

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

Forced Displacement and Ethnic Cleansing

**Israel's Violations of the Palestinians' Rights to
Residency in Jerusalem**

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Introduction on the Civic Coalition of Jerusalem NGOs:

The Coalition is currently composed of 16 institutions and movements concerned with development and human rights issues in Jerusalem. The Coalition is hosted by the Welfare Association (WA), which supervises a coordinating team assigned with the task of providing follow up to the different activities of the Coalition. The Coalition works for defending the political, social, economic and cultural rights of Palestinians in Jerusalem by means of monitoring and documentation of rights violations, awareness raising, advocacy and lobbying, and legal follow up within the framework of the following general principles:

1. Promote Palestinians' awareness of their civil, political, economic and social rights and violations of these rights in Jerusalem.
2. Promote the principles of democracy, social justice and good governance.
3. Call for the application of the international law, the humanitarian international law and the international conventions of human rights to Jerusalem.
4. promote the principle of integrity and transparency.

The Coalition adheres to the vision and mission statements agreed upon by representatives and activists from civil society organizations within the strategy of «Land and Humans» developed in late 2006.

Vision: Palestinians are persistent in Jerusalem and capable of protecting all their rights.

Mission: Mobilize efforts, capacities and resources to protect the political,

civil, economic, social and cultural rights on the basis of the international and human rights law.

The Coalition seeks to develop a series of programs and activities to achieve the three main objectives it has identified within the framework of its vision and mission, namely:

1. Promote Palestinians' awareness of their civil, political, economic and social rights and violations of these rights in Jerusalem.
2. Coordinate and activate advocacy and lobbying on individual and collective human rights issues in Jerusalem.
3. Build the organizational capacity of the Coalition towards achieving its vision and objectives.

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Preface

The successive governments of Israel have consistently targeted Palestinian presence throughout historical Palestine. In 1948, the government of Israel under Ben Gurion conducted a large-scale expulsion operation displacing about 750,000 Palestinians (indigenous populations) from the areas where the State of Israel was established, including the western part of Jerusalem. These Palestinians were expelled and their houses and properties were either destroyed or appropriated and used to house Jewish newcomers from across the world in a large scale in an attempt to conceal any signs of Arab civilization inside the 1948 areas.¹ In addition, tens of thousands of Palestinians have been forcibly displaced from their homes and are now living as “internally displaced” in what is today known as the Palestine 1948 areas, where the state of Israel was created.

The goal of this study is to examine the extent to which Israeli policies and measures aimed at increasing the Jewish presence in Jerusalem and minimizing the Palestinian can be classified as forced displacement amounting to ethnic cleansing. To this end, the study will provide a background on the legal status of Jerusalem, and detail the policies and methods adopted in Jerusalem by Israeli authorities to expel Palestinians from the city, analyzing these under relevant international and human rights law. The study will also provide definitions of forced displacement and ethnic cleansing, analyzing the application of these terms on Jerusalem and its Palestinian residents. A summary of the main points is followed by recommendations to the international community, Israeli and Palestinian authorities and international and local NGOs working in the occupied Palestinian territories.

¹ During the 1948 war between Arabs and Jews, the government of Ben Gurion attempted to clear the western part of Jerusalem from Palestinian citizens and appropriated houses and properties in their neighborhoods (Baqa'a, Qatamon, Talbīyeh, Lifta and others). Most of these houses and neighborhoods still exist today and are occupied by Jewish settlers.

Background

British Mandate over Palestine

On 24 July 1922, the League of Nations authorized the British government to have mandate over Palestine. Composed of 28 articles, the British Mandate for Palestine included an obligation of the British government as the mandatory to secure the establishment of a Jewish national home in Palestine, realizing the Balfour Declaration of 2 November 1918. The Mandate officially came into force on September 29, 1923².

The British mandate over Palestine sought to strengthen the authority of Britain in this region and create the required conditions for the fulfillment of the Balfour Declaration, establishing a Jewish national home in Palestine. The Declaration recognizes the Jewish agency as a public body for the purpose of “advising and cooperating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine.” Despite that Jews were a small minority compared to the Palestinians at the time; the Mandate only addressed Palestinians civil and religious rights, ignoring their political rights, including their right to self-determination.³

The mandate also ignored the political aspects of Jerusalem City and dealt with only its religious significance, similar to all other holy sites across Palestine. The Mandate addressed the preservation and management (including free access) of all holy places in Palestine in general, without making specific mention of Jerusalem.

² PASSIA. Palestine facts. Accessed at www.passia.org

³ According to Article 2 of the mandate instrument, the mandatory was responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home at the expense of the indigenous Arab population, while the instrument ignored the political rights of the Palestinians by only referring to the need to safeguard the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.

Throughout the mandate period, British policies violated the rights of Palestinians and supported and encouraged the migration of Jews to Palestine. As a result, the ratio of Jews to Arabs became 1:3, an increase from the ratio of 1:12 prior to the mandate.⁴

The British government abandoned its authority in Palestine and referred the Palestinian issue to the UN in April 1947, once the demographic balance in Palestine was reversed in favor of Jewish immigrants. At this time, Arabs and Jews were in conflict in Jerusalem, with the Jewish immigrants settling in the Western part of the city and Arabs retaining the population majority in the Eastern section, including the Old City.⁵

On 15 May 1947, the UN General Assembly adopted Resolution No 106, providing for the creation of a UN Special Committee on Palestine (UNSCOP). UNSCOP was tasked with developing and submitting a report on the issue of Palestine to the General Assembly, and was granted extensive powers to examine and record all facts. This included investigating all aspects of the issue and obtaining oral and written affidavits from the Mandate authority and the population of Palestine.⁶

UNSCOP submitted its final report to the General Assembly accompanied by two recommendations. The first, known as the majority decision, recommended partitioning Palestine into two states: one Arab and one Jewish state, while considering Jerusalem a "corpus separatum" to be managed by a special international regime under the supervision of the UN. The second recommendation, known as the minority decision, called for ending the British Mandate and creating one federated state for Arabs and Jews with Jerusalem as the Capital of the proposed state. Following the discussion of these two proposals, the UN General Assembly passed resolution No181 (D2) of 29 November 1947, endorsing the majority decision on the creation of two states.

In line with UNSCOP recommendation, Part III of the Resolution provided for putting Jerusalem under a special international regime for 10 years,

4 In 1919, the number of Jews in Palestine was 58,000, which was 8.53% of the total population, compared to 642,000 Arabs, or 91.7%. In 1947, however, the Arab population was 1,977,626, or 69%, and the Jews 614,239, or 31% of the total population.

5 According to the investigative study by UNSCOP, the area of Jerusalem City housed an estimated number of 102,000 Jews and 150,000 Arabs in December 1946.

6 Henry Cattan, *Recollection on the United Nations resolutions to partition Palestine*. The Palestine Yearbook of International Law, Vol. IV, 1987/88 p. 261.

considering it a "corpus separatum" and expanding its boundaries to "include the present municipality of Jerusalem plus the surrounding villages and towns, the most eastern of which shall be Abu Dis; the most southern, Bethlehem; the most western, 'Ein Karim; and the most northern Shu'fat."⁷ The UN conferred the administration of the City with its new boundaries to a UN-affiliated trusteeship council, which was also commissioned with the task of developing a detailed statute for the City. The statute aimed to protect and preserve the unique spiritual and religious interests of the three great monotheistic faiths; to foster cooperation among all the inhabitants of the city; and to promote the security and well-being of the residents. A Governor of the City of Jerusalem was to be appointed by the Trusteeship Council provided that he shall not be a citizen of either State in Palestine. The Governor was to represent the United Nations in the City and to be assisted by an administrative staff chosen from the residents of the city and of the rest of Palestine on a non-discriminatory basis.

The special international regime called for electing a Legislative Council by adult residents of the city on the basis of secret voting and proportional representation and for the establishment of an independent judiciary system. In economic terms, the City was to be included in the Economic Union of Palestine. It was to be neutral and demilitarized and no paramilitary formations, exercises or activities were to be permitted within its borders, with the exception of police forces to assist in the maintenance of internal law and order and the protection of the Holy Places in the city.⁸

Palestinians objected to the partition plan outlined in Resolution 181, and viewed it as prejudicial and contradictory to the principles of justice and democracy. The Zionist movement accepted the resolution in order to establish and cement its presence in the region through the creation of an independent Jewish state.⁹

7 UN General Assembly Resolution No 181, Part III, Section B, "Boundaries of the City". UN General Assembly 29 November 1947.

