village of Um Al-Hiran.[133] The Court concluded that the tribe did not acquire property rights in the land through its protracted presence and buildings in the area. Both judgments ignore the unique lifestyle of the Bedouin and the customs and traditional arrangements that have regulated their land rights and interests; the Court focussed on the classification of property rights and on the formal methods to obtain them. This approach taken by the Israeli authorities does not formally recognise a collective right to the Bedouin.

Nevertheless, any future findings related to certain parts of Naqab-Negev land as Matruka land[134] on this issue may provide some recognition of the collective usage rights of the Bedouin as an indigenous people rather than privately/individually owned. This argument might strengthen their right to land. By examining the issues involved in the categorisation of the Bedouin as indigenous, if they rightly meet the accepted definition as indigenous, then they are entitled to the full package of rights and protections owed to indigenous persons, such as the collective right to land. There is a great value in exploring further avenues for the defence of groups within Palestinian society with special needs, lifestyles, or cultural practices at risk of degradation such as the Bedouin. This should not detract from the broader objective

[130] CA 4220/12 Al-Oqabi v. State of Israel, 14 May 2015.
[131] According to the Ottoman land Code 1858; Mewat is an area of wasteland that lies beyond the carry of the human voice when uttered from the nearest habitation.
[132] CA 4220/12 Al-Oqabi v. State of Israel, 14 May 2015. 175; Al-Oqabi (Al-Araqib) and Al-Kiya'an (Um Al-Hiran) Cases: Analysis of the Supreme Court Decisions and Their Implications, NRC legal memo, June 2015: 3.
[133] CA 3094/11 Al-Kiya'an v. State of Israel, 5 May 2015
[134] According to the Ottoman Land Code (1858), Mtruka is a land that was designated by the Ottoman and Mandatory authorities for the Bedouin collective use - for the purpose of parking, grazing, and seasonal agriculture.

of protecting the rights of all Palestinians. In fact, such an approach can be complementary by exploring a range of new and emerging areas of law, which can provide the necessary tools in addressing and explaining those needs to support the claims to land of this marginalised group.

2.3.1. Nomadic Groups

Nomadism has been described as 'the movement of household during the annual round of productive activities'; unlike sedentism which is described as 'the immobile location of the household during the annual round of productive activities'.[135] Nomadic people are minority groups distributed globally that have a diverse but unique lifestyle, as they have continuous, frequent movement without fixed patterns. This lifestyle may counter the norms of definitions of property, and they face related threats related to their mobile livelihood and survival. Therefore, questions related to land, property and housing are more complex. Frequently, nomadic people face pressure from the predominant sedentary world in relation to land rights, water recourses and mobile access to natural resources. The unique lifestyle of these groups is simultaneously related to the land and freedom of movement.[136] Under the international human rights system, states have a general obligation to guarantee the rights for nomadic peoples, including cultural and political rights, land rights, freedom of movement, and effective management of natural recourses. Human rights law provides protection for nomadic people to preserve their lifestyle and culture as a minority group. Nomadic groups include many peoples, such as Roma, Travellers and Bedouin[137].

A brief examination of a few examples reveals how various states handle nomadic populations. In Bulgaria, the government did not provide the Roma with an option to gain tenure of their land. This was a violation of housing rights protected in the

[135] Philip Salzman, 'When Nomads Settle: Processes of Sedentarization as Adaptation and Response', New York, (1980): 10.
[136] Jérémie Gilbert, 'Nomadic peoples and human rights', Routledge, (2014):5; according to Gilbert Jérémie, in this book, he highlights that there is current lacuna in international human rights law related to the nomadic peoples, and he questions the ability of this regime to protect the nomadic peoples. Therefore, he proposes optional possibilities to develop specific rights for nomadic peoples.
[137] Nomadic and semi-nomadic populations, they are Palestinian Arab Bedouin, have been living in Southern region of Palestine, al-Naqab since centuries, they lived collectively in small groups on collectively held.

Revised European Social Charter.[138] In a collective complaint filed by the European Roma Centre against Bulgaria,[139] the European Committee on Social Rights found that Bulgaria had violated the Revised European Social Charter, as the state's law prevented the Roma community from legally gaining tenure of their land, even though the domestic laws in Bulgaria provided the right to adequate housing. Therefore, the committee found that the state had breached its obligation to balance the public interest and the basic right to adequate housing of individuals. Further, the committee decided that individuals' rights to live under a roof defeated the public interest.[140]

Italy has also violated the rights of Romas. The Italian government has forcibly removed Roma from their settlements, following laws that empower the government to use "extraordinary power and means". The state defined the nomadic phenomenon during a state of emergency as a "natural disaster" in the Nomadic Emergency Decree.[141] The European Roma Rights Centre (ERRC) brought forth a complaint in relation to this development. In the *ERRC v. Italy*[142] the complaint claims that the situation of Roma in Italy amounts to a violation of Article 31, the right to housing, of the Revised European Social Charter. The European Committee of Social Rights concluded that there was a violation of the right to housing, article 31 of the Revised European Charter, in conjunction with Articles E of the revised European Social Charter, pertaining to non-discrimination. Further examples of violations of Roma rights have occurred in Poland. Polish policies systematically deny all requests approving Roma for a security of tenure, which prevents them from accessing important public services.[143]

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[138] Article 31 of the Revised European Social Charter, Network, Active Citizenship; 'European Charter of Patients' Rights. Rome: Active Citizenship Network (2002).

[139] Collective Complaint No. 31/2005 The European Roma Centre V. Bulgaria, CM/ReS (2007) 2 (September. 5, 2007), available at http://www.errc.org/cms/upload/file/decision-on-the-merits-by-the-european-committee-of-social-rights-18-october-2006.pdf, last visited on 05 June 2016

[140] Council of Europe Committee of Minsters Resolution, complaint no. 31/2005 by the European Roma Rights Centre Against Bulgaria, CM/ResChS (2007)2(Sep.5, 2007) http://www.errc.org/popup-article-view.php?article_id=2858.

[141] Kate Hepworth, 'Abject Citizens: Italian "Nomad Emergencies" and the Deportability of Romanian Roma', Citizenship Studies 16, (2012): 431.

[142] Complaint no. 27/2004, European Roma Rights Centre (ERRC) v. Italy, Jurisdiction: European Committee of Social Rights Date of Decision: 21 December 2005. Available on: http://hudoc.esc.coe.int/eng/?i=cc-27-2004-dmerits-en#{"ESCDcIdentifier":["cc-27-2004-dmerits-en"]}

[143] ERRC Actions on Roma Rights in Poland. European Roma Rights Centre.

There is an attempt by some states, such as United Kingdom and Israel, to encourage Travellers and Roma to purchase their own property, whereby these groups could legalise their property claims. However, guidelines are not respected and the government has not improved the current situation by consulting with the Traveller and Roma groups with cultural compromises, meaning that this planning policy is far from achieving any progress. While domestic state practice reflects a lack of enforcement in the protection of cultural rights vis-a-vis property, for nomadic peoples, within the international human rights law framework, there are basic principles and guidelines that relate to eviction and displacement. Such protection can be found in the basic principles and guidelines on development-based eviction and displacement. Annex 1 of the report of the Special Rapporteur on adequate housing states that where there is 'legal protection against the practice of forced evictions for all persons under their jurisdiction, states should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land'.[144] This might encourage states to handle future cases with more understanding, while improving the guidelines on planning and encouraging nomadic groups to purchase their property. Nevertheless, throughout Europe, the majority of Roma face the frequent prospect of forced eviction from informal settlements or tenements. It should be noted here that these evictions proceed despite the authorities' failure to fulfil their legislative obligations to provide adequate, permanent, temporary and transit halting sites.

In the case of the Bedouin community of al-Naqab, Israel has developed policies to resettle them, transferring them from their traditional lands and to urbanized communities. The Israeli government forces them to move to planned urban townships, aiming to concentrate the entire Bedouin community from the al-Naqab community in these townships. Regularly, Bedouin were forced to transfer to the "planned township", as stated in the Involuntary Migration and Resettlement study dealing with the problems and responses of dislocated people' is that:

[144] Principles and Guidelines on Development-based Eviction and Displacement. In the research file the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living A/HRC/4/18.

> The large majority of those forced to move by development projects are the low-income and low-status people who have little political power and scant access to national resources. Governments can and do move with the impunity.[145]

However, the majority of the Bedouin population in al-Naqab have opposed the transfer policy. As a consequence, approximately half of the Bedouin in al-Naqab live in "spontaneous" settlements or "unrecognised" communities, which are considered illegal. These Bedouins face frequent forced eviction decisions by the authorities.[146]

2.4. Land Rights as an Issue of Gender Equality

Land rights have been acknowledged as a central point in relation to gender equality. Women's right to land may be contingent upon their marital status under domestic legislation on property rights, and land rights are often restricted to men. As a matter of fact, a 2003 report by the former Human Rights Special Rapporteur on Adequate Housing, notes:

> In almost all countries, whether 'developed' or 'developing', legal security of tenure for women is almost entirely dependent on the men they are associated with. Women-headed households and women in general are far less secure than men. Very few women own land. A separated or divorced woman with no land and a family to care for often ends up in an urban slum, where her security of tenure is at best questionable.[147]

Land rights are specifically referred to in article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),[148] which requires states to guarantee that women 'have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian

[145] Hansen, Art, and Anthony Oliver-Smith, 'Involuntary migration and resettlement: the problems and responses of dislocated people', Boulder, Colo, Westview Press xi, (1982): 333 (In series: Westview Special Studies, 1982).

[146] According to the Regional Council for Unrecognised Villages of the Palestinian Bedouin in al-Naqab, Palestinian community-based organization in al-Naqab, more details about 'unrecognized villages' see chapter 3 in this thesis.

[147] Special Rapporteur on adequate housing. 'Study on women and adequate housing'. E/CN.4/2003/55, 26 March 2003. Available on: <http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2003.55.En?Opendocument>.

[148] Article 14 of The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) dedicated to the rights of rural women states that women should "have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes".

reform as well as in land resettlement schemes'.[149] Reference to ownership and property implicitly links the article to land rights, and the state should ensure equal rights between the spouses, according to article 16 of CEDAW:

> States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.[150]

This link is also described in General Recommendation No. 21 of the CEDAW Committee entitled 'equality in marriage and family relations':

> In countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.[151]

Therefore, the committee highlighted the significance of land rights to improve women's human rights. The committee indicated, however, that the land registration system involved inequality by giving preference to males within the tenure system.

The committee explained that the strong relationship between access to land rights and resources such as water and food, and that the obligation of the states is to:

> ensure equal access by women to resources and nutritious food by eliminating discriminatory practices, guaranteeing land ownership rights for women and facilitating women's access to safe drinking water and fuel.[152]

Therefore, there is a link between the right to food and land rights that was addressed in a broader context in which land rights are a key tool to guarantee local people's right to food. This is connected to the large-scale land acquisition, as described in the report:

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[149] As mentioned earlier, the article includes specific indication about land rights in nine core international human rights treaties. However, there is no call for general reform of unequal land laws, as it focuses specifically on ensuring that women should not be treated unequally in all aspects related to land reforms.

[150] The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) dedicated to the rights of rural women.

[151] The Convention on the Elimination of Discrimination against Women (CEDAW). General Recommendation No. 21 - 'Equality in marriage and family relations'. 1994a. UN Doc. A/49/38 on 1. 13th session. <http://www.un.org/ womenwatch/daw/cedaw/recommendations/recomm.htm>.

[152] Ibid.

> The human right to food would be violated if people depending on land for their livelihoods, including pastoralists, were cut off from access to land, without suitable alternatives; if local incomes were insufficient to compensate for the price effects resulting from the shift towards the production of food for exports; or if the revenues of local smallholders were to fall following the arrival on domestic markets of cheaply-priced food, produced on the more competitive large-scale plantations developed thanks to the arrival of the investor.[153]

This implies that states should implement polices to ensure more equitable access to land, as the interaction between the right to food and land rights implies the protection of land rights. Therefore, protection of land rights is essential to guarantee the right to food.[154]

According to article 15 of the African Commission on Human and People's Rights, its description of the importance of adequate food stipulated:

> States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food.[155]

Access to adequate food is affirmed under international human rights law. According to article 25 of the UDHR, 'everyone has the right to an adequate standard of living that includes 'food''. Furthermore, article 11 of the ICESCR refers to 'the right of everyone to an adequate standard of living, including adequate food'; article 11 (2) refers to 'the fundamental rights of everyone to be free from hunger'; article 11 (2)(a) requires states 'to improve methods of production, conservation and distribution of food' and refers to 'equitable distribution of world food supplies; as required in accordance with article 11 (2)(b)'. In general, these can be used to establish that the link between the right to food and land rights derived from the indication of the need to 'improve methods of production, conservation and distribution of food […] by developing or reforming agrarian systems in such a way

[153] Olivier de Schutter, Report, UN Special Rapporteur on the Right to Food, I. introduction section paragraph 4 p.3.
[154] Olivier de Schutter, 'The Green Rush: The Global Race for Farmland and the rights of Land Users', (2011) 52 Harvard International Law Journal 504; Luca Miggiano, Michael Taylor, and Annalis Mauro, Links between Land Tenure Security and Food Security (International Land Coalition 2010).
[155] African Commission on Human and Peoples' Rights. 2003. Protocol to the African Charter on Human and Peoples' Rights <http://www.achpr.org/instruments/women-protocol/> accessed 13 July 2016.

as to achieve the most efficient development and utilization of natural resources'.[156] The report from the Special Rapporteur on the right to food, Jean Ziegler, indicates that:

> Access to land is one of the key elements necessary for eradicating hunger in the world. Many rural people suffer from hunger because either they are landless, they do not hold secure tenure or their proprieties are so small that they cannot grow enough food to feed themselves.[157]

A protection for the right to private property is found in article 14 of the African Charter on Human and Peoples' Rights, '[t]he right to property shall be guaranteed',[158] alongside the general protection of equality and prohibition of all kinds of discrimination.[159] Under the African Charter on Human and Peoples' Rights, a direct link can be found in the right to adequate housing, with its provision on the prohibition of forced eviction under article 16 of the Protocol to the African Charter on Human and Peoples' Rights on the Right of Women in Africa. Article 16 states, '[w]omen shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing'.[160] When a forced eviction occurs, it may engage other legal and human rights to which women are entitled, such as the right to food security, dignity, education, and health.[161] Moreover, Section 2(a) of the African Charter on the Rights and Welfare of the Child protects the right to adequate housing by stating that, 'to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health,

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[156] International Covenant on Civil and Political Rights. General Assembly, resolution 2200A (XXI), 16 December, article 11, 1966a <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.
[157] Jean Ziegler, Report of the Special Rapporteur on the right to food, UN Doc. A/57/356 (2002). Available on: <http://www.righttofood.org/wp-content/uploads/2012/09/A573561.pdf>.
[158] African Charter on Human and Peoples' Rights, Article 14 available on http:/www.africa-union.org.
http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf
[159] African Charter on Human and Peoples' Rights, at Article18 (women and children in particular); (3) Article 28 available on: http:/www.africa-union.org
http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf; African Charter on the Rights and Welfare of the Child, Article 3 available on:
http://www.au.int/en/sites/default/files/Charter_En_African_Charter_on_the_Rights_and_Wlefare_of_the_Child_AddisAbaba_July1990.pdf.
[160] Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, Article 16, available on: http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf.
[161] Ibid.

education, clothing and housing'. Violations of these rights to which the child is entitled can cause human rights violations relating to the access to education, health, food, family and life.[162]

2.5. A Right to Housing

International human rights law deals with the right to housing in several ways, such as through article 11, paragraph 1, of the ICESPR; article 27, paragraph 3, of the Convention on the Rights of the Child; and article 5(e) of the ICERD. The right to housing is also addressed within the non-discrimination provisions found in article 14, paragraph 2 (h), of the CEDAW. Often, the right to housing qualifies as a right to adequate housing. For instance, it qualifies in article 25 of the UDHR, under the broader umbrella of the right to adequate standards of living.

To fulfil the right to adequate housing, access to land and the security of tenure is required. It is therefore important to recognize that land rights comprise of the right to housing as a main aspect. This is reflected in the duties of the UN Rapporteur on Adequate Housing:

> Throughout his work, the Special Rapporteur has tried to identify elements that positively or negatively affect the realization of the right to adequate housing. Land as an entitlement is often an essential element necessary to understand the degree of violation and the extent of realization of the right to adequate housing.[163]

Additionally, housing and land rights are interlinked in the human rights approach to forced eviction. Forced eviction is identified in General Comment No. 7 of the Committee on ESCR as:

> permanent or temporary removal against the will of individuals, families or communities from their homes or land, which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.[164]

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[162] African Charter on the Rights and Welfare of the Child. Available on: http://www.au.int/en/sites/default/files/Charter_En_African_Charter_on_the_Rights_and_Wlefare_of_the_Child_AddisAbaba_July1990.pdf

[163] Mil Millon Kothari, Report of the Special Rapporteurs of Human Rights Council on Adequate Housing as a Component of the Right to an Adequate Standard of Living, 31,33, UN Doc. A/HRC/4/18 (5 Feb 2007): Paragraph 25.

[164] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7 - The right to adequate housing (Art.11.1) (1997) forced evictions. Sixteenth session, 20 May. Paragraph 3, Available on: http://www.unhchr.ch/tbs/ doc.nsf/0/959f71e476284596802564c3005d8d50.

Accordingly, forced eviction is a *prima facie* violation of the human right to housing, as it might include the loss of land. A similar definition of forced eviction is found in the Basic Principles and Guidelines for Development-Based Evictions and the Comprehensive Human Rights Guidelines on Development-Based Displacement.

2.6. The right to land in the context of International Humanitarian Law

In the case of armed conflict, international humanitarian law may provide protection of certain property rights, codified in article 53 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War,[165] and according to The Hague Regulations,[166] property rights are protected during armed conflict.[167] This is specifically addressed under article 46 of The Hague Regulations. According to the Fourth Geneva Convention,[168] the occupying government should protect the civilian population and must not deprive them or take any measures that cause collective punishment, the illegal land expropriation of private property or forcible transfer, or forced eviction unless it is justified by military necessity.[169] In addition, international humanitarian law emphasizes the obligations upon the occupying power vis-à-vis protection of the population, including provisions guaranteeing inter alia the rights to freedom of conscience and religion, life and property under article 46 of Hague Regulations.[170] Article 27 of the Fourth Geneva Convention[171] ensures the human treatment of populations and the prohibition of discrimination regardless of race, religion or political opinion. This article therefore indirectly addresses the

[165] Article 53, International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287, available on: https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=77068F12B8857C4DC12563CD0051BDB0.

[166] Article 46, International Conferences (The Hague), Hague, Hague Convention (IV) Respecting the Laws and Customs of War on Land Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907.

[167] Yoram Dinstein, The International Law of Belligerent Occupation, Cambridge University Press (2009): 89.

[168] International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287.

[169] Marco Sassoli, 'Legislation and Maintenance of Public Order and Civil Life by the Occupying Power', 16 European Journal of International Law (2005): 657

[170] Article 46 International Conferences (The Hague), Hague, Hague Convention (IV) Respecting the Laws and Customs of War on Land Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907.

[171] Article 27, International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287.

expropriation of land or forced eviction.[172] Article 47 of the fourth Geneva Convention 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 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.[173]

Therefore, there is no lawful justification for the deprivation of protected persons from their own property by the occupying power. Rights are secured to protected persons according to provision 47 of the Fourth Geneva Convention, which provides the protection of civilians under occupation in the case of annexation during conflict.[174] For example, it states that protections against the extensive destruction and appropriation of property are prohibited, except when it is justified by "military necessity" or the "necessities of war". Similar considerations relate to the restitution of housing, land, and the property rights of displaced peoples.[175] Article 49 of the Fourth Geneva Convention[176] prohibits forced removal or external deportation from occupied territory during the times of international and non-international armed conflicts, unless there are military reasons for this act, such as the protection of civilians in the relevant areas. There is a guarantee, where property is seized, that restitution must be offered. However, lawful justification for the expropriation of

[172] Forced evections can cause arbitrary displacement and violate the rights of internally displaced persons and refugees, yet this is not the main focus of the thesis. For more details about the internally displaced persons who have been forced to flee home as result of armed conflict or nature disaster, but have not crossed an internationally recognised state borders. For the refugees, check the convention relating to the Status of Refugees, where States parties are obliged to treat refugees as favourably as possible in regard with housing rights. Check: guiding principles on Internal Displacement, the property rights of displaced people and refugees were discussed in the Pinherio principles in 2005, detailing the United Nations Principles on Housing and Property Rights. They were authorised by the Sub-Commission on the Promotion and Protection of Human Rights and are relevant to the property rights of displaced people and refugees; for more details: Paulo Sérgio Pinheiro, Housing and property restitution in the context of the return of refugees and internally displaced persons: Final report of the Special Rapporteur, UN Doc. E/CN.4/Sub.2/2005/17, 28 June 2005.

[173] Article 47, International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287.

[174] Authoritative International Committee of the Red Cross commentaries to the Fourth Geneva Convention Relative to the Protection of Civilians Persons in Times of War (1958): 275.

[175] UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005).

[176] Article 49 of International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287.

property is found in article 52 under The Hague Regulations. The article indicates that expropriation may apply in a case of "absolute necessity",[177] however; the occupying power should provide compensation as soon as possible for the use of the houses and land in question.[178] Beside the permission of expropriation of land according to the domestic laws in defining the 'public purposes' that justify the land expropriation if it's done for exclusive benefit of the occupied population.[179] Moreover, article 53 of the Fourth Geneva Convention and their additional protocols of 1977 prohibit the forced displacement of the civilian population. 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 other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.'[180] This treaty confirms the prohibition of destruction, according to international humanitarian law, during the administration of territory during belligerent occupation[181] and the conduct of hostilities.[182] Henckaerts, Jean Marie also claims that according to rule 129 of the customary international humanitarian law, it is forbidden for parties of an international armed conflict to 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 demand it.[183] Besides the conventional international humanitarian law, which also prohibits the deprivation of protected persons' transfer from or within the occupied territory, article 49(1) of the Fourth Geneva Convention states: 'individuals or mass forcible transfers, as well as deportations of protected persons from occupied territory to the

[177] Military absolute necessary, including "the movements, maneuvers, and actions of any sort, carried out by the armed forced with view to combat". International Committee of the Red Cross, customary International Humanitarian Law, on the additional protocols, par. 2191

[178] Jean-Marie Lauterpacth, Oppenheim's International Law, Vol. 2: Disputes, War, and Neutrality (1952): 411.

[179] Ernest Herman Feilchenfeld, 'The International Economic Law of Belligerent Occupation, Carengie Endowment for International Peace, (1942): 50.

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

[181] Rule 50, International Committee of the Red Cross, customary International Humanitarian Law, Volume 1: Rules, 2005.

[182] Article 23 (g) International Conferences (The Hague), Hague, Hague Convention (IV) Respecting the Laws and Customs of War on Land Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907.

[183] Jean Marie Henckaerts, Customary International Humanitarian Law- Vol. 1: Rules, Cambridge University Press, p. 457.

territory of the occupying power or to that of any other country, occupied or not, are prohibited, regardless of their motive'.[184] Therefore, the displacement and transfer of the civilian population is prohibited according to international humanitarian law, explicitly according to article 49(6) of the Fourth Geneva Convention, which states the 'Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies'.[185] Whenever transfer and deportation is involuntary and unlawful, displacement is then illegal according to international humanitarian law.[186] Situations, in which the security of the civilian or military explanations security demands it, might legitimize the deportation or forcible transfer.[187] It is important to note that systematic attacks against civilian populations, which include mass forced eviction, as well as displacement and transfer, might be considered as war crimes or crimes against humanity in the International Criminal Court.[188] Article 8 of the Rome Statute of the International Criminal Court defines extensive destruction and appropriation of property as unjustified by military necessity and carried out unlawfully and wantonly in the context of international or non-international conflicts. The article states, '[t]he transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory' is considered to be a war crime.[189] The Rome Statute emphasizes that:

> Deportation or forcible transfer of population' means forced displacement of the persons concerned by expulsion or other coercive acts from the area in

[184] Article 49(1) of International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287.
[185] Article 49(6) of International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287.
[186] Prosecutor v. Blagoje Simic et al. (Trial Judgment), IT-95-9-T, International Criminal Tribunal for the former Yugoslavia, 17 October 2003. At par. 122 the Chamber., states: "depuration 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 removed or displacement of people from one area to another which may take place within the same national borders". Prosecutor v. Radislav Krstic, International Criminal Tribunal for former Yugoslavia, 2 August 2001,
[187] Article 49(2) of International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287.
[188] A crime against humanity see article 7(1)(d), Rome Statutearticle 8(2)(a)(vii) and article 8(2)(b)(viii).
[189] Rome Statute article 8(2)(a)(vii).

> which they are lawfully present, without grounds permitted under international law.[190]

This statement indicates that deportation or forcible transfer of populations is a crime against humanity if it is committed systematically against any civilian population.

2.7. Limitations and Violations of Land Rights

After an examination of the international framework of land rights, in conclusion the international legal system recognizes a right to land. Before turning to the regional systems it is necessary to understand some lawful limitations and unlawful violations to the right to land. There is a balance between the requirement of the right and what may be argued as pressing social needs. The expropriation of land from a private owner by a state may be a legitimate exercise of sovereignty.[191] The question of precisely when property rights may be expropriated 'ultimately remains a question of interpretation by the supervisory organs'.[192] This section focuses on two cases in which states have applied a limitation to land rights in situations of land expropriation and forced housing evictions.

2.7.1. Land Expropriation, Deprivation of Property

Land expropriation is defined as confiscating privately owned property by a public entity. Private property expropriation is a powerful instrument that can have disturbing consequences on the individuals it affects. Thus, various instruments, including human rights conventions and treaties, govern expropriation. However, based on the general equality principle, states have adopted several standards to evaluate whether property expropriation in each case is legal and fulfils the conditions that justify the land expropriation.[193] These standards include whether it is

[190] Rome Statute article 7 (2) (d).
[191] Simon Keith, et al, 'Compulsory acquisition of land and compensation', (Food and agriculture organization of the United Nations-FAO), 2008).
[192] Catarina Krause, 'The Right to Property', in Asbjørn Eide, Catarina Krause, and Allan Rosas (eds.), (Economic, Social and Cultural Rights: A Textbook., 2nd revised ed., The Hague, Martinus Nijhoff, 2001), at 192-193.
[193] International Covenant on Civil and Political Rights, Art. 26, Dec, 16, 1966, 999 UNTS 171; 6ILM 368 (1976), available on. http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx; International Covenant on Economic, Social, and Cultural Rights, Art. 2 (2), Dec. 16, 1996, 993 UNTS 3; 6 ILM 368 (1976), available on: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.; International Convention on the Elimination of All Forms of Racial Discrimination. At Art. 5 (v). Dec. 21, 1965, 660 U.N.T.S. 195

(1) provided for by law; (2) is in the public interest; and (3) is accompanied by adequate compensation. In turn, the following discusses these in detail.

2.7.1.1. First Condition: Provided by Law

An act of expropriation must be specified by clear and unambiguous legal provisions in domestic law. Therefore, the expropriation act must be authorized by the responsible authorities, and that authority must notify the owner who faces property expropriation, within a reasonable amount of time, providing an explanation of the decision to expropriate their property. The procedure is meant to be fair towards the owners, and provides them the option to challenge the decision. Furthermore, if the expropriation is lawful, the authorities are obligated to provide an opportunity to claim rights and damages that occur to owners as a result of the property expropriation. This prevents arbitrary measures that can be taken by the authorities, given the strength of the expropriation tool and the damage that might be caused following dispossession.[194]

In *Hentrich v. France*,[195] the European Court of Human Rights highlighted the importance of fair and proper procedures against the unjust deprivation of property.

(1969), available on http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx.; Convention on the Elimination of All Forms of Discrimination Against Women, Art. 14 (2)(g); and Art. 16 (h), Sep. 3, 1981, 1249 U.N.T.S. 13, (1981) Available on: http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf; The Court of Justice of the European Communities have proposed criteria for expropriation where the decision is made respecting the fundamentals of human rights. An example of this is found in the case of Fearon v. Irish Land Commission before the Court of Justice of the European Communities. Consequently, although Article 222 of the Treaty does not call into question the member state's right to establish a system of compulsory acquisition by public bodies, such a system remains subject to the fundamental rule of non-discrimination that underlies the chapter of the Treaty relating to the right of establishment. The court states that, article 52 of the Treaty does not prevent a member-state from making exemption from compulsory acquisition measures adopted under legislation governing the ownership of rural land subject to a requirement that nationals of other member-states who have taken part in the formation of a land-owning company reside on or near the land, if that residence requirement also applies to nationals of that member-states and if the powers of compulsory acquisition are not exercised in a discriminatory manner. According to the judgement, there is a non-discriminatory obligation that member states are supposed to respect in cases of land expropriation, and they should follow the equality standards that are imposed by the European Union. Hence, the European Court of Human Rights sets examinations in order to balance and control the damage that results from expropriation, while keeping in mind the general standards for the protection of fundamental freedoms via human rights.

[194] Lithgow v. United Kingdom, 102 Eur., Ct.H.R. (ser. A), par. 110 (1986), available on http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":["lithgow%20v%20uk"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57526"].

[195] 13616/88 Hentrich v. France, Judgment of 22 Sept. 1994, Series A, No. 296-A; (1994) 18 EHRR 440, available on http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57903#{"itemid":["001-57903"]}.

This case centred on the requirement of fair procedures, and indicated no deprivation may be arbitrary. Although the court's ruling primarily concerned the proportionality of the pre-emption decision, the court made clear that with such taking of property, there was an obligation to inform the owners of the property expropriation decision in a reasonable timeframe. There is an additional obligation that the authorities should give property owners an opportunity to challenge the decision before land expropriation *de facto* happens. This should be an available tool that owners can use, before an independent decision maker, as Benedict, Krisch, and Stewart note:

> Administrative infringement of individual rights whether through the imposition of sanctions, liabilities, disadvantageous determinations of status, denials of required licensing approvals, or otherwise generally requires a prior hearing for the affected person, specific justifying reasons, and the possibility of review by an independent body. Under such an approach, it is presumed to be irrelevant who interferes with rights: whether it is a domestic regulator or an international administrative body does not matter.[196]

2.7.1.2. Second Condition: Public Interest

Property expropriation is acceptable when it is driven by "public interest".[197] Each state may determine what interests are considered justified public interest needs, and in which cases the common interest prevails over the right to private property ownership. There are states that hold one particular list that describes the public interests that could justify lawful expropriations and this list would also be controlled by one authority, while other states consider the definition as a broad range of projects and activities for the benefit of society and the public interest. Therefore, the state can determine the definition that legitimizes property expropriation, based on each society's needs.[198]

In the case *James & Others v. United Kingdom*, the European Court of Human Rights (ECtHR)[199] tackled the issue of the definition of lawful expropriation justified

[196] Ingsbury, Benedict, Nico Krisch, and Richard B. Stewart, 'The emergence of global administrative law, Law and contemporary problems 68 no. 3/4 (2005): 15-61.
[197] Charter of the Fundamental Rights of the European Union, Article 17(1)(Dec. 7, 2000) available on http://www.europarl.europa.eu/charter/pdf/text_en.pdf; Convention for the Protection of Human Rights and Fundamental Freedoms, Article. 1 of Protocol N. 1 (Nov. 9. 1950).
[198] Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 1 of Protocol no.1 (Nov. 9. 1950) Available on, http://conventions.coe.int/treaty/en/treaties/html/009.htm; Charter of the Fundamental Rights of the European Union, Article 17(1)(Dec. 7, 2000) available on http://www.europarl.europa.eu/charter/pdf/text_en.pdf.
[199] ECtHR8793/79 James and others v. The United Kingdom, Application No. 8793/79, Judgment of

by public interest. The ECtHR has alleged that 'in pursuance of legitimate social, economic or other policies may be "in the public interest", even if the community at large has no direct use or enjoyment of the property taken. In this case the margin of appreciation applied when the ECtHR made their determination in this case, as was illustrated in the judgment:

> Because of their direct knowledge of their society and its needs, the national authorities are principle better placed than the international judge to appreciate what is 'in the public interest'; (....) Furthermore, the notion of 'public interest' is necessarily extensive. (....) decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ widely. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is 'in the public interest' unless that judgment be manifestly without reasonable foundation.[200]

The court addressed the question of whether the public interest could be served by a compulsory transfer of ownership, from one private individual to another. The court added that the taking of property that is pursuant to a policy calculated to enhance public interest within the community could properly be described as being within the public interest.[201]

Furthermore, in order to have lawful property expropriation, it must be proportional to the intention to achieve public interest,[202] as the question of proportionality was key in the case of *Brumarescu v. Romania*:

> A taking of property within this second rule can only be justified if it is shown, *inter alia*, to be 'in the public interest' and 'subject to the conditions provided for by law'." Moreover, any interference with the property must also satisfy the requirement of proportionality. As the court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being

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21 February 1986; Former King of Greece and others v. Greece, Application No. 25701/94, Judgment of 23 November 2000; Michael Hutchinson, 'The Margin of Appreciation Doctrine in the European Court of Human Rights', International and Comparative Law Quarterly 48 no. 3, (2008): 640.

[200] ECtHR8793/79 case of James and others v. United Kingdom.

[201] James and Others v. United Kingdom, 98 Eur. Ct. H.R. (ser. A), (1986), par 39-41. Par. Par. 45; 46, par. 50 available on, http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57507#{"itemid":["001-57507"]}.

[202] ECtHR8793/79 James and others v. The United Kingdom, Application No. 8793/79, Judgment of 21 February 1986.

> inherent to the whole of the Convention. The court further recalls that the requisite balance will not be struck where the person concerned bears an individual and excessive burden.[203]

Another example is the case of *Mellacher and Others v. Austria,*[204] in which the ECtHR concluded:

> As the Court stressed in the James and Others judgment, the second paragraph of Article 1 of Protocol No. 1 (P1-1) must be construed in the light of the principle laid down in the first sentence of the Article (P1-1). Consequently, an interference must achieve a 'fair balance' between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The search for this balance is reflected in the structure of Article 1 (P1-1) as a whole, and therefore also in the second paragraph thereof. There must be a reasonable relationship of proportionality between the means employed and the aim pursued.[205]

In *Sporrong & Lonnroth v. Sweden*[206] the ECtHR concluded that the damage that the owners suffered as a result of long-term prohibition on using their property, under the risk of expropriation, constitutes a violation of the principle of peaceful enjoyment of the property on the part of the owners. Despite there being no actual expropriation, the owners deserve compensation following the inconvenience caused by the state's decision to prohibit the place's construction, and considers this "an individual and excessive burden", which is considered a direct violation of article 1 of the European Convention on Human Rights.[207] Hence, as mentioned above, the court recognized this as a violation. Although this case was an indirect expropriation, despite the fact that the expropriation did not happen according to the first article, compensation was still required.[208]

The right to property was addressed by the African Commission in the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group*

[203] Case of Brumarescu v. Romania, No. 28342/95 (October 28, 1999), par. 78. Available on: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58337#{"itemid":["001-58337"]}
[204] Mellacher and Others v. Austria, (A169 (1989), par. 48, available on: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57616#{"itemid":["001-57616"]}.
[205] Ibid.
[206] Sporrong and Lonnroth v. Sweden, 52 Euro. Ct. H.R. (ser. A) 1982, par. 11, 16, 73 available on: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57580#{"itemid":["001-57580"]}.
[207] The European Convention on Human Rights, available on: http://www.echr.coe.int/Documents/Convention_ENG.pdf.
[208] Sporrong and Lonnroth v. Sweden, 52 Euro. Ct. H.R. (ser. A) 1982, par. 11, 16, 73 available on http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57580#{"itemid":["001-57580"]}.

International on behalf of Endorois Welfare Council v. Kenya[209] whereby the commission noted that any limitation on the right to property must be 'in the interest of public need or in the general interest of the community' as well as 'in accordance with appropriate laws',[210] and 'proportionate to legitimate need, and should be the least restrictive measure possible'.[211] Furthermore, the commission highlighted the significance of the land rights of the indigenous peoples:

> [t]he 'public interest' test is met with higher threshold in the case of encroachment of indigenous land rather than individual private property. In this sense, the test is much more stringent when applied to ancestral land rights of indigenous people.[212]

2.7.1.3. Third Condition: Compensation

With respect to entitlement for compensations following land expropriation provided by customary international law, [213] the requirement of compensation may be found in *Chorzów Factory*[214] which remains the formative decision on compensation payment, despite some controversy. Accordingly, payment of compensation in such cases is required under customary international law. In *Chorzów Factory* the Permanent Court of International Justice affirmed that in the case of a wrongful act (wrongful expropriation):

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[209] AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS (ACHPR). 2010. Communication 276/2003, Centre for Minority Rights Development (CEMIRIDE) and Minority Rights Group International (MRG) (on behalf of the Endorois) v Kenya (decision of Feb., 2010).

[210] Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Communication No. 276 / 2003, May 2009, paragraph 211; for more details about the indigenous and land right dealt in the case:Ashamu, Elizabeth, 'Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v Kenya: A Landmark Decision from the African Commission', (Journal of African law 55.02, 2011): 300-313.

[211] Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Communication No. 276 / 2003, May 2009, paragraph 214.

[212] Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Communication No. 276 / 2003, May 2009, paragraph 212.

[213] Antonio Cassese, 'International law in a Divided World', Oxford University Press, USA, (1987): 156- 57, turning to customary law thus means that when states are part of the norm-setting practice known as customs, states' 'primary concern is to safeguard some economic, social, or political interests. The gradual birth of a new international rule is the side effect of the states' conduct in international relations'.[213] State practice coupled with coincident state interests is the fundamental factors that create customary law. To determine custom, emphasis is placed on accounting for official acts and statements related to the subject. For more details, see: Christian Tomuschat, Human Rights: Between idealism and Realism, Oxford University Press, 2nd ed, (2008): 37.

[214] The Chorzów Factory Case (Germany/Poland), September 13, 1928, Series A, No. 17 (substantive issue).

> Reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by the restitution in kind or payment in place of it such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.[215]

The Court of International Justice referring to reparations for States and the law is less developed on individual reparation.[216]

Compensation is a way to minimize the damage caused to the former owners by private property expropriation. If the necessity of the expropriation for reasons of public interest is provided as prescribed by law, the former owner is entitled to a fair, acceptable, actual and prompt compensation. The question of how to interpret these wide terms persists, in cases in which the practice following the procedures in each state may be applied differently, and where the international courts might apply different standards when examining each case separately, in order to reach an optimal solution in each circumstance. Normally, the court follows the lead of the state's decision, unless the state's judgment is without a reasonable basis.[217] For example, "appropriate compensation" of natural resources has been accordingly explained as follows:

> Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law.[218]

There are various methods of compensation. In cases in which the property is equal to property or real estate, money is equal to the accurate market value or investment securities. The idea is to estimate the most definite form of compensation in consideration that the benefit to the individual owners to balance the damage that

[215] The Chorzów Factory Case (Germany/Poland), September 13, 1928, Series A, No. 17 (substantive issue): 47.
[216] In the context of international humanitarian law.
[217] Lithgow v. United Kingdom, 102 Eur., Ct.H.R. (ser. A), par. 122 (1986), available on http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57526#{"itemid":["001-57526"]}.
[218] Permanent Sovereignty over Natural Resources, G.A. res. 1803 (XVII), U.N. Doc. A/5217, 1962, paragraph 4.

occurs to them as a result of their property expropriation would be property instead of what they had lost, as it will be less affected by market inflation when it comes to cash value. This will be refused when there is a high rise that makes the compensation valueless. Concerning the question of how much compensation should be awarded, full compensation refers to equivalent to the market value, or "prompt, adequate and effective"[219] is requested.

The value of the compensation may range in scale from full compensation to zero compensation. This depends on how each case and its individual circumstances are read. Where the judgement may be full compensation, the calculation is based on the market value, including any loss that occurs as a result of the expropriation, such as legal fees, lost profit and transition costs. In a limited number of cases, however, the court has found that the lack of compensation does not:

> […] upset the 'fair balance' that has to be struck between the protection of property and the requirements of the general interest.[220]

There are some cases in which the government does not need to compensate the market value of the property, as according to the court, the mechanism of compensation aims to protect a general interest, which may be measured differently in different cases. Where the greater general interest might defeat the actual market value, and so in similar cases, the compensation amount will be congruent. For instance, in *Lithgow & Others v. United Kingdom*[221] the ECtHR ruled in favour of the United Kingdom, as the court considered that national judges, in this particular case, were better positioned than international judges to determine the compensation. The reasoning was that national courts may be in a position to consider the various needs of the greater general interest. National judges may better understand the state resources and social interest, and therefore, can determine adequate reimbursement. The court reasoned that:

> The taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference, which

[219] OECD, 'Indirect Expropriation' and the 'Right to Regulate' in International Investment Law', Working Paper on International Investment, No. 2004/4, (September 2004).
[220] Jahn and Others v. Germany, par. 117 available on: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69560#{"itemid":["001-69560"]}.
[221] Lithgow v. United Kingdom, 102 Eur., Ct.H.R. (ser. A), par. A21-122 (1986), available on http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57526#{"itemid":["001-57526"]}.

> could not be considered justifiable under Article 1 (P1-1). Article 1 (P1-1) does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of 'public interest', such as pursued in measures of economic reform or measures designed to achieve greater general interest, may call for less than reimbursement of the full market value.[222]

States should pay compensation,[223] before or simultaneously with the property expropriation act, although some exceptions in practice occur where there is a delay in compensation. An abnormally extensive delay in the payment of compensation may - where there is a high level of inflation - be potentially detrimental as the failure to make any payment at all.[224] Moreover, there may be urgent cases where the state issues immediate expropriation without a timeframe for compensation. In such circumstances, the court may view this as a violation equivalent to a lack of compensation.

2.7.2. Forced Eviction

This section will analyse the development of the international human rights framework that deals with forced eviction. Forced eviction is defined here as 'the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or the land which they occupy, without the provisions of, and access to, appropriate forms of legal or other protection. Such forced removal is directly or indirectly attributable to the state.'[225] Miloon Kothari, Special Rapporteur on Adequate Housing, explains that a component of the right to an adequate standard of living, and has noted that forced evictions:

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[222] Lithgow v. United Kingdom, 102 Eur., Ct.H.R. (ser. A), par. A21-122 (1986), available on http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57526#{"itemid":["001-57526"]}.

[223] The European Court of Human Rights imposes compensation for property expropriation, despite the fact that it is not clearly mentioned in the Convention itself; therefore, although Protocol 1, Article 1 does not necessarily require that full compensation be paid where property has been expropriated (in Lithgow v United Kingdom, 102 Eur., Ct.H.R. (ser. A), par. 121 (1986), available on: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57526#{"itemid":["001-57526"]}. and the guiding principle that there is a fair balance between the general and individual interest obviously requires that the sum considered appropriate is actually paid (in Akkus v. Turkey, 9 July 1998, available on: http://www.hrcr.org/safrica/property/akkus_turkey.html.).

[224] Guillemin v France, (1998/99), available on: http://www.hrcr.org/safrica/property/guillemin_france.html.

[225] Comment 7, The Right to Adequate Housing (Article 11.1) of the Covenant on Economic, Social and Cultural Rights, forced evictions E/CN 4/Sheet No. 25, Forced eviction and Human Rights (1996, office of the High Commissioner for Human Rights). At 1-6, please note that the General Comments are an authoritative interpretation of the International Covenant on Economic, Social and Cultural Rights available on: http://www.minorityrights.org/3253/normative-instruments/icescr-general-comment-7-the-right-to-adequate-housing-forced-evictions.html.

> […] are acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection. Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law.[226]

International human rights law addresses issues related to forced evictions that may be found in certain provisions, for instance under article 25(1) of the Universal Declaration of Human Rights (UDHR), which allows for the right to adequate housing, as well as the protection against forced eviction in article 17(2).[227] Under Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights.[228] General Comment 4 states that the right to housing should not be interpreted narrowly, but rather 'should be seen as the right to live somewhere in security, peace and dignity'. General Comment 7 further notes that forced evictions 'are '*prima facia*' incompatible with the requirements of the Covenant'.[229]

Housing rights have been elaborated upon generally in previous sections, and in particular, forced eviction as a violation of housing right is confirmed by international treaties including the following: Article 17 of the International Covenant on Civil and Political Rights which provides a requirement by the state to

[226] Millon Kothari, Report of the Special Rapporteurs of Human Rights Council on Adequate Housing as a Component of the Right to an Adequate Standard of Living, 31,33, UN Doc. A/HRC/4/18 (5 Feb 2007).

[227] The Universal Declaration of Human Rights, Article 25(1): "Everyone has the right to a standard of living adequate for the health and well-being of himself and of 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 in circumstances beyond his control. And 17(2): "No one shall be arbitrarily deprived of his property.", General Assembly Resolution 217 (III) A, U.N. Doc. A/RES/217 (III) (DEC. 10, 1948), available on :http://www.un.org/en/documents/udhr/

[228] International Covenant on Economic, Social, and Cultural Rights, art. 11(1) 1: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." Dec. 16, 1996, 993 UNTS 3; 6 ILM 368 (1976) Available on: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

[229] The committee on Economic Social and Cultural Rights, on the right to adequate housing; Forced evictions comments 4 and 7, which were adopted by the UN Committee in 1991 and 1997 respectfully; comment 4 on the right to adequate housing, Available at: http://www.escr-net.org/docs/i/425218; Comment 7, The Right to Adequate Housing; Forced evictions, (the General Comments are an authoritative interpretation of the International Covenant on Economic, Social and Cultural Rights available at, http://www.minorityrights.org/3253/normative-instruments/icescr-general-comment-7-the-right-to-adequate-housing-forced-evictions.html.

provide adequate housing,[230] with additional protections under the International Convention on the Elimination of All forms of Racial discrimination where Article 5(e)(3) requires the prohibition of racial discrimination in all forms of the enjoyment to the right to housing.[231]

Under article 16, paragraph 1 of the Convention on the Rights of the Child, the Convention states that '[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation'.[232] In CEDAW, article 14(2)(h) contains provisions that deal with non-discrimination on the basis of gender in the enjoyment of adequate living conditions. This article states, 'particularly to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications'.[233] Other references within international law include Article 21 of the 1951 Convention relating to the Status of Refugees.[234] Furthermore, such protection is found in article 16 of the International Labour Organization's Indigenous and Tribal Peoples Convention[235] beside the protection of displaced people, and offers protection to civilians during times of war, as stated in Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian

[230] International Covenant on Civil and Political Rights, Article 17, Dec. 16, 1966, 999 Unts 171: 6. ILM 368 (1976), available at: http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

[231] International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (v). Dec. 21, 1965, 660 U.N.T.S. 195 (1969), available on: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx.

[232] The Convention on the Rights of the Child, available on: http://www.ohchr.org/en/professionalinterest/pages/crc.aspx.

[233] Convention on the Elimination of All Forms of Discrimination against Women Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1), available on http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf , at , Art 14 (h).

[234] "Housing: As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances." Convention relating to the Status of Refugees, Article 21 - "Housing: As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances". Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950, entry into force: 22 April 1954, in accordance with article 43, available on: http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx.

[235] International Labour Organization, Convention (No. 169) - Indigenous and Tribal Peoples Convention, 1989, Convention concerning Indigenous and Tribal Peoples in Independent Countries (Entry into force: 05 Sep 1991) Adoption: Geneva, 76th ILC session (27 Jun 1989) - Status: Up-to-date instrument (Technical Convention). Available on: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

Persons in Time of War.[236] Additionally, article 16 of the European Social Charter stipulates '…provision of family housing'.[237] The deprivation of housing through forced evictions also triggers violations of other rights, including access to health services, which are protected in article 12(1) of the International Covenant on Economic, Social and Cultural Rights[238] and access to education provided in article 14 of the International Covenant on Economic, Social and Cultural Rights[239] and the right to work, which is protected in the Universal Declaration of Human rights in article 23.[240]

Under international law (and replicated in many domestic provisions), evictions may be lawful in exceptional circumstances. Despite the guidelines that seek to regulate the 'exceptional' nature of forced evictions, the practice has become commonplace. States increasingly argue necessity and situate the practice within a broad interpretation of 'public interest'. According to paragraph 21 of the Basic Principles and Guidelines on Development-Based Eviction and Displacement, any eviction must be:

> (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidance. The protection provided by these procedural

[236] International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287, Available on: https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=77068F12B8857C4DC12563CD0051BDB0.

[237] European Social Charter, Article 16, 529 U.N.T.S. 89, entered into force Feb. 26, 1965 (affirming the right of the family to social and economic protection including family housing), Available on: http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm.

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

[239] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993:3 states that: "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.".

[240] U.N. General Assembly, the Universal Declaration of Human rights, 10 December 1948, 217 A (III)," Everyone has the right to work, to free choice of employment, to just ad favourable conditions of work and to protection against unemployment".

> requirements applies to all vulnerable persons and affected grounds, irrespective of whether they hold title and property under domestic law.[241]

The grounds used to justify forced eviction range from national security, public order and public safety. All of these justifications can be associated with developments regarding urbanisation: the construction of facilities for international events such as the Olympic Games; increased land for agriculture; redistribution to campaign towards equality; improvements for infrastructure projects; armed conflict; ethnic violence; and other issues.[242] It is worth noting that even if there is a public interest condition that has been fulfilled by the state that justifies an eviction, the eviction must fulfil the obligations under international human rights law, and should follow the general principles of reasonableness, proportionality, and non-discrimination.[243]

Several international documents provide guidelines to states in order to facilitate the protection of the individual whose rights are to be violated as a result of forced eviction. In Annex 1 of the Commission on Human Rights, Report of the Special Rapporteur on Adequate Housing, as a component of the right to adequate standards of living,[244] principle number 17 requires that the state offers an alternative location to persons who claim their rights by asking for protection against forced eviction. In addition to reasonable notification and written announcement prior to an eviction, those affected must be provided:

> (1) a public hearing on the proposed plans and alternatives, with clear information from the authorities that is easy for all the vulnerable groups in society to understand;
> (2) reasonable time for a public review;
> (3) expert advice to offer to clarify the options, whether legal or technical or any other advice;
> (4) the holding of a public hearing;
> (5) the opportunity to challenge the eviction decision by proposing alternative decisions[245].

[241] The basic principles and guidelines on development-based eviction and displacement, In the research file of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living A/HRC/4/18.
[242] This thesis will not deal with the status of refugees or any related questions.
[243] The Commission on Human Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standards of living, Annex 1, Miloon Kothari, 13-17, U.N.Doc. E/CN.4/2004/48(Mar.8, 2004).
[244] Ibid.
[245] Further details can be found in principle no. 37 of Annex 1.

Furthermore, Principle 21 of the Basic Principles and Guidelines on Development-Based Evections and Displacement states that:

> States shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their adverse impact on a wide range of internationally recognized human rights. [246]

Therefore, states must consider all the alternatives and options prior to an eviction and execute a forced eviction as a last resort. Forced eviction must be understood as an exceptional measure.

Additionally, principle 41 of Basic Principles and Guidelines on Development Based Evictions and Displacement stipulates that:

> Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary. [247]

Thus, the provided notice should include justifications for the forced eviction, and full details of existing alternatives. If there are alternatives, there should be descriptions of all the measures that the authorities considered in order to minimise the effects of the evictions.[248] In the cases in which the eviction is unavoidable, and the "public interest" criterion has been met, the state is obliged to minimize the damage as a result of the forced eviction, and offer remedies. When an eviction occurs, it triggers other human rights obligations, which include adequate compensation, restitution and return. Each of these elements will be addressed in turn below.

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[246] Principles, Basic. "GUIDELINES ON DEVELOPMENT-BASED EVICTIONS AND DISPLACEMENT (2007) Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living A."Human Rights Council. A/HRC/4/18.

[247] Ibid.

[248] The general obligation to respect the principles of human rights still exist. such as the right to life, dignity, non-discrimination against women, and requirements that no acts of violence occur during the eviction.

2.7.2.1. Adequate Compensation, Restitution and Return

Adequate compensation is a condition that needs to be fulfilled by the state in the case of unavoidable forced eviction. The compensation must be fair and appropriate, and cover all losses of welfare, property, and the personal goods of the evicted person. Additionally, 'compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities including employment, education and social benefits'. [249] Compensation should cover material damages and moral damage, where an objective expert opinion can determine the loss. In such an event, the recommended compensation would not be monetary, as it would be in a case of taking land. It is preferable to offer land back of equal or even better value and size. The states should calculate the economic damage that includes losses and costs, where the home and land are used as a source of livelihood.[250] References to the obligations of remedies are located in the ICCPR, Article 2(3), which requires state parties to provide "an effective remedy" in case of rights violations, which includes "adequate compensation for any property".[251] Additional references to the state's obligation to provide remedies following a forced eviction can be found in recommendation number 22 of the Basic Principles and Guidelines on Development-Based Eviction and Displacement, Annex 1, which stipulates that '[s]tates must ensure that adequate and effective legal or other appropriate remedies are available'.[252] In addition, article 17 of the ICCPR states the 'right not [to be] forcibly evicted without adequate protection' when forced eviction is 'arbitrary or unlawful […] dispute with individual's home'.[253]

Forced evictions driven by infrastructure and development projects rarely allow for restitution and return. In such cases the authorities should take the people affected by

[249] The basic principles and guidelines on development based evection and displacement, annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standards of living, 60, A/HRC/4/18.
[250] Ibid.
[251] Available at: http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx and general comment 7.
[252] The basic principles and guidelines on development based eviction and displacement, annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standards of living, 22, A/HRC/4/18.
[253] Available on: http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

the eviction into account, by giving them a choice to decide whether they are willing to return. In the event that this is possible, the state should take care of the financial cost and security, to provide a safe return, while facilitating the management of the return process.[254]

2.8. Regional Protection of Right to Land

There three main regional human rights mechanisms around the world include: The European Court of Human Rights which created by the European Convention for the Protection of Human Rights and Fundamental Freedoms (known as European Convention of Human Rights) in 1953; the Inter-American Commission on Human Rights, in conjunction with the Inter-American Court of Human Rights for the protection and promotion of human rights in the Americas; and the African Commission on Human and Peoples' Rights established by the African Charter on Human and Peoples' Rights (ACHPR). The African Commission was founded on November 2nd 1987 in Addis Ababa, Ethiopia. Afterwards the Commission's Secretariat was located in Banjul, the Gambia. Provisions regarding property and resources can be found within each of these mechanisms.

Within the African mechanism, under the African Charter on Human and Peoples' Rights (ACHPR), the right to property is ensured, and the Charter highlights its limitation when balance is required with respect to other concerns in terms of the general interest and the community's public needs.[255] A protection to the right to private property can be found in article 14, which states that '[t]he right to property shall be guaranteed'.[256] In addition, article 13 (3) provides equal access to public property and services to every individual. In the African context in particular, the history of colonialism is very important.[257] The right to property is guaranteed unless

[254] The basic principles and guidelines on development based evection and displacement, annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standards of living, 67, A/HRC/4/18.

[255] Gino J Naldi, Limitation of Rights under the African Charter on Human and Peoples' Rights: The Contribution of the African Commission on Human and Peoples' Rights, (17 South African Journal on Human Rights, (2001): 109-118.

[256] African Charter on Human and Peoples' Rights, Article 14, available on http:/www.africa-union.org
http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf.

[257] E A Ankumah, The African Commission on Human and Peoples' Rights: Practice and Procedures, The Hague, Martinus Nijhoff Publishers, 1996, at 142.; C A Odinkalu, Implementing Economic, Social and Cultural Rights under the African Charter on Human and Peoples' Rights, in M D Evans,

the expropriation occurred as a result of public interest, in which case it is justified by the rules of the authorities. In article 21 (2) the article clearly states the right of acceptable compensation for the victim following property rights violations,[258] alongside the general protection of equality and the prohibition of all kinds of discrimination.[259]

To turn to the Inter-American mechanism, the right to own private property is protected in Article XXIII of the American Declaration of the Rights and Duties of Man, which states that '[e]very person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home'.[260] The general protection of equality[261] also applies to property expropriation measures. Furthermore, such protection of the right to property, detailed in the American Convention on Human Rights (ACHR) in article 21,[262] upholds the rights of everybody to the "use and enjoyment of his property," in addition to the balancing of this right for the interest of society,[263] while also explaining the limitations of the state's actions. Article 21 offers measures to deal with deprivation while offering compensation, which allows expropriation for public utility or social interest where it follows that the domestic laws of the authorities should be followed in similar scenarios.[264] Additionally, in the ACHR, forced eviction might violate the right to privacy which is protected in Article 11 (2) of the charter, which states '[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or

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and R Murray (eds.), The African Charter on Human and Peoples' Rights: the system in practice, 1986-2000, Cambridge, Cambridge University Press, 2002, at 191.

[258] African Charter on Human and Peoples' Rights, at Article 21 available on: http:/www.africa-union.org
http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf.

[259] Ibid.
http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf; African Charter on the Rights and Welfare of the Child, Article 3 available on:
http://www.au.int/en/sites/default/files/Charter_En_African_Charter_on_the_Rights_and_Wlefare_of_the_Child_AddisAbaba_July1990.pdf.

[260] American Declaration of the Rights and Duties of Man, Article XXIII, available on:
http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm.

[261] Ibid.

[262] American Convention on Human rights (adopted at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22 Nov. 1969), Article 21(1).

[263] Interpretation of the analysis of official records indicates that the term 'subordinate' is evidence to the states of Latin America while reviewing the importance of social function of property; see Theo RG. Van Banning, 'The Human Right to Property' Intersentia nv, (2002): 62.

[264] American Convention of Human rights (adopted at the Inter-American specialized conference on Human Rights, San Jose, Costa Rica, 22 Nov. 1969), Article 21(2).

unlawful attacks on his honour or reputation'.[265] Clearly, in the event of a forced eviction, there is an additional indirect effect on several human rights, such as education, health, food, family and life.

In the European system, in relation to the Council of Europe, the right to property has not been guaranteed in the European Convention on Human Right[266] (ECHR).[267] However, in 1952, the first article of the first protocol to the ECHR, titled "Protection of Property", states that:

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The question of property deprivation is raised in the Charter of Fundamental Rights of the European Union[268] in article 17 (1), which refers to the protection of private property. This article determines the right to possession and sets an exception in the case of expropriation, in which the public interest supersedes the private interest, and further suggests the offer of fair compensation paid within a reasonable amount of time, all under legal regulations set by the law of each country.[269] Furthermore, the treaty governing the functioning of the European Union provides that each state governs the system of ownership,[270] separate from court decisions. This provides an

[265] American Convention on Human rights (adopted at the Inter-American specialized conference on Human Rights, San Jose, Costa Rica, 22 NOV. 1969) Article 11(2).
[266] The European Convention on Human Rights, available on: http://www.echr.coe.int/Documents/Convention_ENG.pdf.
[267] For more on this discussion as to whether to include the right to property in the ECHR, Catarina Krause, 'The Right to Property', in Asbjørn Eide, Catarina Krause, and Allan Rosas (eds.), (Economic, Social and Cultural Rights: A Textbook., 2nd revised ed., The Hague, Martinus Nijhoff, 2001): 192-193. 194. Broadly, on the competing visions of states and the different institutions of the Council of Europe during the drafting process of the ECHR, see Steven. C. Greer, 'The European Convention on Human Rights: Achievements, Problems and Prospects', New York, Cambridge University Press, (2006): 18-9.
[268] Charter of Fundamental Rights of the European Union, 2009, Art. 17. This became legally binding upon its entry into force of the Treaty of Lisbon in 2009 (following the model of Article 1 of Protocol 1 to the ECHR in respect to the protection of the right to property).
[269] Charter of the Fundamental Rights of the European Union, Art. 17 (1) (Dec. 7, 2000), available on: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.
[270] Consolidated Version of the Treaty on the Functioning of the European Union, Art. 345, Sept. 5, 2008, 2008 O.J. (C115) 47 (2008), available on: http://www.eudemocrats.org/fileadmin/user_upload/Documents/D-Reader_friendly_latest%20version.pdf.

additional legal tool to deal with related cases and compensation, in order to remedy any injustice following the expropriation of property or property rights violations.[271]

In the ECHR, in the first optional protocol regarding property, there are fundamental freedoms such as equality, as described in Article 1. Article 1 prohibits deprivation from property and gives the right to individuals to enjoy their property, except for a public interest condition that counters private interest.[272] Further, article 17 of the Charter of Fundamental Rights of the European Union[273] includes the protection of private property, in which case the European Court of Human Rights addresses the question and tries to maintain fundamental freedoms, in order to advise states to balance their powers over expropriation.[274] Moreover, the ECtHR imposes compensation for property expropriation, despite the fact that it is not clearly mentioned in the convention itself. Therefore, although article one the first optional protocol does not necessarily require that full compensation be paid in the event that property has been expropriated,[275] the guiding principle that there is a fair balance between the general and individual interest requires that the sum that is considered appropriate is actually paid.[276]

In the European Union, the protection of private property located in the Charter of Fundamental Rights of the European Union, as mentioned earlier in article 17 (1), which determines the right to possession and sets an exception in the case of expropriation, where the public interest conquers the private one[277] and in Article 1 - Protection of property states that:

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[271] Case 1531/89, Loizidou v. Turkey, available on: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-62566.

[272] "Protection of property, every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.", Article 1. European Convention for Human Rights, available on: http://www.echr.coe.int/Documents/Convention_ENG.pdf

[273] Charter of Fundamental Rights of the European Union, 2009, Art. 17. This became legally binding upon the entry into force of the Treaty of Lisbon in 2009 (following the model of Article 1 of Protocol 1 to the ECHR in respect to the protection of the right to property).

[274] Sporrong and Lonnroth v. Sweden, 52 Euro. Ct. H.R. (ser. A), par. 69 (1982), available on: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57580#{"itemid":["001-57580"]}.

[275] Lithgow v United Kingdom, 102 Eur., C.T.H.R. (ser. A), par. 121 (1986), available on: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57526#{"itemid":["001-57526"]}.

[276] Akkus v Turkey, 9 July 1998, available on: http://www.hrcr.org/safrica/property/akkus_turkey.html.

[277] Charter of the Fundamental Rights of the European Union, Article 17(1)(Dec. 7, 2000) available on http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.[278]

In addition, the right of everyone to respect for private and family life is affirmed in Article 7, '[e]veryone has the right to respect for his or her private and family life, home and communications'.[279] Hence, the prohibition of forced eviction is comprised under this provision.

Further, article 8 of the ECHR, the protection of the right to respect for privacy and family life, which covers the right to home, in section (1): 'Everyone has the right to respect for his private and family life, his home and his correspondence', may link to the prohibition of forced eviction.

In addition to the functioning European, Inter-American and African systems, there are developing systems in the Arab World[280] and Commonwealth of Independent States. These systems lack an enforcement mechanism and are not binding.

The Arab World's regional mechanism includes a protection of private property that is anchored in the (Revised) Arab Charter on Human Rights. There, it states that '[e]veryone has a guaranteed right to own private property', and includes the prohibition of the unlawful deprivation of private property, further stating, 'and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property'.[281] This should be read together with the general protection of equality and non-discrimination.[282] Prohibition against forced eviction can be found in Article 21 of the Arab Charter: '(1) No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation; (2) Everyone has the right to the

[278] Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, Article 1, available on: http://conventions.coe.int/treaty/en/treaties/html/009.htm.
[279] Charter of the Fundamental Rights of the European Union, Article 7(Dec. 7, 2000) available on: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.
[280] In the Arab world system, there are 13 states that have ratified it, but the UN has stated that it does not comply with human rights standards and therefore does not recognise it.
[281] Arab Charter on Human Rights adopted in 2004, Art. 31, available on: http://www1.umn.edu/humanrts/instree/loas2005.html.
[282] The Arab Charter on Human Rights, Article 3, available on: http://www1.umn.edu/humanrts/instree/loas2005.html.

protection of the law against such interference or attacks'.[283] It is important to stress that forced eviction is a violent violation that can impact further human rights involving privacy, education, health, food, family, life and dignity. Finally, the damaging violations caused by forced evictions are numerous, and the most tragic ones involve people becoming homeless, with nowhere to practice their basic livelihood rights.[284]

The Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms follows the regional mechanisms of the Commonwealth of Independent States article 26 (1) of 1995, which instructs the subject of the right to property. This allows for the usual limitations for deprivation, without however expressly mentioning the requirement of compensation by the states:

> [i]n the public interest, under judicial procedure and in accordance with the conditions laid down in national legislation and generally recognised principals of international law. However, the foregoing provisions shall in no way affect the right of the Contracting Parties to adopt such laws as they deem necessary to control the use of items withdrawn from general circulation in the national or public interest.[285]

2.9. Conclusion

Although a definition and explicit inclusion of the right to land is not explicitly included in the international human rights framework, as this chapter has detailed, its necessity to fulfil and protect other human rights has been recognized at both the international and regional levels. Rights regarding land are recognized within international humanitarian law, under The Hague Regulation and the Geneva Conventions and the Rome Statute.

Land rights include access, use and ownership of land, but are not absolute. Lawful limitations to the right to property require that several conditions be met. Therefore, land rights may be violated in the case of land expropriation, land deprivation or forced evictions. These developments may occur for a number of reasons, such as development, territorial disputes or displacement that raise the question of social

[283] The Arab Charter on Human Rights., Article 21, available on: http://www1.umn.edu/humanrts/instree/loas2005.html.
[284] Forced Eviction is "gross violation of human rights "according to UN Commission on Human Rights, Resolution 1993/77 on Forced Evection, 10 March1993, E/CN.4/RES/1993/95.
[285] Commonwealth of Independence States Convention on Human Rights and Fundamental Freedoms.

justice, and human rights issues related to land rights. Land and cultural rights for indigenous people are established, unlike for other minority groups, which consider their land rights part of their culture identity and definition. Therefore, this land should not be approached merely as an economic resource.

The tensions surrounding land rights are not new. Violent conflicts have occurred throughout history because of competing claims over land or territorial disputes. Tensions regarding land rights that have led to conflict are perhaps most conspicuous in the context of the Israeli/Palestinian conflict. The question of control over the land has defined the conflict and the hegemonic contestation over how to apply a rights-based approach in the region. Chapter three therefore describes the background of the Israeli/Palestinian conflict and examines various violations of human rights in relation to the Arab Palestinian citizens in Israel. Chapter four examines the evaluation of the land regime in Israel by tracing and analysing Israel's domestic land laws since its establishment in 1948. It will also address how the law contributes to shaping the current distribution of land policy.

This discussion leads to chapter five, which examines forced eviction cases in the Sheikh Jarrah neighbourhood in East Jerusalem.

Chapter 3: An Architecture of Exclusion

We need history, but not the way a spoiled loafer in the garden of knowledge needs it.

Nietzsche[286]

We can view the past, and achieve our understanding of the past, only through the eyes of the present. The historian is of his own age, and is bound to it by the conditions of human existence.

Carr Edward Hallett[287]

3.1. Introduction

This chapter addresses the exclusion of the Palestinian Arab citizens in Israel[288] from socio-economic and political decision-making institutions, as well as their limitations on access to land and property. This will be achieved by examining the history of the conflict between Israeli-Arabs and Israeli-Jews through the creation of the State of Israel in 1948. This background to the conflict lays the groundwork to understand their current status as an involuntary minority within the state of Israel as they remained in their historical homeland following 1948. The Palestinian Arab citizens in Israel also became a minority within the Palestinian community, which includes Palestinians living in the West Bank and Gaza and the refugees living in the Diaspora. These developments have had direct implications on their status as a part of the political struggle waged since 1948.[289]

Arab Israeli citizens are trapped between their Palestinian ethnicity and their civic Israeli identity. There is a significant amount of literature that examines the backdrop

[286] Friedrich Wilhelm Nietzsche, The Use and Abuse of History, Cosimo, inc., 2006.
[287] Edward Hallett. Carr, 'What is History?', Cambridge, (1961), 24.
[288] This community is also referred to as the Palestinian citizens of Israel, Israeli Arabs or Palestinian-Israelis, Arabs in Israel, the Arabs of 1948, Israeli Arabs and the Palestinians in Israel. For a better understanding of these different designations and the different contexts in which they are used, and the analytical position associated with the various terminologies, see Dan Rabinowitz, 'Eastern Nostalgia: How the Palestinians Became the 'Arab of Israel', Theory and Criticism 4, (1993): 141-51,[Hebrew].
[289] For a general analysis of Arab-Jewish relations and the status of the Arab minority in Israel, see Sammy Smooha, 'Arab-Jewish Relations', Israel: A Deeply Divided Society', Israel Identity in Transition (2004): 31-67; Yitzhak Reiter, National Minority, Regional Majority: Palestinian Arabs versus Jews in Israel, Syracuse University Press, 2009; Eli Rekhess and Arik Rudniski, 'Arab Society in Israel Information Manual' Neve Ilan, Israel, Abraham Fund Initiatives, 2009.

to the Israeli-Palestinian "meta conflict". These historical narrations are rarely uncontested. The history-building project of the Israeli State competes for space with the Palestinian search for recognition and identity. This chapter does not endeavour to revisit this already populated space. Instead, it provides only a brief historical overview of the conflict. The first section offers a historical background from 1948 to the Six-Day war of 1967 and Jerusalem, briefly exploring the foundation of the State of Israel and the status of the Palestinian Arab citizen in Israel. It will outline the demographic changes that occurred as a result of the war. The second section of this chapter turns to the status of Palestinian Arab citizens in Israel, focusing on discrimination in various fields, such as citizenship, the Arabic language, political participation, education and employment. It then turns to land and property rights, with a full observation on the legal regime in Israel in the next chapter.

3.2. Beginning of the Conflict

The Israeli/Palestinian conflict has been referred to as a 'meta-conflict' because it is a conflict about the nature of conflict itself as well as an on-going conflict between two peoples with competing historical narratives. The principal disagreements involve tenets about identity, rights to territory and victimhood. In another words: The Israel/Palestine conflict is a "meta-conflict"; it is both a long-drawn-out conflict between two peoples and a conflict about the nature of the conflict itself. Contestations over the authenticity of Palestinian identity are part of a broader hegemonic contestation over how the histories of this contested space are read and exported. Attempts to contest the rootedness of the Palestinian national identity have become part of the 'official history' of the state.[290]

The conflict in Israel/Palestine as mentioned is involved a "meta-conflict"[291] about the nature of the conflict itself that creates meta-narratives. According to the dominant Israeli narrative, what happened in Palestine in 1948 was called 'the War of Independence, in Hebrew "Milhemet haa'tzmaout", whereas the Palestinians

[290] Avi Shlaim, 'The War between Israeli Historians', Annales. Histoire, Sciences Sociales. Vol. 59. No. 1. Editions de l'EHESS, 2004.

[291] Joshua Castellino and Kathleen A. Cavanaugh, 'Minority Rights in the Middle East', Oxford: Oxford University Press, (2013): 24; Brendan O'Leary and John Mc Garry, 'The Politics of Ethnic Conflict Regulation: Case Studies of Protracted Ethnic Conflicts', Routledge, 1993; Marianne Heiberg, Brendan O'Leary and John Tirman, 'Terror, Insurgency and the State: Ending Protracted Conflict', University of Pennsylvania Press, 2007; Victor Kattan, 'From coexistence to conquest: international law and the origins of the Arab-Israeli conflict' Pluto Pr (2009): 1891-1949.

describe it as "the Catastrophe", or "Al-Nakba" in Arabic. The gap between the two descriptive labels reveals two conflicting memories. The following paragraphs briefly address the historical perspectives of each side.

3.2.1. The United Nations Partition Plan

By the end of World War II, the British mandate over Palestine expired, leaving 1,269,000 Arabs and 608,000 Jews living within the borders of Mandate Palestine.[292] The British approached the newly established United Nations (UN) to resolve the fate of Palestine, and subsequently the UN appointed a committee to investigate the situation on the ground, despite disagreement among the committee members with regard to the political resolution. There was general agreement that the country would have to be divided between Palestinian Arabs and Jews. The vote on a partition plan for Palestine took place on November 29th 1947, and was drafted by the UN General Assembly, titled UN Resolution 181.[293] The UN General Assembly's recommended a partition plan that proposed the partition of Mandate Palestine into two separate states, with 57 percent of the territory allocated to a Jewish state and 43 percent to a Palestinian state.[294] Upon the partition plan resolution, the Jewish state owned only 7 percent of historic Palestine's land area.[295] The Zionist leadership agreed to the UN partition plan, but the Arab and Palestinian leadership rejected it,[296] viewing the resolution as unfair and harmful to Palestinians. They argued that the plan was not sufficient for the demographics of the population[297] and instead demanded the establishment of an Arab State in all parts of historical Palestine. On May 15th 1948, British troops withdrew from Palestine and

[292] Beinin Joel and Lisa Hajjar, 'Palestine, Israel and the Arab-Israeli Conflict', The Middle East Research & Information Project 11(2009): 4.
[293] United Nations General Assembly Resolution181, UN GAOR. 1ST Sess., UN Doc. A/64 (1946), 29 November 1947.
[294] United Nations General Assembly Resolution181, UN GAOR. 1ST Sess., UN Doc. A/64 (1946), 29 November 1947, 131, 139
[295] Walid Khalidi, 'Why Did Palestinian Leave? Revisited', Journal of Palestine Studies, Vol. 34, no.2 (2005): 42-54.
[296] With the exception of some leaders of the National Liberation League and the communists.
[297] Henry Cattan, 'Palestine and International Law, the Legal Aspects of Arab-Israeli Conflict', 2nd edition, New York: Longman (1973):37. Moreover, some Palestinian narrative scholars argue that Israel is a 'colonial product' imposed upon the Arabs, and as a result of the unfair partition plan proposal, they could not accept it; they blame Israel for the expulsion of the Palestinians who became refugees after the war; see Amal Jamal, 'The Citizenship Glossary for the Arab Students in Israel', Jerusalem: Hebrew University, 2005, [Arabic].

David Ben-Gurion[298] announced the establishment of the State of Israel. Following the adoption of the resolution,[299] the British evacuated Palestine and fighting began between the Palestinian Arabs and the Jews. In 1949, the war between Israel and the Arab States was concluded with several armistice agreements, which marked the end of the 1948 Arab-Israeli war. The war ended with Israel controlling 78 percent of Mandate Palestine and other parts occupied by Jordan and Egypt.[300] Israel and neighbouring Egypt, Lebanon, Jordan, and Syria established armistice separation lines[301] that divided the newly established Israel from other parts of Mandate Palestine. The Palestinian state proposed by the UN partition plan was never established and historical Palestine was divided into three parts, including separate political control for Israel, which comprised of over 77 percent of the territory. In the founding declaration, the Jews stated legal sovereignty over the territory,[302] while the coastal plain around the Gaza Strip fell under Egyptian military administration. Concomitantly, Jordan governed East Jerusalem and the hill country of central Palestine.[303]

3.2.2. Competing Historical Narratives of the 1948 War, Meta Narratives

Two narratives were predominant in the description of the historical circumstances of 1948. These narratives are important because they inform each side of the historical narrative -Palestinian and Israeli. The goal of illustrating the various narratives is to provide a better understanding of the unresolved Palestinian/Israeli territorial conflict, since 'the dispute has been significantly shaped by conflicting nationalist ideologies and the strong conviction of each of the two nations (Palestinian-Arab and

[298] David Ben-Gurion was the primary founder of the state of Israel and Israel's first prime minister and defense minister from 1948-1953 and 1955-1963.
[299] It is important to highlight that the General Assembly had no power to grant territory. In addition, the resolution was a proposal conditional to approval by the two parties, which means that it could be implemented only if the two parties agreed to it; see John Quigly, 'Palestine and Israel: A Challenge to Justice', Durham, NC: Duke University Press (1990): 47-53.
[300] Alexander Sandy Kedar and Oren Yiftachel, 'Land regime and social relations in Israel, Swiss Human Rights Book 1 (2006): 127, 130.
[301] Referred to as the 'green line'; the Green Line is a term originally used to define Israel's borders with Jordan from the period following Israel's 1948 independence war until the Six Day War when Israel captured the West Bank and East Jerusalem.
[302] Declaration of the Establishment of the State of Israel, 1 Laws of the State of Israel 3, 4, 5 (1948).
[303] Beinin Joel and Lisa Hajjar, 'Palestine, Israel and the Arab-Israeli Conflict', The Middle East Research & Information Project 11(2009): 4.

Israeli-Jewish) claiming the sole historical right to the land of Palestine'.[304] A close examination of these narratives might clarify the gap between the approaches to analyse the consequences the conflict.

The Palestinian Narrative, described by 'Al-Nakba- The Catastrophe, 1948; In the wake of the war, Palestinian scholars describe the situation as the loss of a homeland, the collapse of a society, and the failure of a national project and dream.[305] Additionally, it meant living in exile or becoming citizens of the newly founded state over their motherland's remains, as it is illustrated as:

> The defeat of the Arabs in Palestine is no simple catastrophe, "Nakba", nor an insignificant evil feeling, but a catastrophe in the full sense of the word, an ordeal more severe than any suffered by the Arabs in their long stories of ordeals and tragedies.[306]

Palestinian historians maintain that there was an expulsion in 1948 and a plan to occupy Palestine.[307] A number of Israeli-Palestinian, and later Arab-Israeli wars, which included the neighbouring Arab states of Egypt, Syria, Jordan and Iraq led an estimated 700,000 - 900,000 refugees to flee. According to Abu Lughod, the number of Palestinian residents who were expelled or fled as a result of these wars and became refugees in neighbouring countries was between 770,000 and 780,000.[308] A military policy of expulsion was enacted, which forced people to leave as a result of the destruction of an entire Palestinian village or city. This tactic was used in several massacres of civilians, for example the Deir Yasein massacre in which 254 civilians were killed,[309] Sliha in which seventy to eighty percent of the population was killed, Lod in which 250 were killed as well as hundreds in Dawayima.[310] The tactic involved the soldiers of Irgun, Lehi, and Haganah armed Zionist soldiers[311] surrounding 'each village on three sides, and put the villagers to fight through the

[304] Juval Portugali, 'Nationalism, social theory and the Israeli-Palestinian case', Implicate Relations. Springer Netherlands, (1993): 35-48.
[305] Ahmad Sa'di, 'Memory and Identity', 'Towards a Historical Narrative of the Nakba' Mada-al-Carmel, The Arab Centre for Applied Social Research, Haifa, (2006): 57-79 [Arabic].
[306] Constantin Zureiq, 'The Meaning of Disaster' - 'Maa'na Al-Nakba', Beirut, (1948) :11[Arabic].
[307] Walid Khalidi, 'Plan Dalet: Master Plan for the Conquest of Palestine', Middle East Forum 37(9) (1961): 22-8.
[308] Ibrahim A. Abu Lughod, 'The Transformation of Palestine: Essays on the Origin and Development of the Arab-Israeli Conflict', Northwestern University Press, (1971): 161.
[309] David Gilmour, 'Dispossessed: the ordeal of the Palestinians', Sphere Books, (1982): 62.
[310] James Gelvin, 'The Israel-Palestine Conflict: One Hundred Years of War', Cambridge: Cambridge University Press, (2005): 137.
[311] Irgun, a Jewish military organization led by Menachem Begin, a future Israeli prime minister, and Lehi, another Jewish military organization under the leadership of Itzhak Shamir, another future Israeli prime minister.

fourth side. In many cases, if the people refused to leave, they were forced onto lorries, and driven away to the West Bank. In some villages, there were Arab volunteers who resisted by force, and when these villages were conquered, they were immediately blown up and destroyed'.[312] This mechanism threatened the Palestinian people and encouraged them to flee.[313] Beinin Joel and Lisa Hajjar state that, 'Many Palestinians have claimed that most were expelled in accordance with a Zionist plan to rid the country of its non-Jewish inhabitants'.[314] Jews therefore formed the majority in the newly established state. Through Irgun, Lehi and Haganah armed Zionist soldiers,[315] the three Jewish military forces took control of 78% of Palestine.[316]

These narratives are in opposition to the Israeli narratives', beginning with the dominant narrative. Israeli historians have predominantly argued that the Palestinians fled voluntarily according to the Arab armies' orders, and that they were assured that they could return after the victory. Indeed, they argue that there was no expulsion

[312] Ilan Pappe, 'A history of modern Palestine: One land, two peoples', Cambridge University Press, (2004): 137.

[313] See the Palestinian National Information Centre [Arabic]. Retrieved 1 May 2016 from: http://nakba.sis.gov.ps/massacers/massacers.html. Examples of such massacres include the 9 April 1948 Deir Yassin massacre; the Irgun and the Stern Gang forces descended without warning on the Deir Yassin village located near Jerusalem, killing 200 villagers, most of them elderly, children, and women. Walid Khalidi, 'Deir Yassin-Friday, 9th April 1948', Beirut: Institute for Palestinian Studies, 1999 [Arabic]; Menachem Begin, The Revolt: Story of Irgun, H. Shuman (1951):162-165; Moreover, Irgun used the survivors of the massacre to threaten the rest of the Arabs in Jerusalem, putting them in trucks to show them to the others, forcing them to flee as a result of fear, Harry Leven, 'I Saw the Battle of Jerusalem', Schocken Books (1950):160 of future similar massacres; Irgun later killed the survivors Avi Shlim, Collusion Across the Jordan: King Abdullah, the Zionist Movement and the Partition of Palestine, Clarendon Press (1988):164; Michel Palumbo, 'The Palestinian Catastrophe: The 1948 Expulsion of a People from Their Homeland', Faber & Faber (1987): 52; after Haganah announced using loudspeakers in Arabic that people staying in their homes in Jerusalem would probably face the same destiny; Erskine B. Childers, 'The Wordless Wish: From Citizens to Refugees, in The Transformation of Palestine: Essay on the Origin and Development of the Arab-Israeli Conflict, Association of Arab-American University Graduates, (1973): 165- 186; Ibrahim Abu-Lughod, 'A Transformation of Palestine, Northwesteren University Press,1971; Another example is the Tantura massacre on 22 May 1948, in which the Alexandaroni Brigade killed 200 people after opening fire on the villagers along the Mediterranean Sea to the South of Haifa; Illan Pappe´, 'The Ethnic Cleansing of Palestine', London: One World Publications, 2006; Benny Morris, The Birth of the Palestinian Refugee Problem, 1947-1949 (1987): 52.

[314] Beinin Joel and Lisa Hajjar, 'Palestine, Israel and the Arab-Israeli Conflict', The Middle East Research & Information Project 11(2009): 4.

[315] Irgun, a Jewish military organization led by Menachem Begin, a future Israeli prime minister, and Lehi, another Jewish military organization under the leadership of Itzhak Shamir, another future Israeli prime minister.

[316] Ian Lustick, The Quiescent Palestinians: The System of Control over Arabs in Israel, in The Sociology of Palestinians 64, 66 (1980): 1.

policy from the Jewish armed forces.[317] Palestinians became refugees of their own accord, and Israel had no responsibility for the refugee problem. Furthermore, the few massacres, such as the Deir-Yassin massacre, which occurred during the war, were exceptional cases linked with extremist soldiers associated with Irgun and Lehi [Irgun, a Jewish military organization led by Menachem Begin, a future Israeli prime minister, and Lehi, another Jewish military organization under the leadership of Itzhak Shamir, another future Israeli prime minister].[318]

This approach is illustrated well in official booklets, such as the 1985 version of 'Facts about Israel':

> Causes (of the War of Independence): Arab rejection of November 1947 UN Partition Plan gives rise to escalating attacks on Jewish community in Palestine [...].
>
> Responses: On 15 May 1948 the regular armies of Egypt, Jordan, Iraq, Syria and Lebanon, and a Saudi Arabian contingent invade the new state […] IDF, although poorly armed and vastly outnumbered, repulse Arab assault.
>
> Outcome: By July 1949 separate armistice agreements signed with Egypt, Jordan Lebanon, and Syria, based on cease-fire lines. Armistice agreements intended to facilitate transition to permanent peace.[319]

Additionally, the 1992 version of the 'Facts about Israel' booklet never used the term "refugees" and instead use the term "left", indicating a voluntary population exchange, as it is described here:

> The number of Arabs in the country dropped, as nearly 600,000 had left during the War of Independence and only about 167,000 chose to stay or had returned under a family reunification program. With the arrival of a further 300,000 Jews from Arab countries over the next few years, a virtual exchange of populations was effected between Jews from Arab lands and Arabs from Israel.[320]

[317] Howard M. Sachar, 'A History of Israel. From the Rise of Zionisme to our Time', Knopf (2007): 315.
[318] Irgun, a Jewish military organization led by Menachem Begin, a future Israeli prime minister, and Lehi, another Jewish military organization under the leadership of Itzhak Shamir, another future Israeli prime minister.
[319] Facts about Israel, 1985, Jerusalem: Israel Information Centre, 39.
[320] Facts about Israel, 1992, Jerusalem: Israel Information Centre, 36.

Dominant Israeli historians additionally claim that the Palestinians and Arab countries initiated the war, as Ben-Gurion indicated in the cabinet meeting on June 1948, '[w]e did not start the war. The Arabs attacked us in Jaffa, Haifa etc.'.[321]

According to this narrative, the estimated number who left was at maximum 500,000.[322] This occurred because the Palestinians ignored Jewish calls not to evacuate following the Arab armies, causing Palestinians to voluntarily abandon their homeland. This was reflected in the cabinet meeting memos of June 16th 1948:

> Most of the Arabs living in the regions that passed to Israeli control fled their homes, even before the state established its various institutions and the Israel Defense Forces. Since that time, Israel and the Arab states have been at loggerheads over responsibility for the creation of the Palestinian Refugee problem. The Arab side claims that Israel is responsible, since it now holds the lands where these refugees lived before the war and since, they claim, Israel's forces drove these people from their homes. On its part, Israel rejects this claim and its spokespeople laid the responsibility on Arab leaders, since they called upon the inhabitants to leave the battle zones. Their vain hope was that they would quickly win the war, wipe Israel off the map, and let the local population return.
>
> However, Arab luck did not hold: Israel won the war and the local inhabitants were left outside […].[323]

Peres continued:

> [...] As one who was close to Ben-Gurion and his generation of leaders, I know that he, as Prime Minister and Defense Minister during the War of Independence never gave an order to expel people from their lands and homes. I have reason to believe that the Israel Defense Forces never had a "transfer" strategy. What transpired was the unplanned result of the tragic circumstances of the war, amid calls by Arab leaders to flee. About six hundred thousand Palestinians fled from Israel during the 1948 War of Independence [...].[324]

[321] Israel State Archives, ISA, Protocol of the Cabinet Meeting of 16 June 1948 [Hebrew].
[322] However, the dominant Israeli historians were challenged in the 1950s version by the Communist Party and Israeli figures in the Mapam, a Zionist left party.
[323] This theory was described in a cabinet meeting on 16 June 1948 by Prime Minister Ben-Gurion and Foreign Minister Moshe Shatret. Shimon Peres and Naor Arye, 'The New Middle East' New York: Henry Holt and Company, (1993): 186.
[324] Shimon Peres and Naor Arye, 'The New Middle East' New York: Henry Holt and Company, (1993): 186.

According to Ariel Sharon, future prime and defence minister of Israel, the Palestinians are responsible for their refugee status, not the state of Israel, '[t]hey had become refugees in a war they themselves had made'.[325]

Alternatively, innovative evaluations of 1948's history were completed by several Israeli historians[326] dubbed the "New Historians" in the middle of the 1980s, who described themselves as revisionist historians. They carried out research using material that had been declassified thirty years after the establishment of Israel.[327] They challenged the dominant Zionist narratives and memory.[328] According to their approach, the Jews accepted UN Resolution 181 as a strategic step to establish grounds for the future "Judaisation" of the new state in addition to territorial expansion, which left the question of the policy of expulsion of the Arab population controversial. Benny Morris, in his book *The Birth of the Palestinian Refugee Problem,*[329] outlines the reasons for the departure of the local population, but concluded that there was no premeditated, comprehensive policy of expulsion. According to Morris:

> […] undermines the traditional official Israeli 'explanations' of a mass flight ordered or 'invited' by the Arab leadership […] [the report] does uphold the traditional explanation of the exodus, that the Jewish, with premeditation and in a centralized fashion, had systemically waged a campaign aimed at the wholesale expulsion of native Palestinian population. […] however, the circumstances of the second half of the exodus, estimated between 300,000 and 400,000 people, are a different story.[330]

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[325] Ariel Sharon and Chanoff David, 'Warrior: An Autobiography', New York: Simon & Schuster, (2001): 259.

[326] Simha Flapan: 'The Birth of Israel: Myths and Realities (Hardcover)', Pantheon (1987); Tom Segev, 1967: Israel, the war, and the year that transformed the Middle East. Macmillan, 2007; Avi Sclaim, Ilan Pappe: 'The Ethnic Cleaning of Palestine', Oxford: One World, 2006 and 'The Making of the Arab-Israeli Conflict, 1947-1951', I.B. Tauris & Co Ltd, (2014: 98, and Benny Morris in his book 'The Birth of the Palestinian Refugee Problem Revisited' Cambridge: Cambridge University Press, 2004.

[327] Resulted after the Lebanon War of 1982.

[328] In the 1990s, they received some public opinion support, although their work drew some criticism for not using Arabic sources appropriately.

[329] Benny Morris, 'The Birth of the Palestinian Refugee Problem, 1947-1949' Cambridge: Cambridge University Press, 1987; Benny Morris, 'The Birth of the Palestinian Refugee Problem Revisited' Cambridge: Cambridge University Press, 2004.

[330] Benny Morris, '1948 and After: Israel and the Palestinians, Oxford: Clarendon Press, 1990; Benny Morris later distanced himself from some of his earlier political positions, but he never withdrew any of his writings; see, for example, an interview on 9 January 2004 with Ha-a'retz, where his stance was more radical, stating that if Ben-Gurion 'had carried out full expulsion rather than a partial one, he would have stabilized the state if Israel for generations'. See Ari Shavit, 'Survival of the Fittest' (An Interview with Benny Morris), Ha-a'retz Magazine, 2004.

Ilan Pappe, an Israeli historian who has consistently opposed the hegemonic control of history-telling in Israel, opposes the dominant narrative that denies Israeli responsibility for the Nakba, demanding the acknowledgement of ethnic cleansing and the moral responsibility for performing it,[331] he argued that:

> […] Plan D can be regarded in many respects as a master plan for expulsion. The plan was conceived out of the blue, expulsion was considered as one of many means for retaliation against Arab attacks in Jewish convoys and settlements; nevertheless, it was also regarded as one of the best means of ensuring the domination of the Jews in the areas captured by the Israeli army.[332]

Although it is challenging for researchers to bridge the countering historical narratives,[333] several attempts to reconcile these meta-narratives have been made. However, bringing Jewish and Palestinian academics together to frame guidelines for coexistence between the two sides have ended in disappointment. Such initiatives have been undertaken by the Israeli Democracy Institute.[334] Dan Bar-On explored the option of bridging the Palestinian and Israeli narratives and claimed that it is impossible, as he acknowledged:

> that narratives are (hi-)stories that may have to exist alongside each other, and it might be impossible to ever reach a common understanding of the past. While he describes the Israeli-German narrative as a joint one, he does not see a joint Israeli-Palestinian narrative emerging. He also argues that "there is nothing definite about narratives" - they do keep changing, so the listening and telling process is a continuous, recurring one. [335]

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[331] Ilan Pappe, 'The Ethnic Cleaning of Palestine', Oxford: One World, 2006.

[332] Ilan Pappe, 'The Making of the Arab-Israeli Conflict, 1947-1951', I.B. Tauris & Co Ltd, (2014: 98. Plan D text as cited in the book on page 92: '...operations against enemy population centres located inside or near our defensive system in order to prevent them from being used as bases by an active armed force. These operations can be carried out in the following manner: either by destroying villages (by setting fire to them, by blowing them up, and by planting mines in their debris), and especially of those population centres which are difficult to control continuously; or by mounting combing and control operations according to the following guidelines: encirclement of the village, conducting a search inside it. In case of resistance, the armed force must be wiped out and the population expelled outside the borders of the state'.

[333] Robert I. Rotberg, 'Israeli and Palestinian Narrative of Conflict, History's Double Helix', Bloomington: Indiana University Press. 2006; Mordechai Bar-On 'Conflicting Narratives or Narratives of a Conflict: Can the Zionist and Palestinian Narratives of the 1948 War Be Bridged?' Israeli and Palestinian Narratives of Conflict: History's Double Helix', Robert.I. Rotberg, Israeli and Palestinian Narratives of Conflict, Bloomington: Indiana University Press, (2006): 142-43.

[334] Uzi Benziman, 'Whose Country Is This? A Journey to Formulate a Jewish-Arab Charter in Israel', Jerusalem: Israel Democracy Institute, 2006, [Hebrew].

[335] Bar-On, Dan, and Sami Adwan. 'The psychology of better dialogue between two separate but interdependent narratives History's Double Helix', Robert.I. Rotberg, Israeli and Palestinian Narratives of Conflict, Bloomington: Indiana University Press, (2006): 205-224.

Later, however, in dealing with concrete events, Dan Bar-On[336] and Sami Adwan[337] saw an optimistic possibility to bridge the narratives following their experience with meetings between Palestinian and Israeli teachers trying to focus on the stories surrounding the difficult events of 1948 with their students.[338] These different narratives constantly influence the political behaviour of the two parties whenever it reached the point of discussion linked with obvious political questions, such as the right to return or Jerusalem.[339]

The year 1948 marked the beginning of a long struggle between Palestinians and Israelis over land. Although there are, as noted earlier, various historical narratives of what informs and sustains the conflict, what is perhaps less contested is that competing claims to land are at the core of the Israeli-Palestinian conflict. It is the unresolved and competing claims to territory that underscore the protracted nature of the conflict, which have had a contemporary effect in the current struggle over the land of the Palestinian Arab citizens in Israel and the limitations that deny their accesses to land. In other words, these narratives can affect the understanding of each side with respect to how the laws motivate one dominant group's ideology towards a state building project that Israel has promoted since the establishment, which is particularly the main focus of this research dealing with the shaping of the land regime towards the adoption of the dominant narrative. This project has led to the banishment of the Palestinian Arab citizens in Israel and the dismissal of their historical narrative. Therefore, the implementation of the national Jewish homeland resulted in the exclusion of the Palestinian Arab citizens in Israel from participation in the state's development through governmental and public systems.

[336] From the Department of Behavioural Science at Ben-Gurion University (during the presented project).
[337] From Bethlehem University (during the presented project).
[338] Dan Bar-On and Sami Adwan, 'The Psychology of Better Dialogue between Two Separate but Independent Narratives', Robert.I. Rotberg, Israeli and Palestinian Narratives of Conflict Bloomington: Indiana University Press, (2006): 205-24.
[339] Yitzhak Reiter, 'Parallel Narratives and Adverse Strategies: The Arab Minority in Jewish State' The Australian Journal of Jewish Studies, 19(2005): 87-162.

3.3. Military Rule

In the wake of 1948, Israeli authorities refrained from declaring their intention to prevent the internally displaced in Israel to return to their towns and villages,[340] using indirect measures to block their return. Karmen argues that:

> The Israeli authorities took other steps to preclude the return of the internally displaced Palestinians, such as demolishing houses in some towns and villages, expelling residents to beyond the borders of what was declared to be the State of Israel, settling some Jewish immigrants in the homes of the refuges and establishing Jewish towns on the land of destroyed towns and villages.[341]

The most effective tool used to reach this goal was imposing military rule.[342] The Provisional Council of State imposed military rule on the areas where substantial Arab Palestinian populations stayed after the end of the war: Naqab, the Triangle, the Galilee, and the Arab cities of Majdal-A'sqalan, Jaffa, Lydda, and Ramleh.[343] Israel's military commanders were authorised to announce closed zones in the Arab areas from 1948 until 1966, according to Article 125, Defense Regulations (Times of Emergency) (1945), Closed Areas of the Emergency Regulations, which states:

> A Military Commander may by order declare any area or place to be a closed area for the purposes of these Regulations. Any person who, during any period in which any such order is in force in relation to any area or place, enters or leaves that area or place without a permit in writing issued by or on behalf of the Military Commander shall be guilty of an offence against these Regulations.[344]

Therefore, in order to enter or leave their zones, the Palestinian residents were required to present movement permits.[345] The military commander of an area had the

[340] Charles S. Kamen, 'After the Catastrophe I: The Arabs in Israel, 1948-51', Middle Eastern Studies 1987, 23(1), 453-493.
[341] Ibid.
[342] Sarah Ozacky-Lazar, 'The Military Governments as a Mechanism of Controlling Arab Citizens: The First Decade, 1948-1958', Hamizrah Hehadash 43, (2002): 103-132. [Hebrew].
[343] Yair Bäuml, 'The Military Government', The Palestinians in Israel: Reading in History, Politics and Society, Nadim N. Rouhana and Areej Sabbagh-Khoury, Mada al-Carmel, Arab Center for Applied Social Research, (2011): 47.
[344] Regulation 125, Defense Regulations (Times of Emergency) (1945), http://www.israellawresourcecenter.org/emergencyregs/essays/emergencyregsessay.htm, last visited 17 May 2016.
[345] Nur Masalha, 'Israel and the Politics of Denial: Zionism and the Palestinian Refugees', Ramallah: Madar, The Palestinian Centre for Israeli Studies, (2003), [Arabic]; Tom Segev, '1949 - The First Israelis', Henry Holt, New York: The Free Press, (1986).

power to issue an order declaring a certain area a closed zone for security reasons.[346] Were a Palestinian resident to enter a closed zone, it was considered a violation of the regulations.[347] The official goal was to enforce the law and the military administration over Palestine for security purposes. One of the undeclared goals was to prevent the return of the refugees and the internally displaced people[348] to their original villages and towns.

In June 1967 during the Six-Day War, Israel gained control over and occupied East Jerusalem from Jordan and immediately annexed it. Israel reaffirmed these annexations in 1981 of the West Bank (from Jordan), the Golan Heights (from Syria), and Gaza and Sinai (from Egypt). In order to govern the Palestinian residents of the West Bank and Gaza, Israel established a military administration and military court system, and unlike the Palestinian Arab citizens of Israel, who were citizens governed under the military rule as mentioned above. By late 1966 (after the expiry of the military rule), the Palestinian Arab citizens of Israel came to be governed by the Israeli civil system of administration and judiciary.[349]

3.4. Jerusalem

Under the partition plan adopted by United Nations General Assembly Resolution 181,[350] Jerusalem was to be placed under international sovereignty. In addition, Under Resolution 181, Jerusalem received special treatment. Of all the territory that the General Assembly advised should be divided, Jerusalem was to be kept as a separate entity, a ‘‘*corpus separatum*’’, under administrative responsibility of the United Nations Trusteeship Council.[351] However, violence between the Arab and Jewish communities in Palestine broke out in response to this resolution and the plan was never instituted. As a result of the 1948 Arab-Israeli War, the newly declared State of Israel asserted sovereignty over West Jerusalem, while Jordan asserted its

[346] In areas such as Ghabisya, Ma’lul, Safouriyya, al Majdal, el Damoun, Kfar Biri’m, Iqrit, etc., there were prohibitions for the residents to enter there, which would be a violation of article 125 of the Emergency Laws.
[347] Hanna Nakkara, ‘Lawyers of the Land and the People’, Acre: Dar Alaswar (1982) [Arabic];
[348] Charles S. Kamen, ‘After the Catastrophe I: The Arabs in Israel, 1948-51’, Middle Eastern Studies 23(1) (1987): 453-493.
[349] Beinin Joel and Lisa Hajjar, ‘Palestine, Israel and the Arab-Israeli Conflict’, The Middle East Research & Information Project 11(2009): 4.
[350] United Nations General Assembly Resolution181, UN GAOR. 1ST Sess., UN Doc. A/64 (1946), 29 November 1947.
[351] General Assembly resolution 181. UN GAOR. 1st Sess., UN Doc. A/64 (1946). Pt III.

claim over East Jerusalem, which is defined as a 6.5 km^2 area covering the Old City and its surrounding neighbourhoods. Jordan's annexation of the West Bank, including East Jerusalem, was not widely recognised. In the June 1967 War- a reaction to military action by Egypt and Syria- Israel occupied the West Bank, including East Jerusalem, Sinai, the Golan Heights and Gaza Strip, and effectively annexed East Jerusalem through an extension of Israeli law before absorbing East Jerusalem into the West Jerusalem municipality. When Israel redrew the boundaries of municipal Jerusalem, it expanded East Jerusalem to 71 km^2 by absorbing 28 surrounding Palestinian villages. This larger municipal Jerusalem came under Israeli civil authority, whereas the rest of the occupied Palestinian territory was subject to military rule. Israel formally purported to annex East Jerusalem in 1980 by adopting the Basic Law: Jerusalem,[352] which declares expanded municipal Jerusalem to be the capital of Israel. The United Nations Security Council has consistently asserted that that Israel must withdraw from all of the territory it occupied in the 1967 War, including East Jerusalem.

Under Israel's May 1948 declaration, Jerusalem was divided into two parts East under the Jordanian authorities, West under the Israeli authorities.[353] In 1967, Israel won the Six-Day War.[354] The United Nations Security Council asked Israel to depart from these territories, as the Israeli states' presence breached the prohibition against acquiring territory by military force.[355]

Israel applies its law to Palestinian residents of East Jerusalem based on two ordinances passed after the Six-Day War.[356] Administrative ordinance, amendment

[352] 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), p. 186; the Bill and an Explanatory Note were published in Hatza'ot Chok No. 1464 of 5740, 287.
[353] As a result of the protection that the Jordanian forces grant the eastern section of Jerusalem, Israel controls 38 km^2 located in West Jerusalem, where most residents are now Jewish. The Palestinian residents are ruled by the Jordanian authorities in the second area of 6 km^2, located in East Jerusalem. See Etan Felner,'A Policy of Discrimination: Land Appropriation, Planning and Building in East Jerusalem vol. 15, B'tselem, (1997): 55-83. Israel declared West Jerusalem as a capital of Israel in 1950 in the Israeli parliament, according to Emergency Regulations (Land Requisition - Accommodation of State Institutions in Jerusalem), 4; Laws of the State of Israel (1950) 106.
[354] Amos Shapira, 'The Six-Day War and the Right of Self-Defense', Israel Law Reviews 6 (1971): 65-6; Charles W. Yost, 'The Arab-Israeli War: How it Began' Foreign ADD, 46 (1968): 304-08.
[355] S.C. Res. 242, UN SCOR, 22D Sess., 1375th mtg. at 8 UN Doc. S/INF/22/Rev. 2 (1967).
[356] Ardi Imseis, 'Facts on the Ground: An Examination of Israeli Municipal Policy in East Jerusalem' AM. U. INT'L L. REV. 15, (2000): 1039-40.