8 Under the provisions of the partitioning resolution, the Economic Board of Palestine should consist of three representatives of each of the two States and three foreign members appointed by the Economic and Social Council of the United Nations. The task of this Board is to conduct measures and develop plans required to achieve economic unity of the proposed two states in Palestine.

9 Henry Cattan. Palestine in the light of right and justice. Op. cit., p. 26.

Palestine partition resolution and Israel's control over West Jerusalem:

Following Resolution 181, acute disputes arose between the Arab population and the Zionist movement, leading to a large scale war in Palestine in 1948 and resulting in the partition of the country. As a result, the fate of Palestine, including Jerusalem, was decided by means of military power. The war undermined the boundaries outlined in the partition plan as the Zionist forces occupied more than 22% of the territory assigned to the Arab state. Jerusalem was divided into two parts, with the Zionist movement controlling the western part and displacing most of its Arab population and Jordan controlling the eastern part of the City.¹⁰

Members of the People's Council and representatives of the Jewish community in Palestine declared the establishment of Israel on 14 May 1948, stating "by virtue of our natural and historic right and on the strength of the resolution of the United Nations General Assembly, [we] hereby declare the establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel." On the following day, Israel took advantage of the disorder resulting from the withdrawal of British troops from Palestine and seized all of the 12 Arab neighborhoods in the western part of Jerusalem. On the other side, Arab armies intervened to blockade the city and isolate it from Jewish settlements. The battle over Jerusalem concluded with the Jordanian troops controlling the eastern part and the Israelis the western part.¹¹

Consequently, the United Nations asked its Trusteeship Council to identify the measures required to protect the City and its citizens and to submit its suggestions to the General Assembly as soon as possible. On 17 May, Count Bernadotte was appointed as the international mediator on Palestine, and recommended to create an investigation committee on Palestine. Following the recommendation, the General Assembly passed Resolution 194 creating the Conciliation Commission, tasked with developing proposals

10 In 1948, 38 villages and towns were destroyed in the Jerusalem area, displacing about 73,258 Palestinians. This number does not include many neighborhoods within the western part of the City, mainly the neighborhoods of Musrarah, Baqa>a, Talbiyeh, Qatamon, the German Quarter, and the Greek Quarter, where the local residents were forced out and their houses were appropriated and occupied by Jewish settlers. These houses are still standing today. See *Jerusalem 1948: The Arab neighborhoods and their fate in the war*. Editor: Salim Tamari. Published by Institute of Jerusalem Studies and BADIL Resource Center for Palestinian Residency and Refugee Rights.

11 Musa Al-Qudsi Al-Dweik. *Jerusalem and the international law*. A study on the legal status of the City and the Israeli violations of human rights, 2002, p. 13. Nizar Ayyoub. The legal status of Jerusalem City between the Mandate and political settlement. Published by Al-Haq, Ramallah, 2001. p. 35.

for a permanent international regime for Jerusalem and facilitating the right of refugees to return to their homes. Resolution 194 also requested the Security Council “to take further steps to ensure the demilitarization of Jerusalem” and instructed the Conciliation Commission “to present to the fourth regular session of the General Assembly detailed proposals for a permanent international regime for the Jerusalem area which will provide for the maximum local autonomy for distinctive groups consistent with the special international status of the Jerusalem area”, and to present recommendations concerning the Holy Places within the territory of Jerusalem.¹²

The Conciliation Commission established a special committee on Jerusalem to carry out consultations with representatives of Arab governments and the different religious groups in Jerusalem. Arab agencies and delegations expressed willingness to accept an international regime in Jerusalem, provided that the UN would present guarantees for the stability and durability of such a regime. Unwilling to withdraw from the areas it occupied illegally, including the western part of Jerusalem, Israel refused to accept an international regime in the city as provided for in Resolutions 181 and 194, and accepted the international regime only in Holy Places.

The Jordanian authorities declared the annexation of the West Bank, including East Jerusalem, on 24 April 1950. The UK recognized the annexation and extended its mutual defense agreement with Jordan to include the West Bank and East Jerusalem. On 1 April 1950, the first parliamentary elections to include both sides of Jordan River were held and the National Assembly consisting of the Chamber of Deputies and the House of Senators adopted a resolution to unify the two sides of Jordan River – Palestine and Jordan – within the Hashemite Kingdom of Jordan. East Jerusalem remained under the Jordanian rule up to 7 June 1967.¹³

UN efforts over two decades had sought but failed to apply the special international regime in Jerusalem, partly due to Israeli rejection of the special regime. At the same time, the Israeli measures undermined the efforts of the Conciliation Commission by creating facts on the ground to

12 See UN General Assembly Resolution 194 (D3), 11 December 1948. The Conciliation Commission consisting of France, Turkey and the USA was assigned the task to facilitate the return of refugees to their homes or the payment of compensation for those wishing not to return.

13 It should be noted that the annexation of the West Bank and East Jerusalem to Jordan was recognized by two states only: UK and Pakistan.

ensure UN acceptance of the Israeli control over the western part of the city. Following the occupation of the West Bank, including East Jerusalem, in June 1967, the Commission explained the complex developments taking place in and around Jerusalem to the General Assembly and declared its inability to undertake any further efforts in this regard.

Israel's occupation and annexation of East Jerusalem:

Immediately after ensuring control over the occupied Palestinian territories (oPt), including East Jerusalem, the occupying Israeli authorities initiated a series of policies aimed at implementing land appropriation and confiscation, construction of settlements and transfer of Jewish settlers to the settlements. East Jerusalem was particularly targeted by these measures. The occupying authorities immediately started to implement policies aimed at undermining the city's Arab character, expelling Arab residents, isolating the city from the rest of the oPt, and annexing the City. These aims were revealed on 7 June 1967 by Moshe Dayan, the Israeli Defense Minister at the time, who explicitly described Israel's policy to retain control of occupied Jerusalem by saying, "The Israeli Defense Forces have liberated Jerusalem. We have united Jerusalem, the capital of Israel. We have returned to the holiest of our Holy Places, never to part from it again."¹⁴

To realize Dayan's statement and annex the city, the Israeli government held a meeting on 11 June 1967, where they unanimously agreed to annex the city and assigned a special control committee to develop the needed steps in this direction. This committee presented three draft laws to the Israeli government: the Law and Administration Ordinance (Amendment No. 11) Law of 1967; the Municipalities (Amendment No. 8) Law of 1967; and the Protection Of Holy Places Law of 1967.¹⁵

The draft laws were presented to the Israeli Knesset and were approved on 25 June 1967. The next day, the Israeli government issued the Law and Administration Ordinance No. 1 of 1967, which established the Israeli judicial and administrative jurisdiction on East Jerusalem. In his speech

¹⁴ Israeli Defence Minister Moshe Dayan, Statement at the Western Wall, June 7, 1967.

¹⁵ For further information, see: Advocate Ossama Halabi. *Space and People: Geographic and Demographic Dimensions in Israel's Policy towards «East Jerusalem» in the period 1967-2000 – Brief Review and Analysis*, published by: Jerusalem Center for Legal Aid and Human Rights, and Advocate Ossama Halabi. *Israeli Laws and Judicial System as Tools for Accomplishing Political Objectives*, published by CCDPRJ, 2006.

to the Knesset, the Israeli Minister of Justice stated that the Israeli army has liberated many areas from the rule of strangers and there is a need to take measures to establish sovereignty over them and apply the Israeli jurisdiction on them.¹⁶

According to the Law and Administration Ordinance. Israel extended its judicial and administrative jurisdiction on areas of the Old City, Sur Baher, Sheikh Jarrah, Kalandia airport, Jabal Al-Mukabber, Shu'fat, Wadi Al-Joz, Eisawiyeh, and Beit Hanina. In addition, the Israeli Interior Minister issued the "Jerusalem Declaration" decree providing for the expansion of powers of Jerusalem municipality to include East Jerusalem and adjacent villages and towns, including the Old City, putting the occupied Jerusalem under the authority of the Israeli municipality of Jerusalem.

The United Nations objected to the three laws and associated decrees, which aimed at altering the situation of the City from the time prior to the occupation. The UN adopted a number of resolutions calling upon the occupying power to desist from taking any action that may alter the status of Jerusalem. Such resolutions include the UN General Assembly Resolution No. 2253 (ES-V), which called upon Israel to rescind all measures already taken and to desist forthwith from taking action which would alter the status of Jerusalem, considering these measures invalid.¹⁷ The UN Security Council unanimously adopted Resolution 242, which emphasizes the "inadmissibility of the acquisition of territory by war and the need to work for a just a lasting peace", which should include "withdrawal of Israel armed forces from territories occupied in the recent conflict"¹⁸.