No. 11,[357] approved by the Israeli parliament, announced that all Israeli law, administration and jurisdiction applies to any territory to which the government decided it applied. This was to include 'any part of Palestine which the minister of defence has defined by proclamation as being held by the defence army of Israel'. An amendment to this ordinance on June 27th 1967 reads as follows: 'in the Law and Administration ordinance, 1948, the following section shall be inserted after section IIA: IIB. The Law, Jurisdiction and administration of the State shall apply in any area of Eretz Yisrael designated by the government by order'. This amendment changed the definition of the areas that the minister of defence could control, although Israeli law is not applicable in these areas. The Israeli army ordered that areas such as the West Bank and Gaza Strip, besides East Jerusalem, could now be controlled by government order, given that it is an area wherein Israeli law could be enforced.

From this point onward, the Palestinians have been subject to Israeli rule that has been jurisdictionally divided into three areas, each of which has a distinct legal status. The first is the sovereign territory of Israel, located within the 1949 armistice line (often referred to as the "Green Line").[358] The second consists of those units/parts of the Occupied Territories that have been de facto annexed (e.g. East Jerusalem, confiscated lands, Jewish settlements and military installations). Finally, there is the Israeli military administration that was originally established to govern Palestinians in the West Bank and Gaza. In 2005, Israel "withdrew" from the Gaza Strip, and since August 2005, the military legal administration (which includes military courts) only applies to citizens of the West Bank.

The second ordinance passed under Amendment No. 11, which was adopted on June 27th 1967, the Knesset passed the Municipalities Corporations Ordinance

[357] Law and Administration Ordinance, published in the official gazette on 22 September 1948.
[358] Israel and neighbouring Egypt, Lebanon, Jordan, and Syria established armistice separation lines that divided the newly established Israel from other parts of Mandate Palestine. Referred to as the 'green line'; the Green Line is a term originally used to define Israel's borders with Jordan from the period following Israel's 1948 independence war until the Six Day War when Israel captured the West Bank and East Jerusalem.

(Amendment No. 6),[359] which endowed the Interior Minister with the following power:

> At the discretion and without holding any inquiry, to enlarge by proclamation the area designated by the order under section IIB of the Law and Administration Ordinance.

In effect, this ordinance expanded the boundaries of East Jerusalem to an annexation of 64 km^2 of territory in the West Bank, 6 km^2 in the east of the city and 38 km^2 in the west. In fact, in 1980, as stated in basic law: Jerusalem Capital of Israel, Israel declared an undivided Jerusalem as the united capital of Israel. In addition, Israel did not identify the borders of Jerusalem to allow the establishment of new settlements in the surrounding area.[360] Article 1 stipulated that 'Jerusalem, complete and united, is the capital of Israel'.

International law prohibits annexation and the acquisition of territory by force, according to the *jus ad bellum* in the Charter of the United Nation.[361] Furthermore, The Hague Regulations of 1907[362] did not admit the right of annexation, even following a war of self-defence, unless the annexation was part of a peaceful resolution. Moreover, the Hague Regulations of 1907, particularly article 46 of The Hague Convention,[363] places a prohibition on land confiscation in occupied territory. In addition, article 49, paragraph 6 of the Geneva Convention[364] also specifies 'the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies'.[365] Disapproval of this annexation can be found in United Nations Resolutions on the Palestine and Arab-Israeli Conflict 1947-1974, which requested that Israel not change the status of East Jerusalem, taking any measures

[359] Adapted on 27 June 1967; Knesset passed the Municipalities Corporations Ordinance (Amendment No. 6), volumes 1-2: 1947-1974
[360] Published in Sefer Ha-Chukkim No. 980 of the 23rd Av, 5740 (5 August 1980): 186; the Bill and an Explanatory Note were published in Hatza'ot Chok No. 1464 of 5740: 287.
[361] U. N. Charter, 'Charter of the United Nations', June 26 (1945): 59.
[362] International Conferences (The Hague), Hague, Hague Convention (IV) Respecting the Laws and Customs of War on Land Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907.
[363] Convention (IV) 'Respecting The Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land. The Hague' (18 October 1907)<http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E719FBF0283E98E3C12563CD005168BD> accessed 18 June 2016.
[364] Ibid.
[365] Ibid.

necessary to effect this.[366] Later, in 1980, a UN Security Council Resolution did not approve the application of basic Israeli laws in East Jerusalem.[367] Hence, East Jerusalem is not an occupied territory for Israel.[368]

3.5. Palestinian Arab citizens in Israel: A Framework for Inequality

This section addresses the historical stages of the Palestinian Arab citizens in Israel with respect to their political formation and social experience as individuals and a collective starting from 1948, which was followed by a militarily ruled period until 1966.[369] These stages of demographic change that transformed Palestinians from a majority into a minority in their homeland caused massive demographic changes; some 160,000 Arab Palestinians remained in Israel after the war.[370] The Israeli government prevented the return of a majority of Palestinian refugees in neighbouring Arab countries to Israel, while allowing the immigration of hundreds of thousands of Jews from across the world to Israel, who were mainly Holocaust survivors from Europe and Jews from Islamic countries. The Palestinian Arabs lost a great deal of their ownership of land. Before the war, Jews owned 7 percent of the territory and Palestinian Arabs owned 93 percent of the territory.[371]

However, before turning to land-related issues in the next chapter, this section's focus is to explain the unique experience of Palestinian Arab citizens of Israel, as they were not included in any of the future peace plan proposals between Israel and Palestine. This is because the Palestinian Arab citizens of Israel have been mostly

[366] George Joseph Tomeh (ed.), United Nations Resolutions on Palestine and Arab-Israeli Conflict 1947-1974 (Washington."DC: Institute for Palestine Studies, 1975) Vol. 1.
[367] The UN Security Council Resolution no. 478 of 1980 does not approve application of basic Israeli laws in East Jerusalem George Joseph Tomeh (ed.), United Nations Resolutions on Palestine and Arab-Israeli Conflict 1974-1981', Institute for Palestine Studies, (1982).
[368] Etan Felner,'A Policy of Discrimination: Land Appropriation, Planning and Building in East Jerusalem vol. 15, B'tselem, (1997): 55-83.
[369] 1948-1966, when Israel imposed military rule over the Palestinian Arab citizens in Israel, was a critical period that they disconnect from their Palestinian and Arab nation and environment.
[370] As I mentioned earlier, there have been various estimations of the number of the Palestinian refugees and the Arab Palestinians who remained in Israel; see Raphael Patai, 'Encyclopaedia of Zionism and Israel', New York (1971): 72; Walter Lehn, 'The Jewish National Fund', London: Taylor & Francis, 1988; Edward Said, 'The Question of Palestine', Vintage Books, New York, (1980): 14, 45; Ibrahim A. Abu Lughod, 'The Transformation of Palestine: Essays on the Origin and Development of the Arab-Israeli Conflict', Northwestern University Press, (1971): 161.
[371] Eyal Benvensiti and Eyal Zamir, 'Private Claims to Property Rights in Future Israeli-Palestinian Settlement' (The American Journal of International Law, Vol. 89, No. 2, 1995): 295-340, 297.

ignored and have received little attention from the international community.[372] In this context, the peace plan refers to the possibility of negotiation and compromise as a means for settling territorial disputes in order to find a solution to the Israeli/Palestinian conflict. This resolution has long been advocated by the international community, moving towards a Palestinian independent state alongside Israel, which is known as the two-state solution.[373] This was suggested to both, on one hand to improve living conditions on the ground for the Palestinians and on the other hand, to address the security needs for Israel, which intend to propose a compatible permanent agreement for the Israeli/Palestinian conflict. This plan is supposedly consistent with the Palestinian aspiration for dignity and sovereignty and the security needs of the Israelis. This Israel/Palestine peace process has allegedly been planned in a series of stages, with establishment of limited Palestinian autonomy in part of the West Bank and Gaza Strip followed by the territorial expansion of the self-government region to include major Palestinian population centres. The original intentions of the future peace process are to be a transition stage towards Palestinian statehood. A final round of negotiations will have to deal with difficult central issues, such as territories and borders, the character of the Palestinian state, the question of the right to return of Palestinian refugees, the question of the sovereignty over Jerusalem and the issues surrounding it, like expanding Israeli settlements. Any future peace process will require transforming significant territorial geographical boundaries as part of the conflict resolution process in areas of ethno-territorial disputes and Israeli/Palestinian conflict.[374] Therefore, given the political reality that reflects the complexity of the challenge that the Israeli/Palestinian conflict presents, the security concerns led to the relationship between Israel's authorities and the Palestinian Arab citizens of Israel that have caused alienation them. These actions by authorities caused the marginalization of Palestinians minority in Israel through pursuing exclusionary policies toward them and limiting

[372] International discussion of what has become known as the Palestinian question has focused almost exclusively upon the Palestinians living in the occupied territories: the West Bank, Gaza Strip and East Jerusalem.

[373] The United Nations General Assembly passed Resolution 181, a partition plan partitioning Palestine into two states, one Jewish and one Arab, on November 29, 1947; Morris, Benny, 'One state, two states: Resolving the Israel/Palestine conflict', Yale University Press, (2009); Hilal, Jamil. Where Now for Palestine? : The Demise of the Two State Solution. Zed Books, (2007).

[374]David Newman, David, ' Shared Spaces-Separate Spaces: The Israel-Palestine Peace Process', GeoJournal 39.4 (1996): 363-75.

their access to resources along with narrowing their political power and dominating them within the state of Israel.[375]

Since 1948, Israel's state-building project has constructed an architecture of exclusion comprised of laws and planning commissions that have facilitated the expropriation of land from the Palestinian Arab population of Israel. The question of Palestinian statehood does not address their status. Its attempt to address the constructed isolation from civil and political life in Israel through the use of legal methods to prevent them from achieving equality in different fields and at the same time dispossessing them of their resources is more concrete for the current study. At the same time, security issues and the treatment of Palestinian Arabs as enemies on various occasions is the justification used to explain their exclusion from socio-economic and political decision-making institutions.[376] Dr Yair Bäuml[377], historian of the Middle East, describes this in his article 'The Military Government':

> However, a majority of Israeli Jews and their leaders refused to remove the barriers between them and the Arabs who remained in the new state and integrate them. The Israeli establishment continued to implement the "national Jewish home" policy, while reducing the meaning of democratic Israeli citizenship common to the Jewish majority and the Arab minority.[378]

Within the contrasting reading of history, the reason for the demographic change, which led the Palestinian population to be reduced. By the end of 1949 only about 160,000 Palestinian Arabs remained in what became Israel [379] (before the war, around 800,000 to 900,000[380] Palestinian Arabs had lived in Mandate Palestine).[381]

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[375] Ilan Pappé, 'The Forgotten Palestinians: A History of the Palestinians in Israel', Yale University Press, (2011).

[376] Sabri Jirys, 'The Arabs in Israel' (New York, 1976).

[377] He is a historian of the Middle East, head of the Interdisciplinary Department at the Oranim Academic College of Education.

[378] Yair Bäuml, 'The Military Government', in 'The Palestinians in Israel Readings in History, Politics and Society', Nadim N. Rouhana and Areej Sabbagh-Khoury, Mada al-Carmel Arab Center for Applied Social Research (2011): 48-56, 48.

[379] Beinin Joel and Lisa Hajjar, 'Palestine, Israel and the Arab-Israeli Conflict', The Middle East Research & Information Project 11(2009): 6.

[380] Please note that some of the Palestinians who remained in Israel were considered 'internally displaced in Israel' or 'present absentee'. Unlike the refugees in the neighbouring countries, they are a sub-group of the Palestinians who were driven from their homes by Jewish forces prior to the establishment of Israel or by Israeli institutions following the foundation of Israel and stayed within the boundaries of Israel. Even today, Israel prevents them from returning to their original homes. Other names used to describe them are 'refugees in their own homeland',[380] 'internal refugee', 'refugees in Israel', and '1948 refugees'. These terms refer to the Palestinians who remained in Israeli territory during the 1948 war or made their way back to Israel after the war, but were unable to return to their original homes and villages, which had been abandoned or destroyed during and after the

They were granted Israeli citizenship with full and equal membership in the state of Israel, such as the right to vote. According to the Declaration of the Establishment of the State of Israel, it is described as follows:

> We appeal, in the very midst of the onslaught launched against us now for months, to the Arab inhabitants of the State of Israel to preserve peace and participate in the building of the State in the basis of full and equal citizenship and due representation in all its provisional and permanent institutions.[382]

3.5.1. Discrimination against Palestinian Arab Citizens in Israel

The Israeli-Arab conflicts that characterise the region have had a great effect on the relationship between Palestinian Arab citizens in Israel and the State of Israel's distinguished treatment of Jewish citizens. Today, the number of Palestinian Arab citizens in Israel is estimated at approximately 1,771,000 residents, comprising of 20.8% of the entire population.[383] They belong to three religions: Muslim, Christian, and Druze.[384] In the analysis of the status of Palestinian Arab citizens in Israel, the political circumstances that involved the creation of Israel in 1948 should not be ignored. On the one hand, security concerns, combined with the Israeli State's calculations, such as fighting in the 1948 war with the Arab side caused serious

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fighting. In 1948, they were approximately ten thousand in 1948, and in 2001, their number was estimated at approximately 250,000.This level of detail is beyond the scope of this section; for more details, see Areej Sabbagh-Khoury, 'The Internally Displaced Palestinians in Israel', Nadim N. Rouhana and Areej Sabbagh-Khoury (The Palestinians in Israel), 26; Hillel Cohen, 'The Internal Refugees in the State of Israel; Israeli Citizens, Palestinian Refugees' (Palestine-Israel Journal of Politics, Economics, and Culture 9.2,(2002): 43.

[381] Benny Morris, The Birth of the Palestinian Refugee Problem, 1947-1949 (1987); Edward Said, 'The Question of Palestine', Vintage Books, New York, (1980): 14, 45.

[382] Declaration of the Establishment of the State of Israel, 1 Laws of the State of Israel 3, 4, 5 (1948).

[383] According to the media release published by the Central Bureau of Statistics, 'Israel Population on the Eve of 68th Independence Day - 2016'. According to this report, the population of Israel numbered approximately 8.522 million persons on the eve of Israel's 68th Independence Day. At the time of the establishment of the state, it numbered 806,000 residents. The Jewish population numbers approximately 6,377,000 residents (74.8 percent of the total population); the Arab population numbers approximately 1,771,000 residents (20.8 percent); and the population of "others" (referring to non-Arab Christians, members of other religions, and persons not classified by religion in the Ministry of the Interior) numbers about 374,000 (4.4 percent). See www.cbs.gov.il, last accessed 18 May 2016; media release can be found at http://www.cbs.gov.il/www/hodaot2016n/11_16_134e.pdf, published on 9 May 2016. Israel's population in 2008 officially numbered 7,465,500, of whom 5,634,300 were Jews, 318,000 were non-Jewish relatives of Jews (immigrants from the former Soviet Union), and 1,513,200 were Arabs. If we subtract the 269,000 Palestinian residents of East Jerusalem and the 16,800 Druze residents of the Golan Heights, who are by and large not Israeli citizens, the Arab citizens constituted about 16.5 percent of Israel's population, not 20 percent as officially stated. See Statistical Abstract of Israel 2009, chapter 2 (Israel, Central Bureau of Statistics, 2009). This figure does not include the Arab population of East Jerusalem or the Golan Heights.

[384] Israeli Central Statistics (CBS), Statistical Abstract of Israel, No. 60, Tables 2.2, 2.8, 2.10; this figure excludes the residents of East Jerusalem or the Golan Heights.

doubts regarding the question of the loyalty of the Palestinian Arab citizens in Israel. The state of Israel dealt with the Palestinian Arab citizens in Israel like a security threat. Israel viewed them as a potential option to party with the hostile parties outside of Israel during the war. Furthermore, until now the Israeli government argued according on a security basis for its restrictions imposed on the Arab population.[385] On the other hand, the Israeli authorities used emergency regulations against the Palestinian Arab citizens in Israel, for instance regulation 125 Defence Regulations (Times of Emergency, 1945)[386], and "military rule", had been imposed over 18 years over the major areas where Palestinian Arab citizens of Israel lived from 1948-1966. These factors damaged their economic independence, as many of the Palestinian Arab citizens of Israel were farmers and the military rule prevented them from reaching their cultivated lands. In conjunction with one another, these were tools to facilitate the separation between the Palestinian Arab citizens of Israel and the Palestinians and Arabs in neighbourhood countries.[387] Additionally, the systematic land confiscation that started in this period produced permanent outcomes that modified the architecture of exclusion, by preventing the Palestinian Arab citizens of Israel from access to territory in comparison with Jewish citizens.[388]

However, even after the termination of military rule in 1966, the Palestinian Arab citizens of Israel continued to be excluded from participating fully in the socio-economic and decision-making institutions of Israel. Marginalisation of the Palestinian Arab citizens of Israel is represented in various ways across the civil and political landscape, and is reflected in the socio-economic status of t the Palestinian Arab citizens of Israel.[389]

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[385] Ozi Benziman and Attallah Mansour, 'Subtenants, Israeli Arabs their status and the policy toward them', Jerusalem, Keter, (1992) [Hebrew]; An additional example of the fear of disloyalty to the state explains the government's decision to exempt the Palestinian Arab citizens in Israel from obligatory military service, with the exception of the Druze and Bedouins.

[386] Regulation 125, Defense Regulations (Times of Emergency) (1945), http://www.israellawresourcecenter.org/emergencyregs/essays/emergencyregsessay.htm, last visited 17 May 2016.

[387] Yair Bäuml, 'A Blue and White Shadow: The Israeli Establishment's Policy and Actions among its Arab Citizens: The Formative Years: 1958-1968', Haifa: Pardes, (2007) [Hebrew].

[388]Benny Morris, 'The Birth of the Palestinian Refugee Problem, 1947-1949' Cambridge: Cambridge University Press, (1987); Benny Morris, 'The Birth of the Palestinian Refugee Problem Revisited' Cambridge: Cambridge University Press, 2004; Arnon Golan, 'Wartime Spatial Changes: Former Arab Territories within the State of Israel, 1948-1950', Ben Gurion University Press, Beer-Shiva, 2001 [Hebrew].

[389] 'Or Commission Report' in 2003. The Or Commission investigated the clashes between the Trenches' security Palestinian Arab citizens in Israel in October 2000. The chief investigator was

An audit of the definition of the State of Israel, as a Jewish and democratic state, requires a more complex underpinning, one of which ethnicity/race continues to play a primary role in the definition of the concept of the citizen in Israel. Citizens may be included or excluded from the political decision-making and socio-economic institutions.[390]

3.5.2. Israel's Jewish and Democratic State and its Implications

A 'Jewish and Democratic State' is the Israeli legal definition of the nature and character of Israel, and is entrenched in Israeli law and jurisprudence.[391] A description of the fundamental aspects of the Jewish State can be found in the 1948 Declaration of Independence.[392] Israel's founders declared that the nature of the State is Jewish.[393] The intent of the state building project was made clear in the foundation of the Declaration of the Establishment of the State of Israel:

> The land of Israel was the birthplace of the Jewish people. Here their spiritual, religious and political identity was shaped. Here they first attained statehood, created cultural values of national and universal significance.
>
> […] On the 29th November 1947, the United Nations General Assembly passed a resolution calling for the establishment of a Jewish state in Eretz-Israel;[394] the General Assembly required the inhabitants of Eretz-Israel[395] to take such steps as were necessary on their part for the implementation of that resolution. This recognition by the United Nations of the right of the Jewish people to establish their state is irrevocable.

Theodore Or, once a judge on the Israeli Supreme Court. The clashes began following the second Intifada that caused the killing of 13 Palestinian Arab citizens in Israel by the Israeli police; see Marwan Dalal,'October 2000 Law and Politics before the Or Commission', ADALAH, The Legal Center for Arab Minority Rights in Israel, 2003.

[390] Dan Rabinowitz, 'The Palestinian Citizen of Israel: The Concept of Trapped Minority and the Discourse of Transnationalism in Anthropology', Ethnic and Racial Studies 24, no.1 (2001): 64-85.

[391] In recent years, the academic sphere and human rights originations have begun to penetrate and question the inherent contradiction between Israel's identity as both Jewish and democratic (details provided later); see, for example, Gil Troy and Martin J. Raffel, 'Israel - Jewish and Democratic', JCPA, 2013 [Hebrew].

[392] The Declaration of the Establishment of the State of Israel, 1948, founding documents designing the principles on which the state of Israel was established and the definition of the state as a Jewish and democratic state. Declaration of the Establishment of the State of Israel, 1 Laws of the State of Israel 3, 4, 5 (1948).

[393] Jay Harris, 'The Israeli declaration of Independence', The Journal of the Society for Textual Reasoning, vol. 7, 1998; Brenner, Michael; Frisch, Shelley, 'Zionism: A Brief History', Markus Wiener Publishers (2003):184.

[394] Eretz Yisrael is the Hebrew translation of The Land of Israel, greater Israel.

[395] Ibid.

> […] Accordingly we, members of the People's Council, representatives of the Jewish community of Eretz-Israel[396] and the Zionist Movement, are here assembled on the day of the termination of the British Mandate over Eretz-Israel, and by virtue of our nature and historic right and on the strength of the resolution of the United Nations General Assembly, hereby declare the establishment of a Jewish State in Eretz-Israel,[397] to be known as the state of Israel. [398]

In addition, Chief Justice Aharon Barak[399] listed core principles for the Jewish character of the state:

> 1. The right of every Jew to immigrate to Israel in which Jews will comprise a majority.
> 2. Hebrew is the state's central official language.
> 3. The state's main holidays and symbols reflect the national revival of the Jewish people.
> 4. The Jewish heritage is a leading component of its religious and cultural heritage.[400]

The establishment of the State of Israel and its creation were aimed to maintain the national Jewish land and strengthen the Jewish heritage and present its dominant ideology, while shaping the policies and the symbols in the State of Israel. Nevertheless, the definition includes the fundamental aspects of Israel as a democratic state. The democratic character was first officially added in an amendment to the Basic Law: The Knesset, amendment 9 article 7A, passed in 1985:

> 7A. A candidates' list shall not participate in elections to the Knesset, and a person shall not be a candidate for election to the Knesset, if the objects or actions of the list or the actions of the person, expressly or by implication, include one of the following:
> 1. Negation of the existence of the State of Israel as a Jewish and democratic state;
> 2. Incitement to racism;

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[396] Ibid.
[397] Ibid.
[398] The Declaration of the Establishment of the State of Israel, 1948, founding documents designing the principles on which the state of Israel was established and the definition of the state as a Jewish and democratic state. Declaration of the Establishment of the State of Israel, 1 Laws of the State of Israel 3, 4, 5 (1948).
[399] Former president of the Supreme Court of Israel.
[400] Supreme Court Judgment, Bagatz 11280/02, Piskey Din 57 (4), 1:101; Election Confirmation 11280/02. The Central Elections Committee for the Sixteenth Knesset v. MK Ahmed Tibi, PD 57(4) 1(2003) paragraph 12, citing Kaadan v. Israel Lands Authority, PD 54(1) 258 (2000) paragraph 31. This interpretation was endorsed in endorsed in Election Appeal 9255/12 Central Elections Committee for the Nineteenth Knesset v. Hanin Zoabi, paragraph 21, 20 August 2013, not yet published; available in the Nevo database [Hebrew].

> 3. Support of armed struggle, by a hostile state or a terrorist organization, against the State of Israel.[401]

However, the inspiration for the obligation for equality and provision of rights to citizens of the State of Israel, regardless of their race or origin, can be found in the Declaration of the Establishment of the State of Israel. This indicates the importance of equality for the entire population:

> It will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.[402]

The Declaration of the Establishment of the State of Israel[403] invokes the commitment to democracy and human rights from the Partition Resolution, which implies the democratic character and declares that the constitutions of the Jewish and Arab states will be democratic:

> [...] Guaranteeing to all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms, including freedom of religion, language, speech and publication, education, assembly and association.[404]

Predominant scholars writing from liberal and neo-liberal viewpoints believe that Israel is a liberal democracy,[405] forgiving claims that security threats and internal and external social pressures force the temporary sacrifice of some liberal principles.[406]

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[401] Basic Law: The Knesset (Amendment No. 9 article 7A, passed 7 August 1985, Principal Legislation, Sefer Hahukim [Hebrew], No. 115, 7 August, 196; Bel in Legislative Bills, Hatzaót Hok, [Hebrew], No. 1728, 17 April 1985, 193, as amended in 2002, Amendment No. 35, LSI 1845 410, 22 May 2002.

[402] Declaration of the Establishment of the State of Israel, 1 Laws of the State of Israel 3, 4, 5 (1948).

[403] Ibid.

[404] United Nations General Assembly Resolution181, UN GAOR. 1ST Sess., UN Doc. A/64 (1946), 29 November 1947.

[405] Eisenstadt, Shmuel Noah, 'The Transformation of Israeli Society: An Essay in Interpretation' Weidenfeld & Nicolson, (1985); Shlomo Averini, 'The Making of Modern Zionism: The Origins of the Jewish State', New York: Basic Books, (1981).

[406] Dan Horowitz and Lissak Moshe, 'Trouble in Utopia: The Overburdened Polity of Israel' State University of New York Press, Albany, New York, 1989.

These arguments have disappeared gradually as a result of progress in Israel's relations with the Arabs.[407]

However, there has been criticism of the understanding of the term 'Jewish and democratic state'. One of various suggestions explaining the conflict is in the term itself, because it adopts the approach that Israel is a democratic nation state in which Israel preserves the majority ethnic community's culture. This justifies favouring one ethnic community in the state by using the historical claim for territory[408] and assigning it to a restrictive Jewish ethnicity. The term "Jewish and democratic" reveals the real nature of the State, as it no longer includes all its citizens, as Dan Rabinowitz defined it:

> […] the term ['Jewish democratic'] exposes the real nature of the state: an exclusive ethno-territorial project which serves the hegemonic group at the expense of others. A state cannot purport to be democratic, complete with total sovereignty of the rule of law and equal citizenship and civil rights, while its symbols, power structure and resource allocation remain safely "Jewish".[409]

More radical approaches have considered that Israel has just one of the essential conditions to be classified as a democracy, which are free elections that are capable of changing governing parties.[410]

A different perspective is suggested through understanding the Palestinian Arab citizens of Israel as a "trapped minority":

> […] The state of Israel came into being as an instant package deal combining the saving of the Jews as individuals, the nationalist aspirations of political Zionism and the transformation of the Jewish religion into a defining aspect of a new state. This convergence was powerful enough to displace the Palestinian collective from the physical terrain, and to have its rights, historic subjectivity and memory erased from Zionist cognition. Pre-state Zionism easily identified the Palestinians as a military force to be reckoned with, and continued to do so throughout the 1948 war and in many ways into the first

[407] Ruth Gavison, 'Jewish and Democratic? A Rejoinder to the "Ethnic Democracy" Debate' (Israel Studies 4.1 1999), 44-72; Benyamin Neuberger, 'Democracy in Israel: Origins and Development' (Government and Politics in Israel, Unit 2, 1998).
[408] For instance, the Estonian Constitution's preamble (http://www.servat.unibe.ch/icl/en00000_.html) and the Slovak Republic's Constitution's preamble (http://www.servat.unibe.ch/icl/lo00000_.html).
[409] Dan Rabinowitz, 'The Palestinian Citizen of Israel: The Concept of Trapped Minority and the Discourse of Transnationalism in Anthropology', Ethnic and Racial Studies 24, no.1 (2001): 64-85.
[410] Baruch Kimmerling, 'Religion, Nationalism, and Democracy in Israel', Constellations 6.3, (1999): 339-363.

> decade of the state. Hence, for example, the military governorate that was imposed on Palestinian towns and villages from 1948 to 1966. Palestinians as a civilian population, however, and, more explicitly, as rightful citizens within a democratic state, were hardly acknowledged.
>
> 'A Jewish democratic state' is thus a concept that hinges on dehistoricizing Palestinians and the presence of a Palestinian people. Instead, the Jewish state re-introduces Palestinians as 'Arabs' - an element marginal to Zionist history, now canonized as the underlying narrative of state ideology.[411] 'The Arab minority', once recognized by Israel and Israelis, was treated as if it surfaced out of nowhere. Its history was truncated, its spatial continuity with Palestinians and Arabs in adjacent territories arrested. Its entrapment as a figment of the Israeli presence was complete. [412]

Another perspective suggests reading the Palestinian Arab citizens of Israel as obtaining their formal citizenship living in an ethnic democracy. This is a technical and restrictive definition of democracy as a regime that grants the right to vote and that is voted on.[413] Other scholars, such as Oren Yaftachel[414] and Yoav Peled,[415] disagree with Sammy Samooha's argument of democracy, as there is no sustainable description for a desirable solution. Yiftachel argues that Israel's socio-economic policies have caused internal ethnic and class divisions among the Palestinian citizens in Israel, and that Jews have alienated the most peripheral groups, causing a distinctive contradiction built into the term "Jewish and democratic state".[416] Oren Yiftachel explains the situation:[417]

> […] despite Israel's self-definition as Jewish and democratic, it is in effect a Judaizing state, with democracy being subordinated to the (often racist) exigencies of Judaization in all central societal arenas - legal, institutional,

[411] Dan Rabinowitz, 'Eastern Nostalgia: How the Palestinians Became the 'Arab of Israel', Theory and Criticism 4, (1993): 141-51, [Hebrew].
[412] Dan Rabinowitz, An Israeli sociologist, first introduced the term 'trapped minority' while examining the effect of 're-territorialisation' on the identity and consciousness of Palestinian Arab citizens of Israel, who are doubly marginalised; Dan Rabinowitz, 'The Palestinian Citizen of Israel: The Concept of Trapped Minority and the Discourse of Transnationalism in Anthropology', Ethnic and Racial Studies 24, no.1 (2001): 64-85, 73-74, 76-77. Further approaches about definition of the Palestinian citizen in Israel are 'triple minorities' marginalized within Israel, the Arab world, and the broader community of Palestinian people, see, Joshua Castellino and Kathleen A. Cavanaugh, 'Minority Rights in the Middle East', Oxford: Oxford University Press, (2013): 24.
[413] Smooha, Sammy, 'Jewish and Arab Ethnocentrism in Israel', (Ethnic and Racial Studies 10.1, (1987): 1-26.
[414] Oren Yiftachel, 'Israeli Society and Jewish-Palestinian Reconciliation: "Ethnocracy" and Its Territorial contradictions, The Middle East Journal, (1997): 505-519.
[415] Yoav Peled, 'Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State', American Political Science Review 86.02, (1992): 432-43.
[416] Oren Yiftachel, 'Israeli Society and Jewish-Palestinian Reconciliation: "Ethnocracy" and Its Territorial contradictions', The Middle East Journal, (1997): 505-19.
[417] Ibid.

> material, and executive. The Judaization project has framed the meaning of Israeli citizenship, and worked to both exclude and marginalize the state's Arab citizens. Israel's settler colonialism and violent oppression of the Palestinians in the Occupied Territories has further marginalized the status of the Arabs in Israel, given their natural support for the uprising Palestinians. The "separate and unequal" citizenship structure actively prevents the creation of an integrative civil Israeli political community. The result has produced a discriminatory and deeply flawed Israeli citizenship structure, with the allocation of stratified 'packages' of rights and capabilities based on ethnic origins. Obviously, there are serious gaps between this reality and the notion of equal democratic citizenship […].[418]

According to the law, de jure, the Palestinian citizens of Israel are equal citizens according to what is above mentioned. This implies that the democratic condition exists in the fundamental definition of the state, as a democratic state found in the declaration of the establishment of the State of Israel and the state laws.[419] Nevertheless, de facto, the Palestinian Arab citizens in Israel struggle with the state's definition; they think that they will never gain equality as long as the Israeli state describes itself as a Jewish state,[420] in conjunction with a feeling of alienation from the state. They therefore seek to change this status quo,[421] by demanding to change the definition of the Jewish state to 'a state to all its citizens' and by requesting their rights as a collective minority (not as individuals) as well as that Israel additionally acknowledge them as a national minority.[422] Conversely, the Israeli government claims that the Palestinian Arab citizens in Israel are resisting integration into a democratic society that cannot be disconnected from the historical conflict of the creation of Israel. This results in the initiation of divisions - in some cases, Israel views Palestinian Arab citizens of Israel as a security threat, as they are historically

[418] Oren Yiftachel, 'Ghetto Citizenship: Palestinian Arabs in Israel', Israel and the Palestinians - Key Terms (2009): 56-60; Rouhana, Nadim N. and Areej Sabbagh-Khoury, 'Palestinian Citizenship in Israel', The Palestinians in Israel, (2011):128.
[419] Declaration of the Establishment of the State of Israel, 1 Laws of the State of Israel 3, 4, 5 (1948); Basic Law: The Knesset (Amendment No. 9 article 7A passed 7 August 1985, Principal Legislation, Sefer Hahukim [Hebrew], No. 115, 7 August, 196; Bel in Legislative Bills, Hatzaót Hok, [Hebrew], No. 1728, 17 April 1985, 193, as amended in 2002, Amendment No 35, LSI 1845 410, 22 May 2002.
[420] Nadim N. Rouhana, 'Attitudes of Palestinians in Israel on Key Political and Social Issues: Survey Research Results', Haifa, Israel, (September 2007).
[421] Nadim N. Rouhana, 'Attitudes of Palestinians in Israel on Key Political and Social Issues: Survey Research Results', Haifa, Israel, (September 2007).
[422] Amal Jamal, 'Strategies of Minority Struggle for Equality in Ethnic States: Arab Politics in Israel' Citizenship Studies 11(3) (2007): 263 -82; Elie Reckess, 'The Evolvement of an Arab-Palestinian National Minority in Israel', Israeli Studies 12(3), (2007): 1-28.

part of the Palestinian people.[423] Furthermore, the Israeli state represents the Jewish majority, which commonly views the Palestinian minority as a demographic threat because its rate of reproduction is approximately twice as high as that of the Jewish population.[424] The structure of the population is shifting, with the share of Jews declining by 3-5 percent every 15 years.[425] The endeavours to exclude the Palestinian Arab citizens in Israel from socio-economic and political decision-making institutions therefore face substantial discrimination in two main areas:

> [...]substantial discrimination in terms of the distribution of economic resources, particularly as regards housing and land allocation; education; budget for local authorities; the maintenance of holy places; and employment as a result of preferences given to those who serve in the army. Secondly, they seek better opportunity to express their national identity in the cultural, educational, linguistic and other realms.[426]

In Israel, there is social separation between Palestinian Arab citizens as a minority and the Jewish majority.[427] Most Palestinian Arab citizens live in their own villages and towns, whereas some others live in mixed cities. The Palestinian minority mainly live in northern Israel, in villages or small towns, the Galilee area, the Triangle, and in the south in the Negev desert, which is mostly Bedouin. Nine-tenths of the Palestinian minority live separately in Arab communities; one tenth live in Jewish towns, yet in separate neighbourhoods in towns such as Haifa, Jaffa, Lode, Acre,

[423] Sammy Samooha, 'Arab-Jewish Relation in Israel: A Deeply Divided Society', Israeli Identity in Transition Praeger, (2004): 43; for more details, refer to the historical background in the first section of the chapter.
[424] Israel, Central Bureau of Statistics, Prediction until 2025, Components of Population Growth, by Population Group and Religion Medium Variant, 2004, http://www.cbs.gov.il/www/publications/popul2005/pdf/t06.pdf; Elia Zureik, The Palestinian in Israel: A Study in Internal Colonialism, London: Routledge and Kegan Paul, (1979). The 'demographic' debate is based on the desire of political leaders to limit the number of non-Jews in Israel, therefore preserving its Jewish character. For instance, the Law of Return (1950) and the Citizenship Law (1952) allow any Jew to immigrate to Israel and gain citizenship. Meanwhile, Palestinian Arabs who were expelled from their homes and lands to become refugees are excluded.
[425] Israel Central Bureau of Statistics, Population in Base Year 2000 (1) and Projection for 2010 and 2025, by Variant, Population Group and Religion, 2004, http://www.cbs.gov.il/www/publications/popul2005/pdf/t02.pdf. This data already takes into account immigration, which mitigates the drop to some extent.
[426] United Nations Committee on the Elimination of Racial Discrimination (CERD), consideration of reports submitted by stated parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination (CERD): Israel, 3 April 2012, CERD/C/ISR/CO/14-16, 18.
[427] Segregation mostly prevails in Israel, but there remain a few places where the Palestinian minority and the Jewish majority are integrated in experimental bilingual schools (Hebrew and Arabic) or special communities seeking peace inspiration such as the oasis of peace - Wahat el salam - Neve Shalom.

etc.[428] In addition, the education system is separate until an academic level,[429] meaning that assimilation occurs mostly in workplaces, where Jews typically hold higher positions than the Palestinian minority. This is a situation that results from the lack of resources available to the Arab community to acquire a higher education. Language boundaries may also be problematic. For example, a Palestinian student who needs to study at the university or college level may have Hebrew as a second language, which might be a real obstacle that prevents the average pupil in high school from reaching higher education. Moreover, 50% of the Palestinian minority population lives under the poverty line.[430] They also suffer from high levels of unemployment, and more than 50% - 60% of their land was expropriated by the state.[431] In addition, housing demolitions threaten the Palestinian minority.[432] The Palestinian minority faces discrimination in legislation[433] because of the laws that directly discriminate against them, such as the citizenship law.[434] Furthermore, municipalities those need to deal with poor infrastructure lack funding, which results in segregation in most aspects of civil rights. Oren Yiftachel argues that:

> Palestinian Arab citizenship in Israel can be characterized as existing in a ghetto. This ghetto is multifaceted - political, cultural, economic and administrative, and as a result also spatial. The Palestinian Arabs in Israel are officially part of society, yet structurally marginalized by domination, exclusions, and disempowerment. [435]

The remaining sections of this chapter will examine, in depth, the legal architecture surrounding the Palestinian Arab citizens as a collective in five particular areas: citizenship, education, political participation, the Arabic language and employment.

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[428] Sammy Smooha, 'Arab-Jewish Relations in Israel: A Deeply Divided Society' in Anita Shapira, ed., Israeli Identity in Transition, Praeger, (2004):42.
[429] Zama Coursen-Neff, 'Discrimination Against Palestinian Arab Children in the Israeli Education System', international law & Politics, NYC Vol. 36, (2004): 749.
[430] OECD, 'Labour Market and Social Policy Review of Israel - 2010' (Organization for Economic Cooperation and Development, 2010), available at: http://www.oecd.org/els/israel2010.
[431] Oren Yiftachel, 'Ethnocracy: Land and Identity Politics in Israel/Palestine', University of Pennsylvania Press (2006): 166.
[432] David Grossman, 'Sleeping on a Wire: Conversations with Palestinians in Israel', Picador, (2003): 334.
[433] Amendment to the Citizenship and Entry into Israel Law 2003 that prevents unification of Palestinian families when a spouse is resident in the occupied territories or what the Israeli state considers 'enemy states' such as Iran, Iraq, Syria and Lebanon. See Yoav Peled, 'Citizenship Betrayed: Israel's Emerging Immigration and Citizenship Regime', Theoretical Inquiries in Law 8(2) (2007): 333-58.
[434] Ibid.
[435] Oren Yiftachel, 'Ghetto Citizenship: Palestinian Arabs in Israel', Israel and the Palestinians - Key Terms (2009), 56-60; Rouhana, Nadim N. and Areej Sabbagh-Khoury, 'Palestinian Citizenship in Israel' (The Palestinians in Israel): 128.

3.5.3. Citizenship

To delve into this question leads to immigration and nationality laws in Israel that reflect unequal treatment under the Israeli legal system. As a starting point to explain the notion of citizenship, a definition can be found in the Law of Return 1950, which states that 'every Jew has the right to come to this country as an oleh [a Jew emigrating to Israel'.[436] In other words, every Jewish person in the world is entitled to come to Israel unconditionally and become an Israeli citizen. The Citizenship/Nationality Law (1952) states in article 2a: 'Every person who has immigrated according to the Law of Return will be a citizen of Israel'.[437]

Furthermore, the Law of Return 1970, article 4A(a), extends this right to their offspring in the Amendment No. 2, which defines the rights of members of family states that:

> 4A. (a) The rights of a Jew under this Law and the rights of an oleh under the Nationality Law, 5712-1952, as well as the rights of an oleh under any other enactment, are also vested in a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.

Nevertheless, according to article 3 of the Citizenship/Nationality Law (1952), the same law that specifies this privilege to Jewish people excludes Palestinians who were in Israel:

> (a) A person who, immediately before the establishment of the State, was a Palestinian citizen and who does not become an Israel national under section 2, shall become an Israel national with effect from the day of the establishment of the State if -
> (1) he was registered on the 4th Adar, 5712 (1st March 1952) as an inhabitant under the Registration of Inhabitant Ordinance, 5709-1949; and
> (2) he is an inhabitant of Israel on the day of the coming into force of this Law; and
> (3) he was in Israel, or in an area which became Israel territory after the establishment of the State, from the day of the establishment of the State to

[436] Passed by the Knesset on 20 Tammuz, 5710 (5 July 1950), published in Sefer Ha-Chokkimno. 51 of 21 Tammuz, 5710 (5 July 1950), p. 159; the Bill and an Explanatory Note were published in Hatzao't Chokno. 48 of 12 Tammuz, 5710 (27 June 1950):189.

[437] The Citizenship Law (1952) and its Amendments (3.3.58) (8.7.68) (5.17.71), passed by the Knesset on 6 Nisan, 5712 (1 April 1952) and published in Sefer Ha-Chokkim no. 95 of 13 Nisan, 5712 (8 April 1952): 146; the Bill was published in Hatzao't Chok no. 93 of 22 Cheshvan, 5712 (21 November 1951): 22.

> the day of the coming into force of this Law, or entered Israel legally during that period. [438]

Therefore, Israeli nationality is conditional for Palestinians who were in Israel from the day of the state's establishment. In fact, this article excludes those Palestinians who left during the "al-Nakba" or "war of independence" and prevents them from obtaining citizenship. Further, this denies Palestinians the right to return, according to UN General Assembly Resolution 194 (III), Article 11, issued December 1948, which resolves:

> […] refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.[439]

Since May 2002, these obstacles with respect to obtaining citizenship apply to a spouse if the spouse is a Palestinian resident of the region (the Occupied Territories including West Bank and Gaza), even if the application fulfils the procedural security and criminal background check.[440] Following that, the Knesset introduced legislation prohibiting citizens in Israel from obtaining nationality for their spouse if the latter is from the Occupied Territories, even if they are married by enactment of the

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[438] The Citizenship Law (1952) and its Amendments (3.3.58) (8.7.68) (5.17.71), passed by the Knesset on 6 Nisan, 5712 (1 April 1952) and published in Sefer Ha-Chokkim no. 95 of 13 Nisan, 5712 (8 April 1952): 146; the Bill was published in Hatzao't Chok no. 93 of 22 Cheshvan, 5712 (21 November 1951): 22.

[439] UN General Assembly Resolution 194 (III), Article 11, issued December 1948, adopted by the General Assembly, GAOR, 3rd session, part I, 1948, Resolutions, 21-24.

[440] That differ from the case in that the case is dealing with the spouse not Jews but not Arab as well, according to article 5 of the Citizenship/Nationality (1952) states:

> A person of full age, not being an Israel national, may obtain Israel nationality by naturalisation if -
>
> (1) he is in Israel; and
>
> (2) he has been in Israel for three years out of five years preceding the day of the submission of his application; and
>
> (3) he is entitled to reside in Israel permanently; and
>
> (4) he has settled, or intends to settle, in Israel, and
>
> (5) he has some knowledge of the Hebrew language, and
>
> (6) he has renounced his prior nationality or has proved that he will cease to be a foreign national upon becoming an Israel national.
>
> (b) Where a person has applied for naturalisation, and he meets the requirements of subsection (a), the Minister of the Interior, if he thinks fit to do so, shall grant him Israel nationality by the issue of a certificate of naturalization;

and its Amendments (3.3.58) (8.7.68) (5.17.71), passed by the Knesset on 6 Nisan, 5712 (1 April 1952) and published in Sefer Ha-Chokkim no. 95 of 13 Nisan, 5712 (8 April 1952): 146; the Bill was published in Hatzao't Chok no. 93 of 22 Cheshvan, 5712 (21November 1951): 22.

Citizenship and Entry into Israel Law (Temporary Order) Section 2,[441] which limits citizenship and stay in Israel:

> [T]he Minister of the Interior shall not grant the inhabitant of an area citizenship on the basis of the Citizenship law, and shall not give him a licence to reside in Israel on the basis of the Entry into Israel Law, and the Area Commander shall not grant a said inhabitant a permit to stay in Israel, on the basis of the security legislation in the area.[442]

This law discriminates against Palestinian Arab citizens in Israel as it violates their family life, forcing families to live apart (or at least threatening separation) and the right to equal liberty and dignity. An amendment to the law was made in July 2005,[443] which provided an opportunity to apply for a temporary residency permit to most Palestinian women over 25 years of age and Palestinian men over 35, but under very restrictive circumstances. These permits do not include work permits, driving licences or any social benefits.[444] Hence, the discriminative aspect in the law remains. Cases were addressed by the Supreme Court of Israel, in which interference in the law was upheld by a split decision after a majority of six out of eleven judges rejected the petition.[445] As a result of this decision, thousands of Arab Palestinian families will be banned from living together on the basis of their national affiliation. However, the petitioner's argument that the law disproportionately violates the constitutional right to a family life and equality was accepted, with one of the judges refusing to order remedy by cancelling the law. Justice Heshin, who voted to dismiss the petitions, stated that 'the right to human dignity does not include any constitutional obligation on the state to allow foreigners married to Israeli citizens to

[441] The Nationality and Entry into Israel Law, 31 July 2003.
[442] In theory, the law applies to Arabs as well as Jewish citizens. However, the majority of Israeli citizens who marry residents from the occupied territories are Palestinian Arab citizens, since the prohibition does not apply to Israeli settlers living in the West Bank.
[443] The Nationality and Entry into Israel Law (Amendment), 27 July 2005.
[444] The amendment denies status to Palestinians acquiring temporary permits who are related to certain individuals if the security officials suggest that this might constitute a security threat to Israel; The Nationality and Entry into Israel Law (Amendment), 27 July 2005.
[445] Decision delivered on 12 May 2006, HCJ 7052/03, Adalah - The Legal Center for Arab Minority Rights in Israel v. the Minister of the Interior (2006). The petitions were submitted by MK Zehava Galon, the Association for Civil Rights in Israel, Hamoked - Center for the Defence of the Individual, Adalah, and several individual petitioners whose rights to family unification were violated by the Citizenship Law.

enter the state'.[446] However, Chief Justice Aharon Barak, who voted in favour of the petitions, stipulated:

> The issue concerns the right of Israeli citizens of the state to family life and equality, which derive from the constitutional right to human dignity. As espoused in the Basic Law [Human Dignity and Liberty], this violation of rights is directed against Arab citizens in Israel. As a result, therefore, the law is a violation of the right of Arab citizens in Israel to equality.[447]

> Furthermore, in 2007, the prohibition was extended comprising citizen and residents from "enemy states" including Iran, Iraq, Lebanon and Syria,[448] but effectively anybody living in an area in which operations that constitute a threat to the state of Israel are being carried out.[449] Gaza Strip citizens were added to the list following a cabinet decision in June 2008. This law was intended to be a temporary order, yet the Knesset renewed it, essentiality using the "war on terror" and the need to control internal violent attacks in order to validate the extension.[450] The UN Human Rights Committee questioned the Citizenship and Entry into Israel Law (Temporary Order)[451] and recommended it to be revoked, stating that it would 'review its policy with a view to facilitating family reunifications of all citizens and permanent residents without discrimination'.[452]

In 'Families Divided: An Analysis of Israel's Citizenship and Entry into Israel Law',[453] Bethany Nikfar articulated the argument that the court should determine the abuses caused by this law:

> Israel's High Court of Justice should strike down the Citizenship and Entry into Israel Law as a violation of its Basic Law and a contravention of several international human rights treaties. The law discriminates on the basis of birth nationality, and the measure increases the hardships faced by Palestinians. While Israel's security concerns cannot be underestimated or minimised, security provides a weak excuse for this law, which, at its heart, aims to

[446] Ibid.
[447] Ibid.
[448] The Nationality and Entry into Israel Law (Amendment), 21 March 2007.
[449] The decision falling under the responsibilities of the security service; HCJ 830/07, Tabeli et al. v. the Minister of the Interior et al., demanding the cancellation of the extension of the Nationality and Entry into Israel Law (Temporary Order), 2003, remain pending.
[450] HCJ 830/07, Tabeli et al. v. the Minister of the Interior et al., demanding the cancellation of the extension of the Nationality and Entry into Israel Law (Temporary Order), 2003, remain pending.
[451] The Nationality and Entry into Israel Law, 31 July 2003.
[452] UN Committee of the Human Rights Committee, Israel, Concluding Observations CCPR/C/ISR/CO/3, 29 July 2010, para. 15; UN Committee on the Elimination of Racial Discrimination (CERD), Israel, Concluding Observations ,14 June 2007, CERD/C/ISR/CO/13, para. 20, and CERD's special decisions of 2003 (Decision 2/63) and 2004 (Decision 2/65); UN Committee of the Committee on the Elimination of Discrimination against Women (CEDAW)-Israel, Concluding Comments, 22 July 2005, CEDAW/C/ISR/CO/3, para. 33.
[453]Bethany M.Nikfar, 'Families Divided: An Analysis of Israel's Citizenship and Entry into Israel Law' [2005] Northwestern Journal of International Human Rights 3, issue 1, article 5, 19

> undermine the population of Arabs in Israel. Furthermore, the measure stokes anti-Israeli sentiment among Arabs across the region. Such resentment will only increase Israel's present and future security risk. In […] this era of global interconnectedness, such a risk may have a domino effect as the United States' ties to and backing of Israeli policy foment even more resentment by an oppressed people.[454]

The Knesset enacted another law with a discriminatory nature in 2011, the Citizenship Law (Amendment No. 10) 57771,[455] which authorised the Ministry of the Interior to revoke the citizenship of any person convicted of an invasive act of terror. The act stipulated that:

> 1A. (A) If a person is convicted of an offence and the court determines that the offence is an act of terror as defined in the Prohibition of Financing Terror Law (2005)[456] or is convicted under sections (97) treason; (98) espionage; (99) assisting the enemy in time of war; (112) violating state sovereignty; (according to 113(B)) serving in enemy forces of the Penal Code).

On October 26th 2010, Adalah, a legal centre for Arab minority rights in Israel (hereafter, Adalah), addressed the Chair of the Knesset's Internal Affairs and Environment Committee to oppose the proposed law[457]. Adalah argued that the lawful path to deal with such alleged crimes was the criminal law, proposing that the citizenship of the Palestinian Arab citizens in Israel targeted in this law was rendered conditional.[458]

3.5.4. Education

Education in Israel is operated as a two-tier system, with Palestinian Arabs in separate institutions from primary to the high school level. In accordance with the State Education Law (1953)[459] amended in 2000, the law defines the institutional setup of the public educational system in Israel, as well as its goals and objectives. However, these regulations are couched in Jewish terms and are only for Jewish

[454] Ibid.
[455] Enacted by the Knesset on 22 Adar Bet 5771 (28 March 2011); the legislative proposal and explanations were published in Knesset Bills - 366, on 27 Shvat, 5771 (1 February 2011): 73. 1 Book of Laws 5737: 226; 5771: 80.
[456] The Prohibition of Financing Terror Law (2005), introduced on 3 May 2010, legislative bill no. 2366/18.
[457] Adalah, a legal centre for Arab minority rights in Israel, is a local human right NGO located in Haifa, Israel, concentrating on topics related to the Palestinians Arab citizens in Israel.
[458] Adalah, a legal centre for Arab minority rights in Israel, 'New Discriminatory Laws and bills in Israel', issued June 2011, updated October 2012.
[459] 7 Laws of the State of Israel, 5713-1952/53, (LSI) 113.

students, with a focus on two dimensions of Jewish education systems - state secular and state religious. According to article 2 of the State Education Law, the objective of education is to preserve the Jewish nature of the state by teaching its history, culture, language and national heritage that solely relate to the Jewish narrative, excluding the Palestinian experience. Article 2(11) acknowledges the cultural and linguistic needs of the Palestinian Arab citizens in Israel. These were not fulfilled, despite additional recognition of the "non-Jewish" education in article 4 of the State Educational Law, which stipulated that 'in non-Jewish educational institutions, the curriculum shall be adapted to the special conditions'.[460] Consequently, all aspects of the non-Jewish educational system are completely determined by the Ministry of Education.[461] The Israeli government has largely not provided equal funding or facilities to the two sectors, and discrimination is prevalent in pre-school and special education. According to official data released as recently as late 2004:

> the Israeli government continues to allocate less money per head for Palestinian Arab children than it does for Jewish children. Arab schools are still overcrowded, understaffed, and sometimes unavailable. On average, they offer far fewer facilities and educational opportunities than those offered to other Israeli children. The greatest inequalities are found in kindergartens for three- and four-year olds and in special education.[462]

The gap between Jewish and Arab pre-school children is significant, as the rate of attendance amongst Jewish children is between 10-15% higher in comparison with Arab children of the same age group.[463] Arab students are under-represented in higher education. For instance, in the academic year 2006-2007, Arab students comprised of just about 3.8%, while an examination of Jewish students in higher education indicated a figure of 9.1%[464] of all students. As a result of poor performance in the final governmental high school exams known as "the Bagrut" in Israel, this statistic reflects the fact that they did not receive acceptance to the university at a rate that is reflective of their 20 percent portion of the total population.

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[460] Ibid.
[461] Yousef T. Jabareen, 'Law and Education Critical Perspectives on Arab Palestinian Education in Israel' American Behavioural Scientist 49 (2006): 1052-1074.
[462] Zama Coursen-Neff, 'Discrimination Against Palestinian Arab Children in the Israeli Education System', International Law and Politics 36, (2004):101-62.
[463] See 'Inequality of Opportunity in Early Childhood Education: The case of 3-and 4-year old Palestinian Arab Children in Israel', Adalah Position Paper (May 2015) <http://www.adalah.org/uploads/Position-Paper-Early-Childhood-Education-Eng-May-2015.pdf> accessed 20 April 2016
[464] Central Bureau of Statistics (CBS), 'Abstract of Israel' (2008) 59, Table 8.47.

Arabs make up 11.2% of all undergraduates; while postgraduates account for 6.1% and those studying for a third degree and doctoral studies fall to an average of 3.5%.[465] Furthermore, the number of Palestinian Arab minority employees in Israeli academia is minimal, making up only 1.2% of all tenured positions and receiving approximately 50% lower salaries without tenure posts.[466] Arab women are noticeably under-represented in higher education: no Arab woman held the post of professor by the Higher Education Council until the first appointment in 2008.[467]

Despite the fact that the Arab students study in their mother tongue, the curriculum was similar to Jewish schools until 2007, when the government accepted the use of an exclusive history book in Arab Israeli schools, approving the Palestinian historical narrative in the curriculum, which was reflected in a textbook. However, the change in historical narrative in the curriculum did not last due to a regime change in Israel that led to a radical right-wing administration in 2009, which changed the curriculum according to the publication of *The Government of Israel Believes in Education* report. This report illustrated that the objective of the Israeli education system was to maintain Judaism and Zionism by deepening and strengthening their connection through highlighting the historical achievements of leaders and role models. It also enhanced Zionism, Israeli identity and ethical values by assigning extra teaching hours to learn the "Tikva", the Israeli national anthem, and by promoting both national civic service and military service. Additionally, the term "Nakba" was ordered to be removed from the Arabic textbooks.[468] Since 2009, the Knesset has continued this policy, and in 2011, it enacted an amendment to the State Budget Law (1985) referred to it as the "Nakba Law".[469] This law prohibits all bodies that receive state funding from spending money on any activity that, inter alia, 'Commemorates Independence Day or the day of the establishment of the state as a day of

[465] Central Bureau of Statistics (CBS), 'Abstract of Israel' (2008) 59, Table 8.52.
[466] Adel Manna (ed.), 'Chapter IV: Education and Higher Education', Yearbook of Arab Society in Israel (2) (Van Leer Jerusalem Institute 2008) [Hebrew].
[467] 'Israel's Fifth Periodic Report to the UN Committee on the Elimination of Discrimination against Women', CEDAW/C/ISR/5, 21 October 2009:161, para. 374.
[468] Gido'n Saar, 'The Government of Israel Believes in Education' (August 2009) <http://meyda.education.gov.il/files/owl/hebrew/alsederhayom/education_presentation_final_opt.pdf> accessed 20 March 2016 [Hebrew]:
[469] Book of Laws 5745, 15; 5771, 195.

mourning'.[470] The Supreme Court of Justice dealt with cases of discrimination against the Palestinian Arab citizens of Israel. On various occasions, the court has delivered favourable decisions approving inequality and illegal discrimination. In practice, however, the state has not implemented them. One example is a High Follow-up *Committee for Arab Citizens of Israel v. Prime Minister of Israel*[471], this petition challenged specific government decisions, such 'national priority' and government Decision No. 228, which includes only four Arab communities. These decisions specified a list of communities and principles privileging the Jewish citizens. In the petition, Adalah highlighted discrimination against Palestinian Arab citizens in the field of education. The Supreme Court, in a precedent-setting decision, nullified the government decision because it was unlawful on the grounds of discriminating against Arab towns and villages. Secondly, the government had not granted authority to regulate national priority areas, such as broad budgeting requiring formalisation and establishment in law by the Knesset.[472]Another example may be found in the *Abu Sheibleh v. the Ministry of Education judgment*,[473] the Supreme Court considered the petition created by Adalah representing parents of Arab Bedouin students and other residents. It sought the establishment a high school in a newly recognised village in Naqab/Negev, Abu Tlul, provided the fact that students needed to travel a long distance to reach the nearest high school, which in turn, led to high drop-out rates[474]. In 2007, the Supreme Court confirmed the state's obligation and responsibility to open a school in Naqab, although the state authorities delayed its implementation through planning procedures. This obligation has not been fulfilled to date.

[470] Article 3B(a)(1) of the State Budget Law, Amendment: Prohibited Expenses (2009), legislative bill no. 18/1403. The Knesset passed the bill on first reading in March 2010; Book of Laws 5745, 15; 5771, 195.
[471] HCJ 11163/03, High Follow-up committee for the Arab Citizen of Israel v. prime Minister of Israel, decision delivered 27 February 2006.
[472] Expanded seven-justice panel; HCJ 11163/03, High Follow-up committee for the Arab Citizen in Israel v. Minister of Israel, decision delivered 27 February 2006.
[473] HCJ 2848/05, Abu Sheibleh v. the Ministry of Education, decision issued 23 January 2007.
[474] The drop-out rate is particularly alarming among the Arab Bedouin in the Naqab, at approximately 70% overall; See H el-Sana and A Asif, The Arab Bedouin Population in the Naqab: Economics and Employment (The Naqab Institute for Peace and Development Strategies 2007).

3.5.5. Political Participation

When dealing with the decision-making processes and centralisation of powers, there is limited access available to Palestinian Arab citizens, whose marginalisation from the political domain is embedded in the Israeli landscape. Since the establishment of the State of Israel in 1948, Arab parties have never been part of a ruling government coalition. On March 18th 2014, the Knesset passed the Governance Law (2014), raising the electoral threshold from 2% to 3.25% of total valid votes. This is only one example of how the Knesset enacts laws that effectively limit the political participation of the Palestinian Arabs citizens of Israel.

In the March 2015 elections, Palestinian Arabs held just over 13% of seats in Parliament,[475]even after the unification of the four Arab parties, Al-Jabha/Hadash (joint Jewish-Arab party),[476] Raám-Taál,[477] Alarabya Liltagyer and Tajammoua.[478] Currently, of the 120 seats in the Knesset, Arab members have held 16 (2 women and 14 fourteen men). This was a consequence of the Governance Law (2014) that imposes a limitation on the minimum percentage of votes that each party is meant to collect in order to get nomination approval to receive membership in the Knesset. This was suggested in order to constrain the Arab/Palestinian parties from receiving the minimal votes necessary to be represented in the Knesset.[479]

Further narrowing of political participation can be found under section 7(A) of the 1985 amendment to the Basic Law - The Knesset (1985), Prevention of Participation in Election. In accordance with its provisions, the Central Election Committee can prevent a candidate or political party from running in an election if it is determined that the candidate either has denied the existence of Israel as a Jewish and/or

[475] Only 13% of the seats, despite the fact that Palestinian Arabs citizen of Israel constitute more than 20% of the population, excluding East Jerusalem and Golan Height residents.
[476] Democratic Front for Peace and Equality, the largest parliamentary political party in the Arab community in Israel; the vast majority of its members are Arab.
[477] The United Arab List and the Arab Movement for Change.
[478] National Democratic Assembly.
[479] In the former election, 11 Arab members sat in the Knesset, with just one women member, Haneen Zoabi, the first Arab women to serve in the Knesset on behalf of an Arab political party. Previously, two Arab women had been elected, but as members of Jewish parties - Hussniya Jabara, as a Meretz member, and Nadia Hilou, as a representative of the Labour Party; 'Knesset Members by Parliamentary Group' <https://www.knesset.gov.il/description/eng/eng_work_sia.htm> accessed 15 March 2016.

democratic state. Section 7(A) of the 1985 amendment to the Basic Law - The Knesset (1985), articulated that:

> A list of candidates who shall not participate in the elections for the Knesset if its aims or actions, expressly or by implication, point to one following:
> (1) Denial of the existence of the State of Israel as the state of the Jewish people.
> (2) Denial of the democratic nature of the states.
> (3) Incitement to racism.

In addition, amendment 12 in 2002 to Amendment no. 35 of the Law of Political Parties (1992) reformed article 7(A) (1) notes that a party's desire to run for election will not be accepted if its goals or actions directly or indirectly offer '[s]upport for armed struggle by a hostile state or a terrorist organisation against the State of Israel'.[480]

The Knesset enacted an amendment to the Basic Law: The Knesset (Candidate who has Visited a Hostile State Illegally), on June 20th 2008, covering any candidate who visited an "enemy" state, including Iraq, Iran, Syria and Lebanon, during the seven years preceding the date of submission to the list of candidates. The amendment was preceded by an order for the Extension of Validity of Emergency Regulations (Foreign Travel) (1948) (Amendment 7) (2002), which removed the exemption from members of the Knesset being able to travel lawfully to "enemy states".[481] This amendment may violate a basic constitutional right to be elected but, most likely, applies to Arab members of the Knesset. Attempts were made by the Attorney General to disqualify Arab candidacies by means of section 7(A) of a 1985 amendment to the 1985 Basic Law: The Knesset, the Prevention of Participation in the Elections and Arab Lists. In a counter-argument, lawyers requested that the motions be rejected on the grounds of a lack of factual basis by relying on inaccurate media reports. Therefore, the Arab members were permitted to run in the election.[482]

Any of these laws may disqualify candidates and candidate lists. Although these articles formally apply to all Knesset members, in reality, these discriminatory bills

[480] Law and Political Parties (1992), amendment 12 (2002), article 5.
[481] This amendment resulted in some Arab Knesset members visiting Arab states, but the law does not apply retroactively.
[482] Election Appeal 131/03, Balad-The National Democratic Assembly v. Central Elections Committee; election confirmation 50/03, Central Elections Committee v. Azmi Bishara; election confirmation 11280/02, Central Elections Committee v. Ahmed Tibi; election appeal HCJ 561/09, National Democratic Assembly and United Arab List and Arab Movement for Change v. The Central Elections Committee and the Attorney General.

and laws target Arab members and undermine their ability to participate freely in political life by shrinking the open space for political action among Israel's Palestinian Arab citizens. This is reflected in the punitive measures that the Knesset and the Attorney General undertake against Arab members.[483]

Additional inequality in the decision-making process includes the judicial system and civil service system. The minimal representation of Palestinian Arab citizens is another issue. Since Israel was established, only one Supreme Court judge has been an Arab. Currently, just one of 15 Supreme Court justices is an Arab and no Arab women yet served on the Supreme Court. Arab judges at district court level make up 7 of 143 (4.9%); in the magistrates' courts, this figure is 29 of 373 or about 7.7%. In the labour court, the figure is 2 out of 55 (3.6%).[484] This minimal representation is notable, as it poorly reflects on the credibility of the judicial system in the State of Israel, where the majority of Palestinian minority citizens have no faith in the judicial system.[485]

3.5.6. Arabic Language

Arabic is considered an official language, according to the Palestinian Order-in-Council (1922), adopted by the Israeli legislature in article 15B of the Law and Government Ordinance (1948).[486] Numerous government statutes and regulations later secured the official status of Arabic. In practice, however, it is different; Lambert has argued that Arabic language holds secondary status, as he states:

> Arabic in Israel is a unique case. It was the main language of the area until the establishment of the State of Israel, after which, because of the changing

[483] Adalah Briefing Paper, 'Restrictions on Human Rights Organizations and the Legitimate Activities of Arab Political leaders in Israel', Submitted to the European Parliament, Committee on Foreign Affairs, Sub-Committee on Human Rights in advance of its hearing on 'The Situation of NGOs and civil society in Israel' (23 June 2010) <http://www.adalah.org/uploads/oldfiles/newsletter/eng/jun10/docs/bp.pdf> accessed 20 April 2016; see court cases, for instance: HCJ 5754/10, Member of the Knesset Mohammed Barakeh v. Tel Aviv Magistrate Court et al., and HCJ 8148/10, Member of the Knesset Zoabi v. the Knesset.

[484] Sikkuy, 'Representation of Arab Citizen in the Justice System in Israel' (2008) <http://www.sikkuy.org.il/doc/courts2008.doc> accessed 1 March 2016 [Hebrew].

[485] Sammy Samooha, 'Index of Jewish-Arab Relations in Israel-2009: The Lost Decade of Arab-Jewish Relations in Israel (The University of Haifa 2010) 9 [Hebrew].

[486] The Palestinian Order-in-Council (1922) was adopted by the Israeli legislature in article 15B of the Law and Government Ordinance (1948) and states that Arabic and Hebrew are the two official languages in Israel after also eliminating English as an official language, as stated in article 82 of the Palestinian Order in Council (1922).

> political circumstances, it became a secondary language. Despite Arabic being legally recognised as an official language in Israel, it is not a competing partner in a dyadic bilingual state, according to the classification posited.[487]

The Supreme Court decision in *Adalah et al. v. the Municipality of Tel Aviv-Jaffa*[488] ruled positively to maintain Arabic as an official language by accepting the appeal of Adalah and the Association for Civil Rights to oblige municipalities in mixed Arab-Jewish cities to add Arabic to traffic and warning signs in areas under their jurisdiction. However, contrary to the judgment, the transport minister decided to change the names of all road signs in Israel to Hebrew, and furthermore, decided not to use the original Arabic name of cities and towns. De facto, this decision vacated the judgment, as it does not involve using the historic Arabic name. For instance, Jerusalem would be "Yerushalayim" (יְרוּשָׁלַיִם as it is called in Hebrew), not "Al-Quds" (القدس), as it is called in Arabic. In other words, the implementation of the judgment by the authorities creatively diverted the court's decision from the actual stature of the Arabic language as one of the official languages of the state, thereby violating its responsibility to maintain Arabic.

Arabic speakers in Israel have little opportunity to use their native language after completing primary and secondary school, unless within their tier community or private sphere. Hebrew is the practical language to use, in addition to its status as the main language in the higher education system and in most professional workplaces and public institutions. In general, the language practices in the State of Israel today are as follows:

> Most Israelis understand and speak Hebrew. The exceptions are older Arabs and recent immigrants, and of course the tourists and foreign workers. Most Israeli Palestinian Arabs speak Arabic as their first language and use it at home and in their towns and villages, but they use Hebrew at work and in other settings. Recent immigrants still use their immigrant languages in the home and the immediate neighbourhood. Many longer-settled immigrants speak their own languages occasionally in homes and the community settings. Code switching is common among all the groups. Among Haredi (ultra-Orthodox) Jews, Hasidim (members of sects, created originally in the late eighteenth century in Eastern Europe, who from tight enclaves around a prestigious religious leader or Rebbe) especially but also some Ashkenazim

[487] Richard D. Lambert, 'A Scaffolding for Language Policy', International Journal of the Sociology of Language 137, no. 1 (1999): 3-26.
[488] See also the Supreme Court's decision in HJC 4112/99, Adalah et al. v. the Municipality of Tel Aviv-Jaffa et al., delivered on 25 July 2002.

> (Jews from Germany and Poland and their descendants) continue to use Yiddish in education and other settings. Tourists and foreign workers use their own languages and when they cannot use them or Hebrew, try English as a substitute. Most government business and economic life is conducted in Hebrew, except in some localities. Most schooling is conducted in Hebrew. The two exceptions are the Israeli schools in the Arab sector which use Arabic and the Hasidic Haredi schools, which encourage their pupils to switch from Hebrew to Yiddish.[489]

3.5.7. Employment

Under the Equal Opportunities in Employment Law 5748 (1983), discrimination in employment is prohibited with respect to job hunters. The law states:

> Prohibition of discrimination.
> 2. (a) An employer shall not discriminate among his employees or among persons seeking employment on account of their sex, sexual tendencies, personal status or because of their age, race, religion, nationality, country of origin, views, party or duration of reserve service, within the meaning thereof under the Defence Service (Consolidated Version) Law 5746-1986, in any of the following:
> (1) Acceptance for employment;
> (2) Terms of employment;
> (3) Advancement in employment;
> (4) Vocational training or supplementary vocational training;
> (5) Dismissal or severance pay.
> (6) Benefits and payments for employees in connection with their retirement from employment.
> (b) For the purposes of subsection (a), the making of irrelevant conditions shall be regarded as discrimination. (c) Differential treatment necessitated by the character or nature of the assignment or post shall not be regarded as discrimination under this section. [490]

To the contrary, in an evaluation from an unemployment report provided by the Israeli Industry, Trade and Labour Ministry in 2008,[491] it indicates that the rate of unemployment amongst Palestinian Arab citizens is 10.8%, in comparison with 6.8% amongst Jews.[492] Five percentage points is the gap between the unemployment rate of Israeli and Palestinian Arab men, while a highly significant gap is seen in the employment rate of Jewish women (70%) versus that of Palestinian women citizens

[489] Bernard Spolsky and Shohamy Elana, 'Language in Israeli Society and Education' [1998] International Journal of the Sociology of Language 137, no. 1, 93-114.
[490] This law came into force on 14 Nisan, 5748 (1 April 1988).
[491] U.N. Committee on Economic, Social and Cultural Rights (CESCR), July Conclusion observations, Israel (12, July 2010), E/C.12/ISR/3, para 30-32; for more details, check Table 3: percentage of employees engaged in selected industries, 2008, CBS, Statistic Abstract of Israel in 2008, No. 59.
[492] In 2007, overall unemployment in Israel was 7.3%.

(20%).[493] The highest unemployment rates are found in 36 Arab towns.[494] Moreover, Arabic women need on average 64 weeks to search for a new job, while the average search time for a new job amongst Jewish women is 31 weeks.[495]

Several elements affect workplace opportunity distribution, one of which is military service.[496] A relevant example of the barriers and conditions that exclude Israel's Palestinian Arabs occurred in 2009. The Israeli Railway Company (IRC), which employs railway guards, concluded a new agreement according to which only those who have served in the Israeli military can be hired for these positions. As the vast majority of Palestinian citizens of Israel are exempt from military service, this decision discriminates against them. More than 130 Arab citizens are currently employed as railway guards and this decision threatens all of their jobs and prevents them from being employed as railway guards in future. Adalah, Tel Aviv University Human Rights Clinic and Sawt el-Amel took a case to the Tel Aviv Regional Labour Court challenging this agreement on the grounds of a violation of equality. They argued that this work was civic in type and that using military service as a criterion would effectively exclude Palestinians Arab citizens. In September 2009, the Court

[493] IMF recent study. International Monetary Fund, IMF Country Report Israel, No. 15/261, 2015 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for Israel (September 2015), accessed 15 April 2016

[494] Shimon Shamir, 'The Arabs in Israel-Two Years after the Or Commission Report', Konard Adenauer Program for Jewish-Arab Cooperation 2006.

[495] The Ministry of Industry, The Status of Employment of Arab Women between the Ages of 18-65 in 2006 (Trade and Labour 2008) [Hebrew].

[496] For historical and political reasons, the Palestinian Arab citizen in Israel are exempt from obligatory military service in the Israeli Defence Force. However, the males of the Bedouin and Druze community are an exception, according to an agreement the Druze religious leaders and the State of Israel signed in 1956. Additionally, the Orthodox Jewish also do not serve in the Israeli Defence Force out of religious conviction. The Minister of Economy and Labour had previously eliminated obligatory military service. As conditional acceptance criterion for employment disregarded skills linked with the nature of the jobs or the service, such inclusion for military service seems to be neutral. In practice, however, it is inherently discriminatory towards the Palestinian Arab citizens in Israel regarding employment opportunities. On 16 June 2013, the Ministerial Committee on Legislation approved the proposed sections to the state bill, which institutes preferential treatment for citizens who contribute to the state (i.e. serving in the military or the civil service), including preference in recruitment, salaries and in receiving services such as student housing, higher education and allocation of land for housing. The bill states that such preferential treatment shall not be considered discrimination as prohibited by Israeli law. The bill also includes consequential amendments to other laws designed to fulfil the purpose of this bill, including preference in civil service jobs that are currently open to different populations, such as minorities. A softened version was drafted as result of violation of the Basic Law on Human Rights Dignity and Freedom (1992). See Talya Steiner and Modechai Kremintzer, 'The Contributors to the State Bill: Contributing to the Jewish-Arab Divide' Israel Democracy Institute, Op-Ed in Maarev (29 October 2013) <http://en.idi.org.il/analysis/articles/the-contributors-to-the-state-bill-contributing-to-the-jewish-arab-divide/> accessed 12 April 2016. This warns that the veterans' benefit bill under consideration by the Knesset, which ostensibly is intended to extend benefits to those who have contributed to the State, discriminates against Israel's Arab citizens, who are exempt from military service.

issued a temporary injunction preventing the IRC from dismissing the 130 Arab employees for not having performed military service. Following a further hearing in February 2010, the IRC withdrew its appeal and cancelled these provisions.[497]

In the public sector, Palestinians comprise approximately 6% of all civil service employees, among which only 2% are Arab women.[498] The state endeavoured to increase this representation in the civil service under the 2000 Amendments to the Civil Service Law (Appointments) (1959), which requires fair representation in the civil service and all ministries, with reference to both sexes and the Arab population, including Druze and Circassian.[499] To date, the law has not been successful. For instance, less than 1% of Palestinian citizens that live in Naqab are civil service employees. This was an attempt to reach internal public institution quotas for the 10% representation target by 2010, which were made by several governments decisions.[500] The 2000 Amendment to the Government Corporation Law (1975) requires fair representation of the Arab population in higher-level positions, such as directors, boards of governors and corporations. The present rate of representation is minimal in comparison to the Arab community percentage.[501] The situation has not improved despite serious questions being asked about the implementation of the amendment.[502]

One underlying issue related to unemployment amongst Palestinians is lack of state support to improve infrastructure, for instance, suitable industrial zones in Arabic towns and villages. Scarcely 2.4% of all industrial zones in the state are situated in

[497] Labour Lawsuit 4962/09, Abdullah Tayeh v. the Israel Railway Company.
[498] The Civil Service Commission, Suitable Representation for the Arab Minority, including the Druze and Circassians in the Civil Service (Civil Service 2006) [Hebrew].
[499] Ali Hedar, 'The Arab Citizens in the Civil Service', Sikkuy Report, Equality and the Integration of the Arab Citizens of Israel, 2000-2001, citing an April 2001 report of the Governmental Companies Authority.
[500] Decision 1832 of 29 April 2004; Government Decision 414 of 15 August 2006; Government Decision 2579 of 11 November 2007; and Government Decision 4437 of 25 January 2009. See the Third Periodic Report of the State of Israel to the UN Human Rights Committee, CCPR/C/ISR/3, 21 November 2008.
[501] Data sent by the Authority for Governmental Corporations to Sikkuy-The Association for the Advancement of Civil Equality in Israel, dated 6 July 2009. As of 6 July 2009, Jewish men accounted for 54.3% of the sitting board members of governmental corporations, Jewish women 37.6%, Arab men 5.2% and Arab women 2.7%.
[502] 'The Negev Coexistence Forum for Civil Equality, The International Day Against Racism, 21 March 2010, the Situation of the Arab Villages in the Negev, March 2010' (March 2010), <http://www.dukium.org/user_uploads/pdfs/doh.pdf> 14 April 2016.

Arab towns and villages.[503] The budget for 2008 distributed 215 million NIS for developing industrial zones, of which only 10 million NIS was allocated to Arab towns and villages.[504] There is evidence of a serious shortage of government-funded entrepreneur initiatives.[505] This de-linking of Arab towns and villages and central cities is due to the absence of frequent adequate public transportation. This causes difficulty in reaching workplaces, particularly in that Palestinian Arabs often need to commute long distances. A research at the University of Haifa illustrates that the gap that was created as a result of the lack of public transportation in the Arab towns and villages, as shown below:

> Since the establishment of the state the Arab sector has suffered from a low level of public transport services. The reasons for this are many and varied, but probably indicate a double-standard toward the Arab sector in general, which is probably also the main reason for discrimination in transportation.[506]

These factors have contributed to an increasing poverty rate among Palestinian Arab citizens of Israel, which is much higher than the rest of the population. The rate of poverty amongst them was 50.9% in 2003;[507] this rate is not stable and had increased since 2003 by 6%.[508] The situation is even worse in the unrecognised villages situated mostly in Naqab, located in southern Israel. They lack basic living standards such as electricity and a water supply. There are many seminal works that unpack the definition of unrecognised villages - the unique cases and legal statutes, and the legal complexity of the status beyond the scope of this section.[509] Although a detailed look

[503] One industrial zone in a Jewish area in Tzipporit Industrial zone is larger (about 6,000 dunams of land) than all the developed industrial zones in all Arab towns and villages; See Yosef Jabareen, 'The Employment of Arabs in Israel'. paper presented at the 18th Caesarea Forum (June 2010) <http://www.idi.org.il/sites/english/events/TheAnnualEconomicForum/Pages/EconomicConference2010.aspx 85> accessed 14 April 2016

[504] Mossawa, Centre, Arab Citizens' Share of the State Budget for 2008, Mossawa Centre 2008, [Hebrew].

[505] Meirav Arlosoroff, 'The Arab you don't know may be about to change the Market', Haaretz 2010.

[506] Yoram Asidon, 'A Gap of Accessibility and Mobility in Israeli Society, and the Social Implications of Change' (research report at the University of Haifa, Department of Nature and Environmental Resource Management, September 2004, [Hebrew].

[507] Compared to 19.3% for the whole population of Israel, IMF, International Monetary Fund, Annual Report 2012, 2.

[508] Compared to 1.2% for the whole population of Israel, IMF, International Monetary Fund Annual Report 2012, 7-8,

[509] The Regional Council for the Unrecognized Villages in the Naqab estimates that the number of villages that could be recognised based on tribal divisions on the ground today is 35;Shlomo Swirsky and Yael Hasson, 'Invisible Citizens;, 2006, p. 8; 'Get to know the Naqab - The Land of the Struggle for Survival', Regional Council for the Unrecognized Villages in the Naqab (n.d.) <http://rcuv.net/online/ar/ subject.asp?id=35> accessed 18 June 2016 [Arabic]; H el-Sana and A Asif,

at the situation in unrecognized villages is beyond the scope of this study and has been covered adequately elsewhere,[510] it is worth noting that all Palestinian Bedouin populated in Naqab, Southern Israel, were retroactively termed illegal, since 85% of the Naqab is labelled as "state land". Therefore, their villages do not exist within the official governmental planning. Accordingly, they are excluded from current plans and remain officially unrecognized villages (with a few exceptions). Since these villages are unrecognized, they do not receive public services and remain subject to demolition and appropriation into regional plans under Jewish Agency conditions. Additionally, the number of unrecognized villages is unknown as without official recognition for these villages, there are no official statistics on their populations. Estimations from NGOs and local activist groups estimate their populations at approximately 80,000 people living in these communities.[511] Not offering a solution to unemployment through distribution of funds or positive initiatives may be a violation of equality rights, undermining the potential of this community to improve its present status. The government has obligations toward these communities and something should be done to change the current situation by providing state funds in order to create and reshape the required development plans.

3.6. Conclusion

This chapter introduced the background of the Palestinian Israeli conflict. The various narratives were explained to assist with understanding the wide range of conflicting claims over the territory, and access to land. There are incompatible nationalist narratives on each side. Palestinians and Israelis both believe they have sole historical rights to the land of Palestine. These competing narratives are crucial to the underpinning of right to land, (to access, use or own land).

'The Arab Bedouin Population in Naqab: Economic and Employment' (The Naqab Institute for Peace and Development Strategies 2007).

[510] Unrecognized Villages of the Naqab, OHCHR, 'The Goldberg Opportunity: A Chance for Human Rights-based Statecraft in Israel the International Fact-finding Mission Solutions for Applying the Recommendations of the Commission for Regulating Bedouin Settlement in the Naqab/ Negev' 2010; Rodolfo Stavenhagen, Ahmad Amara, and Amara, 'International Law of Indigenous peoples and the Naqab Bedouin Arabs', Indigenous (In) Justice, (2012): 159.

Oren Yiftachel, Batya Roded, and Alexandre Sandy Kedar, 'Between rights and denials: Bedouin indignity in the Negev/Naqab', Environment and Planning A, (2016): 0308518X16653404.

[511] Exclusive housing and development to the Jewish citizens.

The focus was moved consecutively to illustrate the current situation of the Palestinian Arab citizens of Israel. The broad framework to examine the exclusion that the Palestinian citizen of Israel lives, contradict the obligation of equality that the democratic state owes its citizens (Israel toward the Arab Palestinian citizens). Hence, examination of various rights was essential, in order to draw a broader picture of their unique case, minority struggle, and limitations in practicing their basic human rights in the state of Israel. The context of the Palestinian citizens of Israel and the exclusion that they are facing in major socio economic fields, such discrimination and exclusion, marginalize their status and exclude them form the power centres within the state. This is linked with the context of land including control and access to land, the planning policies and other policies preventing the Palestinian citizens in Israel from accessing land. This was shaped by creating a new pattern to exclude the Palestinians from land such as Jewish agency, Israeli land that aim to maintain the demographic balance and land control areas among the majority Jewish citizens. Land in particular is a core instrument in the conflict, as it is historically, following the establishment of the State of Israel in 1948, prevented territorial continuity of Palestinians lands (villages or towns), while sustaining the developing of Jewish to motivate the Zionist ideology and empower Jewish citizens, which has been accepted and legitimized through the authorities. Therefore, the context of the status of the Palestinian Arabs within the State of Israel, which is characterized by a wide range of links between socio-economic, and political aspects lead to the exclusion. The situation is further complicated when the exclusion is linked with land and territory. This factor cannot be dismissed as it is influenced by the decision making institute that promotes the state building project ideology in order to maintain the land within the hands of Jewish population. This exclusion imposed on the Palestinian citizens of Israel prevails in several domains, for example in exclusion from equal education funds, enjoyment of native language practice, limitation on political participation, poverty within the Arab sector, and discrimination in employment opportunities.

Israeli decision makers have been motivated by dominant ideological and political norms, and therefore the conflict is not symmetric in land related issues. This reflects key governmental policies to support Jewish citizens and to marginalize the Palestinian Arabs citizens of Israel. This chapter has shown that the exclusion policies towards the Palestinian citizens of Israel aim to exclude them from the socio-

economic and political decision making institutions. Further, there is a discriminative framework that has been embedded in Israel's socio-legal landscape.

The following chapter addresses a concrete examination of the land regime and legal methods of land confiscation and transfer from Palestinian Arab citizens of Israel to the Israeli authorities or to Jewish individuals, focusing on the years after the establishment of the State of Israel, which were crucial in land control, including the relocation of land previously held by Arab Palestinians to Jews as a collective and as individuals. [512]

[512] Benny Morris, 'The Birth of the Palestinian Refugee Problem, 1947-1949', Cambridge: Cambridge University Press, 1987; Benny Morris, 'The Birth of the Palestinian Refugee Problem Revisited' Cambridge: Cambridge University Press, 2004; Arnon Golan, 'Wartime Spatial Changes: Former Arab Territories within the State of Israel, 1948-1950', Ben Gurion University Press, Beer-Shiva, 2001) [Hebrew].

Chapter 4: Towards Building the Present Land Regime in Israel
Legislation and Judicial Systems

We are not going to sell them anything back. We shall only sell to Jews, and all real estate will be traded among Jews.

Theodore Herzl[513]

State ownership in itself guarantees no human rights.

Noam Chomsky.[514]

4.1. Introduction

This chapter examines how the law and legal mechanisms were used to establish the current land regime in Israel. By displacing Palestinian Arabs, land ownership was rearranged by law to facilitate the transfer of land from Palestinian refugees and the Palestinian Arab population of Israel to Jewish organisations and state institutions, such as the Jewish National Fund.

The infrastructure that led to the establishment of the laws of Israel is partly adopted from Britain's previous colonial rule. This chapter traces the creation and evolution of land law, evaluates its implications, and demonstrates how the State of Israel has used the law to exercise control over land, and thereby shifted the balance of power towards the new Israeli population. Specifically, following the 1948 War, laws were passed that were designed to facilitate the transfer of lands previously under Palestinian Arab ownership to the newly established State of Israel. The transfer was gradually implemented using legal structures and methods that allowed the Israeli State to normalise the transfer of seized and expropriated Arab lands, as well as to optimise the results to achieve the state's goals.

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[513] Theodore Herzl, '68 Book The Complete Diaries of Theodore Herzl. Vol. I', Th. Huebener and C.H. Voss (1960): 88-9, 4.

[514] Noam Chomsky, 'Davis Uri, Andrew Mack, and Nira Yuval-Davis', Israel & the Palestinians', Ithaca Press for the Richardson Institute and the Issues Programme at the University of Bradford, (1975): 172, 384.

The legal methods that were used created a unique structure for the Israeli land regime. These techniques provided a legal pathway for acts carried out by state authorities and imposed a new, de facto reality, framing it within a legal mechanism that empowered the Jewish population and established it as the dominant group within the state. Understanding how the legal land regime in Israel was created and how it evolved is useful to assess the current Jewish domination of land in the State, as Alexandre Kedar argues:

> [The] Israeli legal system used procedural and evidentiary rules in ways that curtailed the chances of Arab landholders from retaining their lands. As a result, while Israeli rules of property were undergoing transformation that facilitated the acquisition of land from Arab landholders, the legal system bestowed upon this transformation an aura of inevitability and naturalness.[515]

4.2. Historical Overview

The legal resources of the Israeli land regime were rooted in the Ottoman and British colonial rule periods. For example, the Ottoman Land Code of 1858[516] was one of the cornerstones of the land system of Palestine and then Israel for over a century. The code defines five categories of land tenure: Mulk, Waqf, Miri, Mewat and Matrouka.[517] These categories are still relevant to regulate rights regarding land that has not undergone the 'settlement of title' process. The British colonial rule system remained, mostly unchanged, and the authority of "Settlement of Title" was assigned to the Israeli Minister of Justice. The district courts were responsible for arranging hearings and deciding any dispute according to the Land (Settlement of Title) Ordinance (Amendment) Law of 1960.[518] Hence, the 'settlement of title' process

[515] Alexandre Kedar, 'Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967', The NYUJ Int'l L & Pol. 33 (2000): 923, 938-39.
[516] Ottoman Land Code (1858), Shalom Cohen, 'Collection of Ottoman Laws', (Tutetrans, Vol 2, 1954) [Hebrew].
[517] Article 1, Ottoman Land Code (1858), Shalom Cohen, 'Collection of Ottoman Laws', (Tutetrans, Vol 2, 1954) [Hebrew]; Frederic Goadby and Moses Douchan, 'The Land Laws in the State of Israel 1952', Tel Aviv: Gaunt Shoshani Printing Co. reprinted Holmes Beach, 1998 by Guant, 1935; Jacques Kano,' The Problem of Land Between Jews and Arabs (1917-1990)', Tel Aviv: Sifriat Poalim Publishing House (1992) [Hebrew]; An Analysis of Definition of State Land, Palestinian Studies Vol 11, 1981; Aharon Ben Shemesh, 'The Land Laws in the State of Israel'Massadah (1953), 148 [Hebrew]; Kenneth W. Stein, 'Land Question in Palestine, 1917-1939', University of North Carolina Press vol. 12, Chapel Hill, 1984.
[518] The Land (Settlement of Title) Ordinance (Amendment) Law 1960; LSI Vol 14, 12.

became part of the guided state policy, operating the system to regulate rights and interests in land.

Furthermore, Israel adopted the Mandate Emergency Regulations into its laws, and according to section 11 of the Government and Law Arrangements Ordinance 1948, the British Government Mandate enacted the Defence Regulations (Emergency) 1945,[519] pursuant to section 6 of the 'King's Order-in-Council for Palestine (Defence)' 1937. The goal set out in section 6 was to 'assure the public safety, the defense of Palestine, to impose public order and repress uprising, rebellion and riots, and to assure the public necessities of life and vital services',[520] except for 'changes resulting from the establishment of the State or its authorities'.[521]

The majority of the Emergency Regulations were retained after the establishment of the State of Israel in 1948. Another example of the rooted use of these regulations was the use of 'military government rule' that was enforced on the Palestinian Arabs.[522] The emergency regulations were retained by the Israeli authorities from the British mandate rule with the, '… aim of repressing the Arab population and conducting policies of racial discrimination'.[523] The techniques employed included, for example, preventing Palestinian Arabs from returning to their towns and villages, demolishing their houses, expropriating their lands and suppressing the political activities.[524]

Following the termination of military government rule in 1966, the power to enforce the Emergency Regulations shifted from the army to the police and the General Security Service. The ability of the Defence Minister to declare the specific lands of a village or town as closed areas was a specific example of the use of Emergency Regulations as a tool to expropriate land. This meant closures and prohibitions that

[519] The Defense (Emergency) Regulations, 1945, Official Gazette No. 24.3.37, 286
[520] This section's goal was to suppress the great Palestinian revolt of 1936; Jiryis Sabri, 'The Arabs in Israel, 1973-79', Journal of Palestine Studies 8.4, 1979): 31-56.
[521] Amnon Rubinstein and Barak Medina, The Constitutional Law of the State of Israel, Shoken, 2005 [Hebrew].
[522] For more details about the military government rule until 1966, see chapter 3, Nur Masalha, 'Catastrophe remembered: Palestine, Israel and the internal refugees', Zed Books, 2005.
[523] Evelyn Tuma, 'The Roads of Struggle of Arab Masses in Israel', Acre, Dar Abu-Salma Press, (1982) [Arabic].
[524] The terminology used to describe Palestinians living in Israel is highly politicized. Amongst these are: Israeli Arab, Arab Israeli, Palestinians, Palestinians in Israel, Israeli Palestinians, the Palestinians of 1948, Palestinian Arabs, Palestinian Arab citizens of Israel or Palestinian citizens of Israel. For our purposes, the term used to describe Palestinian Arab citizens in Israel will be Palestinian Arabs.

affected the farmers and owners from accessing their land. Therefore, they were not be able to enter the land without permits, and permits were refused by the governor. This resulted in the land becoming 'uncultivated land'. The Minister of Agriculture would then seize the land as it was uncultivated, and transfer it to the Jewish settlement for their use.[525]

In order to trace the development of the land regime in Israel, sections 4.2.1, 4.2.2. and 4.2.3. examine the legal architecture that was developed around land from the Ottoman and British Mandate to the contemporary period. These sections show how the land regime was established and why some of the laws reflected the continuity between the colonial and postcolonial Israeli state, which are reflective of the colonial states' legacies. However, it is not an easy, direct, or linear continuity, and there have been important reasons to provide for situations of discontinuity in various periods as a result of changes in political agendas and policies over time. These are reflected in the use of these laws, defining land ownership from the colonial era, and have been changed since then, more in some area than others. A focus on land laws in concrete historical detail over time will provide a background, while analysing the forms, manifestations, and effects of control of land and transfer of land ownership to the State of Israel from the Palestinian Arabs ownership, besides the ruling laws to limit their access to land in the future.

4.2.1. Ottoman Period

During the mid-nineteenth century Ottoman rule in Palestine, land was an important source of income for the Ottoman Empire through the collection of taxes.[526] For this reason, the Ottoman authorities continued to reform the land system.[527] As part of such reforms, the Ottoman government enacted the Ottoman Land Code of 1858,[528] which was followed by the Civil Code "Mejille" of 1869. The main impact of these

[525] Section 125 of the Emergency Regulations grants the military commander of a specific area to issue an order to announce a closed area for certain places for security reasons; Hanna Nakkara, 'Lawyers of the Land and the People', Acre, Dar Alaswar, 1982, [Hebrew]

[526] Eliezer Malchi, 'The History of the Law of Eretz-Israel', (2nd ed. 1953) [Hebrew]; Jacques Kano, 'The Problem of Land Between Jews and Arabs', (1992) [Hebrew]

[527] Frederic Goadby and Moses Douchan, 'The Land Laws in the State of Israel 1952', Tel Aviv: Gaunt Shoshani Printing Co. reprinted Holmes Beach, 1998 by Guant, 1935; Jacques Kano,' The Problem of Land Between Jews and Arabs (1917-1990)' (1992) [Hebrew Land Between Jews and Arabs (1917-1990)', Tel Aviv: Sifriat Poalim Publishing House (1992) [Hebrew].

[528] This law would be the basis of the land regime during the British Mandate in Palestine with few modifications by the Israeli state up to 1969 when Israel enacted the Israeli Land Law.

reforms was that individual land rights were awarded, which provided protection for farmers and allowed the state to maintain centralised control of the land.[529] In reality, the reforms were ineffective due to a lack of maps and registered titled deeds.[530] Furthermore, the description of the borders of the land plots, and details of locations were verbal, inexact, and did not match the reality on the ground. Accordingly, the registration of land in the Ottoman land registry, the Tabu,[531] was inaccurate. Moreover, the farmers did not respect the registration system when they transferred land among themselves.[532] This was a mechanism to escape taxes and fees and to avoid the tracking young men for military service. This resulted in low registration of land in Palestine under the Ottoman regime and led less than five percent of the land to be registered at the end of this historical period.[533] Until 1917, the majority of land ownership rights were held by the Sultan, and it was his prerogative to award land rights to whomever he desired. Therefore, during Ottoman rule very little land in Palestine was held in full, formal ownership, which meant that very little land was privately owned in Palestine during the Ottoman period.[534]

As noted in section 4.2, the Ottoman Land Code of 1858 defines five land categories:[535] Mulk, Waqf, Miri, Mewat and Matrouka. Each of these categories was distinct:

> Thus, if we conceive of concentric circles with the village as the nucleus, the first circle around the nucleus would consist of lands, which are cultivated by the inhabitants, or Miri lands. This circle may be crisscrossed with radii representing the connecting roads, and the land comprising these would be Matrouka lands. Within this same circle there may be lands dedicated and turned into Waqf, and there may also be Mulk lands. If another larger circle is drawn, representing the distance from the nucleus from which a human voice cannot be heard, then all

[529] Bunton Martin, 'Demarcating the British colonial state: land settlement in the Palestine Jiftlik villages of Sajad and Qazaza', New Perspectives on Property and Land in the Middle East, Cambridge 121, 2000):121-158.
[530] Don Gavish, 'Land and Map: for land Settlement to Maps Eretz Israel 1920-1948', Mahbarot I' Mihkar u-I'Bekoret, (1992) [Hebrew].
[531] Tabu is the Ottoman land registry offices.
[532] An alternative unofficial registration system was created within the small communities in the Arab villages; unofficial social arrangements for land transfer were created by the community members as a result of the cohesiveness that characterised these small communities.
[533] Avraham Halleli, 'The Rights in Land: General-Historic Background of Evolution of Property in Israel', the Lands of Galilee, Haifa, (1983): 575-86 [Hebrew].
[534] For description of the Ottoman land system see Frederic Goadby and Moses Douchan, 'The Land Laws in the State of Israel 1952', Tel Aviv: Gaunt Shoshani Printing Co. reprinted Holmes Beach, 1998 by Guant, 1935; Jacques Kano,' The Problem of Land Between Jews and Arabs (1917-1990)', Tel Aviv: Sifriat Poalim Publishing House (1992) [Hebrew].
[535] Article 1, Ottoman Land Code (1858), Shalom Cohen, 'Collection of Ottoman Laws', (Tutetrans, 1954), Vol. 2 [Hebrew].

> the lands lying beyond the circumference of the circle would be lands falling into the category of Mewat; those within it would be Miri lands.[536]

Given that the Sultan owned most land, categorising land as a Mulk was rare, as it signalled full and absolute ownership rights to the land. Mulk is found in Palestine in built-up areas in the centre of towns and villages. Waqf property is under the control of religious trusts (Jewish, Islam and Christian) and is administered for the benefit of the community.[537] The most common land classifications in Palestine during the Ottoman Empire were Matrouka, Mewat and Miri. Within these three categories, the legal interest, Raqabie or ultimate ownership, remained in the hands of the Sultan responsible to the Ottoman authorities or the sovereign. Lands classified as Miri were located in populated areas in which rights to the land remained with the individual landholder, while ownership was held by the State.[538] This meant that rights were granted to individuals to use the land for agriculture, for its pastures or for its forests. If an individual had farmed the plot of land consistently for ten years, they would be eligible to request registration of the land in his/her name.[539] Article 78 of the Ottoman Land Code allows, '[a]nyone who held and cultivated State land for a period of ten years acquired the right to register that land in his or her name as Miri land'.[540] Additionally, rights in Miri can pass by inheritance, or be allocated to other individuals[541] through the fulfilment of certain rules. In practice, the authorities are mainly concerned with the benefits they gained from collecting taxes and fees, i.e. the financial interest and the ultimate reversion. This provides freedom to the individual landholder to transfer his land according to his interests and wishes.[542] Mewat, which exactly translates to 'dead', is unused or undeveloped land not owned by any individual, located at least one and a half miles[543] or half an hour's distance

[536] Raja Shehadi,'The Law of the Land, Jerusalem', PASSIA Palestinian Academic Society for the Study of International Affairs, (1993).
[537] This was part of the Millet system where the Shari'a (religious Islamic Court) had jurisdiction over the Waqf system. During the Israeli era, the system changed and the Shari'a Court lost this role as administrator, which led to the expropriation of most of the Waqf property.
[538] Leah Doughan-Landau, 'The Zionist Companies for the Land Purchase in Eretz Israel 1879-1914', Yad Izhak Ben-Zvi, Jerusalem, (1979): 13[Hebrew].
[539] Avraham Halleli, 'The Rights in Land: General-Historic Background of Evolution of Property in Israel', Artsot ha-Galeel, the Lands in Galilee, (1983):575-86. [Hebrew]
[540] Article 78 of the Ottoman Land Code
[541] This brought about an increase in the control of land by rich landholders who used the tenant farmers to work in the farms.
[542] Raja Shehadi, 'The Law of the Land', Jerusalem: PASSIA, Palestinian Academic Society for the Study of International Affairs, 1993.
[543] This is equivalent to 2.414 kilometres.

from inhabited places and populated areas. This vacant land is Khali[544] land, which includes rocky areas, mountains, stony fields, or any unused area close to a town or village, which has potential for development but has not yet been developed.[545] Dead land is defined as:

> Dead land meaning vacant land such as mountains rocky places, stony fields, pernalik[546] and grazing ground which is not in the possession of anyone by title-deed or assigned *ab antique*[547] to use of the inhabitants of town or village, and lies at such distance from towns and villages from which a human voice cannot be heard at the nearest inhabited place.[548]

According to the Land Code of 1858, article 103, the first individual who revives Mewat land earns the right to purchase it, even if the land was cultivated without obtaining permission. In such a case, the individual would purchase the Mewat land rights at the Tabu[549] value. The term for this is "Badal Methel", meaning the price of purchasing Mewat land rights, which reflects the value of the land before its designation as wasteland.[550] Therefore, a person can purchase this space as Miri land as follows:

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[544] Abraham Granot, 'The Land System in Palestine - History and Structure', M. Simon trans., Eyre & Spottiswoode, (1952): 92.

[545] Article 6 and Article 103, Ottoman Land Code 1858; according to the Mejelle, 'waste land [Mewat] was abandoned property, and any person could appropriate it'; Aharon Ben Shemesh,' The Land Laws in the State of Israel', (1953):148 [Hebrew].

[546] According to Note 1 (article 19) of the Ottoman Land code, 1858, 1927 definition of "Pernalik" is the land in which the holm oak grows.

[547] According to Aaron X. Fellmeth and Maurice Horwitz. 'Guide to Latin in international law', Oxford University Press, (2009), ab antiques mean, "From antiquity" Having been so since ancient times.

[548] Most uninhabited and uncultivated land was defined as 'mewat' (dead) land. According to Article 6 of the Ottoman Land Code, 'mewat' land was land that was located "at such a distance from a village or town from which a loud human voice cannot make itself heard at the nearest point where there are inhabited places. That is a mile and a half, or about half an hour's distance from such." Likewise, Article 103 defined mewat as "dead land … [meaning] vacant (khali) land, such as mountains, rocky places, stony fields, pernallik and grazing ground which is not in the possession of anyone by title-deed or assigned ab antique to the use of inhabitants of a town or village, and lies at such a distance from towns and villages from which a human voice cannot be heard at the nearest inhabited place". Taken from Alexandre Kedar, 'Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967', The NYUJ Int'l L & Pol. 33 (2000): 923, 938-939. This translation of the Ottoman Land Code is based Frederic Goadby and Moses Douchan, 'The Land Laws in the State of Israel 1952', Tel Aviv: Gaunt Shoshani Printing Co. reprinted Holmes Beach, 1998 by Guant, 1935; Jacques Kano,' The Problem of Land Between Jews and Arabs (1917-1990)', Tel Aviv: Sifriat Poalim Publishing House (1992) [Hebrew]; Bunton, Martin, 'Demarcating the British colonial state: land settlement in the Palestine Jiftlik villages of Sajad and Qazaza', New Perspectives on Property and Land in the Middle East, Cambridge 121,(2000): 121-58.

[549] Tabu refers to the Ottoman land registry offices.

[550] Article 103, Ottoman Land Code.