In his address to the General Assembly's emergency special session, which issued the resolutions No. 2253 and 2254, the Secretary of State for Foreign Affairs of the United Kingdom expressed the position of his country saying, "war should not lead to territorial aggrandizement ... I call upon the State of Israel not to take any steps in relation to Jerusalem which would conflict with this principle. I say very solemnly to the Government of Israel that, if they purport to annex the Old City or legislate for its annexation, they will be taking a step which will isolate them not only from world opinion but will also lose them the support that they have."¹⁹

16 Meron Benvenisti, *Jerusalem: The torn city*. Jerusalem 1976, p. 10.

17 In view of Israel's failure to abide by this resolution, the UN and its agencies have taken dozens of other resolutions that have never been implemented, including the Resolution 2254 (D5).

18 United Nations Security Council, Resolution 242, 22 November 1967.

19 United Nations, General Assembly, Official Records. Fifth Emergency Special Session, 17 June-8 September 1967. 1529th Plenary Meeting, A/A/PV, p. 2.

Opposition of Israeli policies by the USA and the international community has been limited to formalities. In light of the new realities resulting from Israel's occupation of the eastern part of Jerusalem, the international and Arab position calling for applying a special international regime on Jerusalem City in line with the UN General Assembly resolution No. 181 began to fade, allowing various non-harmonized positions to appear. The USA abandoned its support of establishing a special international regime and adopted a different position, indicating that the status of Jerusalem should be decided through negotiations between the Jews and Arabs.²⁰

Israel continued to ignore the international resolutions and take steps towards Judaizing Jerusalem by building settlements and transferring Jewish settlers to the settlements, while employing numerous measures to minimize the Palestinian presence in the City. Following the development of the legal framework for the annexation of the City, the Israeli occupying authorities began implementing steps on the ground to reinforce their control over Jerusalem and the Jerusalemites by appropriating and confiscating lands, building Jewish settlements, isolating the City from the rest of the oPt, and restricting the livelihoods and living conditions of the Palestinians to force them out of the City.

Probably the most serious action in this direction was the Knesset's approval on 30 July 1980 of the basic law "Jerusalem the Capital of Israel," which explicitly demonstrated the Israeli intentions aimed at annexing and Judaizing the City, confirming international and UN concerns regarding the Israeli measures towards occupied Jerusalem and revealing the role of these measures in the plan to create a conducive environment for the annexation of Jerusalem.

The law stated that «Jerusalem, complete and united, is the capital of Israel» and provided for strengthening the presence of official State institutions in Jerusalem, including the seat of the President of the State, the Knesset, the Government and the Supreme Court. The law also required the Israeli government to provide for the development of Jerusalem by allocating a special annual grant to the Municipality of Jerusalem²¹.

The Israeli decision to annex East Jerusalem was met with strong objection

20 Jerusalem and US Policy, an information booklet, PASSIA, 1991, p. 32.

21 Jerusalem, the Capital of Israel. Passed by the Knesset on 30 July 1980. Accessed at http://www.knesset.gov.il/laws/special/eng/basic10_eng.htm

by the UN and international governmental and non-governmental organizations. The UN Security Council issued its resolution No. 478, expressing strong condemnation of Israel's annexation of Jerusalem and its refusal to respect and comply with international resolutions concerning Jerusalem and the rest of the oPt, considering the enactment of the "basic law" as a violation of international law, indicating that the Council does not recognize the "basic law" and such other actions by Israel that seek to alter the status of Jerusalem, calling upon all members of the UN to accept Resolution No. 478 and calling upon those states that have established diplomatic missions in Jerusalem to withdraw such missions from the City.²² Consequently, all the 13 states that had diplomatic missions in Jerusalem withdrew them from the City.²³

²² Security Council Resolution 478, 1980, adopted with 14 members voting in favor and 1 (the United States of America) abstaining.

²³ Three governments (Ecuador, Chile and Venezuela) withdrew their embassies prior to the adoption of the SC Resolution No. 478 (1980). The remaining 10 governments (Salvador, Panama, Colombia, Bolivia, Holland, Guatemala, Dominican Republic, and Uruguay) withdrew their embassies in response to the SC resolution. However, Salvador and Costa Rica moved their embassies back to West Jerusalem later.

Chapter one

Israeli measures against Palestinian citizens in the occupied Jerusalem

The application of the Israeli laws to East Jerusalem as a result of its annexation to Israel has led to the denial of Palestinians' right to residency in Jerusalem and has caused the disintegration of Palestinian families, the obstruction of family unification and other problems related to registration of newborns, access to education, delivery of health, social and other services, housing and construction.²⁴

Palestinians and Jerusalemites in particular became vulnerable to Israeli policies and measures, including legislations adopted to undermine the social fabric and economic structure of the city, disintegrate Palestinian Jerusalemite families and deprive them from essential requirements to ensure an adequate standard of living. As a result, the families have been facing daily fights to defend their rights, primarily the right to live in Jerusalem in dignity and the rights to housing, education, health and to a family life.

Means used to deprive the Palestinians from the right to residency in Jerusalem:

Following the actual annexation of Jerusalem, the occupying authorities initiated a register for its Palestinian residents, who were dealt with as permanent residents in Israel; provided they could prove they were actually living in the City and were present during the registration. Conditions made by the occupying authorities to allow Palestinians to live in Jerusalem represented the initial steps to reduce the proportion of Palestinians in

²⁴ Musa Al-Qudsi Al-Dweik. *Jerusalem and the international law. A study on the legal status of the City and the Israeli violations of human rights*, 2002, p. 53.

the City. The right to residency was restricted to those who were present in the City during the census, while those living outside the city at that time were automatically excluded, including those living outside the municipal borders as delineated by the Israeli interior ministry in June 1967. As a result, these families were denied the status of permanent residents and were not allowed to return back to their homeland.

The Israeli authorities granted the “right to permanent residency” only to those Palestinians that were present in Jerusalem in 1967 according to the provisions of the entry to Israel law of 1952. Palestinian Jerusalemites were and still are considered “residents in Israel” and not “citizens,” which means they are not entitled to the permanent rights ensured by the nationality laws, and so they are forced to comply with conditions required for residency in Israel similar to foreign nationals coming from abroad under the aforementioned 1952 law.²⁵

Since then, whenever Palestinians leave Jerusalem to live in abroad or in the West Bank or Gaza Strip for a relatively long period of time, they risk losing their right to permanent residency in the City, particularly as the Entry to Israel law of 1974 entitles the Interior Minister to cancel residency, whether it is temporary or permanent.²⁶ In addition, article 11(a) of the provisions of the Entry to Israel law stipulates that permanent residency is forfeited when its holder lives in a foreign country for seven years, obtains permanent residency in a foreign country or becomes a national of a foreign country, which also includes Palestinians living outside the municipal borders of Jerusalem as delineated by the Israeli authorities following the occupation of the City.

This policy continued up to the year 1988, when the Israeli Supreme Court issued its ruling in Mubarak Awad’s case, employing a new criterion – domicile – as a condition for Palestinians to maintain their permanent residency status in Jerusalem. Based on this principle, the Israeli interior ministry acquired the authority to withdraw the Jerusalem ID cards from Palestinians who are proved to be living outside the city and their “domicile” proves to be outside the municipal borders even if for less than seven years.²⁷

²⁵ Ibid, pp. 60-61.

²⁶ Entry to Israel law of 1974, articles 10-11.

²⁷ Decision of Israeli Supreme Court No. 282/88 – Mubarak Awad vs. Prime Minister and Interior Minister in Israel. See, Advocate Ossama Halabi. *Israeli Laws and Judicial System as Tools for Accomplishing Political Objectives*, op. cit., pp. 10-11, and *Space and People*, op. cit. pp. 38-39.

Starting from 1995, the Israeli authorities have employed these measures on a large scale, applying strict measures against Palestinians living outside the City and creating various obstacles to undermine their right to residency and prevent them from returning to Jerusalem. These measures have affected tens of thousands of Palestinians who were forced by difficult housing conditions in the City to live in adjacent neighborhoods. The same problems were faced by Jerusalemites living outside Jerusalem with spouses who do not hold a Jerusalem ID and whose requests for family unification and child registration have become almost impossible to be approved. As a result, thousands of families have been fragmented and many Palestinians have been subjected to forced migration from the City.²⁸

In addition, the National Insurance Agency has since 1984 begun to impose strict measures against Jerusalemites, withholding the different social security allowances for those Palestinians who moved to live outside the "municipal borders." These measures have deprived children born in areas outside the municipal borders and in adjacent suburbs from all social benefits. This step has been supported by the Israeli judiciary and the Israeli Supreme Court, which ruled in 1993 in favor of depriving Jerusalemites residing outside the "municipal borders" from benefits and services offered by the National Insurance Agency.²⁹

To justify these measures, the Israeli authorities resort to excuses and arguments that are in breach of international law and human rights standards, claiming that these children forfeit their rights because they were born or have long been living outside the occupied territories, that their domicile is not in Jerusalem or that they have been absent from the City for a period exceeding seven consecutive years. These claims constitute a serious violation of the rights of these residents, especially children, to maintain their family relations, and belonging to their City and identity, which in turn is considered a breach of children's right to normal growth and development and their rights to education, health and social services.

28 According to the joint report published in October 2006 by B'tselem and Center for the Defense of the Individual – HaMoked, the Israeli occupying authorities have been denying family unification of Palestinians in the oPt with their spouses from outside the territories for over six years. Since the beginning of the second Intifada, over 120,000 applications for family unifications have been submitted to the Israeli authorities, who have consistently failed to consider and process them, except for very few cases that have been processed as «special humanitarian cases.» In this regard, see the above-mentioned report titled, «Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories.»

29 Ossama Halabi, *Israeli Laws and Judicial System*, op. cit, p. 11, Musa Al-Qudsi Al-Dweik, op. cit, pp. 48-49. *Silent Displacement: Cancellation of Palestinian Residency in Jerusalem*, Preliminary Report, prepared by: Hanadi Al-Zghayar, Arab Thought Forum, May 2007, pp. 22-23.

Nationality and entry to Israel law of 2003 and impact on the Palestinians:

In May 2002, the Israeli government adopted the resolution 1813 in regard to “addressing the issues of illegal residents in Israel and policy of unification of families, who have a member of Palestinian origin or from the West Bank and Gaza Strip.” This resolution provided for the inapplicability of nationality or permanent residency to spouses of persons with Israeli nationality or permanent residency, when the spouses have Palestinian origins or are Palestinian residents of the occupied territories.³⁰

The resolution states, inter alia, that no applications for legal status shall be made for Palestinians from the Palestinian Authority (PA) areas or from Palestinian origins and that no applications currently on hold at the interior ministries shall be approved to grant legal status to spouses of Arabs in Israel, who are either residents of PA areas or from Palestinian origins. In cases where such spouses have already obtained a permit for a status, such status shall not be advanced to a higher level and shall be frozen, for example keeping “temporary resident” as temporary and not advancing the status to that of “permanent resident”.³¹

The resolution is indisputably targeted at Palestinians wherever they happen to be (in Israel, in the oPt, or abroad) as it applies solely to Palestinians and those of Palestinian origins, and allows non-Palestinians and those of non-Palestinian origins to proceed with their applications for obtaining Israeli nationality and/or permanent residency when they are married to Israeli spouses.

The Israeli government transformed this resolution to a law on 31 July 2003 by enacting the Nationality and Entry into Israel law (temporary order) of 2003, which prevents Palestinians and persons of Palestinian origins married to Israeli citizens or holders of permanent residency in Israel from living with their spouses in Israel. In view of the illegal annexation of Jerusalem

30 In view of the actual annexation of East Jerusalem, the Israeli occupying authorities deal with the occupied City and its Palestinian residents holding permanent residency status as «part of Israel,» which is unlawful and in breach of international law. By this token, the Israeli authorities consider this resolution as applicable to Jerusalem and its residents, thus freezing all family unification processes.

31 Upon the promulgation of this resolution, Adalah - The Legal Center for Arab Minority Rights in Israel appealed to the Supreme Court against the Israeli government's resolution in regard to the unification of 14 families. The appeal contested the legality of the resolution on the basis of its clear discrimination against Palestinian citizens in Israel on an ethnic basis and violates their constitutional and human rights to build a family life with their spouses based on their own choices and/or with their young children on equal footing with all human beings.

and Israeli treatment of the City as “part of Israel”, this law basically affects Jerusalemites and their children born outside the City, denying them the right to register at the Israeli interior ministry. In practice, this law has meant a total freezing of family unification measures.

This law has been periodically extended since its implementation and is still in force. Under an amendment made on 27 July 2005, a chance was allowed to apply for family unification for non-Jerusalemite wives who are 25 years or older and non-Jerusalemite husbands who are 35 years or older. The situation for those under this age remains the same. The Israeli authorities justified this by claiming that persons under these ages have carried out attacks inside Israel.³² This law has deprived thousands of Palestinian families in the oPt, including Jerusalem, and in Israel from their basic rights, especially in view of the fact that the family is the main unit in the social fabric and the natural environment for the growth and wellbeing of all its members, particularly children, and that the family should be offered all protection and support in order to be able to successfully undertake its responsibilities within the society. The International Covenant on Civil and Political Rights recognizes the family as “the natural and fundamental group unit of society” that “is entitled to protection by society and the State”, and further recognizes “the right of men and women of marriageable age to marry and found a family”³³. The International Covenant on Economic, Social and Cultural Rights obligates States Parties to recognize that “the widest possible protection and assistance must be accorded to the family, [...] particularly for its establishment and while it is responsible for the care and education and dependent children”³⁴.

The Nationality law specifically targets the Palestinians and persons of Palestinian origins, freezing the family unification applications of Palestinians from both sides of the Green Line and in occupied Jerusalem, imposing very strict restrictions. As a result, family unification and child registration became almost impossible and Palestinian families became disintegrated, deprived of their right to live together in a safe and sound family environment. Palestinians became forced to migrate from areas where they are unwanted to areas behind the Wall or to leave the country altogether, which serves the discriminatory policies of the Israeli authorities aiming to reduce the proportion of Palestinians and increase the proportion of Jews.

32 Compilation of Israeli Laws, 2005 volume, No. 2018 (published on 10 August 2005).

33 International Covenant on Civil and Political Rights Article 23, 1966

34 International Covenant on Economic, Social, and Cultural Rights, Article 10, 1966

The Nationality law also denies children with one parent from Israel and the other from the occupied territories the right to have permanent legal status in Israel. Specifically, the law also only allows Palestinian children aged 14-18 years to obtain a temporary permit to stay in Israel for a maximum period of 6 months, without social benefits, even when the child lives with his or her parent that has Israeli nationality.

Children under the age of 14 can obtain a permit from the interior ministry for temporary residence in Jerusalem or inside Israel, valid for two years only and entitling the child to enjoy all benefits and rights equal to citizens (social security benefits, health insurance, etc). Such permits are only granted, provided that adequate proofs are submitted that the child's domicile is in Israel.

It should be noted that the fate of these children when they reach the age of 18 is unclear. Will they be able then to obtain permits to stay with their parents? Will the authorities deny them such permits, forcing them to leave their houses in Israel or the occupied Jerusalem? Or will they continue to live in their houses and with their families under a consistent threat of being evicted to the occupied territories? Under the UN Convention on the Rights of the Child (CRC), "applications by a child or his or her parents to enter or leave a State for the purpose of family reunification shall be dealt with by State Parties in a positive, human and expeditious manner".³⁵

The Supreme Court supports the policies of residency cancellation and freeze of family unification:

Measures to isolate Jerusalem and reduce the proportion of Palestinians in the City have been supported by the Israeli Supreme Court in the case of Mubarak Awad vs. the Prime Minister in 1988. The judges corroborated the decision of the interior minister to withdraw the permanent residency of Mubarak Awad (withdrawal of the Israeli ID cards from Palestinian residents of Jerusalem) because he left Jerusalem to the United States to pursue his studies, married there and obtained American citizenship.

Following Knesset's approval of the Nationality and Entry to Israel law, several Palestinian and Israeli human rights organizations appealed to the

³⁵ Convention on the Rights of the Child, Article 10, 1989

Israeli Supreme Court, contesting the legality of the law and calling for its revocation based on its violation of international human rights law, in particular racial discrimination through its specific targeting of Palestinians. However, the Supreme Court rejected these appeals.³⁶

Six out of the 11 judges agreed with the appellants' claim that the provisions of the law violate the basic rights to family life and equality but they accepted the official pretexts and justifications submitted by the authorities, claiming that the law is invoked by security needs. With a majority of six judges against five, the Israeli Supreme Court rejected the appeal submitted by Adalah Center and six other associated appeals, including that of the Association for Civil Rights in Israel, all of which appealed for the cancellation of the Nationality and Entry to Israel law (temporary order) 2003 based on its violation of the right of Israeli citizens to family unification with their Palestinian spouses from the oPt.³⁷

Justice Heshen, who was then the deputy president of the Supreme Court, expressed the opinion of the majority, claiming that the citizens of the State of Israel have no constitutional/basic right to request the court to revoke a law approved by the Knesset in regard to denying their foreign spouses a legal status in Israel. Justice Heshen considered that the right to one's dignity does not entail any legal duty on the part of the State to allow foreigners married to Israeli citizens to enter Israel. According to Justice Heshen, the "fact of war against the Palestinian Authority" was an adequate justification to enact this law in order to prevent the entry of hostile elements to Israel. Justice Levy recognized that the law is unconstitutional but held that appeals should be rejected in order to allow the Knesset a chance to amend the law. The rest of judges in the majority acknowledged that the law violates the constitutional rights but thought it fits well with the desired outcome.