> Anyone who is in need of [Mewat] land can with the leave of the Official, plough it up gratuitously and cultivate it on the conditions that the legal ownership 'raqabe'[551] shall belong to the Treasury. If the person cultivates Mewat without authorization he should pay the Tabu value and shall be given a Tabu grant.[552]

The roots of this rule may lie in Islam:

> [t]he principle of 'reviving' the land is based on the proclamation of Mohammed the Prophet himself, that whoever opens up a plot of land which has no owners and settles there is at liberty to acquire it for himself.[553]

The third category is Matrouka land, which was allocated for public benefit, for example as streets, markets, and meadows.[554] This category reflected the rural lifestyle of village communities in Palestine during this period. Whilst Matrouka land was not sold to individuals, nor was it not officially in the ownership of the authorities, as it did not come under the definition of "public land" as defined in the Ottoman Land Code. According to the code, "public land" was strictly defined as being under the control of the government.[555] Therefore, ownership is defined according to the classification of the land, and primarily according to which use was assigned to it.[556] Despite attempts to organise the system, most of the lands were not formally registered by the end of Ottoman rule in Palestine. The failure to register lands during this period would have a significant impact going forward. This produced a future conflict over the rights on plots of land where the landownership was determined by registration of the deed or its lack of a deed in the Ottoman Tabu.[557] Additionally, the process was never successfully completed by the Ottoman

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[551] Raqabe is the legal ownership.

[552] Frederic Goadby and Moses Douchan, 'The Land Laws in the State of Israel 1952', Tel Aviv: Gaunt Shoshani Printing Co. reprinted Holmes Beach, 1998 by Guant, 1935; Jacques Kano,' The Problem of Land Between Jews and Arabs (1917-1990)', Tel Aviv: Sifriat Poalim Publishing House (1992) [Hebrew].

[553] Abraham Granot, 'The Land System in Palestine - History and Structure', M. Simon trans., Eyre & Spottiswoode (1952): 93; Samir M. Seikay, 'Land Tenure in 17th Century Palestine: The Evidence from the al-Fatwa al Khairiyya', Land Tenure and Social Transformation in the Middle East, (1984): 397, 403.

[554] Article 5, Ottoman Land Code.

[555]The government did not view Matrouka land as public land under its authority. Sami Hadawi, 'Palestinian rights and losses in 1948: a comprehensive study', Saqi Books, (1988):42 [Arabic].

[556] Article 5, Ottoman Land Code; Palestine Order in Council 1922 dealing with public lands; Frederic Goadby and Moses Douchan, 'The Land Laws in the State of Israel 1952', Tel Aviv: Gaunt Shoshani Printing Co. reprinted Holmes Beach, 1998 by Guant, 1935; Jacques Kano,' The Problem of Land Between Jews and Arabs (1917-1990)', Tel Aviv: Sifriat Poalim Publishing House (1992) [Hebrew]: 60.

[557] Tabu refers to the Ottoman land registry offices.

authorities, which caused ambiguity for future ownership claims and the registration system.

4.2.2. British Mandate Period

The British Mandate reorganised the Ottoman land classification system. This reorganisation, based on the preparation of maps, was an attempt to register lands by legal interest and title. However, as mentioned earlier, the lack of clarity in the Ottoman system caused misunderstanding, and the lack of a cadastral survey caused confusion within the registration system.[558] Therefore, the British Mandate decided to restructure the land system by creating an altogether new system in 1920, making the registration of any deal related to land obligatory. This system was implemented by the newly established Department of Lands in 1922, which had the goal to register all state-owned lands.[559] The registration aimed to reach settlement in regards to issues of land ownership based on:

> [the] examination of rights to land and the solution of disputes about the ownership, boundaries, category and other registerable rights in land, its cadastral survey for purpose, and eventual recording of the rights in land registers.[560]

The process of land registration and settlement of ownership was carried out from 1922 to 1946. During this period, approximately 35% of Palestine under the British Mandate was surveyed and the resultant maps were published in 1947.[561] Ownership of land was decided through a 'Settlement Title' according to the (Settlement of Title) Ordinance (1928).[562] The High Commissioner would make the declaration that a piece of land was under settlement review. Secondly, any claim in relation to land, such as ownership or any interest in the land, would be submitted to a Settlement Officer, who would investigate the claim, including a hearing of public evidence,

[558] Sally Engle Merry, 'Law and Colonialism', Law & Society Review, vol. 25 (1991),889, 912-915.
[559] Frederic Goadby and Moses Douchan, 'The Land Laws in the State of Israel 1952', Tel Aviv: Gaunt Shoshani Printing Co. reprinted Holmes Beach, 1998 by Guant, 1935; Jacques Kano,' The Problem of Land Between Jews and Arabs (1917-1990)', Tel Aviv: Sifriat Poalim Publishing House (1992) [Hebrew]: 299.
[560] Anglo-American Committee of Inquiry, 'A Survey of Palestine, prepared between December 1945-January 1946', Government Printer, vol. 1,(1946): 234.
[561] Don Gavish, 'Land Settlement during the Mandatory Period', The Redemption of the Land in Israel: Thought and Deed, Jerusalem (1990): 151-161.
[562] For more details, see, Forman, Geremy, 'Settlement of the Title in the Galilee; Dowson's Colonial Guiding Principles', Israel Studies 7.3 (2002): 61-83.

and give a decision in public.[563] Any remaining land that did not have an interest or claim over it would be registered as state land, regardless of whether or not the government had submitted a claim to the land in question. The British Mandate finalised a settlement of around five million dunams, which covered more than 20% of the land of Palestine under the British Mandate; these areas were designated "settlement areas" by the authorities.[564]

The British Mandate reform[565] was therefore an effort to regulate land ownership and create registration systems. Farmers required permission to cultivate land, unlike during the Ottoman period when they were given the right to land if they cultivated it for ten years (without requiring a permit to cultivate the land).[566] In contrast to the Ottoman period, any farmer reviving Mewat land without permission was considered a trespasser. If a farmer started reviving "broken" Mewat before the enactment of the ordinance, the farmer had to apply to the Land Registrar for a title deed within two months or would lose the right to farm. According to the Mewat Land Ordinance (1921), a farmer who revives Mewat land without obtaining permission is a trespasser and the authorities may be prosecuted in Court:

> Any Person who without obtaining the consent of the Administration breaks up or cultivates any waste land shall obtain no right to a title deed for such land, and, further, will be liable to be prosecuted for trespass. [567]

The procedure for the settlement of a title, associated with the (Settlement of Title) Ordinance (1928), included a judicial investigation of land rights for every parcel of land, and the founding of new registers that accurately exposed all the rights in

[563] The Settlement Officer had an administrative and judicial role, and could suggest queries to the court.
[564] Don Gavish, 'Land Settlement during the Mandatory Period', The Redemption of the Land in Israel: Thought and Deed, Jerusalem (1990): 151-161; Don Gavish, 'Land and Map: for land Settlement to Maps Eretz Israel 1920-1948', Mahbarot I'Mihkar I'Bikoret, (1992): 202 [Hebrew].
[565] Legal rights to specific parcels were decided by a quasi-legislative process.
[566] Frederic Goadby and Moses Douchan, 'The Land Laws in the State of Israel 1952', Tel Aviv: Gaunt Shoshani Printing Co. reprinted Holmes Beach, 1998 by Guant, 1935; Jacques Kano,' The Problem of Land Between Jews and Arabs (1917-1990)', Tel Aviv: Sifriat Poalim Publishing House (1992) [Hebrew]:46 [Hebrew].
[567] The Mewat Land Ordinance (1921), 38 I.R. 5 (1 March 1921). The Mahlul Land Ordinance (1920); Frederic Goadby and Moses Douchan, 'The Land Laws in the State of Israel 1952', Tel Aviv: Gaunt Shoshani Printing Co. reprinted Holmes Beach, 1998 by Guant, 1935; Jacques Kano,' The Problem of Land Between Jews and Arabs (1917-1990)', Tel Aviv: Sifriat Poalim Publishing House (1992) [Hebrew].

Palestine.[568] This process of restructuring "Settlement of Title" effectively erased practically all previously unregistered rights, as according to the "Settlement of a Title", a new registration began that cancelled any previous claim or right that contradicted the new registration.[569] Therefore, though the 'Settlement of Title' was not substantial, it provided more certainty in land ownership registration and became a useful foundation on which Israel could establish its land regime. By the end of the Mandate period, the British achieved a final settlement of approximately five million dunams (about one and a quarter million hectares), which constituted more than 20% of the territory of the Mandate of Palestine.[570]

4.3. Establishment of the Land Regime in the State of Israel

This section emphasises how the Israeli authorities adopted or replaced Ottoman and British Mandate laws and created their own legal regime in the early years after the establishment of the State of Israel, and examines the legal mechanisms that were used. The structure of the Land Law in particular had massive implications for the spatial control needed in the country after the territorial conflict following the 1948 War. This factor was dominant in the shaping of the legal land regime.

The legal sources of Israeli Land Law from 1949 until 1969 - which were based on Ottoman and British Mandate laws - were replaced with the single Land Law, enacted in 1969.[571] Article 2 stipulates that the owners of Mulk or Miri were entitled to register as land owners, whereas Matruka land came under the control of local authorities and was used for roads and open areas for the residents of a local area. The Ottoman land categories remained relevant because the land underwent the 'Settlement of Title' process.[572] The Land Law was therefore not greatly significant

[568] Don Gavish, 'Land Settlement during the Mandatory Period', The Redemption of the Land in Israel: Thought and Deed, Jerusalem (1990): 151-161; Don Gavish, 'Land and Map: for land Settlement to Maps Eretz Israel 1920-1948', Mahbarot I'Mihkar I'Bikoret, (1992): 202 [Hebrew].
[569] Ronen Shamir, 'Suspended in Space: Bedouins under the Law of Israel', Law and Society Review (1996): 231-57, 243-44.
[570] Alexandre Kedar, 'Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967', The NYUJ Int'l L & Pol. 33 (2000): 923, 938-939.
[571] LSI, 23, p 283; Yihshoa' Weismann, 'Land Law', Faculty of Law, Hebrew University, Jerusalem (1993) [Hebrew], General Section.
[572] Most of these settlements of title lands are located in southern Israel, in the Naqab, comprising approximately 1.1 million dunams, and possibly more.

for the Palestinian Arabs and their access to land, as the law dealt with privately owned land.[573]

After the establishment of Israel in 1948, sovereignty transferred from the Palestinian Arabs to the Jewish State as result of Israel winning the 1948 War.[574] Control over legal and registered land ownership, however, was a separate issue, despite the fact that at the end of the 1948 War, the land under the authority of Israel comprised 78% of historical Palestine and Mandatory Palestine (around 20.6 million dunams).[575] Jewish organisations and individuals officially owned only about 8.5% of the land overall. In addition, state lands formerly owned by the British Mandate authorities, comprised of approximately 13.5%.[576] This lack of harmony between the sovereign and the official ownership of lands concentrated the minds of the Israeli authorities, from their Zionist position, on the crucial need to resolve the discrepancy. This would focus the Israeli authorities' attention on the mechanism to transform land ownership, and resulted in a new approach by which state policy was promoted, as laws were passed that supported a vision of transferring Palestinian Arab and public land to organisations and state institutions.[577] Discussions in the Knesset led to the creation of a new land regime to protect the principle of keeping the majority of lands in Israel within the hands of Jewish individuals and organisations. In other words, the new land regime was to basically protect the principle of inalienability of land, preventing the transfer of land to Palestinian Arabs.[578] The rationalisation for the process raised during the discussions in the Knesset was the need to maintain a Jewish national territory with a dominant Jewish majority and religion, which was seen as essential for receiving Jewish immigrants to Israel. The idea of the centrality of the ownership system was an indication of the majority of the Knesset's wish to maintain the Jewish ethos of the Israeli State. The focus of the discussion was more about how efficiently the policy should be implemented, as Zerah Verhaftig, the Constitution, Law and Justice Committee chair, explained:

[573] Only approximately 6% of all land in Israel; the remainder falls under public ownership.
[574] For the historical details, see Chapter 2.
[575] Ruth Kark, 'Planning, Housing and Land Policy 1948-1952: The Formation of Concepts and Governmental Frameworks'), Israel: The first decade of independence SUNY Press, (1995): 461, 478.
[576] Avraham Granott, 'Neteevot Vemiflaeem' [Hebrew], 'Villages and Kibutzes' (1952) 133-1434.
[577] Alexander (Sandy) Kedar, 'Minority Time, Majority Time: Land, Nation, and the Law of Adverse Possession in Israel', Tel Aviv University Law Review (1998): 665, 681-82.
[578] Knesset Record 29, 19th July 1960. [Hebrew].

> The reasons for recommending this law, as far as I understand it, are to provide a legal cover for a principle that at its core is religious, and that is 'the land shall never be sold, for the land is mine'[579] and if this is repeated in law as has been recommended, or even found in the Torah.[580]In this is a law that can be interpreted as expressing our original view on the holiness of the Land of Israel […].[581]

This policy would, in the end, result in the majority of land being under state control, including the Jewish National Fund:[582]

> The Israeli land regime was shaped as a national-collectivist regime that rapidly implemented the principles of ethnic territorial expansion and control. At the conclusion of this phase, approximately 93% of Israeli territory (within the pre-1967 borders) was owned, controlled, and managed by either the Israeli State or Jewish nation (through the Jewish National Fund).[583]
>
> The new land regime was based on 1) nationalization and Judaization of the land, 2) centralizes control of this land by the State and Jewish institutions (mainly the Jewish National Fund), and 3) selective and unequal allocation of possessory land rights to Jews in way that mainly favored the 'founders'.[584]

4.3.1. Expropriation and Transfer of Land to Public Ownership

The Land Law of 1969 remained in place until the 1990s, when the basic law reform, known as the "Constitutional Revolution", was instigated by Chief Justice Barak of the Supreme Court of Israel.[585] In the era before the "Constitutional Revolution", Israel formalised a policy for the massive transfer of Palestinian Arab land to Jewish ownership.[586] This policy included various mechanisms to transfer lands, such as bringing Jewish immigrants to settle in Palestinian Arab villages abandoned after the

[579] Leviticus 25/23: the third book of the Hebrew bible and the third of the five books of the Torah. Wayiqra [Hebrew] comes from the first word, 'and he called'.
[580] The Hebrew bible, Old Testament.
[581] Knesset Record 29, 19th July 1960, p. 1917 [Hebrew].
[582] The Jewish National Fund, founded as a result of the Fifth Congress decision, was registered in England in 1907 to begin raising funds; the primary goal of this body was to provide the foundations for a Jewish state, and the body was dedicated to acquiring land which only Jewish people would have access to; Walter Lehn and Uri Davis, 'The Jewish National Fund', (Kegan Paul 1988).
[583] This land regime developed during the first two decades and had crystallised by the 1960s; it essentially remained in this form until the 1990s.
[584] Alexandre Kedar, 'Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967', The NYUJ Int'l L & Pol. 33 (2000): 923, 946-47.
[585] Aharon Barak, 'A Constitutional Revolution: Israel's Basic Laws', Faculty Scholarship Series. (1993): 3697.
[586] Alexndre Kedar, 'Minority Time, Majority Time: Land, Nation, and the Law of Adverse Possession in Israel', Tel Aviv University Law Review (1998): 665, 681-82 [Hebrew].

War, changing Palestinian Arab village names to Hebrew and prohibiting the development of the remaining villages to restrict and constrain natural Palestinian Arab population growth. At the same time, the Jewish areas received the benefit of modern planning measures, development and improvements, including organised industrial areas.[587] After the implementation of the territorial expansion and control scheme, the State of Israel and the Jewish National Fund owned about 93% of the land of British Mandate Palestine.[588]

Following the 1948 War, lands that had been registered during the process of the "Settlement of Title" during the British Mandate period, as well as lands categorised by Israel as "State Land",[589] were transferred to the State of Israel, which included approximately one million dunams of land around Galilee in the north and in the Negev in the south. The transfer was followed by the land's nationalization and Judaization. Between 4.2 and 5.8 million dunams of territory were also abandoned, as a result of the deportation of more than 800,000 Palestinians.[590] These forcibly displaced Palestinians were considered refugees as they were not residents of the State of Israel and Israel prevented their return after the conclusion of the 1948 War, when they became refugees in the neighbouring countries. The Israeli government therefore declared them "absentees", and expropriated their properties, transferring all of their land rights to state ownership. Other Palestinian Arabs became internally displaced people, or "present absentees".[591]

These internally displaced people, about one quarter of the 150,000 who had stayed in Israel after the War, became Israeli citizens,[592] but lost between 40% and 60% of

[587] Alexandre Kedar, 'Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967', The NYUJ Int'l L & Pol. 33 (2000): 923, 947.
[588] The total territory counts before 1967.
[589] State Property Law (1951), section 2; Laws of state of Israel, LSI, Vol 5, 45 [Hebrew].
[590] Arnon Golan, 'The Transfer of Jewish Control of Abandoned Arab Lands during the War of Independence, Israel: The First Decade of Independence SUNY Press, (1995): 403, 431.
[591] David Kretzmer, The Legal Status of the Arabs in Israel, Westview Press (1990): 57; Hillel Cohen, 'The Present Absentees: The Palestinian Refugee in Israel since 1948', Institute for Israel Arab Studies (1993) [Hebrew].
[592] These Arab Palestinian citizens of Israel included inhabitants of the Triangle, located in present-day central geographical Israel, including Arab towns and villages; this area was annexed to Israel according to the Rhodes Agreement. UN Doc S/1302/Rev.1 3 April 1949; Hilde Henriksen Waage,'The Winner Takes All: The 1949 Island of Rhodes Armistice Negotiations Revisited', Middle East Journal 65 (2), (2011): 279-304.

their land.[593] The land expropriation had already begun during the war through the use of temporary emergency regulations that had no legal foundation or merit. In the first stage, therefore, Israel established physical control without any change in the legal ownership of the land by seizing the refugees' land, after preventing them from returning, destroying abandoned villages and transferring newly arrived immigrant Jewish people onto the land.[594] All of this was accomplished through rapid acts of the government with the assistance of committees and the Jewish agricultural colonies, which had existed since the British Mandate and were located near the Palestinian villages.[595] For example, in March 1948, Haghana (a Jewish community military force that later served as a key part of the Israeli military forces) established a committee to administer the Arab property in the villages controlled by Israel. In July 1948, a custodian for Arab Land in Jaffa and Haifa was appointed in accordance with the Abandoned Areas Ordinance of June 1948 by the Provisional Council of State. This ordinance gave the minister authorised by the government the power to regulate 'abandoned property in abandoned areas' that had been surrendered to Israeli armed forces and whose population had been evicted. This temporary step was followed by a regulation to make this regulation permanent. Israel realised the necessity to legitimise the confiscation. Therefore, in the mid-1950s, with the goal of enforcing central government control,[596] the legal system established a method to transfer the refugees' land and legal title to the State of Israel or the Jewish National Fund. The associated laws shaped future land confiscations and were used widely. These were the Absentee Property Law (1950)[597] and the Land Acquisition Law (1953).[598] These laws were supplemented by Court judgments that legalised the confiscations and administrative tools that the authorities provided to support the

[593] Areej Sabbagh-Khoury, 'The Internally Displaced Palestinians in Israel', Nadim N. Rouhana and Areej Sabbagh-Khoury (The Palestinians in Israel), 26; Hillel Cohen, 'The Internal Refugees in the State of Israel; Israeli Citizens, Palestinian Refugees' (Palestine-Israel Journal of Politics, Economics, and Culture 9.2, (2002): 43.
[594] Don Peretz, 'Israel and the Palestinian Arab', (Middle East Institute 1958):143.
[595] Abandoned Areas Ordinance 1948a, Official Gazette Number 7, Supplement 1, 30 June [Hebrew], English version in LSI, Vol 1, 25. See also Arnon Golan, 'The Transfer to Jewish Control of Abandoned Arab Lands during the War of Independence, Israel: The First Decade of Independence (SUNY Press, 1995) 403-440; Arnon Golan, 'Wartime Spatial Changes: Former Arab Territories Within the State of Israel, 1948-1950', Ben-Gurion University Press (2001) [Hebrew].
[596] Sabri Jeiris, 'The Arab in Israel', New York and London: Monthly Review Press (1976): 1-80.
[597] Absentee Property Law (1950) Sefer Houkim 68 [Hebrew].
[598] Land Acquisition Law (1953) Sefer Houkim 58 [Hebrew].

land control process.[599] All of this guaranteed permanent ownership of the lands of Israel for the Jewish population.

4.3.2. Legal Instruments to Expropriate and Transfer Land

An overview of the laws and regulations used by the state to expropriate lands in Israel and to support its land policy is provided below. This overview sheds light on the use of law by the Israeli government to permit land expropriation and transformation of the land from former Palestinian Arabs owners to Jewish organizations and individuals. The enactment of laws, such as the Absentees' Property Law (1950)[600] and the Land Acquisition Law (1953),[601] reflect the development of the land regime in Israel toward maintaining the reordered land partition within Israel after 1948.

4.3.2.1. Emergency Regulations

The leadership of the Israeli state-builders realised the importance of establishing formal legal mechanisms in order to permanently control lands seized and expropriated in the early years following 1948. This arose from recognition of the importance of the image of the newly established state in the eyes of the international community. On a general note, a state of emergency was declared upon the establishment of Israel, and for this reason the government was entitled to declare that the country was in a state of emergency, which continued since the establishment of the state. However, in the Amendment of 1992 of the Basic Law: The Government, (1968),[602] the state limits the declaration of a state of emergency to a maximum of one year. Nevertheless, since the law was passed, the Knesset has renewed the declaration of a state of emergency every year following the government's request, despite the fact that the government does not provide any reasons for such extensions.[603] In this way, in the wake of post-Israel establishment,

[599] David Kretzmer, 'The Legal Status of the Arabs in Israel', (Westview Press 1990) 50.
[600] Absentee Property Law (1950) Sefer Houkim 68 [Hebrew].
[601] Land Acquisition Law (1953) Sefer Houkim 58 [Hebrew].
[602] The Basic Law: The Government (1968) Elman, Peter, 'Legislation: Basic Law: The Government (1968)', (Israel Law Review. 4, 1969), 242-256.
[603] Michal Tzur, 'The Emergency Defense Regulations 1945' (Jerusalem: Israel Democracy institute, 1999), position paper No 16 [Hebrew]; Yoval Yaoz,'Emergency situation. 57 years, do not see an

Israeli authorities introduced emergency legislation to address the lack of legal grounding for the land confiscations. Such emergency measures consisted mainly of general guidelines rather than specific legislation. Measures directed to the expropriation of refugee land included the Abandoned Areas Ordinance (1948),[604] which authorised a government minister to regulate "abandoned property" in "abandoned areas". As stated in Article 2:

> (a) The Government may, by order, declare any area or place conquered, surrendered or deserted as specified in section 1 (a) to be an abandoned area, and upon such declaration being made, such area shall be considered an abandoned area for the purposes of this Ordinance and any regulation made thereunder.
>
> (b) For the purposes of this Ordinance the Government may, by order, extend the whole or any part of the existing law to any abandoned area, subject to the safeguarding of the right of worship and the other religious rights of the inhabitants in so far as the safeguarding of such rights does not prejudice public security and order, and may also empower the Prime Minister or any other Minister to make such regulations as he may deem expedient as to matters relating to the defense of the State, public security, supply and essential services, schools, hospitals and clinics, health, labour, police or Arab Settlement Police, Courts and the appointment of judges - whether with full or with limited jurisdiction - prisons, lock-ups and places of detention, and the expropriation and confiscation of movable and immovable property, within any abandoned area.
>
> (c) A Minister empowered to make regulations for the implementation of this Ordinance may, subject to the approval of the Prime Minister, make regulations, prescribe punishments therein and issue directions concerning any movable or immovable property within any abandoned area.[605]

In order to seize additional land belonging to Palestinian Arabs; "present absentees", who remained within the State of Israel and granted citizenship, a further series of emergency regulations were introduced by the Israeli government between 1948 and in the early 1950s. For example, Emergency Regulations Concerning the Cultivation of Waste Lands and Use of Unexploited Water Sources (1948),[606] legalized the seizure and transfer of land to Jewish ownership. These emergency regulations represent the main legal framework created by Israel to deal with Arab refugee land.

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end' (2005, June 19), Haaretz, [Hebrew]. Retrieved May 7, 2016, from: http://www.haaretz.co.il/hasite/pages/ShArt.jhtmlitemNo=589477.

[604] 1948a, Abandoned Areas Ordinance, Official Gazette Number 7, Supplement 1, 30 June [Hebrew], English version in LSI 1, 25.

[605] Article 2, 1948a, Abandoned Areas Ordinance, Official Gazette Number 7, Supplement 1, 30 June [Hebrew], English version in LSI, Vol 1, 25.

[606] 1948b, The Emergency Regulations Regarding the Cultivation of Fallow Lands and Unexploited Water Sources, October 1948, State of Israel 1948b, 3-8.

They empowered the Agriculture Minister to retroactively seize and transfer land, and functioned, beside the Regulation 125 of the Defense Regulations of 1945,[607] to exclude landowners from areas judged to be unoccupied. Regulation 125 specifically empowered a military commander to declare an area "closed", as "closed" areas were considered unoccupied. Related lands were further expropriated under the Land Acquisition (Validation of Acts and Compensation) Law (1953),[608] which allows the Israeli military to announce a closure for security reasons in a specific area, preventing Arab farmers from reaching their farms, and therefore, activates the Agriculture Minister's authority to expropriate land considered "fallow", which justifies land transfer to Jewish ownership.[609] Defence and Emergency regulations were followed by the Emergency Regulations Regarding Absentee Property (1950),[610] which transferred expropriated land to the Custodian of Abandoned Property, who worked under the authority of the state government.[611] This law was later revised and became the Absentees' Property Law (1950), which will be discussed in detail in the following section.

4.3.2.2. The Absentees' Property Law (1950)

The background to the passing of the Absentees' Property law[612] is a Pakistani law of 1948. In 1947, after the end of colonial rule and the partition that created India and Pakistan, Pakistan established laws to facilitate the expropriation of lands of Hindu and Sheikh refugees and the transfer of the land to Pakistani authorities. Both the Israeli and the Pakistani regulations followed the British Trading with the Enemy Act (1939), which granted the custodian full powers to control the land of the former owner.[613]

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[607] Defense Regulations of 1945, Government of Palestine, 1945, 1090.
[608] Closures need not be published in the Official Gazette.
[609] Hanna Nakkarra, 'Israel Land Seizure under Various Defence and Emergency Regulations', (1985) Journal of Palestine Studies 14(2), 13-34; Menachem Hofnung, Israel - Security Needs v. the Rule of Law, (Nevo 1991) [Hebrew].
[610] The Emergency Regulations Regarding Absentee Property (1950), signed into force by the then Finance Minister on December 2 1948, MAPC, 1948a; 1948b; 1948c; 1948d; State of Israel, 1948c.
[611] The Custodian of Absentee Property is based in the Finance Ministry, which is the department responsible for absentee property according to the Absentee Property Regulations.
[612] Sefer Haqim (1950) LSI 4, 68.
[613] Domke, Martin, 'Trading with the Enemy in World War II', (1944), 489-493.; Jacques Vernant, 'Refugees in the Post-War World', (Allen and Unwin 1953); Forman, Geremy, and Alexandre Sandy Kedar, 'From Arab land to 'Israel Lands': the legal dispossession of the Palestinians displaced by Israel in the wake of 1948', Environment and Planning D: Society and Space 22.6 (2004): 809-830.

The Absentees' Property Law is the core tool used by the Israeli authorities to cover all aspects related to absentee property in order to expropriate refugee lands. The definition of an absentee is given as follows:

> (1) a person who, at any time during the period between the 16th Kislev, 5708 (29th November, 1947) and the day on which a declaration is published, under section 9(d) of the Law and Administration Ordinance, 5708-1948(1), that the state of emergency declared by the Provisional Council of State on the 10th Iyar, 5708 (19th May, 1948)(2) has ceased to exist, was a legal owner of any property situated in the area of Israel or enjoyed or held it, whether by himself or through another, and who, at any time during the said period -
> (i) was a national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan, Iraq or the Yemen
> (ii) was in one of these countries or in any part of Palestine outside the area of Israel
> (iii) was a Palestinian citizen and left his ordinary place of residence in Palestine
> (a) for a place outside Palestine before the 27th Av, 5708 (1st September, 1948); or
> (b) for a place in Palestine held at the time by forces which sought to prevent the establishment of the State of Israel or which fought against it after its establishment…"[614]

Although this definition included Jewish as well as Palestinian Arabs, the Israeli government only applied it to Palestinian Arabs. Under Article 28, absentee owners are excluded from expropriation and transfer of the land to the custodian, if those absentee owners are absent as a result of threats from an enemy of Israel or as a result of a military operation. This provision excludes Jews living outside of the territory from the designation of an absentee as designated by the property law. All efforts had been made not to apply the regulations to Jewish owners, as the first custodian of Abandoned Property declared at the time.[615]

According to the law, any absentee lands will automatically be transferred to the Custodian of Absentee Property,[616] who has both judicial and administrative authority. The Custodian of Absentee Property can decide that a property falls within the category of absentee property, and therefore, that it falls under his/her custody. The burden of proof falls on the property owner to prove that he/she is not an

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[614] The Absentees' Property Law.
[615] During discussions in the Knesset Law and Constitution Committee in 1949/1950, as shown by the minutes of 6 and 22 December.
[616] The Custodian of Absentee Property is based in the Finance Ministry, which is the department responsible for absentee property according to the Absentee Property Regulations.

absentee. According to Article 30a of the Absentees' Property Law, the Custodian of Absentee Property[617] merely needs to issue a certificate to indicate that a person is an absentee, unless the contrary is proven. As the law states:

> (a) Where the Custodian has certified in writing that a person or body of persons is an absentee, that person or body of persons shall, so long as the contrary has not been proved, be regarded as an absentee.[618]

Generally, the court is satisfied with the fulfilment of any of the criteria in the law; accepting simple evidence of the status of an absentee even without certification by the Minister of Finance, especially in the first two decades after the state of Israel was established. For example, in one of the cases held in the district Court of Haifa, in the case of *Muhamad Masri v. Masri and Others and the Custodian of Absentee Property*,[619] the court upheld the Custodian of Absentee Property and confirmed absentee status despite the lack of certification confirming that the individual was an absentee. As stated in Article 30, the court can confirm the status of an individual as an absentee if it is convinced that the statutory principles for the status of absentee are fulfilled.[620]

There is no limitation on when an individual can be pronounced an absentee. People who attempt to sell land that is in their family's ownership may find that the authorities can consider the original owner, for example, a father who left for Jordan during the war, an absentee, and therefore, may consider the land absentee property. The law is also aimed at preventing refugees from selling land while living in exile, and prohibits arrangements between refugees and relatives who remained in Israel.[621]

In the case of dealing with property under consideration to be declared as absentee land that is owned by "present absentees",[622] who are citizens of Israel and members of the Palestinian minority, Palestinian Arab, and remained in Israel after 1948 War.

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[617] The Custodian of Absentee Property is based in the Finance Ministry, which is the department responsible for absentee property according to the Absentee Property Regulations.
[618] Article 30a of the Absentees' Property Law.
[619] Civil Appeal 1295/99, Muhamad Masri v Masri and Others and the Custodian of Absentee Property, the District Court of Haifa, case no. 1295, 10 August 1999.
[620] Ibid.
[621] Michael R Fischbach, 'Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict', Columbia University Press, (2003): 25.
[622] Unlike the refugees who left to the neighborhood countries and never return, those who stayed known as "present absentees" and the state consider the absentee despite their present within the Israeli state. Therefore, they will not be eligible to retrain their property they abandoned as result of the 1948 War.

Later, they were granted Israeli citizenship, which created a situation where Israeli authorities had an obligation to protect the 'present absentee' lands because they are considered Israeli citizens according to the law.[623] However, the law has instead been used to expropriate the "present absentee" lands as well.

4.3.2.3. The Custodian of Absentee Property

The Absentees' Property Regulations provided for the appointment of the Custodian of Absentee Property,[624] who has broad authority to expropriate any land after written certification has been provided that an owner is an absentee. The Custodian of Absentee Property declares the property as absentee property and certifies that the property owner fulfils the definition of absentee. This implies an automatic transfer of the land into the possession of the office, and the custodian has no obligation to explain the criteria for the decision designating the particular plot as absentee property. As mentioned above, the burden of proof of ownership is shifted to the person challenging the declaration.[625] According to Article 10 of the Absentees' Property Law,[626] in cases where the custodian decides that, for development purposes, the property needs to be vacant, the custodian can evict protected tenants or illegal occupants, and is authorised to both appoint inspectors of absentee properties and grant any power to the inspectors that might be required.

The responsibilities of an ordinary property custodian would be that he acts as the trustee of the land until the return of its owner. Nevertheless, in the case of *Habab v. the Custodian of Absentee Property*, the Supreme Court decided that the custodian is not an ordinary authority. Despite the provisions of Article 7 of the Absentees' Property Law, which mandates that the property owner must take care to preserve the land, the court maintained that that no obligations fell on the Custodian of

[623] Unlike the situation of second type of refugees that in the neighboring countries which were prevented to return by the state of Israel after concluding the War and closing the borders.
[624] The Custodian of Absentee Property replaced the Custodian of Abandoned Areas, according to the Emergency Regulations.
[625] Article 30 of the Absentees' Property Law 1950; similar implications can be found previously: Article 32 of the Absentees' Property Regulations.
[626] Article 10 of the Absentees' Property Law.

Absentee Property to maintain, care or develop the land. In the court's view, Article 7 provisions were in the form of recommendations and were not obligations.[627]

The Custodian of Absentee Property can lease the property and is also entitled to sell it to a 'Development Authority'.[628] As stated in Article 8a:

> (a) The Custodian may carry on the management of a business on behalf of an absentee, whether or not he indicates that the business is managed by the Custodian, but he shall always have the right to sell or lease the whole or a part of the business.[629]

The crucial question that arises is who is allowed to purchase property offered for sale or long lease by the Custodian of Absentee Property. In response, the Knesset founded a body named the "Development Authority" under the Development Authority (Transfer of Property) Law of 1950,[630] which purports to preserve the absentee property. The Development Authority[631] is officially defined as an extra-governmental agency.[632]

The Absentees' Property Law (1950) and the Development Authority (Transfer of Property) Law (1950)[633] were essential to the legal architecture developed by the Israeli State that enabled the expropriation and transfer of land. As Forman and Kedar summarise:

> The Knesset enacted the Absentees' Property Law in March 1950 and the Development Authority (Transfer Property) Law in July 1950. This institutionalized Lifshitz's[634] two - statute model - a cornerstone of Israeli machinery facilitating the expropriation and reallocation of Arab land in the

[627] In the case 85/54 Habab v. the Custodian of Absentee Property, the Supreme Court ruled in 1954, PD 10(1) 912.
[628] The 'Development Authority was established to work with relevant government agencies to acquire and prepare lands for the benefit of newly arriving Jewish immigrants. Vast amounts of land allocated for this purpose were bought from the 'Custodian of Absentee Property'.
[629] Article 8 of the Absentees' Property Law.
[630] The Development Authority (Transfer of Property) Law 1950.
[631] Michael R. Fischbach, 'Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict', Columbia University Press (2003): 22.
[632] Yahsoa' Weismann, 'Land Law', Faculty of Law, Hebrew University, Jerusalem (1993) [Hebrew], General Section.
[633] The Development Authority (Transfer Property) Law (1950) LSI Vol 4, 15.
[634] Zlaman Lifshitz, an architect who was the advisor of the Israeli Prime Minister David Ben-Gurion on land and border demarcation. On March 30, 1949, Lifshitz had prepared a 'Report on the need for legal settlement of the issue of absentee property to facilitate its permanent use for settlement, housing, and economic recovery needs'; see Zlaman Lifshitz, 'Report on the need for legal settlement of the issue of absentee property" [Hebrew]; Israel State Archives, Jerusalem (18 March 1949), 130 2401/21 I.

> aftermath of 1948. Expropriated land entered a reservoir dominated by Jewish interests. The Absentees' Property Law empowered the Custodian of Absentee Property to sell land to the Development Authority alone, and the Development Authority Law empowered the Development Authority to sell land to the state and the Jewish National Fund. Despite its pivotal role in the evolving land regime and as a government agency in practice, the Development Authority was legally defined as a distinct extra-governmental agency. In this capacity, it served as an intermediary body to funnel expropriated land to the state and the Jewish National Fund.[635]

This restriction on the sale of land, except to the Development Authority, severed the direct link between the expropriation of absentee land by the Israeli government and its use by the Development Authority. This restriction in turn led to the creation of a legal manifestation in front of the international community. These two laws created a bureaucratic system that involved the transfer of absentee property land from the Custodian of Absentee Property to the Development Authority, whether by sale, lease or exchange. Property was then transferred from the Development Authority to the State or to the Jewish National Fund in the form of leases.[636]

By the end of the 1950s, the Custodian of Absentee Property allocated all abandoned land outside the urban zones to the Development Authority, which transferred the property to the Jewish National Fund or rented it to cooperative agricultural settlements. Only 30 - 40% of affected lands remained under the authority of the Custodian of Absentee Property by the end of the 1950s. These were comprised mainly of old buildings with no economic value, as the land had already been transferred to the Development Authority and the National Jewish Fund.[637]

Those absentee owners residing in neighbouring states that Israel considered hostile were prevented from returning, and therefore, were unable to submit a petition to the Israeli Supreme Court. Consequently, there have only been a limited number of cases challenging the Absentees' Property Law. Therefore, if cases did reach the court, they are cases that dealt with the property of Palestinian Arabs in Israel.[638] The

[635] Forman, Geremy, and Alexandre Sandy Kedar, 'From Arab land to 'Israel Lands': the legal dispossession of the Palestinians displaced by Israel in the wake of 1948', Environment and Planning D: Society and Space 22.6 (2004): 809-830.
[636] Michael R. Fischbach, 'Records of Dispossession: Palestinian Refugee Property and the Arab - Israeli Conflict', Columbia University Press (2003): 53- 58.
[637] Henry Cattan, 'Palestine, The Arabs and Israel: The Search for Justice', Longman (1969): 82.
[638] Michael R. Fischbach, 'Records of Dispossession: Palestinian Refugee Property and the Arab - Israeli Conflict', Columbia University Press (2003): 53 - 58.

core argument of Palestinian Arabs is that Israel is illegally occupying their land and has forcibly deported them and displaced them in order to expropriate their property. However, most Palestinian Arabs did not take a case to court (during the first decades after establishment of Israel) because they did not wish to recognize the process at that time. Therefore, any petition to the Israeli judiciary implied an approval approving and acceptance of the legitimacy of Israel's occupation and superiority. They refused to do this on moral grounds.[639] Additionally, the Israeli parliamentary system[640] has adopted the principle of separation of powers between the legislature, the parliament (Knesset), and the judiciary. The Supreme Court can restrain its authority to interfere in decisions of the legislature authority, whilst dealing with written laws. In particular, the Supreme Court did not want to do this in the early years of the State of Israel. The Supreme Court therefore structured its decisions in a narrow technical way, by not interfering, but instead by leaning towards stabilising the government and legislature's policy. Nonetheless, after the 1980s the narrow approach of the court changed, and the Supreme Court adopted a broad method to intervene in case the judge decided it was of legal interest. This was reflected later and more apparently, after the 1990s, because of the "Constitutional Revolution" that open the door to substantial leeway for judges to intervene and imply a broader understanding of the written laws.[641]

The limited number of cases reaching the Supreme Court are from "present absentees" who tried to reverse their designation by proving their existence in the State of Israel. They argue against the legitimacy of the custodian and that their status as absentees is not valid (regarding the declaration made by the custodian). In the *El-Masri v. Custodian for Absentee Land* case[642] in which an absentee certificate was issued and the petitioner attempted, but ultimately failed to prove that he was not an absentee, the petition was eventually dismissed. Another case that reached the

[639] Alexandre Kedar, 'On the Legal Geography of Ethnocratic Settler States: Notes Towards a Research Agenda' Current Legal Issues 5 (2003): 401-41.
[640] Israel adopted the British model of parliamentary democracy, with no written constitution. In that system the Supreme Court has no power to review the status and laws and cannot invalidate laws or articles; this should be done by the legislator, i.e. in the Israeli parliament, the Knesset.
[641] Aharon Barak, 'A Constitutional Revolution: Israel's Basic Laws' (1993) Faculty Scholarship Series. Paper 3697.
[642] H.C. 137/50, El-Masri v. Custodian for Absentee Land, 5(1) PD 645.

Supreme Court, *Kauer v. Custodian of Absentee Property*[643] involved petitioners requesting re-classification of status from "present absentees" to non-absentees on the basis that they did not depart their homes 'because of military operations, nor for fear of them or for fear of Israel's enemies'. The plaintiff engaged Article 27 (a)(1) and (2) of the Absentees' Property Law (1950), which states:

> (a) If the Custodian is of the opinion that a particular person whom it is possible to define as an absentee under section 1(b)(1)(iii) left his place of residence -
> (1) for fear that the enemies of Israel might cause him harm, or
> (2) otherwise than by reason or for fear of military operations, the Custodian shall give that person, on his application, a written confirmation that he is not an absentee.

This provides that if a person left their home, they wish to be requesting re-classification of status from 'present absentees' to non-absentees on the basis that they did not depart their homes in accordance with Article 27 (a)(1) and (2), mentioned above, although this argument was not accepted by the court. The court refused to exempt him from the status of absentee, which justified the classification.

While the petitioners have been successful in challenging their designations, it has mainly been in cases that involve members of Christian Arabs or Druze minority communities who in some circumstances are treated differently than Muslims, or they may be people who provide evidence for the Israeli State, such as informers. One example of the latter instance is found in *Palmoni v. Custodian of Absentee Property*[644] where a person who worked on a special spy mission for Israel had to leave Israel for that mission. The Custodian for Absentee Property considered him an absentee when he returned, but the court agreed to exempt him from the status of absentee. The Supreme Court is reluctant to hear cases related to absentee petitions. Since 1958, only 209 persons received their property back among the tens of thousands of Palestinian Arabs classified as 'present absentees' who brought cases to the Court.[645]

[643] H.C. 3/50 Kauer v. Custodian of Absentee Property, 4 PD 654; H.C. 43/49 Ashkar v. Inspector of Absentee Property, 2 PD 926.
[644] H.C. 99/52 Palmoni v. Custodian of Absentee Property, 7(2) PD 83.
[645] Don Peretz, 'Israel and the Palestine Arabs', (Washington, DC: Middle East Institute 1958), 155; Sabri Jiryis, 'The Arabs in Israel', New York: Monthly Review Press (1967): 88.

In September 2013, the Israeli Supreme Court started hearings concerning whether and how Israel's Absentees' Property Law (1950) was discriminatory. A final decision came out in April 2015[646] regarding the applicability of the Absentees' Property Law (1950) in East Jerusalem, where owners are living in the occupied territories (West Bank). The former Supreme Court Judge Asher Grunis, with six judges concurring, ruled that the law does apply in East Jerusalem, and rejected a Palestinian property owner's argument against the applicability of the Absentees' Property Law to owners of land in East Jerusalem who are living in the occupied territory in the West Bank.[647] The attorneys for the property owner argued that the Israeli State does not apply the Absentees' Property Law to settlers in the West Bank, and therefore, its exclusive application to the properties of Palestinian Arabs constitutes unlawful discrimination. After the 1967 War and the annexation of East Jerusalem,[648] the municipal borders of Jerusalem were extended, and the law now applies to Palestinians as absentees even though they did not move. They now officially live in the West Bank[649] (just outside the new borders of Jerusalem). The state considers residents of East Jerusalem to be residents of the West Bank, and therefore, as they are living outside the territorial boundaries, they are designated as absentees. This designation was important to how the Court reached its ruling. To explain the complexity of the petition, Judge Grunis argued:

> Not because of any act taken on their part, but because of the transfer of control in Jerusalem to Israeli hands and the application of Israeli law there. These are not [people] under the control of other countries, but [people] who are in territories which Israel has control - to some extent - over.[650]

The court rejected the appeals and ruled that, despite the problematic situation of East Jerusalem, the Absentees' Property Law is applicable in East Jerusalem, which implies that Israel can expropriate the land of Palestinians in the area. However, the Court recommended that the authorities use the law sparingly, and although it did

[646] Case 2038/09 (Cliff Hotel); Case 5931/06 (Beit Safafa); Case 2250/06 (Beit Hanina).
[647] This ruling was a response to a number of cases appealed to the court over the last few years; petitions from Palestinians who face expropriation of their land according to the Absentees' Property Law.
[648] For more details about annexation East Jerusalem see, chapter 3.
[649] By law, the West Bank is an 'enemy nation', despite the fact that it is still under military control.
[650] Supreme Court Appeal for the: Case 2038/09 (Cliff Hotel); Case 5931/06 (Beit Safafa); Case 2250/06 (Beit Hanina).

not overturn the law, it made its future use dependent on the explicit approval of the Attorney General.

Although the majority of the court concurred with the judgment, Judge Naor partially dissented, and while agreeing that the law applied, the judge Naor doubted the laws practicality, and as such, advised the state to consider returning some expropriated proprieties.

In commenting on the decision, Adalah, The Legal Center for Arab Minority Rights in Israel, who had submitted an *amicus curia* ("Friend of the Court") opinion, rightly noted that:

> Even though the Court noted in its ruling that the law is arbitrary, and the ruling brings examples of that, it allows the continued application of one of the most racist and arbitrary laws in Israel, which was enacted in 1950 with the goal of confiscating the property of Palestinian refugees who were expelled from their homes.[651]

4.3.3. Review of International Law in Relation to the Expropriation of Refugee Land

Despite the domestic legal architecture that has enabled the state to confiscate land and prevented owners from returning to their property, these techniques are prohibited under international law. There are a number of resolutions that have been passed by the UN General Assembly that condemn Israeli actions, in particular Resolution 194,[652] which concerns the return of Palestinian refugees, and Resolution 181,[653] which states that expropriation of land owned by Palestinian Arabs of Israel is prohibited unless it is for public purposes, such as the construction of roads and the building of schools and hospitals.[654] Both provide significant challenges to the legality of the provisions and practice of the Absentee Property Law. Moreover, the establishment of a UN Conciliation Commission is intended to facilitate the return of refugees as part of a wider peace effort between Israel and the Arab states, and it

[651] Case 2038/09 (Cliff Hotel); Case 5931/06 (Beit Safafa); Case 2250/06 (Beit Hanina).
[652] General Assembly Resolution 194 of December 1948 states: 'The refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date'.
[653] UN General Assembly Resolution 181 (II) of 28 November 1947.
[654] Paragraph 8, chapter 2 of UN General Assembly Resolution 181 (II) of 28 November 1947.

includes the principle that the refugees have the right to return to their abandoned homes.[655]

In addition, under its obligations as a signatory to the Armistice Agreement between Jordan and Israel on April 3rd 1949,[656] the State of Israel is required to protect property and residency rights of the populations of villages that might be affected by the creation of the Armistice Demarcation Line.[657] Article 6 of the Armistice Agreement between Jordan and Israel states:

> Wherever villages may be affected by the establishment of the Armistice Demarcation Line provided for in paragraph 2 of this Article, the inhabitants of such villages shall be entitled to maintain, and shall be protected in, their full rights of residence, property and freedom. In the event any of the inhabitants should decide to leave their villages, they shall be entitled to take with them their livestock and other movable property, and to receive without delay full compensation for the land, which they have left. It shall be prohibited for Israeli forces to enter or to be stationed in such villages, in which locally recruited Arab police shall be organised and stationed for internal security purposes.[658]

The Small Triangle is a concentration of Palestinian Arabs in Israeli towns and villages adjacent to the Green Line,[659] located in the eastern Sharon Plain among the Samarian foothills. This area is located within the easternmost boundaries of both the central district and Haifa district, and its residents are considered absentees. Thus, the Absentee Regulations would apply to their properties, as they were Jordanian citizens when the regulations were published.[660] In practice, the court in general and the Supreme Court in particular have rejected several appeals, refusing to dismiss the designation of the residents of the Small Triangle property as Absentees. Israeli Courts have also dismissed the section of the Armistice Agreement that obligates

[655] Article 11, U.N. General Assembly Resolution 194 of December 1948 states: 'The refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date'.
[656] The Rhodes Agreement. UN Doc S/1302/Rev.1 3 April 1949; Hilde Henriksen Waage, 'The Winner Takes All: The 1949 Island of Rhodes Armistice Negotiations Revisited' [2011] Middle East Journal 65, no. 2, 279-304.
[657] Article 6 of the Armistice Agreement between Jordan and Israel signed on 3 April 1949.
[658] Ibid.
[659] For more details about 'Green Line' see, chapter 3.
[660] Hillel Cohen, The Present Absentees: The Palestinian Refugees in Israel since 1948 (Institute for Israeli Arab Studies 2000) [Hebrew].

Israel to protect the land rights of the residents of the Triangle. Accordingly, Israel has not respected its obligations, notably Article 6 of the Armistice Agreement.[661]

The status of the Armistice Agreement[662] changed following the Jordan-Israel peace treaty in 1994, and an amendment has been added to the Absentees' Property Law (1950).[663] Section 6, Article 1503 of the Implementation Law of the Peace Agreement (Treaty) between Israel and Jordan[664] affects previous laws, as the amendment states that from November 10th 1994 onward, property owned by residents or citizens of Jordan will not be declared as absentee property. However, this is not retroactive, and so any property designated as Absentee before the peace treaty of 1994 is not affected, although in the future, the amended section can be considered for any cases of classification of property that may arise. Despite the intentions of the amendment and the spirit of the peace treaty, de facto this had very limited effect and only a tiny positive impact, as most of the people who had left Jordan already fall under the definition of absentee under the Absentees' Property Law 1950,[665] and their property was declared absentee during that decade.

4.3.4. Land Acquisition Law 1953

During the early years of the State of Israel, and in the absence of any legal foundation, the authorities seized property via temporary expropriation. Such seizures, based on provisional regulations or military orders, were in addition to the millions of dunams that were expropriated on the basis of the Absentees' Property Law (1950).[666] To strengthen its case for expropriating lands within a legal framework, the Israeli authorities enacted the Land Acquisition (Validation of Acts and Compensation) Law of (1953),[667] which also covered non-Absentee property that the Israeli state wanted to obtain or transfer. The introduction to this law indicates that given essential development or security requirements, there are

[661] Examples of these cases: Supreme Court case 225/53, Elyosef v. Military Governor of A'ra, PD 8, 341; Supreme Court case 25/55, The Custodian of Absentee Property v. Samarrah and Others, 145/55, 148/55, PD 10, 1825.
[662] The Armistice Agreement between Jordan and Israel signed on 3 April 1949.
[663] Sefer Haqim (1950) LSI 4, 68 [Hebrew].
[664] The Implementation Law of the Peace Agreement (Treaty) between Israel and Jordan, 10 February 1995, Book of Laws, 1995, 110 [Hebrew].
[665] Sefer Haqim (1950) LSI 4, 68 [Hebrew].
[666] Ibid.
[667] The Land Acquisition (Validation of Acts and Compensation) Law (1953), LSI 7, 1953.

occasions on which property cannot be returned to its owner,[668] in which case the owner may be eligible for compensation.[669]

In the late 1950s, claims started to be submitted to the courts by Palestinian Arab landowners who were citizens of Israel, and were therefore non-Absentees seeking the return of their land. The question for Israel was whether to consider these Palestinian Arabs as "present absentees". If yes, then the expropriation of land would be considered justified and legal according to the Absentees' Property Law (1950).[670]

The backdrop to the adoption of the Land Acquisition Law merits some review. The legislature in Israel understood the political risk of considering citizens of the state of Israel as absentees, giving rise to the necessity for proper legislation to stop claims over land that was already under state control. Therefore, a sub-committee, composed of senior land and Arab affairs officials, was established to deal with rural land owned by "present absentees".[671] In January 1952, the sub-committee suggested three recommendations, only one of which was accepted. It proposed retroactively to legitimise all past seizures of land, without regard to who the previous owners were - non-absentee or absentee. Hence, this proposal paved the way for the legalisation of any past expropriation already enacted. By appointing the Minister of Finance as adjudicator and supervisor whenever land could not be returned to its previous owner for security or development reasons, that ministry became the responsible authority for handling any claim, including compensation claims. Thus, the law became a legal umbrella that gave authority to the Minister of Finance to retroactively affirm all expropriation of land that had occurred before the law was published. There were three conditions for the law to apply to land: firstly, that the land had been used for security purposes or essential development before April 1952; secondly, that its purpose still existed and the land was still needed for that purpose; thirdly, the land was not in its owner's possession on April 1st 1952. Following the issuing of a certificate confirming fulfilment of all three conditions,

[668] Article 2.a.2 and Article 9 of the Land Acquisition (Validation of Acts and Compensation) Law (1953), LSI 7, 1953.
[669] Article 3-7 of the Land Acquisition (Validation of Acts and Compensation) Law (1953), LSI 7, 1953.
[670] Sefer Haqim (1950) LSI 4, 68 [Hebrew].
[671] The sub-committee was appointed by Foreign Minister Shatrett in August 1951.

the Minister of Finance could then automatically transfer the land to the Development Authority. Furthermore, no legal obligation exists to inform the owner of the property of this process. Compensation was offered as a mechanism to legitimise land expropriation. Two means of compensation were available for the loss: firstly, alternative land, which was rarely used; and secondly, cash payment. The alternative land mechanism is problematic if the state offers alternative land that belongs to another Palestinian Arab absentee. It would be applicable when the land or property owners themselves are in proximity to each other, e.g. involving close family members, sometimes living within the same village, thereby causing social embarrassment or conflict. Compensation by provision of alternative land was therefore not practical or possible, and the authorities provided only limited alternative lands.[672] Cash compensation would also be inadequate compared to the actual value of the land. It was to be calculated as the value of the property in Israeli New Shekels on January 1st 1950, adding 3% per year for inflation. However, this would not necessarily reflect the real property value at any given time.[673] In terms of land compensation exclusively, alternative land totalled approximately 55,629 dunams,[674] rising to over 64,500 dunams in 1959, and 170,000 by 1970 - around half of the total area expropriated under the Land Acquisition Law.[675] Just one year after enactment of the Land Acquisition Law, approximately 1.2 million dunams had been expropriated. The area expropriated from private owners was 311,000 dunams, with 304,700 dunams, almost 98% owned by Palestinian Arabs,[676] the remainder being public land.