The president of the Supreme Court, Justice Aharon Barak, represented the minority position, considering that the issue at stake is related to the right of Israeli citizens to equality and practice of their family life under the

36 These appeals were submitted by Adalah - The Legal Center for Arab Minority Rights in Israel and HaMoked – The Center for the Defense of the Individual. The appeal submitted by HaMoked stressed on the damage inflicted to Palestinians in East Jerusalem who are married to spouses living elsewhere in the oPt (outside the borders of Jerusalem as delineated by Jerusalem municipality following the annexation of the city). It should be noted that in issuing their ruling, the judges neglected the issue of threat caused by the law to the fate of children.

37 The Israeli politicians, officials and government members did not conceal the real aims of this law. They publicly stated that the purpose of this law is first and foremost demographic, i.e., to limit the proportion of Arab population in Israel and maintain the Jewish majority. This proves the Supreme Court's lack of honesty and neutrality in giving legitimacy to the official policies of the consecutive Israeli governments, whether related to Palestinians in the oPt or inside the Green Line.

provisions of the basic law on “human’s dignity and liberty,” which entitles Israeli citizens to practice their family life with their spouses in Israel. Justice Barak added, “here are their houses and their communities, here are their historic, cultural and social roots... This is targeted at Arab citizens in Israel. The outcome of the law is the violation of the right of this group to equality. The minority judges acknowledged that the law is not relative as it abolishes the possibility to examine each case on a one-by-one basis and violates the rights collectively and arbitrarily”. Based on this, Justice Barak concluded that the law should be revoked based on its unconstitutionality.³⁸

Cancellation of residency rights of Palestinian Jerusalemites in view of international law:

The cancellation of Palestinians’ rights to residency in Jerusalem has serious consequences not only for Jerusalemites but for all Palestinians who have an inherent right to live in the City and access it freely. Jerusalem is an integral part of the Palestinian territories occupied by Israel in 1967. All measures taken by the Israeli authorities to alter the legal status of the City and its Palestinian residents are invalid as they are in breach of international law, namely the Fourth Geneva Convention of 1949.

These measures cause suffering to all Palestinians, affecting women and children in particular. Tens of thousands of families have been directly affected: couples cannot live under one roof, with one of them staying in the occupied Jerusalem, in Israel or abroad and the other in Gaza or the West Bank. Children are being raised in the absence of one of their parents. Many people are afraid to travel abroad, including for medical treatment, fearing that they will not be allowed to return to their families. All of these conditions lead to grave violations of international human rights law and the provisions of the Fourth Geneva Convention of 1949.

Everyone’s right to their country is inherent and basic. It is recognized and documented in article 13 of the Universal Declaration of Human Rights of

38 Adalah Center considered that through this case, the court has supported the most racist law in the state of Israel, which prevents family unification on an ethnic – Arab – Palestinian basis. In comparison, Adalah Center notes that «in 1980, in the peak of the apartheid system, the court in South Africa refused to endorse orders similar to the Israeli law because they violated family rights.» Advocate Hassan Jabarin, Chairman of Adalah Center stated, «This way the Supreme Court has established three citizenship tracks on ethnic basis: a direct track for Jews under the right to return, an intermediate track for foreigners based on gradual procedures and the most difficult track for Arab citizens.»

1948, which states that “Everyone has the right to freedom of movement and residence within the borders of each State.” The same applies to the 1966 International Covenant on Civil and Political Rights (ICCPR), which states that “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”

By adopting these policies, Israel is in breach of its obligations under these international instruments and is violating the principle of non-discrimination – a binding rule under international law. Israeli policies on residency and family unification entail evident discrimination against the Palestinian residents of Jerusalem in the first place and constitute a violation of the principle stating that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.³⁹

These policies entail a grave violation of the International Covenant on Civil and Political Rights (ICCPR) that provides for the protection of the family as the natural and fundamental group unit of society, and recognizes the right of the family to enjoy protection by society and the state and the right of men and women of marriageable age to marry and to found a family.⁴⁰ The International Covenant on Economic, Social and Cultural Rights also recognizes the importance of the family, to whom “the widest possible protection and assistance should be accorded”, particularly “while it is responsible for the care and education of dependent children”.⁴¹

The Convention on the Rights of the Child (CRC) confirms “the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents”. The CRC also provides for the exclusion of any unlawful interference or reason that may affect the obligation of States Parties to respect the right of the child to preserve his or her identity, nationality, name and family relations. Therefore, these policies are clearly in breach of the provisions of the CRC, which considers the family as “the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children” and recognizes that the child “should grow up in a family environment”⁴². The CRC also gives special attention to citizenship and the legal status of the

39 International Covenant on Civil and Political Rights of 1966, article 26.

40 International Covenant on Civil and Political Rights of 1966, article 23.

41 International Covenant on Economic, Social and Cultural Rights of 1966, article 10.

42 The Convention on the Rights of the Child Preamble .

child in the society and the state, where he or she can enjoy protection and social services and securities provided by the state to its citizens.

Being a State Party to the CRC, Israel is obliged to respect the Convention's provisions and rules and to halt its ongoing violations of the Palestinian's rights to reside in Jerusalem. Israel must also cancel the freeze on the unification of separated Palestinian families and child registration, which constitutes a violation of its obligations under article 10 of the CRC, stating, "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family."⁴³

The Israeli policies in regard to freezing the unification of Palestinian families living across the Green Line entail grave violations of the rights of Palestinian children, contributing to the disintegration of Palestinian families. Thousands of children are forced to live away from one or both parents due to Israel's rejection of family unification applications and failure to decide in applications submitted prior to 2002 based on discriminatory 'Nationality and Entry to Israel law,' which creates an environment conducive for forced displacement and eviction.

These policies evidently cause harm to the best interests of the child, a basic principle enshrined in international and national laws⁴⁴, obligating States to give priority to the best interests of the child in all policies related to the children living within their jurisdiction and authority. This principle requires allowing all children within the State's jurisdiction to grow and live in a stable and supportive family environment and in an atmosphere of happiness, love and cooperation.

By revoking the right to obtain permanent resident status in Israel, the Nationality law constitutes a serious violation of the rights of these children and their families to a family life. In addition, it affects the ability of parents to fulfill their obligations towards their children.

The Nationality law entails discrimination between children of Palestinian citizens or residents in Israel and children of non-Palestinian citizens and

⁴³ The Convention on the Rights of the Child, Article 10 .

⁴⁴ This includes the Convention on the Rights of the Child, Article 3.

residents of Israel. Moreover, the application of the law to children, who do not constitute a threat to public safety, exposes the real purpose of this law, which is not as official sources claim for security reasons, but to minimize the Arab population within Jerusalem and Israel generally.

Policies and associated measures adopted by the Israeli occupying authorities deprive tens of thousands of Palestinian Jerusalemites from living in the City and deprive any Palestinian or any person of Palestinian origin from entering the occupied City and having residence in it. Restrictions imposed on family unification and on Palestinians' residency in Jerusalem have deprived thousands of children from their IDs as they have to live with the parent who does not hold the Jerusalem ID and cannot stay and reside in the City with their whole family. When children remain outside Jerusalem with parents not holding Jerusalem IDs, they also become vulnerable to losing their right to residency in the City.

Chapter two

Ethnic cleansing and forced displacement

"I support forced transfer and see nothing unethical in it."

*David Ben-Gurion, addressing the Jewish Agency Executive Committee, June 1938.*⁴⁵

"Jewish villages were built in the place of Arab villages. You do not even know the names of these Arab villages, and I do not blame you because geography books no longer exist, not only do the books not exist, the Arab villages are not there either."⁴⁶

Moshe Dayan addressing the Technion (Israel Institute of Technology), Haifa (as quoted in Ha'aretz, 4 April 1969).

Many decision-makers, politicians, lawyers and researchers refuse to use the term "ethnic cleansing" to describe the ongoing policies and practices of Zionist and Israeli political and military leaders against Palestinians since 1948, which aimed to uproot the Palestinians from their lands and replace them with Jewish settlers. These individuals or groups hold that ethnic cleansing is a serious accusation that is difficult to verify and prove, in particular because international law has not yet reached a legal definition of the concept "ethnic cleansing."

This position is due to the attitudes of those who are not willing to admit that Israel, as a "democratic state", is committing acts of cleansing against the Palestinians. This is despite the clear calls and orders issued by the Zionist leaders to Jewish militants in the 1948 war to cleanse the land of its Arab population in order to replace them with Jewish settlers. Since 1948,

⁴⁵ Central Zionist Archives, minutes of the meeting of Jewish Agency Executive, 12 June 1938. Quoted from: *The Ethnic Cleansing of Palestine*, by the Israeli historian Ilan Pappé, p. 1.

⁴⁶ Quoted from: *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948*, Editor Walid Khalidi.

recurrent statements by different Israeli leaders warn of the demographic threats facing Israel that would affect the Jewish majority of the state. The same leaders issue associated calls and approve actions to reduce the proportion of Arabs and increase that of Jews in Israel and occupied Jerusalem, including by means of transfer. These statements, calls and actions clearly show the specific and stated aims of the leaders of Israel and the Zionist movement, to cleanse the country of Arabs just because they are Arabs.

Definition of ethnic cleansing:

The term “ethnic cleansing” first appeared by the end of World War II, when the Czechs and Polish started to publicly call for the need to cleanse their countries from the Germans and Ukrainians. Prior to this, however, the Nazis used to call for making the German lands free of Jews in their health-related programs.⁴⁷ The term started to appear in more often and seriously in discussions in 1981 by the media in the former Yugoslavia for making Kosovo region ethnically homogeneous.⁴⁸ Following the outbreak of the Bosnia and Herzegovina war in the former Yugoslavia, efforts have been exerted to define “ethnic cleansing” within the many reports published on this war and its associated acts and practices. As a result, ethnic cleansing became well-defined and was considered a punishable crime within this context, although there is still a complete absence of an international convention banning all forms of ethnic cleansing.

In Hutchinson encyclopedia, ethnic cleansing is defined as the forced expulsion of one ethnic group by another to create a homogeneous population in a multi-ethnic territory or region. The aim of this expulsion is to transfer the largest possible number of people by using various means, including non-violent means, such as the case with Muslims in Croatia, who were expelled following the signing of Dayton agreement in 1995.⁴⁹

Reports by the Special Rapporteur of the UN Committee on Human Rights on the former Yugoslavia between 1993 and 1994 included a number of acts and practices that were considered a form of ethnic cleansing,

74 Mark Kramer, 'Introduction', in Mark Kramer, ed., *Rewarding Nations: Ethnic Cleansing in East-Central Europe*, Boulder: Rowman & Littlefield, 2001, p. 1.

48 Drazen Petrovic, 'Ethnic Cleansing-An Attempt to Methodology', (1994) 5 *Eur. J. Int'l L.* 343.

49 Ilan Pappé, *Ethnic Cleansing of Palestine*, Beirut, 2007, p. 9.

including such administrative measures as bringing an elected authority down by force, dismissal from work, in particular from influential positions, restriction of access to humanitarian aid, resettlement of refugees from a certain ethnicity in the region being cleansed, enactment of legislations entailing discrimination and oppression, forcing people wishing to leave the region to take their families with them, preventing women of a certain ethnicity from giving birth in hospitals, etc. Other acts and measures potentially constituting ethnic cleansing entail intimidation of civilians by soldiers or armed civilians, including acts of looting, terrifying people in the streets, arrest, abuse and transfer of people to prisons and detention centers, targeting of civilians by shooting at them or exploding and burning down their houses, and group transfer of populations. Ethnic cleansing may also take place during military operations, such as the deliberate killing or torturing of civilian leaders, including religious and political leaders, scientists, academics and businessmen, imposing siege on towns and villages, planned attacks to prevent access to humanitarian aid, targeting of residential areas and infrastructure by shelling, and retaliation from civilians and main civilian figures. All these acts constitute violations of human rights and the rules and provisions of international law and can be considered a form of ethnic cleansing depending on the specific case.⁵⁰

The Special Rapporteur of the UN Committee on Human Rights concluded that the main purpose of the war in Bosnia and Herzegovina is to carry out ethnic cleansing in order to establish ethnic homogeneity in the region, considering that the purpose of ethnic cleansing could be short term or long term. The short term purpose of ethnic cleansing is to seize actual control of the region for military and strategic reasons, while the long term purpose is to create living conditions that make it impossible for the displaced groups to return home and thus effect a change in the ethnic composition of the population based on the region's theories of unity and ethnic homogeneity.⁵¹

Therefore, the Special Rapporteur of the UN Committee on Human Rights stated in his report issued on 17 November 1992 that "the description of ethnic cleansing means the removal by an ethnic group controlling a region of other ethnic groups." The Rapporteur stated in his sixth report that "ethnic

50 Drozen Patrovic, *Ethnic Cleansing – An Attempt at Methodology*, op. cit.

51 Second Mazowiecki Report, at 2, Point 1. Third Mazowiecki Report, at 3, Point 6. Drozen Patrovic, P. 9.

cleansing is the cleansing of civilians on an ethnic basis to force them to flee the region where they live.”⁵²

There are many other definitions of ethnic cleansing, the most prominent developed by the experts’ committee in its first interim report, where they concurred on the opinion that “taking into consideration the conflicts in the former Yugoslavia, ethnic cleansing means making the region ethnically homogeneous by using force and intimidation to displace people of a certain group from the region.” In a historical overview of ethnic cleansing, scholar Bell-Fialkoff maintains that “...ethnic cleansing can be seen as expelling the unwanted population from a region for reasons related to discrimination on ethnic or religious basis and for political, strategic or ideological considerations or for all these elements together.”⁵³

All of the aforementioned definitions entail certain elements that provide for a common opinion on ethnic cleansing, viewing it as aiming to create ethnic homogeneity in a multiethnic region through the expulsion of the unwanted ethnic group(s) using various means (administrative, military, intimidation and media), turning the unwanted ethnic group(s) into refugees and making it impossible for them to return based on the claimed need to restrict the population in the region to a specific main ethnicity.

Ethnic cleansing in Jerusalem:

After examining the definitions of ethnic cleansing and looking at examples of the cleansing of some ethnic groups from a territory to create ethnic homogeneity, we find that the description of ethnic cleansing applies to the policies employed by the Zionist leaders in Palestine during the 1948 war as they were aimed at cleansing the majority of the territories from Arabs in order to create an ethnic homogeneity restricted to Jews.

Following the declaration of the establishment of the Jewish state on the eve of 14 May 1948, the forces in the field were repeatedly using the Hebrew term “Tihour”, which means “cleansing.”⁵⁴ The higher leadership of the Zionist movement selected this expression to charge and provoke the soldiers before they were sent to occupy the Palestinian urban and rural

52 Drozen Patrovic, P. 10.

53 See, Bell-Fialkoff, A Brief History of Ethnic Cleansing, Foreign Affairs, Vol. 72, No. 3 (1993) 110.

54 Ilan Pappé. Ethnic Cleansing of Palestine. Op. cit, p. 143.

areas, cleanse them from Arabs, appropriate and loot their properties and/or destroy them altogether.

Jerusalem City and its surrounding villages and towns were in particular subjected to a large scale ethnic cleansing process. In this regard, the historian Salim Tamari stated that out of 40 villages in Jerusalem district that remained under Israeli control after the signing of the truce agreement in 1949, the population of 38 of the villages was displaced, which at the time amounted to approximately 73,258 people.⁵⁵ This number does not include the residents of Arab neighborhoods in the western part of the City, which was also occupied and cleansed completely of the Arab population, whose houses were appropriated and properties looted. According to some historians, the Arab neighborhoods in the western part of Jerusalem used to be among the richest and most prosperous neighborhoods in the Middle East prior to 1948.⁵⁶

The policy of ethnic cleansing and forced displacement of Palestinians continued after Israel's occupation of the Palestinian territories during the 1967 war. The resulting tragedy has mainly affected the population of the Old City of Jerusalem.⁵⁷ The Israeli authorities also forced the eviction of the population of some Palestinian villages in the territories occupied in 1967 and then destroyed these villages.⁵⁸

The Israeli authorities are specifically targeting the Palestinian presence in occupied Jerusalem and consistently work on altering the demographics prevailing in the City prior to its occupation through a policy of ethnic cleansing, which aims at forcing the largest possible number of Palestinian residents of Jerusalem to move out of the City by means of freezing family

55 Salim Tamari, "The City and its Rural Hinterland", in *Jerusalem 1948*, (Salim Tamari ed., The Institute of Jerusalem Studies and Badil Resource Centre 1999), p. 75-86. According to UNRWA statistics of 1997, the number of refugees from these villages reached 246,342.