A non-interfering, formal approach typifies the Supreme Court of Justice's challenges to the authorities in land expropriation cases. In Israel, given the absence of a written constitution, the Supreme Court has evolved and developed a practice to protect and support civil rights such as freedom of speech, religion, association,

[672] Yitzhak Obed, 'Land Losses among Israel's Arab Villages', New Outlook, (1964): 7, 18.
[673] An amendment of 1973 to the Land Acquisition Law reflects a more realistic calculation of the rates of compensation. Further compensation calculations were offered in 1979 and 1989; see George Hana Bisharat, 'Land, Law and Legitimacy in Israel and the Occupied Territories', American University Law Review 43, (1994): 519-521.
[674] 'Israeli Land Administration, Annual Report' (2003) <www.mmmi.gov.il> accessed 26 June 2016.
[675] Geremy Forman and Alexander Kedar, 'From Arab Land to "Israel Lands": the legal dispossession of the Palestinians displaced by Israel in the wake of 1948', Environment and Planning D: Society and Space 22(2004): 809-830.
[676] Ron Aloni, 'Report on the Implementation of the Land Acquisition Law as of 1 December 1954' (13 January, 1955), Israel State Archives, Jerusalem (74), 1955 2868-gim/0/90 [Hebrew].

demonstration and movement. The court is willing to block executive actions that infringe upon fundamental freedoms, even if there is no explicit statutory authorisation in Israeli law to protect such freedoms. However, when dealing with land expropriation cases, the court has exercised caution and has been unwilling to restrict administrative excess. An example of adjudication on the Land Acquisition Law (1953) that reflects this hands-off approach to land expropriation can be found in the influential case of *Younis v. Minister of Finance*.[677] Younis argued against the certificate that the Minister of Finance had issued regarding his land, under Article 2 of the law. Younis could not reach or cultivate his property (farm) that was located outside his Arab village in a closed military area where residents could not leave without permission.[678] The minister's certificate stated that because Younis was not on his property, it would be transferred to the Development Authority. Younis attempted to prove that the certificate's factual basis was incorrect, as nobody else was using the land, and he also argued that he had been unable to present these facts to the minister. The court dismissed his arguments and considered the certificate irrefutable evidence of the actual state of affairs. This closed the door to any further appeal.

Although the Supreme Court rulings have overall facilitated State policies with regard to ownership of Arab-owned land, in order to minimise Arab landholdings,[679] even where the court has opposed the authorities (e.g. cancel the seizure of Arab land or order the return of land to its former owners), it is difficult to apply these rulings. In cases in which the court has ruled favourably, the implementation of the court's orders have been mostly ignored by the military and civil authorities.[680] Iqrit

[677] H.C. 5/54, Younes v. Minister of Finance, 8(1) PD 314.
[678] Military rule by declaration of Arab villages as closed military areas was common practice in the 1960s. It was used as a tool of control over the Palestinian Arabs between 1948 and 1966. Israel governed Arab citizens by military means under emergency regulations that allowed surveillance, administrative arrests, limitation of movement, and other tactics to control and maintain power; Benziman and A. Mansour, 'Subtenants' Keter Publishing (1992); see chapter 3 for more details.
[679] Alexandre Kedar, 'On the Legal Geography of Ethnocratic Settler States: Notes Towards a Research Agenda' Current Legal Issues 5 (2003): 401-41.
[680] H.C. 6698/95, Kaadan v. Israel Lands Administration, 54(1) P.D. 258; this is one of the breakthrough decisions in the history of Israel. However, the slow implementation of the judgement by the authorities almost revokes the contents of the decision. See also, Yifat Holzman-Gazit, Land Expropriation in Israel: Law, Culture Society Ashgate (2007): 116.

and Biri'm,[681] two Christian villages located on the northern border with Lebanon, are two examples of the executive overriding of a court decision.

During the 1948 War, and after surrender, 600 Catholic and 800 Maronite Christian residents were requested by the Israeli military commander of Galilee to leave their homes until the border could be considered stable and secure. Those living in these villages departed under the impression that a return would be allowed. However, the military government did not respect the promises made, and when the fighting ended, Iqrit and Biri'm were designated closed military zones in accordance with the emergency regulations.[682] The people of Iqrit and Biri'm took a case to the Supreme Court of Justice that approved their right to return, as it accepted the argument that the population of the villages were not absentees. In addition, the court noted the technical invalidity of the eviction orders, due to the fact that they had not been published in the official *Gazette* as required.[683] Despite this court ruling, the authorities never implemented it. The military commanders subsequently circumvented the flaw in the original eviction orders by issuing new versions in September 1951. The population of Iqrit and Biri'm appealed to the Supreme Court, but in the meantime, the Israeli air force had bombed all the residential buildings to prevent the remedy of return. At the second hearing, the court approved the eviction as lawful and valid, as it had been published according to the law.[684] Therefore, the intervention of the court in the first case was ignored; the land of Iqrit and Biri'm was transferred to the state and was afterwards divided among kibbutzim and mushavim in the areas of present-day Bara'm, Sasa, Shomra and Dolev.[685]

The landmark case, *Kaadan v. Israel Lands Administration*[686] concerns the gap between the judicial decision and the authorities' implementations on the ground.[687]

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[681] Civil Case Iqrit and Biri'm, Supreme Court of Israel; Comparative Political Studies, 10.2, 1977), 155-176.
[682] LSI Vol 3, 56 (1949). The Emergency Regulations (Security Zones) allow the Minister of Defence to announce a "security zone" with a prohibition on entering this area without a permit. In the north of Israel, this is within ten kilometres of Israel's border, in the south, within 25 kilometres of Israel's border.
[683] H.C. 64/51, David v. Minister of Security, 5(2) PD 1117.
[684] H.C. 239/51 David v. Appeal Committee for Security Zones, Galilee, 6(1) PD 229
[685] Baruch Kimmerling, 'Sovereignty, Ownership and Presence in the Jewish-Arab Territorial Conflicts: The Case of Bir'im and Ikrit', (Comparative Political Studies, 10.2, 1977), 155-176.
[686] H.C. 6698/95 Kaadan v. Israel Lands Administration, 54(1) P.D. 258, is one of the landmark decisions in the history of Israel, however, the delay of implementation the judgment by the authorities almost revokes the decision from its contents.

The case involved the question of Jewish National Fund communal land ownership and control. The facts of the case are as follows. A Palestinian Arab couple from an Arabic town called Baqa-al-Garbya, wanted to purchase land in a new established settlement named Katzir, founded in 1992 by the Jewish Agency. They noted this was a more desirable location than Arab villages or towns. The Katzeir Cooperative Society, in collaboration with the Jewish Agency, refused to grant permission to the couple to acquire land in Katzir on the basis that they were Arab and the groups' policy was to accept Jewish members only. Before the Kaa'dan decision, the Israel Land Administration provided a privilege to the Jewish Agency to lease state-owned land, which was used nationality as a biased criterion. Hence, this state-owned land leased to the Jewish Agency, despite its discriminative regulations while distributing the land, which includes a nationality as a criterion with a preference to Jewish nationality. In other words, the Jewish Agency discriminated against Palestinian Arabs by preventing them from leasing land under the control of the Jewish Agency. This resulted in the current situation of the development of dozens of new agricultural settlements since the establishment of Israel without Arab members. The Association of Civil Rights in Israel lodged a petition on behalf of the Kaa'dan couple. In March 2000, the Supreme Court accepted the Kaa'dans' petition by a four to one majority, ruling that the state could not allocate land to the Jewish Agency on a discriminatory basis.[688] However, the majority was careful to state that the findings are limited to the facts of the case, indicating the various types of settlement that have a special requirement might justify unique arrangements:

> We are today taking a first step on a difficult and delicate path. It is therefore appropriate that we process very slowly on this path, from case to case, so that we do not trip and fall.[689]

This was the first step toward the equal allocation of public land among Arabs and Jews, because the court proposed treating the Palestinian citizen in Israel as an equal citizen. Unsurprisingly, the case generated intensive public debate.[690] Although the

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[687] H.C. 6698/95 Kaadan v. Israel Lands Administration, 54(1) P.D. 258, is one of the landmark decisions in the history of Israel, however, the delay of implementation the judgment by the authorities almost revokes the decision from its contents.
[688] H.C. 6698/95, Kaádan v. Israel Land Administration, 54(1) P.D. 258, Par. 40.
[689] Ibid.
[690] Akiva Eldar, 'Zionism on Trial', Haaretz, January 31, 2005; Hassan Jabareen, 'Yisraelot Hatzofa Pne A'ted Shel Aravem lefi Zman Yihodi-Zioni, Bamerhav bli Zman Palasteni', 'Israelization of the future, toward Arab according to the Zionist aspect ignoring the Palestinian aspect', (Mishpat w-

court's ruling signaled an important detour from earlier court approaches, it did not provide an effect in practice. In 2000, Knesset tried to overrule the decision by passing a bill. Although it did not pass, the Israel Land Administration refused to allocate land to the Kaa'dan's for another four years. This occurred just after the Association of Civil Rights in Israel submitted a second petition requesting sanctioning of the Israel Land Administration. Finally, after a very long judicial battle that lasted over one decade, the Kaa'dan's were granted the right to purchase a plot in Katzir.

4.3.5. From the 'Absentee Land' Concept to the 'Israeli Land' Concept

The massive expropriation of land that took place in the decade that followed the establishment of the Israeli State was followed by a reorganisation of the land administration system. One of the main issues that had to be addressed in this reorganisation was the question of public ownership. The main goal was to unify the system, centralising the land regime in the best way to achieve the state's goals:[691]

> Now efforts were aimed at creating a unified body for policy planning and land administration, as officials regarded centralized land administration as critical to achieving state goals. Construction of this unified body had great symbolic and functional impact on appropriate Arab land by incorporating into a new form of Jewish Israeli national land legislated into existence in 1960.[692]

Under the land reorganization, responsibility for land was divided among several authorities: The Minister of Finance was responsible for state lands; the Custodian of Absentee Property, along with the Development Authority, were responsible for the property of absentees; the Ministry of Agriculture took charge of farming land; and the Jewish National Fund managed the lands under its ownership. Policy makers created a new classification of national land called "Israeli Lands" and a new administrative framework referred to as the "Israeli Lands Authority". This

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Mimshal TSHSA, (2000): 53; Alexander (Sandy) Kedar, 'The Legal Construction of Rural Space in Israel', State & Society, Vol. 4, University of Haifa, (2004): 845-883; Alexander (Sandy) Kedar, 'A First Step in a Difficult and Sensitive Road: Preliminary Observation on Qaadan v. Katzir', Israel Studies Bulletin 16 (1), Steinberg, Gerald M. The Poor in your Own City Shall Have Precedence': A Critique of Katzir- Qaadan Case and Opinion', (Israel Studies Bulletin, 16 (1) 2000): 12-18.

[691] Yossi Katz, 'The Land will not be sold: the principle of national land in the legislative process in Israeli Law', Karka 48, (2000): 46-79.

[692] Germey Forman, and Alexander Kedar, 'From Arab Land to 'Israel Lands": The Legal Dispossession of the Palestinians Displaced by Israel in the Wake of 1948', Environment and Planning D: Society and Space 22, (2014): 809-30.

coordinated policy brought about the enactment of the Basic Law:[693] Israel Lands Law (1960).[694] Under the Israel Lands Law, a new land classification was developed that included state land. The State of Israel possessed 74% of public land while the Development Authority[695] and the Jewish National Fund each owned approximately 13%. Under Article 1, transfer of land ownership was prohibited:

> The ownership of Israel lands, being the lands in Israel of the State, the Development Authority or the Keren Kayemet Le-Israel, shall not be transferred either by sale or in any other manner. Article 2 provides exceptions to the non-transfer and no sale policy: 'Section 1 shall not apply to classes of lands and classes of transactions determined for that purpose by Law'.

The new land regime, which related to public land in the State of Israel, did not offer any change in the scale of ownership. It maintained the authority of the Jewish National Fund, and the public lands owned by the State of Israel and the Jewish National Fund were institutionalised and centralised in a public body. In practice, the transfer of land was limited under the exceptions to Article 2, [696] and any transfer of

[693] Basic Law in Israel is the stronger constitutional method. Due to the fact that Israel had no written constitution, the Knesset has created different level of law. The Basic Law is the superior category such that any future vote to change it requires a particularly large majority, and there are restrictions on doing so. Hence such laws have higher constitutional status than regular legislation; Amnon Rubinstein, 'Constitutional Law of the State of Israel', Schoken (1996) [Hebrew].

[694] Yihshoa' Weismann, 'Land Law' (Hebrew University 1993) [Hebrew], General Section.

[695] A public company under the control of the government.

[696] Article 2 of the Israel Lands Law (1960) lists exceptions to the prohibition on alienation of 'Israel Lands' states: 2. Section 1 of the Basic Law shall not apply to the following classes of transaction:
(1) acts of the Development Authority under the Land Acquisition (Validation of Acts and Compensation) Law, 5713-1953(2);
(2) the transfer of the ownership of Israel lands, in accordance with rules to be prescribed by regulations with the approval of the Finance Committee of the Knesset, to Absentees, or heirs of Absentees, who are in Israel, in substitution for lands vested in the Custodian of Absentees' Property by virtue of the Absentees' Property Law, 5710-1950(3);
(3) the transfer of the ownership of Israel lands in fulfilment of an undertaking validly entered into or a liability validly created, in respect of those lands before the coming into force of the Basic Law;
(4) the transfer of the ownership of Israel lands in exchange for, or as compensation for, lands, other than Israel lands, expropriated by virtue of any Law: Provided that agricultural land shall not be exchanged for urban land except under special circumstances and with the approval of the Minister of Agriculture;
(5) the transfer of the ownership of Israel lands in so far as necessary for the rectification of boundaries or the rounding off of properties: Provided that the area of the lands shall not in any one instance exceed one hundred dunams; where the transfer is without consideration, it shall require the approval of the Finance Committee of the Knesset;
(6) the transfer of the ownership of Israel lands between the State, the Development Authority and the Keren Kayemet Le Israel; however, the transfer of the ownership of lands of the State or lands of the Development Authority to the Keren Kayemet Le-Israel shall require the approval of the Finance Committee of the Knesset;(7) the transfer of the ownership of lands of the State or lands of the Development Authority for the purpose of non-agricultural development and the transfer of the ownership of lands as aforesaid which are urban land: Provided that the area of all the transfers under this paragraph shall not in the aggregate exceed one hundred thousand dunams.
; Yahshoa' Weismann, Land Law, Hebrew University (1993) [Hebrew], General Section.

Jewish National Fund land required approval from that body. Moreover, lands that were left out of public ownership were eligible to remain private, and the Jewish National Fund remained a separate entity that would not be absorbed into state ownership. Thus, the Jewish National Fund could continue purchasing land in pursuit of the goal of settling Jewish people, as well as keep the land it already owned.

The Development Authority and Jewish National Fund were permitted long-term leases of public land for private use. In accordance with Article 2 of the Israel Lands Administrative Law (1960),[697] the Israeli Land Administration was established and appointed to manage public landholding.[698] Under Section 3, a policy-making body on matters related to public land, the Lands Council, was established.[699]

Since 1960, the Israeli Lands Administrative Law[700] has shaped the land regime in Israel to reflect the ambitions of the Jewish National Fund and the Development Authority through their representation in the Israeli Lands Council. This no-sale policy reflected the dominant Jewish interest in the reality of the land regime in Israel, one that brought about spatial demographic transformation after the 1948 War.

4.3.6. Expropriation of Private Land

The basic authority for exercising the powerful tool of expropriation of private lands for public purposes is embodied in several enactments, but its practice is centralised

[697] The Israel Lands Administrative Law, Laws of the State of Israel: Authorized Translation from the Hebrew, vol. 14 (Jerusalem 1948-1987), 50-2; Israel Land Authority (ILA) was created in 1960 as a result of the Knesset overseeing the distribution and protection of all lands in Israel. According to the Basic Law, Israel Land Authority (ILA) manages the land in Israel that is either property of the state, the Jewish National Fund or the Development Authority. Today 93% of the land in Israel is in the public domain; that is, either property of the state, the Jewish National Fund or the Development Authority. Israel Law Authority (ILA) is the government agency responsible for managing this land, which comprises of 4,820,500 acres (19,508,000 dunams). 'Ownership' of real estate in Israel usually means leasing rights from the Israel Land authority (ILA) for 49 or 98 years. The remaining 7% of land is either privately owned or under the protection of religious authorities.

[698] Aiming to control the costs that resulted from three previous parallel management operations by each of the owners - the state, the Development Authority and the Jewish National Fund.

[699] The Israel Lands Council includes 22 members, 12 of them appointed by the government and 10 who are representatives of the Jewish National Fund.

[700] The Israel Lands Administrative Law, Laws of the State of Israel: Authorized Translation from the Hebrew, vol. 14, Jerusalem (1948-1987): 50-2.

in two laws: the Lands (Acquisition for Public Purposes) Ordinance of 1943[701] and the Planning for Public Purposes Ordinance (1965),[702] which drafts planning and building regulations within Israel. Expropriation of land as a result of planning, and building regulation because of planning schemes or compensation in the case of expropriation for public purposes and building is outside the scope of this thesis.[703]

The Lands (Acquisition for Public Purposes) Ordinance of 1943 (hereafter referred to as the Ordinance), which was inherited from the British Mandate legal system[704] under Section 11 of the Law and Administrative Ordinance (1948),[705] authorises the state to expropriate land for "public purposes". During the Mandate period, the British used the concept of "public purpose" to avoid legal challenges after land expropriation as it gave the High Commissioner of the British Mandate a broad space for interpretation and judgement. The concept of public purpose was subsequently maintained under Section H, Article 190(b) of Amendment No. 3 (2010) of the 1943 Ordinance[706] that describes public purpose as 'any purpose certified by the Minister of Finance to be a public purpose'.[707] Therefore, this wide discretionary power that the High Commissioner had used during the mandate was appropriated by the Minister of Finance, and while the ordinance allows the general expropriation of both Arab and Jewish lands, in practice this law has (and continues) to be applied primarily to Palestinian Arabs.

[701] Palestine Gazette (1943) supp. no.1, 44.
[702] LSI vol. 1 (1965) 330; this law and its implication is covered in Chapter 2.
[703] See details about land expropriation in accordance with the Public Purposes Ordinance (1965) in Yifat Holzman-Gazit, 'Land expropriation in Israel: law, culture and society', Routledge, (2016).
[704] The Israeli state generally tends to replace the British Mandate or Ottoman rules with native Israeli law; this was not the case here, as Israel has kept the law until the present day.
[705] Administrative Ordinance (1948).
[706] Although the Ordinance has been amended several times, its core remains largely tact. The latest amendment No. 3 in 2010 which Amendment No. 10 authorizes the state ownership of land expropriated under this law, even where it has not been used to serve the original confiscation purpose. It permits the state not to use the expropriated land for the original expropriation purpose for 17 years, and prevents landowners from demanding the return of expropriated land not used for the original confiscation purpose if it has been transferred to a third party, or if more than 25 years have elapsed since the expropriation. The amendment develops the Finance Minister's authority to confiscate land for 'public purposes', which under the law includes the establishment and development of towns, and allows the minister to declare new purposes. It was proposed to prevent Palestinian Arabs from submitting claims to reclaim confiscated land. Over 25 years have passed since the expropriation of the vast majority of Palestinian land, and large tracts have been transferred to third parties, such as the Jewish National Fund.
[707] An amendment to Section 2, 1946.

The Supreme Court has also dealt with the concept of public purpose in a formal technical manner, applying the law without judicial challenge and exercised restraint. It has shown itself unwilling to restrict administrative excess in matters relating to land expropriation by not interfering[708] with the Minister of Finance's ability to exercise his power to define public purpose broadly, which normally entails the justification of expropriation.[709] The courts have facilitated the implementation of the policy by allowing flexibility in the definition of what constitutes a public purpose under the ordinance.[710] Until the mid-1980s, the Minister of Finance did not provide an explanation of the public purpose that was used to justify land expropriation, as this was considered an internal administrative matter; hence, landowners were not afforded the legal right to be heard before the expropriation order was confirmed.[711] In some cases, they remained unaware of the public purpose that was used to justify expropriation until they appeared in court, which thereby reduced their ability to prepare and argue against the public purpose. Following decisions by the Supreme Court in the cases *Lubianker v. Minister of Finance*[712] and *Nusseibeh v. Finance Minister*,[713] in 1986 the Attorney General issued a guidance as to how to define the public purposes for which the land was taken and to deny the owner a right to bring her claims before the expropriation authority. In these cases, the court criticised the lack of description of the public purpose for which land was being expropriated and disapproved of procedures that effectively prevented the owners from presenting their case before the relevant authority. Therefore, the Minister of Finance created a sub-committee that worked under his authority to address the critiques issued by the Attorney General. The sub-committee was to hear the owner's case as soon as possible after an expropriation order was issued, unless the public purpose was deemed urgent, in which case the

[708] For a broader understanding of this non-interference approach: as an example of the Court's approach towards the Minister of Finance's decisions is the case of the Committee for the Defense of Expropriation of Land in Nazareth v. Minister of Finance.[708] The Court rejected the petition to overturn the decision by confirming that the decision about which plot of land should be expropriated is under the authority of the Minister of Finance and not subject to judicial review.
[709] H.C. 147/74, Spolansky v. Minister of Finance, 29(1) PD 421; 114/77, Schvartz v. Minister of Finance, 31(2) PD 800; H.C. 147/74, Spolansky v. Minister of Finance, 29(1) PD 421; 114/77, Schvartz v. Minister of Finance, 31(2) PD 800.
[710] H.C. 147/74, Spolansky v. Minister of Finance, 29(1) PD 421; 114/77, Schvartz v. Minister of Finance, 31(2) PD 800.
[711] A notice of expropriation would include general terms stating that the land is needed for 'public use', without further details.
[712] H.C. 307/82, Lubianker v. Minister of Finance, 37(2) PD 1441; Application 33/55, Salamon v. Attorney General, 7 PD 1023.
[713] F.H. 4466/94, Nusseibeh v. Finance Minister, 49(4) PD 68.

hearing would not take place in advance. Since 1986, the process has changed and the practice today is that a committee, including representatives of local authorities and central government, hears objections from owners that have received a notice of expropriation according to the Lands (Acquisition for Public Purposes) Ordinance of 1943.

In addition, the ordinance does not determine the timeframe for the authorities to complete the project for the land that has been expropriated. Delays may affect the option of requesting cancellation of the expropriation, as the authorities might hold the land without developing it. Furthermore, the court could read the Lands (Acquisition for Public Purposes) Ordinance of 1943 in a narrow way and decide that the Minister of Finance has no obligation to disclose the reason or the timeframe for completing a work of public purpose.[714]

Article 20 of the Lands (Acquisition for Public Purposes) Ordinance of 1943 authorises the High Commissioner for Palestine to take up to 25% of the land without compensation if the land expropriated is for a playground, re-established ground or for the construction of roads. Since land can be expropriated without financial compensation, local authorities expropriate it even without an existing intention to promptly use it for public services. This issue affects the question of the legality of the expropriation, due to the denial of the owner's right to compensation.[715]

The Prescriptive Law of 1958, and amended in 1965 is an additional important law related to land expropriation,[716] that preserves the British practices linked with the Ottoman Land Code (1858). The owner of a property was eligible to claim his right to the property at any time. However, according to the new amendment, article 5 of the Prescriptive Law (1958),[717] amended in 1965, if the owner has not submitted a petition to reclaim his right within 25 years of the expropriation, his ownership right

[714] F.H. 29/72, Avivim Ltd v Minister of Finance, 24(2) PD 397; formalistic reasoning is also reflected in H.C. 75/57, Kalmas v. Local City and Planning Commission of Tel Aviv-Jaffa, 11 PD 1601, where the Court obliged the Minister of Finance to specify the public use that had caused the expropriation.

[715] Article 20 of the Lands (Acquisition for Public Purposes) Ordinance of 1943.

[716] 'Laws of the State of Israel: Authorized Translation from the Hebrew, Volume 12'. Government Printer, Jerusalem, Israel (1948-1987), 129-133.

[717] The Prescriptive Law, 1958, 'Laws of the State of Israel: Authorized Translation from Hebrew, Volume 12', Government Printer, Jerusalem, Israel (1948-1987), 129-133

expires and a claim regarding the illegality of the expropriation can no longer be raised.[718] Article 5 stipulated that:

> The period which claim in respect of which action has not been brought shall be prescribed to as 'the period of prescription' shall be, 1) in the case of a claim not relating to land- seven years; 2) in the case of claim relating to land-fifteen years or, if the land has been registered after settlement of title in accordance with the Land (Settlement of Title) Ordinance (1), twenty-five years.[719]

Therefore, this is used as an addition tool to control claims of Palestinian Arabs over land expropriation. The new amendment limits the claims of Palestinian Arabs over land, accordingly, to be an unlimited right according to the Prescriptive law (1958).[720] However, the new amendment No.3 (2010) to the acquisition law (1943)[721] restricts that right and declares that the land right claim will expire if the claim is more than 25 years old.

4.4. Conclusion

Israel has created and established a land regime in stages. The primary laws that were used to expropriate land in the first decades after the establishment of the State of Israel were the Absentees' Property Law (1950) and the Land Acquisition Law (1953),[722] along with the Lands (Acquisition for Public Purposes) Ordinance of 1943. By the 1970s, expropriation of land was primarily undertaken under the general rules of the Lands (Acquisition for Public Purposes) Ordinance of 1943, which was also used by the authorities to expropriate land in East Jerusalem after

[718] In 1977, the law was amended to adjust to the reality of inflation by adding interest to the compensation amount.
[719] Article 5 the Prescriptive Law, 1958, 'Laws of the State of Israel: Authorized Translation from the Hebrew, Volume 12'. Government Printer, Jerusalem, Israel (1948-1987), 129-133.
[720] The Prescriptive Law, 1958, 'Laws of the State of Israel: Authorized Translation from the Hebrew, Volume 12', Government Printer, Jerusalem, Israel (1948-1987), 129-133, this law originally adopted from the Ottoman Land Code (1858).
[721] Amendment No.3 (2010) to the acquisition law (1943), according to Avital judgement the state used to offer land compensation to cover at least 1/3 from the originally expropriated property. However, after the new amendment, there is no more compensation for the land, the only optional compensation calculated by the date in which the land expropriated hence, the compensation will be far from the actual value of the property.
[722] The use of the Absentees' Property Law (including the emergency regulations) ended in the mid-1950s, and the Land Acquisition Law (1953) no longer applied after March 1954.

1967 using the general expropriation rule.[723] Together, these laws created a legal framework, which since the foundation of the state, has facilitated the expropriation of land from Palestinian Arabs who live in Israel. This dynamic has created a situation in which most of the access to land for the Palestinian Arabs are denials in one form or another. Through minimising the access to land which has created an architecture of exclusion in which the Palestinians Arabs struggle on a daily basis in every claim to purchase or lease a plot of land or to demand back their absentee land from the state. The tracing of the creation of the land regime and the tracing of the laws used to expropriate the land can be helpful to draw a broader picture of how this development has occurred through the years. It was particularly evident following the first decades of the creation of Israel. However, the tools and the mechanism are still used until today. Addressing the particular laws can provide an answer to the question of the land Palestinian Arabs dispossessed and the discrimination in access to land that denies land to Palestinian Arabs, it is an attempt to contribute to a better understanding and the legal provisions and mechanism toward restriction on the land rights of Palestinian Arabs citizens of Israel.

[723] An alternative method for the expropriation of land is the Planning Law (1965), which allows 40% of land for expropriation without compensation, in comparison with the 25% laid down in the Lands (Acquisition for Public Purposes) Ordinance of 1943.

Chapter 5: Case Study, Sheikh Jarrah as a Contemporary Struggle

...[i]t seems all clear as daylight. The white man makes a rule or law. Through that rule or law or what you may call it, he takes away the land and then imposes many laws on the people concerning that land and many other things, all without people agreeing first as in the old days of the tribe. Now a man rises and opposes that law which made right the taking away of the land. Now that man is taken by the same people who made the laws against which that man was fighting. He is tried under those alien rules. Now tell me who is that man who can win even if the angels of God were his lawyers.

Ngũgĩ wa Thiong'o [724]

Since 2000, and especially since the Annapolis Conference in late 2007, Israel has been busy augmenting Jewish presence in East Jerusalem. The expansion of Jewish settlements stifles Palestinian urban growth and makes the prospect of and Israeli-Palestinian accord on Jerusalem even more difficult.

Dr. Menachem Klein [725]

5.1. Introduction

After the 1967 annexation of East Jerusalem, the Israeli planning authorities did not adequately plan or implement measures that addressed the natural growth of the Palestinian Arab population.[726] Only 13% of the total area of East Jerusalem is available for construction for the Palestinian population, which equivalent to 21.3 km^2. In comparison, approximately 30% of the land area of East Jerusalem has been confiscated for the construction of Israeli settlement. [727] Thirteen percent of Palestinian territory is already built up, leaving little room for future construction or planning improvements. As a result of the shortage of land, the developed areas are overcrowded, with extended families sharing houses, with sometimes as many as

[724] Ngũgĩ wa Thiong'o, Weep Not, Child (Nairobi: Heineman, 1964) 75.
[725] Dr. Menachem Klein, 'The Shift: Israel- Palestine from Border Struggle to Ethnic Conflict', (London: C. Hurst and New York: Columbia University Press, September 2010). Ir Amim, 'Israel Settlement in Palestine Communities in East Jerusalem' snapshot, August 2009; Ir Amim - "City of Nations" or "City of Peoples", in Hebrew, is an Israeli non-profit, non-partisan organization founded in order to actively engage in issues that impact Israeli-Palestinian relations in Jerusalem and the political future of the city.
[726] UN OCHA, 'The Planning Crisis in East Jerusalem: Understanding the Phenomenon of "Illegal" Construction', Special Focus (April 2009).
[727] Ibid.

four generations of a single family sharing a house. The housing standards are poor, roads are narrow and in bad condition, electricity, gas and water supplies are unreliable. Public transportation is also limited.[728]

The permit application process for new construction and for the renovation of existing housing is expensive and complicated, and is difficult for non-Hebrew speakers, since Hebrew is the sole, official language of the planning authorities.[729] In East Jerusalem, the Israeli authorities have constructed around 50,000 housing units in Israeli settlements. In comparison, they have constructed only 600 housing units for Palestinian residents over the past 30 years.[730] The number of permits issued for Palestinians does not meet the demand for housing associated with the natural growth of the Palestinian population in East Jerusalem, which is estimated to be approximately 1,100 housing units per year.[731] Accordingly, and out of desperation, the construction of houses without permits does occur. The municipal authorities of Jerusalem, under the Israeli Planning and Building Law of 1965,[732] have authority to demolish buildings that have been erected without a permit.[733]

Twenty-two percent of the area of East Jerusalem is designated as "green area", with a prohibition on construction. These green areas are intended to be open spaces, yet they are populated, as the authorities have allowed residents to remain living there who lived there before the Planning and Building Law of 1965 was passed. However, Palestinian residents do not have permission to make renovations. In contrast, Israeli authorities have, on occasions, changed the green area designation to allow Jewish settlers living in this space to carry out construction. Illustrative

[728] UN OCHA, 'The Planning Crisis in East Jerusalem, Understanding the Phenomenon of "Illegal" Construction 2', Special Focus, April 2009:12.
[729] The statistics are until 2008, but the gap can still reflect the current situation. Human Rights Watch, 'Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories', p.135 (2010).
[730] IrAmim, 'State of Affairs: Jerusalem 2008: Political development and changes on the ground', 30 (n42) (December 2008).
[731] UN OCHA, 'The Planning Crisis in East Jerusalem: Understanding the Phenomenon of "Illegal" Construction', Special Focus (April 2009).
[732] The Israeli Planning and Building Law 1965.
[733] East Jerusalem faced massive demolition; according to official statistics, between 2000 and 2008, the Israeli authorities demolished more than 670 Palestinian-owned structures because of lack of permits.

examples include the settlements of "Ramot" and "Har-Homa".[734] A further 35% of the territory is unplanned; nobody is allowed to build there.

Palestinian residents of East Jerusalem are not allowed to buy land located in the Israeli settlements in West Jerusalem, the green areas, and the unplanned areas. This is in contrast with Jewish settlers' organisations, which may purchase Palestinian property in the referenced areas.[735] This directly affects the demographic balance between Palestinian and Jewish residents in East Jerusalem.[736] The question of keeping the Jewish majority in Jerusalem was addressed in the Local Outline Plan for Jerusalem of 2000, which maintained the divisions of the areas under Jewish control and established and facilitated new Jewish settlements.[737]

Under the UN General Assembly Resolution: resolution number 2235 (ES-V), on 4 of 1967, the General Assembly stated that it is '[d]eeply concerned at the situation prevailing in Jerusalem as a result of the measures taken by Israeli authorities to change the status of the City, [c]onsiders that these measures are invalid'.[738] Therefore, East Jerusalem is considered to be occupied territory and included as part of Area C.[739] In 1980, the Knesset adopted a law that declared the unification of East and West Jerusalem, which in part states: 'Jerusalem, complete and united, is the capital of Israel'.[740] Against this claim, Israel has applied domestic, as opposed to international law, when land ownership disputes have arisen between Palestinians living in East Jerusalem that compete with state interests. When these cases have arisen, the courts have viewed these matters solely as ownership disputes between two parties.

The effect of this has been particularly acute in the East Jerusalem neighbourhood of Sheikh Jarrah, where families facing eviction are unable to access remedies under international law. In these cases, the Israeli authorities have viewed the situation as merely domestic ownership disputes to be dealt with by the municipal authorities

[734] ARIJ, 'Evolution of Spatial and Geo-Political Setting of Jerusalem 1947-2010', 45 (December 2010).
[735] Around 2,000 settlers are living in the Palestinian areas of Sheikh Jarrah, Ras-al-Amud, Silwan, and Wadi al-Joz.
[736] Israel Kimchi, 'Population of Jerusalem and Region: Growth and Forecast'.
[737] Local Outline Plan Jerusalem 2000, Report No. 4: 'The Proposed Plan and the Main Planning Policies' (August 2004).
[738] UN Resolution UN General Assembly Resolution: resolution 2235 (ES-V), United Nation
[739] OCHRA, 'Area C Vulnerability Profile ', United Nation Office for Coordination of Humanitarian Affairs report available on:
https://www.ochaopt.org/documents/ocha_opt_fact_sheet_5_3_2014_en_.pdf
[740] 1980 Basic Law: Jerusalem, Capital of Israel, passed by the Knesset on the 17th Av, 5740 (30 July, 1980) and published in Sefer Ha-Chukkim No. 980 of the 23rd AV, 5740 (5 August, 1980):186.

and domestic courts (which is the current situation), closing off any international avenue of legal appeal. The Israeli domestic courts refuse to apply international law standards in these cases.

This chapter provides a detailed case study of the legal struggle over housing rights that has played out in the Sheikh Jarrah neighbourhood in East Jerusalem for nearly five decades. This chapter provides a review of legal cases in Israeli courts, augmented by interviews with people who have been victims of, or live with, the daily threat of eviction, as well as interviews with attorneys involved in legal cases. Sections 5.3 and 5.4 examine the legal tools used by the Israeli authorities to maintain control and power over housing rights in Sheikh Jarrah and concludes with an evaluation of the current legal system's usefulness to protect Palestinian residents facing forced eviction.

5.2. The Sheikh Jarrah Neighbourhood

The neighbourhood of Sheikh Jarrah is located in the Northeast of Jerusalem's Old City in the direction of Mount Scopus. It lies at the intersection with West Jerusalem, and its proximity to the Old City and the holy places within it, gives Sheikh Jarrah added significance to both the Palestinian and Jewish populations of Jerusalem. The neighbourhood also has geopolitical significance at the both national and international levels. Several diplomatic representatives, international consulates and international organisations are located in and near the neighbourhood.[741] The residents of Sheikh Jarrah are mainly Palestinians who arrived as refugees in 1948 after being displaced from West Jerusalem, Haifa, and Jaffa.

5.3. Background to Land Ownership Disputes in Sheikh Jarrah

Land ownership disputes in Sheikh Jarrah can be traced back to the UN General Assembly Resolution 181 of 29 November 1947, which partitioned Palestine into Jewish and Arab states.[742] The partition plan, rejected by the Arab states, defined the status of Jerusalem as *corpus separatum*, governed by the UN:

[741] Examples of diplomatic representatives and consulates: Belgium, Britain, France, Italy, Spain, Sweden, and Turkey. Examples of international organisations: The Young Women's Christian Association (YWCA), the European Union, the Red Cross, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), and the World Health Organization (WHO).
[742] Partition Plan, UN General Assembly Resolution 181 (1947).

> The City of Jerusalem shall be established as a corpus separatum under a special international regime and shall be administered by the United Nations. The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority on behalf of the United Nations.[743]

Following the war of 1948,[744] Jordan assumed control of East Jerusalem, while representatives of Hagana[745] and later the British authorities, demanded that the Jewish residents of East Jerusalem leave their homes because of the violence. Jewish property that was evacuated during the 1948 war came under the administration of the Jordanian Custodian of Enemy Property.[746] The partition line was defined in the ensuing ceasefire agreement between Jordan and Israel in 1949.[747]

In 1956, while under Jordanian control, 28 Palestinian families that had become refugees from West Jerusalem, Haifa, and Jaffa in the 1948 war were given residency in Sheikh Jarrah through an agreement reached between Jordan and the United Nations Relief and Works Agency (UNRWA). The agreement, between the Hashemite Kingdom of Jordan and the UNRWA, for an Urban Housing Project in the near East at Sheikh Jarrah Quarter, Jerusalem, dated November 16th 1954,[748] states:

> It is HEREBY agreed between the Government represented by his Excellency the Minister of Development on the one part, and the Agency represented by the UNRWA Representative to Jordan on the other part, that a project be undertaken to provide housing accommodation for twenty-eight families in Jerusalem.[749]

Under this agreement, each of the 28 families were given the option of receiving legal titles to their new properties on the condition that if they accepted, they were

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[743] Part III, City of Jerusalem, UN General Assembly Resolution 181 (1947).
[744] Palestinians refer to the war as 'Nakba' ('Catastrophe'); Israelis refer to the war as the 'independence war'.
[745] A Jewish organisation that operated during the British Mandate in Palestine. In relation to the evacuation, see Cohen, 'Geroshen the Wise from Nahalat Shimon':113. For a general understanding of leaving the neighbourhood, see A. Golan, Spatial Change - The Result of War Beer-Sheva: Ben-Gurion University Press (2001): 21-7.
[746] Yitzhak Reiter and Lior Lehrs, 'The Sheikh Jarrah Affair: The Strategic Implications of Jewish Settlement in an Arab Neighbourhood in East Jerusalem' Jerusalem Institute for Israeli Studies, (2010): 44.
[747] See chapter 4 of this thesis, for more details; Eyal Zamer and Eyal Benvenisti, 'The Legal Status of Lands Acquired by Israel before 1948 in West Bank, Gaza Strip and East Jerusalem', Jerusalem Institute for Israeli Studies, (1993): 35-57.
[748] Index the Agreement UNRWA, in the file. project no. J/UH/102, found in the Jordanian archive, authenticated by the Minister of Jordan.
[749] The size of each apartment was 60 square meters, on a yard of 350 square meters in size.

required to relinquish their refugee ration cards and disclaim the right to receive material assistance from the United Nations and Jordanian government relief and works agencies, approving of 'their removal from the agency ration rolls'.[750]

These 28 families were housed in an urban residential complex[751] referred to as the Karm al-Jaa'oni complex. The complex was constructed in a neighbourhood to the east of Nablus Road and south of the cave of Shimon HaTzadik and consisted of 'housing accommodation for twenty-eight families through saving in rent to become self-supporting members of the community'.[752]

According to one resident of Sheikh Jarrah, Mrs. Amal Al-Qassem,[753] her house was passed to her through inheritance from her father, the late Mr. Qassem, who signed the agreement with the Jordanian government, represented by the Minister of Housing and Development/Public Works.[754] Mr. Qassem also relinquished his family's refugee ration card in exchange for the rights to the house, in accordance with article 11 of this agreement, which stated 'that if the resident pay a nominal rent for three years, and fulfil all the conditions of the agreement the tenant qualified to an automatic full transfer of ownership of the land and house'.[755] However, despite this assurance, legal titles to the houses were never formally transferred to the families. Al-Qassem explains, 'it was not an easy way to live without the support of the UNRWA, however, the sacrifices given in order to gain ownership and a roof top

[750] The second paragraph of the agreement between Jordan and the UNRWA on the municipal residential project in Sheik Jarrah in the near East for an Urban Housing Project at Sheikh Jarrah Quarter, Jerusalem, dated 16 November, 1954; A copy of this document saved in the research file. A copy of a list of the names and plot details of the families receiving the right to establish their homes, located in the Jordanian archive in Amman; A copy of this document saved in the research file.
[751] Twenty-six two-family houses and two single houses.
[752] According to the second paragraph of the agreement and Provision 1 of the agreement between the Hashemite Kingdom of Jordan and the United Nations Relief and Works Agency for Palestine Refugees (UNRWA), agreement between Jordan and the UNRWA on the municipal residential project in Sheik Jarrah in the near East for an Urban Housing Project in the Sheikh Jarrah Quarter, Jerusalem, dated 16 November, 1954; A copy of this document saved in the research file.
[753] Interview with Mrs Amal Al-Qassem, resident of Sheikh Jarrah, at her house located in Sheikh Jarrah, on 10 August 2015, 10:00 am (interviewed several times personally and via Skype to follow up the situation, with the main interview held on 10 August, 2015, 10:00 am, and the latest on 7 May, 2016, 14:00 pm).
[754] A similar rental agreement between the Jordanian government represented by the Minister of Economy and Development/of Public Works and the tenants, each of the 28 families, which unpack the details about the house sizes, the conditions, and the payment, signed in August 1956; A copy of this document saved in the research file [Arabic].
[755] Article 11 of the rental agreement between the Jordanian government represented by the Minister of Economy and Development of Public Works and the tenants, each of the 28 families, which unpack the details about the house sizes, the conditions, and the payment, signed in August 1956; A copy of this document saved in the research file [Arabic].

to his (her father) family'.[756] Despite the fact that the residents gave up their ration cards in order to gain housing rights, the Palestinian residents maintained their status as refugees based on UNRWA classifications, and were given the choice to return to their abandoned properties in Israel or to request compensation.[757] Hence, this article protects the Palestinian residents' "right to return" therefore they must keep their refugee status. The "right to return" in this context refers to the return of refugees to the sites of their homes, villages, and land in historic Palestine from which they fled or were expelled, in accordance with UN Resolution No. 149 passed on December 11th 1948, article 11, which:

> Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.[758]

In addition, UN General Assembly Resolution 3236, from November 22nd 1974 declared the right of return to be an "inalienable right".[759] However, General Assembly resolutions are not binding in international law.[760]

East Jerusalem remained under Jordanian control until the Six-Day War in 1967, when Israel annexed East Jerusalem under the Law and Administration Ordinance.[761] Palestinian property was subsequently controlled by Israeli development authorities through the Absentees' Property Law of 1950,[762] including property located in West

[756] Interview with Mrs Amal Al-Qassem, resident of Sheikh Jarrah, at her house located in Sheikh Jarrah, on 10 August 2015, 10:00 am.
[757] Article 9 of the rental agreement between the Jordanian government represented by the Minister of Economy and Development of Public Works and the tenants, each of the 28 families, which unpack the details about the house sizes, the conditions, and the payment, signed in August 1956. A copy of this document saved in the research file [Arabic].
[758] UN General Assembly Resolution No. 149 passed 11 December 1948.
[759] UN General Assembly Resolution 3236, from 22 November 1974.
[760] The Oslo Agreements of 1993 deliberately omit any mention of these resolutions and postponed dealing with the 'right to return' until the final future resolution. However, supporters of the Palestinian 'right of return' preserve that 'the right of return' for the 1948 Palestinian refugees still exists according to international law. It exists notwithstanding the language of the Oslo agreements, insufficient as they are in this regard, and despite the position of the current Israeli government. Palestinian refugees should be free to seek their right to repatriation, so long as UN Resolution 194 remains in force. See for more details: Gail J. Boling, 'Palestinian Refugees and the Right of Return: An International Law Analysis', BADIL - Information & Discussion Brief Issue No. 8, January 200.
[761] The Law and Administration Ordinance (Amendment No. 11), Law and Municipalities Ordinance (Amendment No. 6) Law.
[762] Absentees' Property Law (1950), available on: <http://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A>.

Jerusalem.[763] Homes in Sheikh Jarrah fell under the authority of the Israeli General Custodian within the Ministry of Justice. According to the provisions of the Israel General Custodian Law of 1978,[764] the Administrator General is responsible for the administration of abandoned property, within the Ministry of Justice. "Abandoned property" is defined in Section 1 of the law as 'an asset in respect of which no one is entitled and able to be treated as owners, or an asset whose owner is unknown'. Section 5 of the Israel General Custodian Law of 1978[765] stipulates that 'a person holding abandoned property or property which he has reason to believe is abandoned or a public employee who learnt of such property in the course of his duty, must notify the Administrator General and pass on to him/her the information he/she has regarding the property'.[766]

Under Section 5 of the Legal and Administrative Matters (Regulations) Law (1970) [Consolidated Version],[767] the Israeli General Custodian also manages property that was formerly administered by the Jordanian Custodian of Enemy Property. Following the War of Independence, the assets of Jews situated in areas of the West Bank, outside the jurisdictional boundaries of the State of Israel, were vested in the Jordanian Custodian of Enemy Property. In 1967, these assets were vested in the ruling military authorities, and in 1970, properties in East Jerusalem that were previously managed by the Jordanian Custodian of Enemy Property were transferred to the Israeli General Custodian.[768] Since 1967, But the residents of Sheikh Jarrah have never been required to pay rent fees neither to the Jordanian Custodian of Enemy property nor the Israeli General Custodian because they gave up their ration cards in exchange for the rights to these houses as noted earlier.

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[763] The transfer of land previously owned by Palestinians to third parties (such as Israeli immigrants) was made by the Israeli Custodian of Absentee Property to the Israeli Development Authority (Transfer of Property Law (1950), available on: <www.israellawresourcecenter.org/israellaws/fulltext/devauthoritylaw.htm>.

[764] Laws of State of Israel, no. 1270, 61.

[765] Ibid

[766] Examples of cases in which there would be suspicion of abandoned property: a case in which a person died childless, leaving property with no known heirs; a minor who had lost his relatives and inherited property (the Israeli General Custodian would be responsible for the property until the minor reaches a certain age); property belonging to someone who is not in Israel and whose fate is unknown (Holocaust victims are an exception); where contact has been lost with the owners of the property, such as a bank account that has been inactive for ten or more years or a real estate property for which taxes have not been paid for an extended period of time; and property of unknown ownership.

[767] Article A.5 Legal and Administrative Matters (Regulations) Law (1970) 138.Laws of the State of Israel 176.

[768] Ibid.

5.4. Proceedings Against Palestinian Families in Sheikh Jarrah

In 1972, two Jewish committees, the Sephardic Community and the General Council of the Congregation of Israel (Knesset Yisrael) (hereafter called the Committees), claimed the right to ownership of the land in Sheikh Jarrah. These communities requested the release and registration of properties in their names claiming historical and religious affiliation to the land dating back to the 19th century.[769] The committees supported their ownership claim using five documents arguing that they be *Koshan*,[770] land deeds from the Ottoman period.[771]

The *Koshan*[772] remain a source of conflict in several land disputes within the neighbourhood, where the authenticity of the claims are challenged. The cases are even more complicated. The transaction that provided the *Koshan* and deeds occurred in 1886 based on a contract between the Arab landowners and the committees. The contract began in 1875 and ended in 1886, according to the committees' claims. During the Ottoman Period, a valid land deed needed to include a full description of the property, showing four borders and details matching the physical landscape. Therefore, where borders were missing or did not correspond to the landscape, the Turkish administration would consider the deed either invalid or referencing to another plot of land. For this reason, the *Koshan*, which is the subject of the legal proceedings at Sheikh Jarrah, failed to fulfil the conditions.[773]

After 1967, many similar claims to land around Jerusalem succeeded using *Koshan*, although this only provided a provisional form of ownership registration. A provisional registration was established and the land was transferred within the Israeli Land Registry in 1972. The registration deeds indicate that the committees

[769] Civil Appeal 4126/05 Suleiman Darwish Hijazi v the Sephardic Community Council et al. Takdin-Elyon 2006 (2) 4042; Supreme Court of Justice Ruling 6358/08 Muhamad Kamal Al-Kurd et al. v The Land Registry and Regulation Unit et al.; Civil Appeals Authority; Civil Appeal 6239/08 Muhamad Kamal Al-Kurd v the Sephardic Community Council, Supreme Court, Takdin-Elyon 2008 (3): 573.

[770] Koshan was a form used during the Ottoman period to transfer legal ownership titles.

[771] Copy of the Koshans, a copy of this document saved in the research file, and the letter from the Ministry of Foreign Affairs in Turkey in response to Mr. Saleh Abu Hussein, a member of the attorney's team currently representing the residents of Sheikh Jarrah, on 16 May, 2003, after checking Koshan no. 37 from 1291 cannot be found in the Turkish Archive; A copy of this document saved in the research file.