56 Nathan Krystall, "The Fall of the New City 1947-1950", in *Jerusalem 1948*, supra note, p. 93.

57 By an order from the Israeli government, the occupying forces evicted the residents of Magharbeh neighborhood and several adjacent neighborhoods in the Old City and forcibly moved them to Shu>fat refugee camp. Then they demolished these neighborhoods and built new ones to accommodate Jewish settlers. Some of the settlers were accommodated in houses appropriated from Palestinians. Statistics indicate that the occupying authorities completely removed Magharbeh neighborhood, demolishing 135 houses that hosted 650 Palestinians, in addition to demolishing two mosques. For more details, see: Musa Al-Qudsi Al-Dweik. *Jerusalem and the International Law: A Study on the Legal Status of the City and the Israeli Violations of Human Rights*.

58 During the 1967 war, the Israeli occupying troops forcibly evicted the population of the three villages in the Latroun (Imwas, Yalo and Beit Nouba), west of Jerusalem and demolished the villages by the virtue of a decision made by the Israeli government. According to the population of these villages, most of them are currently living in Amman, while some live in Ramallah and Jerusalem.

unification, appropriating land, building settlements, isolating the city from the rest of the oPt through the Separation Wall, permits and other measures, severely restricting construction in Jerusalem, demolishing houses, restricting the freedom of movement and choice of residence for Palestinians, including within the occupied Jerusalem, and annexation of further land through the construction of the Separation Wall.⁵⁹ These policies and measures prevent any Palestinian from practicing their right to live in Jerusalem and force many Palestinian residents out of the City, often by officially revoking their right to reside in Jerusalem.⁶⁰

Among the most serious measures aimed at reducing the proportion of Palestinians and increasing the number of Jewish settlers in Jerusalem is the aforementioned Nationality and Entry into Israel law, which was initiated through the Israeli government's Decision 1813 of 2002, providing for freezing the family unification procedures for Palestinians. The Israeli parliament (Knesset) approved the Decision and turned it into the National and Entry to Israel (temporary order) law of 2003, which was later renamed to the Nationality and Entry to Israel law. Under this law, a complete freeze was exercised on the unification of Palestinian families and the processing of the related applications.

On 16 May 2007, Israel celebrated "Jerusalem Day", which is in Hebrew calendar equal to 28 June – the day when the eastern part of the City was actually annexed. On this occasion, Jerusalem Institute for Israeli Studies issued a special report presenting the findings of an opinion poll implemented among the Jewish public on a number of issues and situations related to Jerusalem and its future.⁶¹

In the data gathered by its experts and presented in the report, the Institute warned that the demographic balance is likely to tip in favor of Arabs during the next two decades and that there is a risk of losing the Jewish majority in Jerusalem. Researchers from the same institute warned in a 2007 conference on Jerusalem's population that the "Jewish majority in the City is increasingly declining since several years" and indicated that the growth rate for the Arab population in Jerusalem is twice as much as the growth rate of Jews.

59 According to Jerusalem Annual Statistical Book published by PCBS, 1635 families have been displaced from Jerusalem district in result of Wall construction.

60 According to data from the Israeli interior ministry, in 2006, the right to residency in Jerusalem was revoked for 1363 Palestinian residents of the City, which constitutes an about 500% increase compared to 2005. These data are based on an article published on the website of 1948 Arabs on 24 June 2007.

61 An Israeli institute specialized in developing studies, visions and strategic plans in regard to the status of Jerusalem.

The data presented in the conference indicates that Jerusalem (both parts) has a total population of about 720,000, including 66% of Jews and 34% of Arabs. This gap is predicted to decrease in the coming years to be 60% of Jews and 40% of Arabs by 2020.

This data clearly points to a certain drawback in the demographic situation as viewed by the Israeli authorities, in spite of the strict measures and restrictions imposed on the Palestinians in order to decrease their proportion in the City to below 30%. Hence, these authorities have been intensifying these measures, as reflected in the Nationality and Entry to Israel law of 2003, which is considered a measure of ethnic cleansing.

Definition of forced displacement:

Internal displacement is a major issue affecting the Palestinians since the beginning of the conflict with the Zionist movement, going back to periods prior to 1948 – the year when Israel was declared as a state. However, the internal forced displacement of Palestinians within the territories where Israel was established (1948 areas) became evident following 1948, with tens of thousands of Palestinians being forcibly displaced inside their homeland.

The forced displacement of Palestinians continued following Israel's occupation of the Palestinian territories, including Jerusalem, in 1967, mainly targeting East Jerusalem and the surrounding areas. Local Palestinian residents were forced out and those wanting to move and live in Jerusalem were not permitted to do so.

There is no legal definition of internal displacement, other than the definition used in the UN Guiding Principles on Internal Displacement of 1998, which define the internally displaced persons as “those persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.⁶²

62 Walter Kalin, Guiding Principles on Internal Displacement, Annotations. ASIL Studies in Transnational Legal Policy, No: 32, Published by the American society of International Law and the Brookings Institution Project on Internal Displacement, 2000, P. 1.

For persons or groups of persons to be included in the above definition of internally displaced, the displacement has to be a result of forced causes, and the displaced persons have to remain living within the internationally recognized borders of their state and not to forcibly cross these borders to be settled in another state.⁶³

To date there is no international convention or criteria to regulate the conditions of the internally displaced and provide them with protection and help as victims of human rights violations, armed conflicts or natural disasters. It should be noted that internally displaced do not benefit from the international protection available to refugees. To fill this gap, the UN Guiding Principles should be adopted as guidance for the different authorities, groups, governmental organizations and NGOs in dealing with cases of internal displacement, as these principles respond to the standards enshrined in international human rights law and in the rules and provisions of international humanitarian law.

Forced displacement in the oPt:

Under the definition of internal displacement as outlined in the Guiding Principles, Israeli policies can be considered as leading to forced displacement of the population of the Palestinian territories occupied in 1967, and in particular the Palestinian Jerusalemites, who have been and continue to be forced to leave their places of habitual residence due to the violation of their rights by the occupying power and have not crossed internationally recognized borders.

In this case, we find that the Palestinian internally displaced are those persons or groups of persons who have been forced to flee as a result of the 1967 war, the violation of their human rights by the Israeli authorities or the construction of the wall and the occupation of the West Bank, confining the Palestinians within enclaves and restricting their freedom of movement.⁶⁴

63 The difference between the internally displaced and the refugees should be emphasized, as each category has a different legal status. A refugee is one who "owing to a well-founded fear of being persecuted for race, religion, nationality, members of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such a fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return to it" (Convention Relating to the Status of Refugees, 1951, Article 1A(2), amended through the 1967 Protocol Relating to the Status of Refugees). Refugees are not considered as citizens of the host country but rather maintain a special legal status. On the other hand, the internally displaced, by the fact that they have remained within the borders of their country, should have all the rights and duties associated with their nationality.

64 This includes Palestinians forced to move from Gaza Strip to the West Bank, including Jerusalem, and vice versa, as they have not crossed the borders of the oPt, but were displaced within these borders, which means they meet the criteria for the internally displaced.

Practices leading to the internal displacement in Jerusalem include the adoption of Israel – as the occupying power – of the policy of isolation of Jerusalem and preventing the Palestinians from accessing the City for purposes of residence or otherwise, the adoption of a discriminatory policy towards family unification resulting in the recent freeze on this process, and demolition of houses and deliberate damage to properties of Palestinians. Since the beginning of the occupation of the West Bank and Gaza Strip in 1967, the Israeli authorities have demolished thousands of buildings and houses on the pretext of security, to deter Palestinians from carrying out attacks against Israel, to retaliate for attacks, and due to the lack of building license. As a result, tens of thousands of Palestinians have been internally displaced.

No accurate statistics are available on the number of the internally displaced in the oPt. According to the estimates of BADIL Resource Center for Palestinian Residency and Refugee Rights, approximately 10,000 Palestinians were displaced during the 1967 war, with the vast majority from the villages and towns of Imwas, Yalo, Beit Nouba, Beit Awwa, Jiftlek, Qalqilia and the Old City of Jerusalem (Magharbeh neighborhood). According to BADIL estimates, about 50,000 Palestinians have been forcibly internally displaced due to the policy of house demolition in Gaza Strip, the West Bank and Jerusalem.⁶⁵ According to UNRWA estimates, the number of persons internally displaced due to house demolition in the period 2000-2004 was about 22,000 Palestinians, including about 3,800 persons who were displaced in Gaza Strip as a result of military operations and the accompanied large scale house demolition during May 2004.

Concerning Jerusalem in particular, forced displacement has been consistently implemented in the City since 1967, when the occupying troops implemented the Israeli government's decision to evict the Palestinians from the Old City (Magharbeh neighborhood and other adjacent neighborhoods) to Shu'fat camp and completely destroy Magharbeh neighborhood. In the remaining neighborhoods, the houses of the newly displaced Palestinians were expanded and used to accommodate Jewish settlers. New housing units were built to increase the capacity for adding even more settlers.

In summary, Israeli measures targeted at Jerusalem and its Palestinian residents vary to include the isolation of the City from the rest of the oPt,

⁶⁵ Profile of internal displacement: Palestinian Territories, Compilation of the information available in the global IDP database of the Norwegian Refugee Council, July 2004, P. 4.

denial of access for Palestinians, creation of obstacles for the unification of Palestinian families in Jerusalem, prevention of any Palestinian not holding permanent residency status in Jerusalem (the blue Israeli ID card) from accessing and residing in the City, and most recently the freeze of the processing of any application for family unification, which means prohibiting any possibility for a Palestinian or a person of Palestinian origin to have residence in Jerusalem. These measures come within a systematic and extensive plan to limit the proportion of Palestinians and increase the number of Jewish settlers in the City. Due to these grave violations of human rights, tens of thousands of Palestinian families have been forced to move out of the city and settle behind the Wall and outside of Jerusalem.

Overall, large numbers of Palestinians have been subjected to internal displacement due to the Israeli policies, mainly the freeze on the unification of disintegrated Palestinian families and the large scale and deliberate practice of house demolition. These people are considered internally displaced because they have not crossed the borders of the territories occupied in 1967, contrary to refugees, who have been forced in 1948 to leave Palestine that was under the British mandate and seek shelter in neighboring countries in result of the Israeli policies or to avoid the adversities of the war.



Summary and conclusions:

The purpose of this study has been to highlight the underlying reasons for the Israeli policies regarding residency and citizenship and their consequences on the Palestinian presence in Jerusalem in particular and in the oPt and Israel in general. These policies are targeting the physical presence of Palestinians in their homeland and subjecting them to internal displacement in order to achieve the Israeli aims of reducing the number of Palestinians and increasing the proportion of Jewish settlers in the country – a practice that fits within the scope and definition of ethnic cleansing.

The study revealed that the definition of ethnic cleansing applies to the Israeli policies targeted at the Palestinian presence in Jerusalem, including the freeze on family unification for Palestinians, house demolition, cancellation of Palestinians' residency status in Jerusalem, land appropriation, restrictions imposed on building activities, and restriction of freedom of movement, including free access to and from Jerusalem. These policies and the associated measures lead to the forced displacement of Palestinians and constitute grave violations of their rights, including Palestinians' right to residency in Jerusalem, the right to have a name and nationality, to choose the place of residence, to free movement, the right to live in liberty and dignity and in a sound family environment, the right to health care and education, and the right to grow and develop under parental care and within a calm and sound family environment. In addition, the policies of the Israeli authorities violate their obligations with regards to non-discrimination, enshrined in various international human rights instruments to which Israel is a party.

The continuation of these policies reflects the leniency of the international community towards Israel and its discriminatory policies, to the detriment of the Palestinian people. These policies have restricted family unification for Palestinians since the beginning of the occupation, culminating with a total

freeze since the start of the second Intifada. Despite the dozens of reports and studies published on the illegitimacy of these policies, there has been little impact on the public opinion. The lobbying efforts of human rights organizations towards ending these policies have had a minimal impact on the international community, who continues its reluctance to exert serious and effective pressure on the Israeli authorities to halt their discriminatory policies and ensure respect for human rights.

Studies and reports in this regard have been based on the international standards and provisions that forbid family disintegration, displacement and forced transfer of civilians from an occupied territory, as well as transfer of the occupying power's population to the occupied territory. They all indicate that the Israeli policies are unlawful and in breach of the principles and rules of human rights law; they censure the Israeli policies and associated measures in absolute terms; they provide adequate input for promoting the mobilization of the international public opinion and prompting states that call for respect and application of human rights to fulfill their obligations and take an active role in pressuring Israel to end their discriminatory practices and refrain from forcibly displacing Palestinians.

This study has demonstrated that the Israeli policies fit within the scope and definition of ethnic cleansing, leading to the forced displacement of Palestinians in order to increase the proportion of Jewish settlers, particularly in Jerusalem. These policies continue to be implemented despite their clear violation of Israel's international obligations as the occupying power under the 1949 Fourth Geneva Convention Relative to the Protection of Civilians in Times of War and international human rights conventions.

The Civic Coalition has presented this brief study on the Israeli policies of ethnic cleansing and forced displacement targeting the Palestinian presence in Jerusalem in the hopes that human rights advocates globally will mobilize international opinion and together, use the information provided in this study to demand for the immediate cessation of these policies.



Recommendations

International community:

- Pressure Israel, the occupying power, to ensure protection for Palestinians in the oPt against the Israeli policies of ethnic cleansing and forced displacement and compel Israel to respect and implement their obligations under international human rights and humanitarian law.
- Pressure Israel, the occupying power, to revoke the Nationality and Entry to Israel law in view of its character as a tool of racial discrimination against the Palestinians in the oPt, Palestinian Jerusalemites and Palestinian citizens in Israel in particular, and to lift the restrictions on Palestinians' mobility, including their free and safe access to and from Jerusalem, and allow all Palestinians to practice their inherent right to choose their place of residence, including in Jerusalem.
- Demand that States Parties to the 1949 Fourth Geneva Convention Relative to the Protection of Civilians in Times of War compel Israel to fulfill its obligations ensuing from the Convention and to halt its policies aimed at the forced transfer of Palestinians, especially Jerusalemites, which constitute a breach of the Convention's rules and provisions.

Israeli authorities:

- Stop the policies of ethnic cleansing and forced displacement of Palestinians, including the immediate cancellation of the Nationality and Entry to Israel law, which entails racial discrimination specifically against Palestinians, and ensure Palestinians' free access to and from Jerusalem and freedom to stay and live in the City.

- Respect and implement the standards of the international human rights instruments to which Israel is a party, specifically with regard to the right to identity and nationality, the right to a family life and children's right to know and be cared for by their parents. This entails upholding obligations to protect the family as the natural and fundamental group unit of society and stop discrimination against Palestinians with regard to family reunification and residency.
- Apply the rules and provisions of international humanitarian law and international human rights law to the Palestinian population of the oPt; stop the current policies concerning the unification of Palestinian families, including Jerusalemites; create, develop and activate mechanisms that can provide Palestinians with protection against violations of their basic rights and freedoms; and ensure their enjoyment of basic rights, primarily the right to freedom of movement and free access to and from the oPt, including Jerusalem.

Palestinian Authority:

- Monitor and document the consequences of the ethnic cleansing and forced displacement of Palestinians, the freeze on the unification of disintegrated families, including Jerusalemite families, and evaluate the ensuing material and psychological damages.
- Ensure the provision of the necessary support and aid to victims of these policies, including their rehabilitation and social integration, and generally support the wellbeing and integrity of Palestinian families.

International and local NGOs:

- Demand Israel, the occupying power, to end its occupation of the Palestinian territories and in the meantime to ensure the application of the Fourth Geneva Convention in the oPt and respect and apply its international human rights obligations with regard to the Palestinians; to restore the situation of Jerusalem as prior to its occupation; and refrain from isolating the City from its Palestinian surroundings.
- Demand Israel, the occupying power, to cease the ethnic cleansing and forced displacement policies against Palestinians aimed at forcing them

out of the City borders by different means, including the freeze on family unification, and to cancel the Nationality and Entry to Israel law, which entails racial discrimination against Palestinians.

- Pressure the international community, the UN and States Parties to the Fourth Geneva Convention to fulfill their legal responsibilities and refrain from supporting the Israeli measures in the oPt, including the freeze on family unification; and pressure Israel to stop its discriminatory measures and fulfill its obligations under international law.
- Monitor and document cases of ethnic cleansing and forced displacement in the oPt, including Israel's policy on family unification, conduct studies in this regard and develop specific tangible projects in the area of protection and assistance to the victims of these policies.
- Develop lobbying and advocacy campaigns targeting the international community, to pressure Israel to stop its violations of human rights in the oPt, specifically those affecting Palestinian families and preventing their unification. This can include threats of boycott and divestment and actual adoption of these measures in the case where Israel fails to respond.