[772] The committees referred to these five documents, one of those dealing with the usage of plot No.37, (the rest of they never present them the rest of the Koshans to the court, and the committees just provide a copy of Koshan No. 37 produced between 1930-1940.

[773] The Hanoun family, while trying to argue against the validity of the committees' documents regarding their home and land, are not included in the committees' Koshans - Hijazi case.

were equal owners of the properties, which were registered as *Heqdesh* - a religious endowment - which is located in the Land Registry Office in Jerusalem.[774] However, the land register included a remark at the bottom stating that the committees promised to provide maps of the plot to illustrate the borders to present beside the *Koshan*. This measure was meant to prove that the plot described in the *Koshan* is the same as representative on the map and matching the description. The registry notes that, to date, the committees have not provided the required documentation or map to make the registration official to the land registry, according to Article 125 of the Land Law. Therefore, the provisional registration is only *prima facie* of the content of the registration.[775] Therefore, it needs to be emphasised that, even if the registration was accurate and legal, it did not fulfil the legal conditions requiring an announcement to the affected parties. The lack of proper notification to the Sheikh Jarrah families is an improper method that may cause the committees' claim to ownership to be defeated.[776] Additionally, the claim also relies on an argument that translation of documents was incorrect and thus misleading. In addition, to date there is no map that defines geographically contested property.[777]

Additionally, according to the Ottoman archives in Ankara, the attorney representing the families could not find any existing title deeds for the committees, which raises questions over the authenticity and validity of the documents. The attorney representing the Hijazi family explained:

> I had personally investigated the existence of such documents in the Turkish archive, with the help of a translator, and requested special access from the Turkish Foreign Affairs Ministry, which provided such access. I have visited the Ottoman archive in Ankara several times to try to underpin and locate the *Koshan* represented by the committees. The research was on the grounds of checking the ownership based on the location plot number and the borders, checking any claim in which transfer of ownership between the parties occurred. According to the system, if such *Koshan* existed, it should be filed by date and location. Nevertheless, no *Koshan* with these details and numbers was found. Furthermore, an answer was later received from the Turkish

[774] Deed of Registry (The Land Registry Office in Jerusalem), Volume 97: 3 (Deeds of Registry No. 1015):5887; A copy of this document saved in the research file.
[775] Article 125 of the Land Law (1969). On the other hand, final registration "Taboo" is proof of ownership for the purpose of subsequent land disputes.
[776] Civil case 5668-04/14 El-Sabagh.
[777] Several Interviews with Mr. Saleh Abu Hussein, the main attorney in the attorneys' team currently representing the residents of Sheikh Jarrah, at Abu Hussein Law Firm, Um El Fahem, Israel, on 5 August, 2016, at 4:15 pm 8 August 2016, at 17:00 and 5 May 2016 16:30.

> Foreign Affairs Ministry in response to a letter dated May 16th 2003, informing me (the attorney) that the *Koshan* he was looking for, no. 37 from the year 1291, could not be found in the Ottoman Archive. This was evidence provided to the court as a real *Koshan*, while the argument of my clients was that it was forged and not authentic.[778]

In 1976, following the primary registration of the *Koshan* at the land registry, the committees took further proceedings against four families, claiming ownership of their properties and requesting eviction, as well as an order requiring demolition of part of the fourth family's house.[779] The Supreme Court denied the request, on the grounds of the fact that the families are the legal residents of the neighbourhood according to the agreement between the families, the UNRWA, and Jordan.

In 1982, the Committees separately brought eviction proceedings against 23 families, out of the 28 families who lived in Sheikh Jarrah neighbourhood. The rest of the families did not face legal dispute because the committees chose to sue only some of the families. However, the committees maintain their right to sue the rest of the families in the future. The court decided to discuss all cases in a joint civil suit.[780] Seventeen of the families were represented by attorney Yitzhak Toussia Cohen between 1982 until 1989.[781] Cohen negotiated an agreement[782] (hereafter called procedural agreement) the court that stated that his clients would not challenge the ownership claims of the committees, and would accept the status of protected tenants under the Tenant Protection Law of 1972.[783] This status granted the families the right to continue living in the properties as long as they paid rent and observed the prohibition on all renovation works.

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[778] Several Interviews with Mr. Saleh Abu Hussein, the main attorney in the attorneys' team currently representing the residents of Sheikh Jarrah, at Abu Hussein Law Firm, Um El Fahem, Israel, on 5 August, 2016, at 4:15 pm 8 August 2016, at 17:00 and 5 May 2016 16:30.

[779] The families are: Zuhdi el-Ayobi, Saleh Ezat, Muhamad Ibrahem Hammad, and Asad Yousef el-Husini, District Court Case 236/76, 18 November, 1967; The Appeal to the Supreme Court, Civil Appeal 459/79 PADI L" HB (4):188.

[780] Civil Court Case 3457/82. The list of the families: Hanoun, al-Ghawi, al-Kurd, Aweideh, al-Fatyani, al-Zayn, Abd al-fahim Ibrahim el-Ghawi, Mani, Aweideh, Zamiri, Ahjeiji, Qasin, al-Jawani, al-Dajani, al-zahudi, Rafqha Abd Allah al-Kurd, Diab Asad al-Dajani, Nusseibeh, al-Khatib, Atiyeh, Arafeh, Sabbagh, and Khoury; Civil Appeal 6239/08 Muhammad Kael al-Kurd v the Sephardic Community Council, Supreme Court, Takdin-Elyon, 2008 (3) 573 [Hebrew].

[781] There is no exact date on the agreement, but these are the dates that the legal proceeding held and conclude the approval of the agreement.

[782] Civil Appeal 6920/08 Maher Hanoun v The Sephardic Community Council, Supreme Court, Takdin-Elyon, 2008 (3) 2530 (Hebrew); Civil File (Jerusalem) 3457/82 The Sephardic Community Council of Jerusalem et al. v Hanoun et al. Y. Hyam [Hebrew]; Civil Appeal 6239/08 Muhammad Kamal Al-Kurd v the Sephardic Community Council, Supreme Court, Takdin-Elyon 2008 (3) 573 [Hebrew].

[783] Tenant Protection Law [Consolidated Version]: 5732-1972.

According to Amal Al-Qassem:

> After the legal proceeding against some of the families in the neighbourhood, the residents decided to locate and appoint an attorney, Yitzhak Tosia Cohen, the first attorney who represented the Sheikh Jarrah residents. Nonetheless, not all of the Sheikh Jarrah residents appointed him, for various reasons, such as financial difficulties which prevented the possibility of payment of the legal procedure costs, or absence from the meeting that day for other reasons.
>
> Later on, the attorney did not address them or discuss the options with regard to their [the residents of Sheikh Jarrah whom Yitzhak Tosia Cohen represented] legal status, before the settlement with the Committees, in which Yitzhak Tosia Cohen agreed, on behalf of his clients, without consulting them, to not challenge the ownership question and instead signed the settlement agreement with the committees in which he accepted the status of his clients as 'protected tenanted', with no ownership claims.

She continued:

> Yitzhak Tosia Cohen met with them just after signing the procedural agreement with the committees without their consent, and his explanation was that this was the only open route, otherwise they would be evicted onto the streets and the committees would demolish the houses with or without their approval.[784]

The decision negotiated by Yitzhak Toussia Cohen,[785] the procedural agreement has set the precedent for how property disputes in Sheikh Jarrah and beyond are judged. Importantly, as the agreement was negotiated without the knowledge of the families involved and did not challenge the legality of the pre-1948 ownership claims by the committees, it considerably weakened the ownership claims of the families as well as damaged their ownership status. The families claim that Yitzhak Toussia Cohen did not explain the procedural agreement[786] and its implications to them. Accordingly, they contested the validity of the agreement and argue it misrepresented their best interest, while they challenge the ownership questions in the cases with the claims that he did not explain the legal implications of the

[784] Interview with Mrs Amal Al-Qassem, resident of Sheikh Jarrah, at her house located in Sheikh Jarrah, (interviewed several times personally and via Skype to follow up the situation, the main interview held on 10 August, 2015, 10:00 am, the latest on 7 May 2016, 14:00 pm).
[785] Civil Appeal 6920/08 Maher Hanoun v The Sephardic Community Council, Supreme Court, Takdin-Elyon, 2008 (3) 2530 (Hebrew); Civil File (Jerusalem) 3457/82 The Sephardic Community Council of Jerusalem et al. v Hanoun et al. Y. Hyam [Hebrew]; Civil Appeal 6239/08 Muhammad Kamal Al-Kurd v the Sephardic Community Council, Supreme Court, Takdin-Elyon 2008 (3) 573 [Hebrew].
[786] An agreement between the parties during the progression of the legal proceedings.

approval of the procedural agreement.[787] Additionally, the families argued that the agreement was a misrepresentation and displayed negligence by their attorney. It is possible to argue, however, that at the time, Cohen was attempting to ensure his clients' immediate rights and prevent their immediate eviction.

Therefore, the procedural agreement allowed the committees to commence legal action against the affected families. In 1993, the committees claimed that the families were breaching the contract conditions prohibiting building without the proper permit, and were thus improperly maintaining the properties.[788] The Magistrate's Court recognised the committees' arguments, and an appeal challenging that decision was denied.[789] The court regards the procedural agreement as binding under Israeli Law and based its decision in relation to the four families[790] who had already been evicted according to this procedural agreement.

Since the court recognised the families as protected tenants, it rejected the request for eviction unless the tenants did not pay the rent as requested.[791] Consequently, based on the procedural agreement,[792] the families were entitled to long-term leasing rights, and in order to maintain those rights they needed to pay rent to the committees as the owners. The reason used to justify the later eviction was that the families, as tenants, did not pay the rent as the agreement stipulated.[793] The families used two main arguments to disprove the validity of the procedural agreement. First, they did not approve or have any understanding of the procedural agreement. If they had, they would not have accepted it as it negates their claim to be the legal owners

[787] Civil Court Case 3457/82. The list of the families: Hanoun, al-Ghawi, al-Kurd, Aweideh, al-Fatyani, al-Zayn, Abd al-Fahim Ibrahim el-Ghawi, Mani, Aweideh, Zamiri, Ahjeiji, Qasin, al-Jawani, al-Dajani, al-zahudi, Rafqha Abd Allah al-Kurd, Diab Asad al-Dajani, Nusseibeh, al-Khatib, Atiyeh, Arafeh, Sabbagh, and Khoury; Civil Appeal 6239/08 Muhammad Kael al-Kurd v the Sephardic Community Council, Supreme Court, Takdin-Elyon, 2008 (3) 573 [Hebrew].
[788] Civil Appeal 6239/08 Muhammad Kamal Al-Kurd v the Sephardic Community Council, Supreme Court, Takdin-Elyon, 2008 (3) 573 [Hebrew].
[789] Civil Appeal 6239/08 Muhammad Kamal Al-Kurd v the Sephardic Community Council, Supreme Court, Takdin-Elyon, 2008 (3) 573 ([Hebrew].
[790] The families are the Hanoun family, the Al-Ghawi family, and the Muhamad Al-Kurd family.
[791] Civil Council, Supreme Court, Takdin-Elyon 2008 (3) 573 [Hebrew]. The decision was delivered on 20 May, 1989.
[792] Civil Appeal 6920/08 Maher Hanoun v the Sephardic Community Council, Supreme Court, Takdin-Elyon, 2008 (3) 2530 (Hebrew); Civil Appeal (Jerusalem) 4744/02 Jaa'bri Riad et al. v the Sephardic Community Council of Jerusalem, Magistrate's Court, Takdin-Shalom, 2005 (1) 18549 [Hebrew].
[793] IrAmim, 'Eviction of Tenants from Their Homes and the Settlement Plan in Sheikh Jarrah: The Case of Shimon HaTzadik', May 2009 [Hebrew].

of the properties. Secondly, the families did not understand Hebrew.[794] Even if that was not the case, they contest that they still did not understand the legal implication of signing the procedural agreement.

Um Kamil, Fawzyi Al-Kurd, the wife of Muhamad Al-Kurd, who was evicted, stated that:

> We have never consented to the procedural agreement. We own the houses of Sheikh Jarrah. The attorney Yitzhak Tosia Cohen did not explain the information included in the Hebrew documents, which he signed on our behalf. We could not read Hebrew and the attorney failed to clarify the legal implication of procedural agreement.[795]

In 1997, a new case against the Committees by Suleiman Darwish Hijazi[796] challenged the committee's ownership of the houses by challenging the authenticity of the 1886 land transfer documents provided to the court. The plaintiff presented thirteen legal deeds of ownership from the Ottoman Archive in Ankara and the Jordanian archives that verified his family's ownership of the Karm al-Jaa'oni area of the Sheikh Jarrah neighbourhood.[797] These documents traced the family ownership of the land from the 18th and 19th centuries to the original ownership of the al-Hijazi family. The Darwish Hijazi al-Sadi (the father and his relatives) family sold the land to Hanna al-Bandik in the 1930-1934 with confirmation the public notary setting in District Court of Jerusalem. Later in 1960 Hanna al-Bandik) sold the land with other parties to Suliman Darwish Hijazi family from Shoafat in East Jerusalem.[798]

Although the deeds obtained from the land authority Amman Archive in Jordan, officially stamped by the Israeli embassy in Jordan, detailed this ownership, the document was not accepted by the Israeli District Court and his petition was denied in 2002. Hijazi launched an Appeal to the Supreme Court in 2005[799] and the appeal

[794] Interviews with the families, affidavits, and testimonies from the families in the Sheikh Jarrah neighbourhood, held during August, 2015 and 5 May, 2016.
[795] Interview with Fawzyia Al-Kurd, wife of Muhamad al-Kurd, evicted resident/family, at Sheikh Jarrah neighborhood, opposite to her evicted house, on 8 August, 2016, at 13:00 pm.
[796] Please note that the land was not part of the UNRWA-Jordan agreement.
[797] Civil File (Jerusalem) 1465/97 Hijazi Darwish Suleiman v The Sephardic Community Council et al., Jerusalem District Court, 2002 (2) 66542 (Hebrew); Civil Appeal: The Sephardic Community Council et al., Supreme Court, Takdin-Elyon, 2006 (2) 4042 (Hebrew).
[798] A copy of Sharia's Court saved in the research file.
[799] Supreme Court Case 4126/05 Suleiman Darwish Hijazi v. the Sephardic Community 773.

was rejected in in 2006 the grounds that the documentation presented was not sufficient in relation to the question of ownership. The Hijazi appeal was denied and the Supreme Court did not find reason to interfere with the former decision of the District Court. Nevertheless, the decision illustrated that the Committees' ownership was incomplete, as the registration in 1972 was a primary registration according to the Israeli Land Laws. Commonly, a significant portion of East Jerusalem is still registered with the land registry, [800] according to the old method of registration of real estate ownership, but it has not yet been organised or updated according to the Land (Settlement of Title) Ordinance (New Version) of 1969.[801] The Supreme Court decision[802] is able to avoid dealing with the question of ownership,[803] instead focusing merely on answers to concrete questions arising from the case, and requesting the authorities to resolve and update property ownership registration in East Jerusalem.[804]

Other families have also tried to petition against the procedural agreement, arguing that it is invalid, but the Israeli Courts have denied their petitions, including those of the Hanoun family[805] and Muhammad al Kamal Al-Kurd.[806] The court's refusal to grant their petition was based either on a claim of non-payment of rent under the lease obligations arising from the procedural agreement, which defined the families as protected tenants, or on claims of construction or renovation of works at the property.[807]

In a separate case of *Rifka el-Kurd v. the Sephardic Community Council* heard in the Supreme Court,[808] the committees claimed that Al-Kurd violated the terms and

[800] The Israeli Land Register.There are nine Land Registration Offices, in Jerusalem, Tel Aviv, Haifa, Petach-Tikva, Nazareth, Netanya, Beersheba, Holon, and Rehovot, with two extension branches in Hadera and Acre.
[801] Land (Settlement of Title) Ordinance (New Version), of 1969, books of Israel Laws.
[802] Civil Appeal 4126/05 Suleiman Darwish Hijazi v the Sephardic Community[Hebrew].
[803] The committee did not adopt the court recommendation to prove their ownership in a separate procedure in the district court trying to achieve declaratory Decision.
[804] Nadav Shragai, and Yael Gold, 'Demography, Geopolitics, and the Future of Israel's Capital: Jerusalem's Proposed Master Plan', Jerusalem Ctr Public Affairs, (2010).
[805] Maher Hanoun v the Sephardic Community Council, Supreme Court, Takdin-Elyon, 2008 (3) 2530 (Hebrew); Civil Appeal Court, Takdin-Elyon, 2008 (3) 573 [Hebrew].
[806] Civil Appeal 6239/08 Muhammad Kamal Al-Kurd v the Sephardic Community Council, Supreme Court, Takdin-Elyon 2008(3) 573 [Hebrew].
[807] AEldar, 'Court: Palestinians Shall Evacuate Houses in Sheikh Jarah', (Haaretz, 18 May, 2009), [Hebrew].
[808] Jerusalem Civil Court Cases, Rifka el-Kurd v. the Sephardic Community Council, Supreme Court 6599/99 and 8041/99 [Hebrew].

conditions of the prohibition of construction or renovation work within the house, and that she should be evicted from that section of the house. The Supreme Court ruled that the family should be evicted from the renovated section of the house, which should then be sealed off.[809]

After over a decade of legal challenge, in 2010 the committees requested the eviction of Hanoun's family in *Maher Hanoun v. the Sephardic Community Council*, and *Muhammad Kamal Al-Kurd v. the Sephardic Community Council.* The committees argued that the occupants had failed to pay rent. In 2011, the Supreme Court[810] ordered the eviction of Muhammad Al-Kurd's family and Maher Al-Hanoun's family, which comprised of 53 members,[811] based on the failure to comply with the negotiated terms of the procedural agreement.[812] In place of the evicted families, the committees settled Jewish residents, including in the renovated section of the Al-Kurd house.[813] Since then, the committees have continued to rent the extension to settlers.

The eviction of Al-Kurd was followed by a series of other evictions. The family of Muhammad Al-Kurd received a final eviction order by the Magistrate's Court in July 2008 and were finally evicted in November 2008. The Hanoun family first received an eviction order in 2002, which they effectively challenged, and were able

[809] Jerusalem Civil Court Cases, Rifka el-Kurd v. the Sephardic Community Council, Supreme Court 6599/99 and 8041/99 [Hebrew].
[810] Jerusalem Civil Court Cases, el-Kurd and al-Hanoun 18091/98 and 8041/99, quotation from the Supreme Court petition 6558/08 [Hebrew].
[811] Jerusalem Civil Court Cases, el-Kurd and al-Hanoun 18091/98 and 8041/99, quotation from the Supreme Court petition 6558/08 [Hebrew]. The current attorney, Saleh Abu Hussein (for the Hanoun family) claimed that the documentation proves that their property was located outside the area of the committees' ownership based on the 1886 Koshan; this claim was addressed by the expert during the Hijazi ownership challenge (mentioned earlier). Additionally, in relation to the eviction of himself and his family, al-Hanoun was charged with contempt of court as a result of not respecting the court order to pay rent and for refusing to leave his home. He was sentenced to three months' incarceration. Civil Appeal Authority 6920/08 Maher el-Hanoun v the Sephardic Community Council; Supreme Court Appeals Authority 6920/08 Maher el-Hanoun v Sephardic Community Council, Supreme Court, Takdin-Elyon, 2008 (3) 2530 [Hebrew] Civil Appeals Authority 9161/08 Abed al-Fatah Ghawi et al. v the Sephardic Community Council of Jerusalem, Supreme Court (issued 16 February, 2009) [Hebrew].
[812] As result of the 2001 decision, the families of al-Ghawi and Hanoun were evicted. However, they returned to their homes in 2006. Nevertheless, the families were re-evicted in August 2009.
[813] Court of Local Affairs Case 2353/03, Muhammad al-Kurd v State of Israel. In November 2001, settlers illegally occupied the renovated section of the home. An order was obtained from the court for the settlers' eviction, but they ignored it, and the family was forced to petition the Supreme Court against the Minister of Public Security as a result of the failure to enforce the order to evict the settlers (May 2007). The Magistrate's Court issued the final eviction order against the family in July 2008, and the family was evicted in November 2008.

to continue to live in the property until they were evicted following the final order in August 2009. Finally, the Al-Ghawi family first faced eviction in 2002, with the second and final eviction in August 2009. The fourth case involving Rifqa Al-Kurd resulted in eviction from the house extension in 2008.[814]

While the evictions ostensibly applied to one family, in three of the cases, the property housed extended family members - the Al-Hanoun family included three families with 17 members; the Al-Ghawi house included seven extended families with 37 members; the Muhammad el-Kurd house included two families with seven members -. The practice of extended families living under one roof is not uncommon due to the housing crisis in East Jerusalem. There is a lack of land available to Palestinians as well as a difficulty to obtain building permits even where land is available. Additionally, many of these families were originally refugees from other locations in historic Palestine and were officially designated as refugees after the 1948 War. Because of this status, they were granted UNRWA ration cards, but gave up this basic support, including the right to receive a basic stipend and free health service, in exchange for ownership rights of the properties they considered their homes. Today, there are eleven families, which include approximately 30 extended families, who are facing eviction proceedings.[815]

5.4.1. The Al-Sabagh Case and Hammad Cases - a Landmark of Hope

In June 2009, the Al-Sabagh family received court notifications from the Magistrate Court of Jerusalem in the case of *the Sephardic Community Council v. Al-Sabagh*[816] *and the Sephardic Community Council v. Hammad*,[817] indicating the intention of the Nahalat Shimon International Company to assert claim over their property. The company purchased its ownership claim from the two Jewish Committees based on the primary land registration of the *Koshan* in 1972. The committees had previously taken control of the property rights from a settler organisation known as "Homot Shalem". Despite the fact that the members of the General Council were hesitant to

[814] AEldar, 'Court: Palestinians Shall Evacuate Houses in Sheikh Jarah' (Haaretz, 18 May, 2009) [Hebrew].
[815] These include Al-Sabagh, Hammad, Al-Diwodi, Al-Dajani, al-Jaa'oni, Al-Qassem, and Iskafi. Civil file 19795/08 (Hebrew); Nera Hasson, 'Two More Palestinian Families Ordered to Vacate Their Homes in Sheikh Jarrah in East Jerusalem' (Haaretz, 7 April, 2010) [Hebrew].
[816] Civil Case19795/05; civil case 5668-04/14 El-Sabagh.
[817] Civil case 5668-02/13 Jerusalem.

sell the property, the deal was approved by the senior Ashkenazi Haredi Rabbi, Rabbi Yousef Elyashiv.[818]

As the Nahalat Shimon company had plans to reconstruct the whole Sheikh Jarrah neighbourhood in accordance with the Jewish settlement plan,[819] the committees' goal to create a Jewish settlement in the neighbourhood of Sheikh Jarrah had 'political and municipal supporters [that] contributed to developments behind the scenes.' [820] The company had campaigned for landownership and a Jewish demographic presence through building planning to build a Jewish settlement in order to strengthen Jewish existence in Sheikh Jarrah. However, in a 2001 interview with Mr. Yehezkel Zakai in *Haaretz*,[821] according to the chairman of the Sephardic Community Council who sold to Nhalat Shimon, the decision to cooperate with the settlers' group including Nhalat Shimon was not on the basis of political motives but because of the conduct of the Palestinian tenants who built homes illegally and without obtaining permits.[822] Whereas the committees had a religious purpose, the Nahalat Shimon Company regarded the property purchase as an investment that they expected to benefit from commercially.[823]

What set the *Al-Sabagh v. the Sephardic Community Council*[824] and *Sephardic Community Council v. Hammad*[825] cases apart from the others were that this property was *not* part of the legal dispute covered by the Procedural agreement,[826] and for the first time, the ownership question in Sheikh Jarrah was raised directly outside of the

[818] 'Nadav Sharagi, Plan, Arab Residents of Shimon HaTzadik Neighborhood to be evicted from their Homes' (Haaretz, 12 October, 2001) [Hebrew].
[819] Civil File 34600-03-10 (Hebrew); Meron Rappaport, 'Right-Wing Organisation Planning to Build Additional Jewish Neighbourhood in East Jerusalem' (Haaretz, 29 January, 2008) [Hebrew]; The location of Jewish neighbourhoods in East Jerusalem is determined by various criteria; for example, firstly, places of past-owned Jewish lands, such as NeveYaákov, A'tarot and Har Khoma; secondly, continuous contact with them such as Pisgat zeév, and if the acquisition is of lands that are not private or church owned, Gilo and Ramot, for example. Thus, for instance, the contiguity of Jewish neighbourhoods between Maálot Dafma and Ramat Eshkol with the French Hill and government residential complex in East Jerusalem links West Jerusalem with Mount Scopus.
[820] 'Nadav Sharagi, Plan, Arab Residents of Shimon HaTzadik Neighborhood to be evicted from their Homes' (Haaretz, 12 October, 2001) [Hebrew].
[821] A former Labour Party Knesset member.
[822] 'Nadav Sharagi, Plan, Arab Residents of Shimon HaTzadik Neighborhood to be evicted from their Homes' (Haaretz, 12 October, 2001) (Hebrew).
[823] IeerAmim, 'Eviction and Settlement Plans in Sheikh Jarrah: the case of Shimon HaTzadik', 1, (June 2009).
[824] Civil Case 5668-04/14 El-Sabagh.
[825] Civil case 5668-02/13 Jerusalem.
[826] Procedural agreement.

arguments associated with the procedural agreement.[827] Provided this fact, the Al-Sabagh and al Hammad family have been able to challenge the authenticity of the related ownership documents by providing original Ottoman documents from the Ottoman Archive in Ankara, Turkey without having to argue that the procedural agreement was fraudulent or that the committees' registration was not final due to the lack of maps.

At a preliminary hearing in 2015,[828] the judge at the District Court of Jerusalem indicated that he was willing to consider the ownership question, and has required both parties to submit their competing ownership claims. This represents an opportunity not provided in the other eviction cases where such claims were dismissed for procedural reasons.[829] According to the attorneys representing the families, there is satisfactory evidence to invalidate the committees' claim. They claim:

> Their preparation [the family and their lawyers team] for the case involves investigating and locating documents in the Turkish Tabu land registry archive, in Ankara in Turkey. These documents, which are authenticated by the Turkish Foreign Ministry and presented to the court in the affidavits of experts, show that the *Koshan* presented by the committees does not appear in the Ottoman registry, and the numbering of the *Koshan* does not match the numbering system used in Jerusalem during the Ottoman period. In addition, the declaration at the beginning of the document emphasises that the subject land was leased for a limited time to the representative committee, which at that time was called Rabannim. In other words, no sale took place between the parties. Therefore, the ownership claim is unfounded, as it is based on a lease contract. Additionally, critical examination of the documents by experts and certified surveyors, indicates conflicts in relation to the location of the land, both with regard to plot boundaries and plot area and conclude that the described plots were located in different parts of Jerusalem, called Lefta. In other words, the plots of Sheikh Jarrah were not included in the *Koshan* according to expert opinion.[830] Moreover, the surnames of the Arab families who owned the land do not match the names presented to the Court by the Rabannim.[831]

[827] However, the ruling in this case will not affect the four families that have already been evicted from their homes, as the court debate does not nullify the previous ruling and is not a retroactive decision; the eviction de facto remains in force.
[828] Civil Case 5668-04/14 El-Sabagh.
[829] Ibid.
[830] Expert opinion, submitted to the court and in the A copy of this document saved in the research file.
[831] Interview with Mr. Saleh Abu Hussein, the main attorney in the attorneys' team currently representing the residents of Sheikh Jarrah, at Abu Hussein Law Firm, Um El Fahem, Israel, on 5 August 2016, at 4:15 pm.

Additionally, the attorneys have located two judgments of the Sharīʿah Court[832] of Jerusalem, which could strengthen the claim of the residents of the Sheikh Jarrah neighbourhood. During the Ottoman period, the Sharīʿah Court of Jerusalem decided land disputes. There were two decisions from the Sharīʿah Court that relate to the case and confirm Hijazi (al Saidi family), the Arab owner, is the owner of the land. However, the second person in the petition is Ibrahim Al-A'mawi, who was selling the property to the Jewish Rabbi on the name of Jewish community of Jerusalem then. According to the Sharīʿah Court decision from the year 131 after Hijrah,[833] confirmed the Hijazi family ownership of the 75% from the plot called "Karm Jao'oni" or known as "Yahodie", the Sharīʿah Court decision denied the ownership claims of Al-A'mawi, and approved the ownership of the Hijazi family, in agreement that the property was not sold to the Jewish community. Therefore, the selling of the property claimed between Al-A'mawi and the Jewish community was invalid according to the attorney given Sharīʿah Court decision, this decision could be considered as having a basis in fact, as the land never left the Arab ownership of the Hijazi family, or at least that the committees never gained ownership rights of the Sheikh Jarrah neighbourhood.[834]

The District Court has heard this case on three occasions. In the first instance, the judge requested the parties to present their statements and responses arising from the second hearing, and the third hearing was held on January 9th 2016. To date, there has been no final decision, and the judge has requested the expert opinion of a certificated surveyor in order to deal with the newly presented findings from each party. If ruled favourably, the Al-Sabagh case could become a landmark case for the ten other families in Sheikh Jarrah who live with the possibility of future eviction proceedings.

[832] Sharīʿah Court, the court is ruling on the ground of the Islamic laws. During the Ottoman empire rule in Palestine between 1876 until 1918, this was the common the religious legal system governing the members of the Islamic faith during the ottoman period 1876 until 1918, these court located in Jerusalem dealt with any legal dispute. The First Sharīʿah Court decisions dated on 1149 after Hijrah and the second 1313 after Hijrah.
[833] A.H. After Hijrah, it is the reference used in the Islamic calendar, of the hegira.
[834] Sharie' Court Decision, El Amouri v. Hijazi, 1331 A.H., a copy of this document saved in the research file; Interview with Mr. Saleh Abu Hussein, the main attorney in the attorneys' team currently representing the residents of Sheikh Jarrah, at Abu Hussein Law Firm, Um El Fahem, Israel, on 5 May, 2016, at 16:15 pm.

Pending a final decision by the Court, all procedures related to the Sheikh Jarrah neighbourhood have been frozen or are pending. However, the company's plans are awaiting approval from the Jerusalem Local Planning Commission. If one of the plans submitted by Nahalat Shimon International in August 2008 receives approval, it would directly affect almost 500 Palestinian residents. This plan proposes the construction of 200 new housing units for Jewish families.[835] Another scheme, which has already been approved, includes demolition of the Shepherd Hotel located in the Sheikh Jarrah neighbourhood and the building of twenty residential units.[836] In 2005, a further plan was proposed for an additional 90 residential units to add to the pending plan, which is in the primary stages of approval. This new plan includes the building of a synagogue and nursery beside the residential units.[837] 'Political and municipal supporters contributed to developments behind the scenes', as Nadav Shargai [838] explained in his article, [839] to create a Jewish settlement in the neighbourhood of Sheikh Jarrah. Since the annual costs were approximately of 400,000 NIS, the security of the settlers' funds was provided by the Ministry of Housing through a private security company.[840]

However, none of the plans have come to fruition to date, and all procedures related to the Sheikh Jarrah neighbourhood have been frozen or are pending since to date no final decision on any of the cases held in the District or Magistrate's Court related to Sheikh Jarrah has been reached, besides for the four evicted families.

[835] UBS 12705, Jerusalem Municipality, Urban Building Scheme 12705, submitted to the Regional Committee for Planning and Construction, August 2008; Meron Rappaport, 'Right-Wing Organisation Planning to Build Additional Jewish Neighbourhood in East Jerusalem' (Haaretz, 29 January, 2008) [Hebrew].
[836] UBS 2591, Jerusalem Municipality, Urban Building Scheme 2591; Meron Rappaport, 'Right-Wing Organisation Planning to Build Additional Jewish Neighbourhood in East Jerusalem' (Haaretz, 29 January, 2008) [Hebrew].
[837] UBS 11536, Jerusalem Municipality, Urban Building Scheme 11536; Meron Rappaport, 'Right-Wing Organisation Planning to Build Additional Jewish Neighbourhood in East Jerusalem' (Haaretz, 29 January, 2008) [Hebrew].
[838] Journalist and researcher.
[839] 'Nadav Sharagi, Plan, Arab Residents of Shimon HaTzadik Neighborhood to be Evicted from their Homes' (Haaretz, 12 October, 2001) [Hebrew].
[840] Ibid.

5.5. Settlement Plans: Why the Jewish Settlement is at the Core of the Arab Neighbourhood in East Jerusalem

According to the Committees, the ideology behind reviving the Jewish historic holy sites - the Holy Basin and Temple Mount - is the importance of the preservation of Israeli interests in these places, regardless of any future resolution. In other words, the objective of the settlement is to safeguard Israeli sovereignty over the Green Line,[841] as well as to retain continuity between the eastern and western parts of Jerusalem. The achievement of this goal will mean a change in the status quo and the demographic profile of the city.

The situation in Sheikh Jarrah cannot be read without understanding the broader legal and political context in which the legal cases have taken place. The actions both of the committee and later Nahalat Shimon cannot be isolated from the state's recent actions, in which the state controlled projects in East Jerusalem that are aimed at maintaining a Jewish demographic majority.

According to Mr. Khalil Tufakji, head of the Mapping and Geographic Information Systems Department of the Arab Studies Society in Jerusalem:

> A governmental decision made by the Israeli Government in 1973, when Golda Meir[842] was prime minster, determined that the Palestinian residents of Jerusalem should remain, constituting 22% of the whole population of East and West Jerusalem. This adopted policy was indirectly implemented by limiting building permits, as well as demolishing the houses of the Palestinian residents of East Jerusalem, adopting a policy aimed at uprooting the Palestinian presence in East Jerusalem. For instance, the Arab neighborhoods of "Bab Al-Magharbeh" in the Old City were completely demolished to build what was later known as the 'Jewish neighborhood'. Not only this, but massive building plans were made for the Jewish settlements in the city, with the Israelis adopting another policy aimed at supporting Jewish settlement groups in East Jerusalem.[843]

He continued:

[841] The Green Line is a term originally used to define Israel's borders with Jordan from the period following Israel's 1948 independence war until the Six Day War when Israel captured the West Bank and East Jerusalem.
[842] Fourth Prime Minister of the State of Israel, between 17 March, 1969, and 3 June, 1974; 'Where are the Palestinian people', Golda Meir's famous statement could be a signal of the importance of the demographic balance between Palestinians and Jews in Israel.
[843] Interview with Mr. Khalil Tafakji, the head of the Mapping and Geographic Information Systems Department of the Arab Studies Society in Jerusalem; the interview took place at the Arab Study society offices in El-Ram, Jerusalem, on 7 May 2016, at 10:00 am.

> Despite all of the Israeli government policies throughout the years that have attempted to maintain the demographic balance between Palestinians and Jews, such as the confiscation of lands and encouraging the building of Jewish settlements, as noted earlier, the population of Palestinian residents of Jerusalem has increased from 70,000 to 316,000, today.[844]

With regard to the demographic set-up policy in the early 1970s, Gideon Levy, argues:

> A multi-governmental committee known as the "Gavni Committee" was set up in the early seventies. The Committee emphasised the importance of maintaining a proportional balance between Jews and Arabs in Jerusalem. In 1973, the percentage of the Jewish population stood at 73.5% as opposed to 26.5% of Arabs. Ever since, efforts have been made to apply the Committee's recommendations. In Jerusalem, new neighbourhoods were built for the Jews, while a number of restrictive and tightening measures have been taken against Palestinians in East Jerusalem.[845]

This view was also expressed by Mr Khalil Tufakji, who stated:

> June 1993 was the first time since 1967 that Jews have been the majority in East Jerusalem. At that time, the number of Jewish was 160,000, with just 155,000 Palestinians.[846]
>
> The estimated Palestinian population growth percentage increase in 2040 would be approximately 55% of the total population of Jerusalem, which would put the current Jewish majority under risk. Therefore, as the demographic set up has become out of control, Israel has also sustained a geographical balance over East Jerusalem by confiscating approximately 87% of the property of East Jerusalem, demolishing houses, refusing building permits, and refusing proposals for outline plans, in order to secure control over East Jerusalem.[847]

Therefore, the importance of the development proposals in the Sheikh Jarrah neighbourhood, and the intention of developing the Jewish settlements in Sheikh Jarrah, specifically in East Jerusalem is clear. Since 1967, successive Israeli governments have been carefully and methodically creating a legal infrastructure that has facilitated the purchase of land and property in East Jerusalem and provided special reductions in tax rates or exemptions from municipal taxes.

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[844] Ibid.
[845] Gidon Levi, 'Womb in the Service of the State' (Haaretz, 9 September, 2002).
[846] PASSIA, 'Jerusalem' Palestinian Academic Society for the Study of International Affairs, (May's issue, 2002).
[847] Interview with Mr. Khalil Tafakji, the head of the Mapping and Geographic Information Systems Department of the Arab Studies Society in Jerusalem; the interview took place at the Arab Study society offices in El-ram, Jerusalem, on 7 May,2016, at 10:00 am.

Additionally, the location of the Sheikh Jarrah neighbourhood between the Old City and Mount Scopus[848] can explain the significant interest in the area. This point clarifies the development initiatives in Sheikh Jarrah in which the intention is to maintain continuity between West Jerusalem and the strategic, religious, and historical Jewish settlement, through 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. These intentions were declared by Binyamin Elon,[849] a former member of the Knesset on various occasions, who states that '[o]ur strategic plan for the city is one - a belt - of Jewish continuity from East to West'.[850] Later, describing the various developments in East Jerusalem, he stipulated that '[b]uilding Jewish neighbourhoods next to open areas will prevent invasions and illegal construction by Palestinians who live near the Old City'.[851] With specific respect to the Sheikh Jarrah neighbourhood, the former mayor of Jerusalem, Mr. Uri Lupolianski, described the Nahalat Shimon construction plans as a method used to 'strengthen the connection between the Jewish neighbourhood in [East Jerusalem]'.[852] This implies clear understanding of the involvement of the broader political interest while exploring the Sheikh Jarrah eviction house cases against the 28 families and the evicted families such as Al-Ghawi, Hanoun, Muhamad Al-Kurd, and Rifqa Al-Kurd. This suggests that there were inherent political goals that advanced the efforts to promote development plans for the Jewish settlement in the neighbourhood.

An important question to be considered is the one-way direction of land reclamation that allows only the Jewish population to acquire ownership rights over land that they abandoned in East Jerusalem in 1948. The policy of reclaiming refugee property abandoned in 1948 within the Green Line,[853] whether by the Palestinian residents of Sheikh Jarrah, who themselves are refugees, raises the complicated issue of Article 5

[848] Mount Scopus is where the Hadassah Hospital and the Hebrew University are located.
[849] Binyamin Elon, former member of the Knesset, chairman of the Moledet Party, between 1996 and 2009, served twice as Minister of Tourism.
[850] Elon Lefkovitz, 'Member Knesset Benny Elon Promises: Jewish Continuity "in Jerusalem"' (Jerusalem Post, 24 April, 2002).
[851] Meron Rappaport, 'Jewish Group to Build 200 New Housing Unites in Occupied East Jerusalem' (Haaretz, 3 August, 2009); Meron Rappaport, 'Right-Wing Organisation Planning to Build Additional Jewish Neighbourhood in East Jerusalem' (Haaretz, 29 January, 2008) [Hebrew].
[852] Ibid.
[853] The Green Line is a term originally used to define Israel's borders with Jordan from the period following Israel's 1948 independence war until the Six Day War when Israel captured the West Bank and East Jerusalem.

of the Legal and Administrative Matters (Regulation) Law of 1970.[854] According to Articles 5(a) and 5(b), the law assigned the Administrator General to release refugee property to the previous owners post-1967. The legislation. While it does not say this explicitly, that is, de facto the practice and that the legislation has been used as a means to exclude Palestinian claims to confiscated property in West Jerusalem. How does the Israeli administration succeed in avoiding a challenge to this policy? The evicted families of Sheikh Jarrah considered addressing the court to re-acquire their rights to the properties in their 1948 areas of origin.[855] Interestingly, the courts are willing to accept ownership claims from the committees in relation to property within East Jerusalem owned before 1948, yet they do not permit similar claims from Palestinians to lands that are located in Israel. The Legal and Administrative Matters (Regulation) Law 1970[856] clearly specifies the right of "only" Jewish owners to claim property in the East Jerusalem area.

5.6. Legal Procedure from the Residents' Point of View & Experience

This section details the experience of families involved in the eviction process,[857] a series of interviews conducted with residents of Sheikh Jarrah,[858] what emerged is a process of state sanctioned (and lawful) violence that residents have experienced in a number of ways. Fieldwork research, the truth-telling or ethnographic research provided in this section are accounts of what people experienced and within this, how they experience everyday life. This systematic study of people and cultures, to explore the residents of Sheikh Jarrah who are living through this experience, can reflect the true story about their reality, as stipulated in this definition:

> Ethnography consists of the observation and analysis of human groups considered as individual entities (the groups are often selected, for practical and theoretical reasons unrelated to the nature of the research involved, from

[854] Legal and Administrative Matters (Regulation) Law (Consolidated Version) 1970, (1973) 27 Laws of the State of Israel 176.
[855] In the previous chapter, there is a full section dealing with the 'absentee property land law'.
[856] Legal and Administrative Matters (Regulation) Law 1970 (Hebrew).
[857] Nevertheless, it is important to highlight that several attempts to interview any member of the settlers who occupied the houses following the eviction, with no exception, they refused firmly to maintain any communication during the field visits, therefore, the section will reflect only the point view of the evicted residents.
[858] This is based on personal testimonies from residents of Sheikh Jarrah, obtained during personal meetings and meetings over Skype to obtain updates and information following field visits in August 2015 and May 2016.

> those societies that differ most from our own). Ethnography thus aims at recording as accurately as possible the perspective modes of life of various groups.[859]

Nevertheless, it is, of course, possible to argue that ethnographic texts can be skilfully manufactured in order to construct a persuasive narrative. But one cannot underestimate the importance of documenting the everydayness of the eviction process. Such "story-telling" allows one to better understand how people are living in the area of this study, by exploring and experiencing their relation with the state and its legal system. It must be noted that the residents interviewed were mainly people who had already been through the eviction process or expected eviction in pending cases associated with their homes. The limited number of the interviewees is linked with the fact that today just four families[860] received final eviction and the rest are still pending. However, this was an attempt to cover all the cases.

As this chapter details, families subject to evictions or the threat of evictions often endure extended court battles that are expensive and stressful. As Maher Hanoun, who was evicted from his home in on August 2nd 2009 explained, 'it is impossible to plan for the future; we are three families who were evicted from the house, including 17 members; the eviction destroyed our lives'.[861] The financial costs of the eviction process are substantial as well, as Amal Al Qassem notes:

> The costs of the legal procedures are enormous, whilst the socio-economic struggle that the Palestinians living in East Jerusalem face to maintain normal life is an extra burden that costs a fortune, and it has been an ongoing legal battle for more than a decade now.

What is clear is that in each case, these families situate their experience within, not outside of the legal system.

5.7. Forced Evictions

The process of a legal eviction begins in the Magistrate's Court. An appeal to a decision of the court can then be sent to the District Court. If a case is found to have

[859] Claude Lévi-Strauss, 'Structural anthropology', (Vol. 1. Basic Books, 1963).
[860] Originally four families, but in reality they compress 12 families as noted earlier.
[861] Interview with Mr. Maher Al-Hanoun, evicted resident, in front of the house from which he was evicted, in Sheikh Jarrah, on 9 August, 2015, at 12:00 pm.

significance in a point of law or a legal question, a final decision is made in the Supreme Court.

In the cases involving the Sheikh Jarrah families, the Court has accepted the committees' ownership rights on the basis of the primary registration of the *Koshan* land deeds in 1972. Therefore, to date, the court has not engaged with the question of legal ownership (except in the AlSabagh case,[862] which was not part of the procedural agreement, as mentioned the lawyers of the families will challenge the ownership question). When a number of cases re-appeared in the Court in 1993, they were related to the non-payment of rent by the families to the committees. In these cases, the court rejected the committees' petitions and stated that under the terms of the November 16th 1954 agreement between Jordan and the UNRWA,[863] the Sheikh Jarrah families were lawfully residing in the properties.

To date, families in Sheikh Jarrah are living under continual threat of eviction, even in cases where the families were not part of the landmark procedural agreement. In certain cases, petitions arise in which there is a dispute over the validity of *Koshan* land deeds, and petitioners argue that such claims are invalid because their house plots are outside the borders of the registered *Koshan* deeds.[864] Furthermore, they argue that the borders do not match the description of their plots. In one case, a translated version of a *Koshan* deed documented that it was geographically removed from and unrelated to the Sheikh Jarrah neighbourhood.[865] The process of eviction is undertaken in a number of stages prior the eviction, the day of eviction and post eviction.

5.7.1. The Procedure of Forced Eviction

This section describes the procedure of forced eviction through personal testimonies of evicted residents or residents under risk of eviction.[866] Those interviewed detailed what usually occurs prior to an eviction: the notices, the timeframe provided to the families after receiving the eviction orders, and proceedings post-eviction.

[862] Civil Case 5668-04/14 El-Sabagh.
[863] Index the Agreement UNRWA, copy kept in the research file. project no. J/UH/102, found in the Jordanian archive, authenticated by the Minister of Jordan.
[864] Civil Case 5668-04/14 El-Sabagh.
[865] Ibid.
[866] This is based on personal testimonies from residents of Sheikh Jarrah, conducted during personal meetings and meetings over Skype to obtain updates and information following field visits in August 2015 and May 2016.

Prior to eviction, the residents receive a notice of eviction order, which is written in Hebrew. Often the residents of Sheikh Jarrah, particularly the older generations, cannot read Hebrew. This places residents at a disadvantage and in a difficult position, as they will need to translate the court papers and someone who can advise them regarding the documents' implications. Translation and/or attorney costs have to be borne by the victims, which places an undue financial burden on low-income families. Amal Al-Qassem explained:

> The eviction notice is in Hebrew, and we need to send it to a translation expert company, which is a very expensive service that we cannot afford, hence, we depended on our lawyer to translate it and explain the contents.[867]

Therefore, the residents either rely upon their attorney's skills in reading and comprehension of Hebrew, or rely on anyone who knows Hebrew for the required translation. On some occasions the residents simply sign the document without understanding the content. Rifqa Al-Kurd, one of the residents already evicted from the extension she built on her family house, emphasises: 'in 1995, I was served papers in Hebrew and was asked to sign them. I looked for somebody to translate the paper. It was an eviction order following the breaching of the procedural agreement by not paying the rent, as protected tenants and building violations derived from the protected tenant status.'[868]

There is no home mail delivery system for Palestinian residents living in Sheikh Jarrah. Court notices are delivered by the plaintiff according to legal procedures. In Sheikh Jarrah, these are delivered by representatives of the committee members, sometimes accompanied by a police officer, who may or may not be on duty or acting in an official capacity. If families refuse to accept the papers on the basis that delivery by non-court personnel is not an official way to deliver court orders, the committees either slide the papers under the door, leave the papers under stones near the house, or deliver them to neighbours, sometimes to young children:

> In 2010, construction work took place on my house because of damage that had occurred as result of rain that led to leaking, which caused sections of the house to fall in. This affected the health of my children, and two among my children suffer from asthma, so I had no choice. I received a court order to

[867] Interview with Mrs. Amal Al-Qassem, resident of Sheikh Jarrah, at her house located in Sheikh Jarrah, on 10 August 2015, 10:00 am.
[868] Interview with Mrs Rifqa Al-Kurd, resident of Sheikh Jarrah who partly has been evicted, from the extension she built to her house, at her house located in Sheikh Jarrah on 10 August, 2015, 12:00 am.

> stop all renovations in the house and this forced me to remain without a roof, my family and myself, for ten days. After proper representation in the court by my lawyer, permission was granted to continue with the renovations, and yet a new case was opened against me for eviction, based on the violation of the prohibition of renovations and construction on the house following the protected tenant agreement (the agreement was signed by my father whom was the owner of the house), and therefore I was obligated accordingly [to not undertake construction on the house or build any new additional sections to the house].
>
> In 2010, I was sent papers in Hebrew, which I cannot read or understand. Apparently, they were an eviction notice, delivered by one of the members of Nahalat Shimon accompanied by another member who took snapshots and filmed inside my home. After refusing to receive the eviction notice and asking them to leave my home, they returned with police and forced me to receive the eviction notice. Here I must mention that it is illegal to use the police given the fact that it is not part of their authority. Therefore, I refused to sign again, but they left the eviction notice under the door.[869]

Mrs Amal Al-Qassem illustrated her feelings after she received the eviction notice order:

> The stress we are living through, since 2010 when we received the eviction order, is unimaginable. We are living under the threat of eviction every day, whilst our case is pending in the court rooms. Not knowing our fate, we are living under constant fear and insecurity.[870]

After the finalisation of the Eviction Decision and the eviction notice given to the families, very limited time was left to the families for preparation of eviction. The families are given one month or less within which to vacate their homes and find alternative housing. Their housing options are very limited, given the political and planning situation, and therefore they do not receive any support from the authorities.

On the day of the eviction, police and border guard police surround the area. Between midnight and sunrise, the authorities enter the house subject to the eviction order, often with the use of force. Families interviewed have indicated that the eviction is often violent, with families given little time to collect their belongings or even to dress. In particular, Muslim women have stated that they were not given

[869] Interview with Mrs Amal Al-Qassem, resident of Sheikh Jarrah, at her house located in Sheikh Jarrah, on 10 August, 2015, 10:00 am.
[870] Ibid.

enough time to put on their veils.[871] As Maher Al Hanoun recalls, on August 2nd 2009, he and his family were evicted from their house:

> We were three families, 17 members in total, living in the house complex. In the early morning hours, hundreds of soldiers and border guards came to our house, surrounding the house and blocking the nearby street. They asked us to evacuate the house but we refused, and they broke in. We were sleeping before that, so my wife was not wearing a headscarf, but they had no respect for the hijab. We did not have proper clothes, we were in our pyjamas, and some of us were even barefoot. Therefore, we requested just ten minutes to change and collect our belongings. It was a very traumatic and scary experience. Before moving to relatives' houses or rented houses in the area, for four months following the eviction we lived beneath an olive tree opposite the house, trying to fight to keep the house in which all our memories and dreams belonged.[872]

During an eviction, the authorities declared the area a restricted military zone, and prohibited anyone from entering, including the media and neighbours who could help the families collect their belongings. After the eviction, volunteer members of the committees entered the home to remove the furniture and family belongings, which are either placed on a truck that the family must pay for or thrown onto the streets or UN offices. Mr. Maher Al-Hanoun explained:

> The eviction is carried out as a military operation, brutal by nature and without regard for the victims' wellbeing. The eviction is very quick. All the residents are evicted within 30 minutes, and the police put plastic covers on the neighbours' doors to prevent them from helping. And we are given a short time to collect our belongings.[873]

After the eviction, settlers move in quickly, sometimes the same day or hour, in a planned and orchestrated manner, protected by the police. Mr. Maher Al-Hanoun continued:

> After approximately 30 minutes of the eviction, trucks arrived and the police loaded the trucks with our possessions and removed them to the UN offices. Simultaneously, the settlers were occupying the house, our house, after less

[871] The religious and conservative Muslim women believe that they should dress humbly. This includes wearing a headscarf, long-sleeved shirts and a long dress, and covering their hair. They are not allowed to show their hair to men outside of the first degree of family and they consider it a violation of their religious beliefs and dignity for any authority or person to force them to leave a property without allowing them the opportunity to cover their hair.
[872] Interview with Mr Maher Al-Hanoun, evicted resident of Sheikh Jarrah, in front of the house located in Sheikh Jarrah, on 9 August, 2015, 12:00 pm.
[873] Ibid.

> than one hour. Also, their belongings arrived immediately and they would use our belongings that we were not able to take from our house.[874]

The evicted victims are left to live on the streets or find alternative means of accommodation, which is not easy due to the housing shortage, overcrowding, and lack of space to set up temporary shelter. The families often refuse to accept tents from the Red Cross or the UN as they do not wish to be refugees for a second time. Mr Maher Al-Hanoun describes the situation, 'the eviction destroyed our lives'.[875] There are instances in which families erected tents opposite their former homes, as a way of opposing the decision and to demonstrate against the eviction. Yet, the police will receive complaints of noise or issues of security raised by the settlers and subsequently tear down the tents and confiscate the family's belongings. In the tents, as an act of support, the international activists stay and sleep with the families in the solidarity tents.

If clashes occur during the eviction or later, the settlers have, in the past, used violence towards the affected families. Rifka Al-Kurd explained:

> My family was expanding; therefore, my son built an extension in front the main house. As a result of not obtaining a permit, the court decided to evict the extension and sealed it, and we had to a pay fine of 10,000 NIS. Later on (November 2009), the settlers moved to the extension and threw all of our furniture outside into the front yard. I was pissed off and I gripped the settler by the hand, explaining to him that this furniture was from my son. The settler hit me and I was in a coma for two days as result of this.[876]

According to the interviews, on several occasions, the police neglected to investigate accusations of violence by the settlers or police. The police accept the settlers' version. To highlight this bias, the municipality of Jerusalem confiscate tents and everything inside because of claims that the evicted families caused noise that bothered the settlers.

> Each time we call the police, a guard car arrives very late and on other occasions it will never arrive. All they do if they come is question the settlers instead of us, or request us to go to the station to register our complaint. Going to the station might put each of us under risk of arrest, for various

[874] Ibid.
[875] Ibid.
[876] Interview with Mrs. Rifka Al-Kurd, partly evicted from the extension of her house, in the house located in Sheikh Jarrah, on 9 August, 2016, 15:00 pm.

> reasons, as the authorities view us as a source of trouble and we are always under suspicion.[877]

This can be even worse when injury results, and a delay in or lack of medical assistance results in health complications:

> After breaking the front door by masked, heavily armed police and the border guards, in the middle of the night, Mouhamad Al-Kurd, my husband, who is ill and confined to a wheelchair, was thrown to the side walk in front of our neighbour's house, whilst I was driven into a wall; the ambulance could not get to the area where the clash had happened [near her house] as a result of the closed the entrance of the house. Nevertheless, they carried my husband to the ambulance. After one week, my husband passed away as a result of a heart attack.[878]

The situation post-eviction is not easy because the psychological trauma of the victims of eviction can be significant. The consequences are especially severe for children. All of this affects the children's right to education as well as the family's right to privacy and a dignified life because these families are usually forced to live in the streets or in relatives' house, which are normally already overcrowded.

Mr Maher Hanoun elucidated his children's' situation:

> Huge impact on the children, because, despite the fact that they have been able to stay in school, they have been returning to a tent instead of to a warm house. Because we stayed for the first five months after the eviction, it was not easy for my kids or myself to observe the settlers playing with their/my kids' football. We stayed in the street in a tent opposite our house. Later, we moved to rented houses, but the children struggle to go to sleep alone as result of the trauma, they are unable to forget that they used to live in that house.[879]

In the wake of evictions, there are some families who opt to continue to reside in tents in order to highlight their plight to the international community. Families may also receive support by activists who live in nearby tents or join the families' resistance demonstrations, partly as a measure to protect those evicted from attack by the settlers. The settlers may complain about the demonstrators to courts, in which

[877] Interview with Mrs Amal Al-Qassem, resident of Sheikh Jarrah, at her house located in Sheikh Jarrah, on 10 August, 2015, 10:00 am.
[878] Interview with Mrs. Fawzeya Al-Kurd, evicted resident of Sheikh Jarrah, in her rented house located in el Ram, Jerusalem, on 7 May, 2016, 12:00 am.
[879] Interview with Mr Maher Al-Hanoun, evicted resident of Sheikh Jarrah, in front of the house located in Sheikh Jarrah, on 9 August, 2015, 12:00 pm.

case the courts often grant exclusion orders against the demonstrators, including members of the evicted families. These exclusion orders are procedurally easy to obtain and the settlers often make use of this mechanism. Exclusion orders have a dramatic effect on younger family members, as they prevent them from attending school or university, which has a resultant impact on their right to education. Mr. Maher al Hanoun, as one resident who was evicted, detailed:

> One of my nieces was a university student, and was ordered by the court to stay away from Sheikh Jarrah neighbourhood.[880] She was excluded from the area for four weeks, which prevented her from attending lectures at her university, so her education was affected.[881]

In addition, it is very difficult to move to the houses of other family members, as the evicted families lose their autonomous family life as well as their houses, which severely affects the evicted family.[882] Moreover, the evicted families are charged eviction costs:

> We do not know what to do. During the proceedings, I had to work as a salesman, compromising my family's economic needs in order to protect the safety of my family under the pending insecure situation [before the final eviction]; the eviction was not the last scene, and the authorities requested us to pay 13,000 NIS for the eviction costs.[883]

This adds to the financial burden previously described, and with approximately 75% of the Palestinian families in East Jerusalem living below the poverty line,[884] this has

[880] These court exclusion orders from the area are easily obtained. For instance, if the settlers complain against the person in any related topics such as violence or noise.
[881] Interview with Mr Maher Al-Hanoun, evicted resident of Sheikh Jarrah, in front of the house located in Sheikh Jarrah, on 9 August 2015, 12:00 pm.
[882] For an indication of the psychological trauma on children who have witnessed demolition, their house can be a good source of understanding the trauma that children can go through in the eviction process. See Nadera Shalhoub-Kevorkian, 'The Political Economy of Children's Trauma: A Case Study of House Demolition in Palestine', Feminism and Psychology, 19, (2009): 335; Save the Children UK, 'Broken Homes: Addressing the Impact of House Demolitions on Palestinian Children and Families' (April 2009).
[883] Interview with Mr Maher Al-Hanoun, evicted resident of Sheikh Jarrah, in front of the house located in Sheikh Jarrah, on 9 August, 2015, 12:00 am.
[884] Social Security Annual Report about poverty and the socio-economic gap (Social Security Research Centre, 2015), available at : www.btl.gov.il (Hebrew), last visited 20 May, 2016; Ronet Selaa', 'Which "United Jerusalem" they are discussing?' (Maa'rev newspaper, 24 February, 2016) [Hebrew].

a devastating effect on families' welfare. The municipality of Jerusalem does not offer any assistance to the affected families.[885]

Settlers live in expropriated homes under police protection. Settlers are also known to hire private security guards. This security presence[886] restricts the movement of residents and their visitors, as one interviewee explains, '100 settlers support visitors in my evicted house, even settlers from all over the world; they are trying to make our life so difficult and impossible, even after the eviction'.[887] Amal Al-Qassem described how hard it was for her visitors to reach her house, because of the constant security guard presence in the neighbourhood, besides the road blocks during Jewish holidays that facilitate the celebrations and enable visitors to reach the settlers. It is complicated to have a similar arrangement for the residents of Sheikh Jarrah during their holy holidays.[888]

Nonetheless, from the perspective of international attention, the case of the Sheikh Jarrah neighbourhood is exceptional in comparison with other Jewish settlements in East Jerusalem. Since November 2009, demonstrations and marches opposing the evictions have taken place weekly on Fridays. These demonstrations have brought together students, Jewish left-leaning activists, thinkers, writers, politicians, and Palestinian residents, together with Israeli protesters, and activists from all over the world.[889]

Due to the complexity of the political reality in East Jerusalem in particular, the residents with pending cases (under risk of eviction), are not very optimistic about possible future court decisions. Nevertheless, the residents and their lawyers believe

[885] There is no direct policy that implies this, other than maintaining the same methodology of the municipality of Jerusalem's attitude towards the Palestinian citizens of East Jerusalem, in relation to the lack of services in the area besides poor infrastructures. Furthermore, in relation to this, the provision of shelters or psychological support for the damage caused by eviction to the families is not existent.
[886] The security guards are employed by the Ministry of Housing.
[887] Interview with Mr Maher Al-Hanoun, evicted resident of Sheikh Jarrah, in front of the house located in Sheikh Jarrah, on 9 August 2015, 12:00 pm.
[888] Interview with Mrs Amal Al-Qassem, resident of Sheikh Jarrah, at her house located in Sheikh Jarrah, on 10 August 2015, 10:00 am.
[889] Nera Hasson, 'In Sheikh Jarrah We Revived the Left', Haaretz, 6 August, 10 [Hebrew]; Some of the left-leaning Israeli public figures who joined the protests include former minister Yossi Sarid, Israeli Prize Laureate for Philosophy Prof. Avishai Margalit, former Knesset member Abraham Burg, etc.

in fighting, while providing more evidence to create new hope in the future. Mrs Amal Al-Qassem, emphasised that:

> I see slim hope at the end of this legal battle. I have had to lower my expectations, but, in fact, I strongly believe in justice and my ownership rights and believe that I owned the house passed to me by my father. Besides, I have faith in our professional attorneys' team representation, who are working hard to provide any possible evidence to the court in order to defend our rights to the homes, on every level. Nonetheless, I have no faith in the Israeli legal system, based on my personal experience of following similar cases in which the Israeli courts could not change the governmental policies towards the residents of East Jerusalem. An obvious example was in the Hijazi court judgment [the Hijazi case in the district court],[890] in which the judge almost approved the authentic original documents presented to the Court. Later, [the judge] changed his mind, following the political atmosphere that interfered indirectly with his final decision. Therefore, he decided that, although Hijazi indeed did have documents to prove his ownership of the plots, they were not sufficient to convince the Court of his right to the land, and also requested the Committees to locate the documents to prove their ownership. Hence, he never decided the ownership of the land, but he did not grant it to a Palestinian resident in East Jerusalem, in this case Hijaze.
>
> Therefore, I do not have any faith in the Israeli legal system, as I strongly believe that it is influenced by broader political interest. I keep my hopes down as we are living in the era in which Israel's current government is one of the most right-wing governments, and in particular, since 2015, with the latest Knesset election, it is even worse. Following the right coalition in the government and the appointment of Ms. Ayalit Shakid as a Minister of Justice[891] which will increase the interference of political policy in the judicial system, as the Minister once declared that Israel should assassinate all Palestinian women as they give birth to terrorist kids. Therefore, I cannot see positive signs, at least not in the near future. But I strongly believe in fighting until the last minute, hoping that soon we will have good news and relief if Israel responds positively to the international diplomatic pressure and examines the new documents.[892]

This story-telling captures the violence of the everyday experience of those living in East Jerusalem. These stories detail not only the loss of property and the exclusion of these families from their homes, but also describe a state apparatus that is creating

[890] Civil File (Jerusalem) 1465/97 Hijazi Darwish Suleiman v The Sephardic Community Council et al., Jerusalem District Court, 2002 (2) 66542 [Hebrew]Civil Appeal: The Sephardic Community Council et al., Supreme Court, Takdin-Elyon, 2006 (2) 4042 [Hebrew].
[891] A member of ha Bayet Ha-Yihodi' - an extreme conservative and right wing party.
[892] Interview with Mrs Amal Al-Qassem, resident of Sheikh Jarrah, at her house located in Sheikh Jarrah, on 5 May, 2016, 10:00 am.

zones of exclusion - who is included as a citizen and who is the 'other'-, which includes Palestinian Arabs and residents of East Jerusalem.

5.8. Silwan - a Further Example of Israeli policy on East Jerusalem

Jewish settlements in East Jerusalem have grown rapidly in the last number of decades, in various locations. These settlements often endeavour to claim territory by linking a historic holy location with a particular area. An example of this is the Palestinian village of Silwan, located within East Jerusalem, situated on the southern hills of the Old City, about 400 meters south of al-Haram elSharif, alAqsa (Palestinian terminology) and called the Temple Mount (Israeli terminology).[893] Silwan also includes areas such as Wadi-Hilweh, Al-Bustan, and Beit-Yehonatan.[894] Approximately 55,000 Palestinian residents live in Silwan in comparison with 500 Jewish settlers.[895] Similar to the Sheikh Jarrah neighbourhood, Silwan illustrates how organised and systematic the settler community is in pursuing eviction orders, land expropriation, and housing demolition in East Jerusalem. The Jewish settler's interests are related to the "City of David", which reportedly lies under the Old City walls, and Silwan is the location where archaeologists describe King David as having established his capital 3,000 years ago.[896] After settlers took back control of the tourist site and archaeology of the City of David in 1997, their activities expanded, and clashes with Palestinian residents are frequent. The settlers have been routinely violent. Examples include gas cans thrown towards Palestinians residents, the eviction of families and their replacement with settlers at Wadi-Helwei, and the demolition of 22 homes in Al-Bustan. The whole area of Silwan has been declared a green area, which prevents the residents from building new or renovating existing houses.[897]

[893] Al-Haram Sharif elSharif, alAqsa a holy Muslim mosque located in the Old City of Jerusalem or Temple Mount.
[894] Beit Yohonatan, was erected without a permit from the planning administration and Jerusalem municipality authorities and the court order to demolish it, but Jerusalem municipality and interior ministry did not accept the decision establish the green line definition, and since then it is populated with Jewish settlers.
[895] Settlers are armed and the Israeli police and armed guards protect them.
[896] To understand more about the political implications of archaeology, see Keith W. Whitelam, The Invention of Ancient Israel: The Silencing of Palestinian History, Routledge, (1996).
[897] Keith W. Whitelam, The Invention of Ancient Israel: The Silencing of Palestinian History, Routledge, (1996).

5.9. Conclusion

While this chapter's concentration lies on the Sheikh Jarrah case, these government policies are not limited to this case, as mentioned earlier, Jewish settlements in East Jerusalem have grown rapidly in the last number of decades, in various locations, and the case is not unique for Sheikh Jarrah. These settlements often endeavour to claim territory by linking a historic holy location with a particular area. An example of this is the Palestinian village of Silwan, Wadi-Helwei, and Al-Bustan.

The struggle of the residents of Sheikh Jarrah and Silwan is similar in a way to the struggle of citizens in what are referred to as unrecognised villages in Naqab, in Southern Israel.[898] In particular, policies have been implemented against the Palestinian Bedouin of Naqab, including forced evictions and the demolition of villages (several times). For instance, the village of Al-Araqeeb has so far been demolished and reconstructed 99 times due to resistance.[899] Another contemporary example of the questioning regarding the architecture of the exclusion policy and its direct links with land at legal-political level can be read in the Supreme Court decision of May 5th 2015, *Abu al-Qi'an, et al. v. The State of Israel*.[900] This decision approved the state's plan to demolish and evict the Arab Bedouin residents of Umm el-Hiran to establish a new Jewish town called Hiran. This court ruling and the several demolitions of the whole village raise questions similar to those that are being raised by the residents of Sheikh Jarrah, and different ones associated with the classification of the cultivated land and use of Miri land.

However, it is important to highlight that the status of residents of Sheikh Jarrah is residents of Israel, unlike the residents the Al-Araqeeb and Umm el-Hiran and all the inhabitants of the unrecognised villages of Naqab allegedly enjoy full citizenship. However, an examination of the state phenomena for the eviction or the villages demolition has to serve a common purpose whereas the evictions of Sheikh Jarrah are a starting point for the establishment of a Jewish settlement in East Jerusalem. In light of this practice, it seems that there is plan to destroy the whole neighbourhood and build a modern Jewish neighbourhood. The motive in the Umm el-Hiran case is

[898] See more details in chapter 3 of this thesis.
[899] http://alaraqeeb.com/index.php/the-true-story-of-al-araqeeb.
[900] HCJ 3094/11, Abu al-Qi'an, et al. v. The State of Israel. For English excerpts of the Supreme Court's 5 May 2015 decision, available on: http://www.adalah.org/uploads/SCT-Umm-al-Hiran-Decision-English-Excerpts.pdf

the same: to demolish the whole village and expropriate the land. The court denied the residents' claims and decided that the village should be demolished:

> Nevertheless, the court ruled that the people of Umm al-Hiran whom it acknowledged not to be trespassing on the land, which has been designated for residential use can be evicted from their land. The court concluded that the state had merely allowed the Bedouin citizens in Atir-Umm al-Hiran to use the land, which was state land, and that the state was therefore within its rights to revoke this decision and retake the land to do with it as it wished, even after 60 years of continuous land use and residence. Thus, according to the court's ruling, the residents of Atir-Umm al-Hiran had acquired no ownership status or property rights to their land over the course of their decades of residence and land use.[901]

The final court decision to demolish the village and displace the Bedouin residents could have a negative implication on the outstanding court ruling dealing with the Sheikh Jarrah cases, assuming that the court implements the policy of exclusion whenever a case relates to land issues. This is unlike the progressive and enlightened decisions that occur for other socio-legal rights. These land-related cases can reflect the non-interference policy that has been embedded in the court over the years and that continues to be applicable today despite the "constitutional revolution"[902] of 1992 in the last decade. This raises a major question about governmental policies regarding land inquiries. What type of judge - if any - could interfere with the process or discontinue the legitimisation of excluding Palestinians from land access. Based on a judicial review of court decisions, the judges operate by supporting the government's practices, and therefore serve as an aggravator of the political land conflict that leads to the exclusion of the Palestinians favouring Jewish citizens. This is practically a given in the current political climate, which emphasises preserving land that is within Jewish control. The implications, insofar as the resistance of Um el-Hiran, Al-Araqeeb, Silwan, and Sheikh Jarrah are concerned, is notable.

Moreover, the forced eviction cases and the demolition of houses that families are struggling with can be observed under a broad umbrella, as shown by the Sheikh Jarrah case study, with all of the difficulties from the legal, humanitarian, and international aspects illustrated above. To chronologically describe the legal events

[901] HCJ 3094/11, Abu al-Qi'an, et al. v. The State of Israel. For English excerpts of the Supreme Court's 5 May 2015 decision, par. 22, available on: http://www.adalah.org/uploads/SCT-Umm-al-Hiran-Decision-English-Excerpts.pdf

[902] Aharon Barak, 'Constitutional Revolution: Israel's Basic Laws, A. Const. F. 4 (1992): 83.

in these cases exposes the way the legal system operates differently depending on the identities of the parties in specific cases. An obvious example is the ownership claims by Palestinian residents in contrast to the claims of Jewish settlers in East Jerusalem. This discrimination and inequality indirectly supports the Israeli government's policy and political agenda, and has long-term implications in terms of favouring one ethnic group over the other. The legal apparatus that has been set up, which creates one system for Israeli Jews and another system for Palestinian residents of East Jerusalem and the Arab-Palestinian citizen of Israel, in reality continues through the architecture of exclusion. Indeed, the legal decisions are establishing a reality on the ground that it will affect the status quo and the demographic balance of East Jerusalem, by excluding Palestinian residents from East Jerusalem. This in turn will directly affect any future proposed resolution. The very sensitive question of Jerusalem, which is key to the Israel/Palestine conflict, is linked to this as well.

The status of Jerusalem is important to the final possible future solution to this conflict, and it is at the core of the peace process. Former Israeli Prime Minister Ehud Olmert took over a commitment that obligated Israel to freeze all settlement activity, in accordance with the U.S. Road Map for Peace in Annapolis Conference in November 2007.[903] Despite international commitment to the peace process, the expansion of Jewish settlements in the heart of the Palestinian neighbourhoods in Jerusalem is narrowing any possibility of future peace.

[903] Quartet Support, Roadmap for Peace in the Middle East: Israel/Palestine Reciprocal Action, U.S. Department of State Bureau of Public Affairs, 16 July, 2003, Phase I.

Chapter 6: Conclusion, Exploring the Dark Side of Land Law

The sun stood still
in the sullen wintry sky
a witness
to the impending destruction

Armed with bulldozers
they came
to do a job
nothing more
just hired killers

We gave way
there was nothing we could do
although the bitterness stung in us,
in the place we knew to be part of us
and in the earth around,

We stood.
Slow painfully slow
clumsy crushes crawled over
the firm pillars
into the rooms that held us
and the roof that covered
our heads

We stood.
Dust clouded our vision
We held back tears
It was over in minutes,
Done.

Bulldozers have power.
They can take apart in a few minutes
all that had been built up over the years
and raised over generations
and generations of children

The power of destroying
the pain of being destroyed,
Dust…

Don Mattera[904]

The poet, unlike the agentic state, may still remind us of our need for justice. We must find the call for justice where we can- in the language for poets and the silences of law and legal scholarship.

Marinne Constable[905]

In reflecting on the consequences of decades of Israeli-Palestinian wars, Arnon Golan writes:

[904] Don Mattera, 'A day They Came to our house, Sophia town, 1962', Azanian Love Son, African Books Collective, (2007): 5-6.
[905] Marinne Constable,' The Silence of the Law: Justice in Cover's field of Pain and Death', Law Violence, and the Possibility of Justice, Princeton University Press, (2001): 88-100.

> War produces a set of enduring catastrophes, causing a wide and drastic spatial transformation process. The destructive force of weaponry and the shortened decision-making process associated with war provide the opportunity for the different societal elements affected to change the established settlement picture with a rapidity impossible in times of peace.[906]

The outcome of the 1948 war caused a demographic shift. The Jewish demographic became a majority while the Palestinian-Arab demographic became a minority.[907] There were only 160,000 of the approximately 850,000 Palestinian Arabs who remained.[908] On the other hand, the Jewish population more than doubled between 1946 and 1951, from 608,000 to 1.4 million.[909] Therefore, over the post-war era, the newly established state authorities seized and transformed the demographic for land to the hands of the state authorities. This was possible by creating and re-structuring new land regimes to maintain the radical spatial changes.[910] Forman and Kedar argue that:

> Between 1948 and 1960, Israel authorities gradually but rapidly created legal structures to seize, retain, expropriate, relocate, and reclassify the Arab lands appropriated by the state. This was part and parcel of the legal institutionalization of Israel's new land regime, which was effectively completed in 1960.[911]

Since the establishment of the State of Israel, the Israel authorities have been driven by an agenda to normalize and deepen the loss of Arab land. The creation of this particular geography is purposeful, and it is part of the state-building project that built exclusion zones for Palestinian Arabs citizens of Israel and later (post-1967 War) residents of East Jerusalem.

In the heart of Israel's polices, the state has privileged Jewish citizens over Palestinian Arab citizens, which facilitates the establishment of new Jewish

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[906] Arnon Golan, 'The transformation of abandoned Arab rural areas'. Israel Studies 2.1 (1997): 94-110.
[907] Narratives of the Israeli-Palestinian conflict more details in chapter 3 of this thesis.
[908] Charles Kamen, 'After the Disaster: The Arabs in Israel, 1948-1950', Mahbarot l'Mihkar u-l'Bikoret, (1985).
[909] Baruch Kimmerling, 'Zionism and territory: The socio-territorial dimensions of Zionist politics', Vol. 51. University of California Intl, 1983.
[910] Land in Israel administrated by the Israel Land Administration since 1960, the ownership is in the hands of the state and the Jewish New Fund. Detailed information about the rule of the Jewish New Fund in excluding the Palestinian citizens of Israel from accessing land in Israel, found in chapter 4 of this thesis.
[911] Geremy Forman, and Alexandre Sandy Kedar, 'From Arab land to 'Israel Lands': the legal dispossession of the Palestinians displaced by Israel in the wake of 1948." Environment and Planning D: Society and Space 22.6, (2004): 809-830.

settlements to encompass de facto Israeli territorial claims. It uses state-run departments such as the Custodian of Absentee Property where land would be transferred to a developing authority, or Israel Land Authority and the Jewish National Fund to prejudice toward the protection of the Jewish demographic advantage.[912] This thesis demonstrates that there has been a deliberate agenda of creating ethnic gaps in Israel based on relationships of a dominant majority and suppression of a minority.[913] What emerged from this transformation was a land regime that extended ethno-national control over contested territory.[914]

The pioneers of the Zionist project fundamentally sought to 'redeem the land from desolation'; based on biblical belief.[915] Jewish founders and settlers used (and modified) the existing colonial legal systems established by the British to construct a 'hegemonic self-perception of Zionism as a story of settlers and colonialists', and used law 'as an essential cultural component in a nation-building project'.[916] The land was essential to Zionism, as it was in many other colonial projects. Post-colonial Israel demanded state control of the territory, and this was implemented using legal instruments, particularly in the years before military rule expired in 1966.[917] Furthermore, the research demonstrates that law was a critical part of the state-building project, which was used to "normalise" the outcome.[918] The state constructed a land regime to regulate social relationships,[919] which resulted in the exclusion and marginalisation of the Palestinian Arabs on the ground.[920]

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[912] The 'demographic problem' is simply a fear that Jews will become a minority in Israel, and therefore the Israeli state promotes Jewish immigration to Israel, 'Alia to Eretz Israel'

[913] Oren Yiftachel, 'Ethnocracy: Land and identity politics in Israel/Palestine, University of Pennsylvania Press, (2006):3.

[914] Alexander Sandy Kedar and Oren Yiftachel, 'Land Regime and Social Relations in Israel, Swiss Human Rights Book 1 (2006):127, 144.

[915] Zionists' claim was made on the 1919 Versailles peace conference and after. Ghazi Falah, 'Israeli 'Judaization' Policy in Galilee and its Impact on Local Arab Urbanization', Political Geography Quarterly 8 no. 3 (1989): 229-53; Ghazi Falah, 'Israelization of Palestine human geography', Progress in Human Geography 13.4, 1989): 535-50.

[916] Ronen Shamir, The Colonies of Law: Colonialism, Zionism and Law in Early Mandate Palestine. Cambridge University Press, 2000: 11.

[917] Shira Nomi Robinson, 'Occupied Citizens in a Liberal State: Palestinians Under Military Rule and the Colonial Formation of Israeli Society, 1948-1966', ProQuest Information and Learning Company, 2005.

[918] Geremy Forman, and Alexandre Sandy Kedar, 'From Arab land to 'Israel Lands': the legal dispossession of the Palestinians displaced by Israel in the wake of 1948', Environment and Planning D: Society and Space 22.6, (2004): 809-830.

[919] Richard Ford, 'The Legal Geographies Reader', (Editors, Nicholas Blomley, and David Delaney. Oxford: Blackwell, 2001); Patrick McAuslan, 'Bringing the law back in: essays in land, law, and development', Gower Publishing, Ltd., (2003); Saw Ai Brenda Yeoh, 'Historical geographies of the

What emerged from the research is that Israel is an ethnocratic democracy, which practices an architecture of exclusion of Palestinian Arabs from socioeconomic and political decision-making institutions. This result is reflected in the current dynamics of power, politics and land.[921] For example, since the establishment of the state in 1948, not a single Palestinian community has been created (except the towns established to promote forced urbanisation of the Bedouin community),[922] but more than 700 new Jewish communities have been established. Moreover, a substantial number of Palestinian towns and villages suffer from neglected and damaged infrastructures and facilities, such as the lack of public transportation, hospitals and roads. These conditions will not change quickly because these towns and villages have no future master plans and cannot expand their boundaries to allow new areas for the purpose of building houses. Palestinian towns and villages remain unplanned or have out-dated master plans. The absence of planning continues creates complications for the next generation of the Palestinian community to accommodate their natural growth. The State of Israel has restricted and limited the development and consolidation of Palestinian areas. Alternatively, new construction in Jewish areas has proliferated.[923] It is also necessary to highlight that the deficit in community planning creates chaos in Palestinian towns and villages in the form of the "building without a permit" phenomenon, which can lead residents to face the demolition of their houses (at their own expenses) and the threat of eviction, especially in the mixed cities.[924] Planning issues discussed in the *Report of the Special Rapporteur on Adequate Housing, Raquel Rolnik, as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this context*, the mission carried out in Israel and the Occupied Palestinian Territory. In the concluding remarks of her report, the following was emphasised:

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colonized world' (editors, B. Graham and C. Nash Modern Historical Geographies, Harlow Longman, (2000): 146-166.

[920] Sibley, David, 'Geographies of exclusion: Society and difference in the West' London: Routledge, 1995.

[921] Anita Shapira, 'Land and power: The Zionist resort to force, 1881-1948', Stanford University Press, 1999.

[922] Oren Yiftachel, 'Epilogue: Studying al-Naqab/Negev Bedouins-Toward a colonial paradigm?' Hagar Studies in Culture, Policy and Identities, Vol. 8 No. 2, (2008): 173; Oren Yiftachel,' Naqab/Negev Bedouins and the (Internal) Colonial Paradigm', (Indigenous (in) Justice: Law and Human Rights among the Bedouins in the Naqab/Negev, (2012): 289-318.

[923] Oren Yiftachel, 'Ghetto Citizenship: Palestinian Arabs in Israel', Israel and the Palestinians-key terms, (2009): 56-60.

[924] Such as: Acre, Jaffa, Haifa, Ramla, Lod, and Jerusalem.

> Throughout her visit the Special Rapporteur witnessed a development model that systematically excludes, discriminates against and displaces minorities in Israel and which has been replicated in the occupied territory since 1967. In very different legal and geographical contexts, from Galilee and the Negev to the West Bank, she received multiple similar complaints from Palestinians, notably concerning a lack of or discriminatory planning, which seriously hampers the urban and rural development of these communities. As a consequence, a disproportionate number of members of such communities live and sometimes work in structures that are "unauthorized" or "illegal" and liable to eviction and demolition.[925]

Land issues are important in the Israeli/Palestinian conflict because of the symbolic and religious significance of the land, which has become a reflection of the national identities of the Jewish and Palestinian Arabs citizens.[926] However, despite the contentious nature of Israeli/Palestinian relations and the security concerns, which Israel uses to justify its discriminatory spatial strategy, Rolnik concluded that based on the right to an adequate standard of living and on the right to non-discrimination, in this context:

> It is also important to underline that the spatial strategy of Israel has also been heavily shaped by security concerns, given the belligerent, conflictive nature of Israel/Palestine relations, marked by waves of violence and terror. But certainly the nondemocratic elements in Israeli spatial planning and urban development strategies appear to contribute to the deepening of the conflict, rather than promote peace.

Rolnik thus recommended:

> [t]his discriminatory system should be changed to allow all those living under the control of the Israeli authorities to enjoy the most basic human right to adequate housing, within the framework of dignity and equality.[927]

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[925] Assembly, General, 'Situation of Human Rights in the Palestinian Territories Occupied since 1967', (2014). Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik; available on: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-46_Add1_en.pdf.

[926] David Newman, 'The geopolitics of peace-making in Israel-Palestine', Political Geography 21.5, (2002): 629-646.

[927] Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik :Addendum: Mission to Israel and Occupied Palestine Territory (2014): par. 99 and 100, available on: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-46_Add1_en.pdf ; Assembly, General. "Situation of Human Rights in the Palestinian Territories Occupied since 1967." (2014).

As a way of looking at this process, the research used interdisciplinary crossroads of law and critical legal geography[928] to interpret the law's role in constructing, organising, and most importantly, legitimising social spatiality and spatial hierarchies.[929] This was done by tracing the creation of the Israeli land regime and by analysing the state as an ethnocratic regime, defined as 'a society shaped by the coterminous process of ethno-national expansion and internal ethno-class satisfaction'.[930]

Within the larger context of an ethnocratic state, land regimes emerge as key sites of contestation between the dominant group, Jewish Israelis, and the minority group, Arabs. Based on that context and on the details of the case study's exploration of the current struggle, lines can be drawn to examine the nature of exclusion and alienation in the state of Israel.[931] One theme which is highlighted in this study is the exclusion of the Palestinian Arabs. Efforts to construct and empower the dominant Jewish population have required advanced methods to control the public space and to recraft it in legal terms so that it favours the Jewish ethnicity. Kedar and Yiftachel argue:

> [T]he Judaization project which forms the spine of the Israeli regime, particularly its land and spatial components, has contributed significantly to the creation and preservation of ethno-classes satisfaction. We [Kedar and Yiftachel] highlight the important role of legal institutions and practices in making and possible transformation of Israeli land regime.[932]

Oren Yiftachel emphasises that link too:

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[928] Legal geography, relatively new sub-discipline, located at the interdisciplinary crossroads of law and geography, explains the role of law in shaping human geography; Richard Ford, 'The Legal Geographies Reader', (Editors, Nicholas Blomley, and David Delaney. Oxford: Blackwell, 2001); Jane Holder, and Carolyn Harrison. Law and Geography (2003).

[929] Nicholas K., Blomley, and Joel C. Bakan, 'Spacing out: towards a critical geography of law', Osgoode Hall LJ 30, (1992): 661; David Delaney, 'Geographies of judgment: The doctrine of changed conditions and the geopolitics of race', Annals of the Association of American Geographers 83.1, (1993): 48-65.

[930] Alexander Sandy Kedar and Oren Yiftachel, 'Land Regime and Social Relations in Israel, Swiss Human Rights Book 1 (2006): 127; Oren Yiftachel, 'Ethnocracy: Land and identity politics in Israel/Palestine', University of Pennsylvania Press, 2006; David Delaney, 'Race, place, and the law, 1836-1948', University of Texas Press, 2010); Forest, Benjamin. "Placing the law in geography." Historical Geography 28 (2000): 5-12.

[931] John Ruedy, 'Dynamics of Land Alienation (in Palestine)', Vol. 5. Association of Arab-American University Graduates, 1973.

[932] Alexander Sandy Kedar and Oren Yiftachel, 'Land regime and social relations in Israel, Swiss Human Rights Book 1 (2006):127.

> Ethnocratic regimes promote the expansion of the dominant group in contested territory and its domination of power structure while maintaining a democratic facade. Ethnocracy manifests in the Israel case with long-term Zionist strategy of Judaizing and Israelization[933] of homeland - constructed during the last century as the land of Israel, between the Jordan River and the Mediterranean Sea. The very same territory is also perceived by most Palestinians as their rightful historical homeland, invaded and seized by Jews. The development of ethnic relations in Israel/Palestine has been fundamentally shaped by the material, territorial, political, and cultural aspects of the Judaization dynamics and by various forms of resistance to that project.[934]

These strategies and policies have been accompanied by broad and progressively violent mechanisms such as land expropriation and forced evictions to facilitate the dominant ethnicity's control and expansion. The exclusion and alienation[935] of primary resources, such as land, through the legal and political practices involved in its ownership, access, allocation, use and control, are inextricable with the ethnocratic motives that are reflected in many major aspects of Palestinian Arabs' lives, not only with respect to land. This thesis suggests that control over land and exclusion from territory have had substantial consequences. Extending the implications of these policies results in the exclusion of Palestinian Arabs from socioeconomic and political decision-making institutions, which thus creates political and economic gaps that affect the Palestinian Arabs' capacity to develop and expand.

The Israeli State claims public ownership over 93 percent of its land[936] following the adoption of "land redeem" ideology into land distribution and planning policies.[937] Mordechai Ben-Hillel Hacohen, a founding father of Zionism,[938] instructed

[933] Ghazi Falah, 'Israeli 'Judaization' Policy in Galilee and its Impact on Local Arab Urbanization', Political Geography Quarterly 8 no. 3 (1989): 229-53; Ghazi Falah, 'Israelization of Palestine human geography', Progress in Human Geography 13.4, (1989): 535-550.
[934] Oren Yiftachel, 'Ethnocracy: Land and identity politics in Israel/Palestine, University of Pennsylvania Press, (2006): 3; Ghazi Falah, 'Israeli 'Judaization' Policy in Galilee and its Impact on Local Arab Urbanization', Political Geography Quarterly 8 no. 3 (1989): 229-53; Ghazi Falah, 'Israelization of Palestine human geography', Progress in Human Geography 13.4, (1989): 535-550.
[935] John Ruedy, 'Dynamics of Land Alienation (in Palestine)', Vol. 5. Association of Arab-American University Graduates, 1973.
[936] The transfer of land into public ownership was facilitated by the selective use of existing land law regulations. See more details in chapter 4 of this thesis; Alexandre Kedar, 'Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967', The NYUJ Int'l L & Pol. 33 (2000): 923.
[937] Elia Werczberger, and Eliyahu Borukhov, 'The Israel Land Authority: relic or necessity?', Land Use Policy 16.2, (1999): 129-138.
[938] Known as The Mordechai, was a 13th-century German rabbi and Halacha Posek.

Palestinian Arabs to learn to have 'lives of possessions and property and established boundaries'.[939] At first, David Ben-Gurion, first Prime Minster of Israel and Defence Minister, [940] expressed a progressive Zionist approach towards the Palestinian population: '[o]ur renaissance in Palestine would be the renaissance of the land; namely that of the Arabs in it'.[941] However, his position would soon shift, as:

> […] it was impossible to reconcile the two images of 'return' in Zionism: 'returning' to the homeland for the sake of progress and enlightenment for the indigenous population, on one hand, and returning to the land in order to create a pure state for the newcomers, on the other.[942]

The narrative that accompanied the transformation became core to the discourse of Eretz Israel and was aligned with Zionism, as it was not only aimed at finding a haven for the Jewish people, but it chose the ancient Hebrew motherland in accordance with Judaism.[943] What was notable about the process was how, through the first decade after the foundation of the state, 'the confidential and political deliberations of state officials were quickly translated into legislation, generating terminology and mechanisms that turned initially illegal appropriation into the constitutional law of land'.[944] Land planning and policies were deeply embedded in the state-building project, at least performatively, underpinned by liberal values such as equality, and respect for fundamental human rights. The process was used to neutralise the "democratic state" image by arguing that the discrimination occurs within the private domain rather than in the public/state domain, as land disputes are not political matters because of the technicalities and questions involved using institutions such as the Jewish National Fund and the Israeli Land Administration. In practice, however, land disputes on issues such as the exclusive land access only to the Jewish National Fund, would transfer the focus to questions about technical, formal and procedural measures. Evidentiary rules failed to focus on individuals'

[939] Quoted in Tom Segev, 'One Palestine, complete: Jews and Arabs under the British mandate', London: Abacus, 2000.
[940] David Ben Gurion, Political leader and Founder of Israel, 'Memoirs', Cleveland, 1970).
[941] Quoted in Shabatai Teveth, 'Ben-Gurion and the Palestinian Arabs: From War to Peace 'Jerusalem: Shoken, 1985, [Hebrew].
[942] Ilan Pappe, 'Zionism as colonialism: A comparative view of diluted colonialism in Asia and Africa', South Atlantic Quarterly 107.4, (2008): 611-33, 624; Ilan Pappe, 'The Ethnic Cleansing of Palestine'. Oxford: One world, 2007.
[943] Abraham Granott, 'Agrarian reform and the record of Israel', London: Eyre and Spottiswoode, (1956): 104.
[944] Geremy Forman, and Alexandre Sandy Kedar, 'From Arab land to 'Israel Lands': the legal dispossession of the Palestinians displaced by Israel in the wake of 1948', Environment and Planning D: Society and Space 22.6, (2004): 809-830.

rights to land, which shifted the burden of proof of ownership to Palestinian Arabs. Those procedures measures gave the impression that land disputes are not political matters because of the technicalities and questions involved in the cases. Therefore, the Israeli legal system plays a central role in the creation and legitimation of the new land regime.[945] The Israeli law:

> [f]ostered the shaping of an ethnicity divided space. It created a legal geography of power that contributed to the dispossession of Arab landholders while simultaneously masking and legitimating of relocation of that land to the Jewish population.[946]

What emerges from this research is a consideration of the neutrality of law and the reasoning behind the political policy to intervene in legal matters. The law is a vital part of shaping power and society, including the division of land space; '[l]aw generally and Supreme Courts specifically, play a crucial role in this [legitimisation of the unequal ordering of space and society] hegemony'.[947] When dealing with land issues related to the Palestinian population, the court uses a narrow technical approach; indeed, the court may be inclined to make formal calculations when it challenges with the state's building policy where the judicial review might advise the government on how to avoid discrimination. However, implementation of the court decision will not be under the control of the Court. Based on the engagement of the judges who are part of the judiciary review in general, and there is a double standard when dealing with land, as redeeming land from non-Jewish populations is rooted in Israel's land regime through support for ethnic control. This raises a major question about governmental policies regarding land inquiries. What type of judge - if any - could interfere with the process or discontinue the legitimisation of excluding Palestinian Arabs from land access? Based on a judicial review of court decisions, the judges operate by supporting the government's practices, and thus serve as aggravators of the political land conflict that leads to the exclusion of the Palestinians Arabs and favours Jewish citizens. This reality is affected by the current political climate, which emphasises preserving land within Jewish control. These issues in the realm of land use and management, which are reflected in the case

[945] Alexandre Kedar, 'Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967', The NYUJ Int'l L & Pol. 33 (2000): 923.
[946] Ibid.
[947] Alexandre Kedar, 'On the Legal Geography of Ethnocratic Settler States: Notes Towards a Research Agenda' Current Legal Issues 5 (2003): 401-41.

study, as it shows the relations between Israeli authorities and Palestinians in land-related cases and sheds light on the struggles of the Sheikh Jarrah residents in particular, and the Palestinian residents of Jerusalem in general.

To turn to the lived experiences detailed by the residents, lawyers and experts engaged in Sheikh Jarrah, these link some of the broader arguments made in the thesis to a case study. This issue has also received international attention, as Jerusalem's holy places are located in the eastern part of the city. The legal aspects are discussed in detail in Chapter 5, but here, turning to the implications of the case study examined in this thesis, it is revealed that it is important to draw a broader picture of political involvement in the case study. How can the law shape the new reality of threats by evicting residents from their homes? Sheikh Jarrah's, critical location and its demographic balance should be considered while waiting for future results. On the ground, the residents of East Jerusalem never receive equal treatment in the planning scheme, according to testimony from Teddy Kollek, a former mayor of Jerusalem, who describes the services provided to each of the communities:

> We said things without meaning them, and we did not carry them out, we said over and over that we would equalize the rights of the Arabs to the rights of the Jews in the city - empty talk […] Never have we given them a feeling of being equal before the law. [As mayor of Jerusalem, I] nurtured nothing and built nothing [for Arabs]. For Jewish Jerusalem I did something in the past 25 years. [For Arabs in] East Jerusalem? Nothing! What did I do? Nothing! Sidewalks? Nothing. Cultural Institutions? Not one. Yes, we installed a sewage system for them and improved the water supply. Do you know why? Do you think it was for their good? For their welfare? Forget it! There were some cases of cholera there, and the Jews were afraid that they would catch it, so we installed [a] sewage and water system against cholera.[948]

The municipality's policies have gone against the general obligation to provide equal treatment for the city's populations since the annexation of Jerusalem after the 1967 war. The poor infrastructure was similarly mentioned in Rolnik's report as a component of the right to an adequate standard of living; This report emphasised the following situation:

[948] Interview with Teddy Kollek, former mayor of Jerusalem, in Israel Daily Ma'arriv (10 October, 1990), quoted in DOCUMENTS ON JERUSALEM, 115 (Palestinian Academic Society for the Study of International Affair, 1996.

> 50. In East Jerusalem, the Special Rapporteur received multiple complaints on issues concerning the Palestinian population, including discriminatory planning, limited access to public services, evictions and house demolitions. Municipal planning procedures appear to disproportionately restrict the expansion and consolidation of Palestinian neighbourhoods in the city, while Israeli settlements have proliferated.
>
> 51. The Local Outline Plan-Jerusalem 2000, although not finalized or officially approved, is the master plan setting out the municipality's strategies up to 2020. This plan is the first to include both East and West Jerusalem. While it includes questions of planning and development in the Palestinian neighbourhoods of the city, the Local Outline Plan does not plan for enough housing units in the Palestinian areas to sufficiently address current shortfalls or accommodate the projected growth in population. Further, the master plan identifies 'Maintaining a solid Jewish majority in the city' as one of its main aims and adds 5 square kilometres for the expansion of Israeli settlements in East Jerusalem. This policy of "demographic balance", a stated aim of official municipal planning documents, is discriminatory and thus violates human rights.[949]

Furthermore, an acute issue is that the policies and laws have been created to limit any future solution accepted by both sides. This is because of the severe changes that occurred under policies and laws favouring the Jewish population while re-engineering the city's demographic and geographic character toward the transformation of the city into the "undivided" capital to Israel. This aspect of the policy is reflected in Moshe Dayan's writings, as he argued that Israel should make, "facts on the ground"[950] and that the situation will not decrease in importance in the future.[951] This is one of the main motives to introduce and later implement the idea of Jewish settlements in the core of this Palestinian neighbourhood:

> For example, Jewish settlements in East Jerusalem that have been built within the municipality and in the surrounding area of East Jerusalem, have led to decrease in the amount of land and resources available for Palestinians.

Assembly, General. 'Situation of Human Rights in the Palestinian Territories Occupied since 1967', (2014); Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik; available on: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-46_Add1_en.pdf.

[949] When Moshe Dian was Defense Minister he called for the establishment of "facts on the ground" in the Territories.

[950] When he was Defense Minister Moshe Dayan called for the establishment of "facts on the ground" in the Territories.

[951] John Quigley, Sovereignty in Jerusalem', (Cath. UL Rev. 45, 1995): 765.

> More than one third of the areas of East Jerusalem has been expropriated for construction of Israeli settlements.[952]

All of this is intended to maintain a solid Jewish majority in Jerusalem; 'a city that would largely become Jewish' Kollek continued, would make 'the city more conducive to Jewish settlement', and a 'united Jerusalem' would be difficult to take apart 'in the future'[953]. Despite his insistence that Jerusalem treats all of its population equally, the discrimination in most socioeconomic spheres is obvious, and land expropriation was intended to develop Jewish-exclusive access.[954] This was done using six methods: expropriation of land; imposing of Jewish settlements; zoning Palestinian lands as 'green areas'; demolishing Palestinian homes; revoking Palestinians' residency rights and evicting Palestinians from their own houses.[955] These methods are reflected in the policies of the Israeli government since the annexation of East Jerusalem in 1967, which have implemented systematic discrimination against the residents of East Jerusalem,[956] driven by the primary national policy of excluding Palestinian residents of Jerusalem from the socio-legal landscape. This policy prevents Palestinians from access to land by designating a process to impose exclusive Jewish access to the land, and furthermore, to evict residents from their houses based on claims related to religious principles. At the same time, Jewish citizens settle (settlers) in the Palestinians' former houses while receiving the additional benefits of settling. The goal is to maintain Jerusalem's status as the "united capital of Israel", as already mentioned, despite the international community's disapproval of these actions and requests 'to immediately stop all home demolitions and evictions […] in East Jerusalem'.[957] The international community has also called for Israel 'to explore all possible alternatives prior to evictions; to consult with the affected persons; and to provide effective remedies for those

[952] OCHA-oPt, East Jerusalem: Key Humanitarian Concerns, Special Focus (March 2011): 2.
[953] Interview with Teddy Kollek, former mayor of Jerusalem, in Israel Daily Ma'arriv (10 October, 1990), quoted in DOCUMENTS ON JERUSALEM, 115 (Palestinian Academic Society for the Study of International Affair, 1996.
[954] Allison B Hodgkins, 'The Judaization of Jerusalem: Israeli policies since 1967', PASSIA, Palestinian Academic Society for the Study of International Affairs, 1996.
[955] A broader discussion about discussing how planning schemes restricts the development of Palestinian neighbourhood, can be found in chapter 4 & 5 of this thesis.
[956] Yael Stein, 'the quiet deportation: revocation of residency of East Jerusalem Palestinians', HaMoked, (1997): 8.
[957] Assembly, General. 'Situation of Human Rights in the Palestinian Territories Occupied since 1967'. (2014); Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik; available on: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-46_Add1_en.pdf.

affected by the evictions'.[958] On one hand, based on the testimonies of the Palestinian residents of Sheikh Jarrah, in addition to the observation of the situation, the residents have not received any support following their evictions, despite the brutal reality that the execution of the evictions take place in the middle of the night or in a very short time . This indicates that there is no policy to manage the evicted families, who have no shelter until the issue is resolved. On the other hand, Israel provides all necessary services to maintain the security of the settlers in the Nahalat Shimon group, whom occupy the evicted homes.

The quandaries that follow are whether the Court may be engaged with the pending cases and whether the residents of Sheikh Jarrah may stay in their homes. In the context of the on-going political conflict over East Jerusalem, stopping the evictions often manifests in opportunities for the judges to interfere by using the law to create justice - even if doing so runs counter to the state's policy -, if those policies are proven to be discriminatory. Is there hope for the residents of Sheikh Jarrah despite the political prejudice that has led to the contemporary practices of legal eviction, which are the product of the original ethnic division ideology and demographic balance in East Jerusalem?

The struggle of the residents of Sheikh Jarrah and other parts of East Jerusalem is critical, and it is important to highlight that the evictions of Sheikh Jarrah are a starting point for the establishment of a Jewish settlement in East Jerusalem. The plan is to destroy the whole neighbourhood and build a modern Jewish neighbourhood. Therefore, the assumption is that these questions should be solved outside of courtrooms, as there is a political aspect inherent in each case that is beyond legal examination. Additionally, the fact is that the courts are still bound by the government's policies and are faithful to the state-building project, including aspects of Zionism and nationalism, when land or space is discussed. Any proposed solution should consider the broader challenge of the nature of the Israeli/Palestinian conflict, as land is a key issue in this political conflict.

The State of Israel, since its inception in 1948, has adopted architecture of exclusion and alienation: an architecture that is shaped in ideological and political terms. While

[958] Ibid.

this state-building project encompasses socio-economic and political decision-making institutions, it is in the land regime that this policy - and law's engagement in progressing it- is clear. Consequently, the law is deployed not only instrumentally but also ideologically, implying and legitimising the State's hegemonic actions and policies. As long as Israel remains an ethnocratic state, these calls will continue to shape the dominant narratives within Israeli civil society, and in turn, shape how Israeli governmental policies are adopted and constructed. By excluding the "other", Israel cannot continue to claim it is a democratic state practicing equality among its citizens, while also being an ethnic state that relies on oppression. Consequently, land is an essential geopolitical reality, and it continues to be the core question of Israeli/Palestinian conflict.[959] This is due to the fact that the Palestinian population and the residents of East Jerusalem, like any other population, is naturally growing and demands fair access to land, future planning schemes and respect for their housing rights. The land is an essential geopolitical reality, so there are questions related to Israel's patterns of controlling access to land through the inclusion of Jewish citizens and exclusion of non-Jewish and Palestinian Arab citizens. The spatial policies that apply to the Palestinian Arab population and the residents of East Jerusalem are the transfer of land through land expropriation, forced evictions and the reduction of Palestinian territory through discriminative planning and land policies. These are drastic measures that the "democratic state" will allegedly refrain from using, but to date have left families without shelter, which generates human tragedy that is particularly significant for children. The Palestinian population in Israel will not vanish; it will continue its demands for justice. Land readjustment is therefore needed to fix this on-going problem. If not properly addressed, the present violence will never come to an end. Regretfully, the Israeli/Palestinian land conflict is a complex issue with several dimensions and levels, and as such there is no miracle solution. If the system continues to marginalise and oppress Palestinian Arabs and the residents of East Jerusalem, no one will win, 'Once one starts to look for and listen to other sources and voices, alternative pasts and presents - and implicitly also imaginaries for the future - thus might appear'. [960]

[959] Second central point would be the refugees right to return.
[960] Sophie Richter-Devroe, Mansour Nasasra, and Richard Ratcliffe, 'The Politics of Representation: The case of the Naqab Bedouin', Journal of Holy Land and Palestine Studies 15.1, (2016): 1-6.

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