

Joint Submission for the 4th Periodic Review on Israel

Main Submitting Organization: The Community Action Center / Al-Quds University (hereinafter: CAC)

The CAC is a Palestinian non-profit rights-based organization located in Jerusalem's old city. Established in 1999 by Al-Quds University, the CAC seeks to empower the Palestinian community in East Jerusalem which is denied basic social and economic rights and is living under a prolonged state of illegal annexation. The CAC provides pro bono legal services to Palestinians from East Jerusalem to help them access their social, economic, and other fundamental rights under occupation.

Endorsed by: Al Mezan Center for Human Rights

The Civic Coalition for Palestniian Rights in Jerusalem

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

I. Introduction:

- 1. Since the occupation and unlawful annexation of the Eastern part of Jerusalem in 1967, two main objectives have dictated all the policies and practices Israel has been implementing therein. The first is to ensure a solid Jewish majority within the city's overall population, and the second is to cement Israeli sovereignty over the occupied city.
- 2. Israel has articulated a clear governmental policy that seeks to maintain a demographic ratio of 60% Jews and 40% "Arabs" within the Israeli-demarcated boundaries of Jerusalem, which in 1980 it declared unilaterally, and in violation of international law, as the unified capital of Israel. Accordingly, and reflective of its 50 -year- long apartheid regime imposed on Palestinians, Israel has used a variety of methods to dilute the Palestinian population in Jerusalem. This includes residency revocations, a ban on family reunification, severe restrictions on child registration, collective punishment, expropriation of land and property, and a discriminatory planning and zoning regime leading to widespread home demolitions, all of which systematically targets Palestinians to ensure Jewish domination, superiority, and hegemony.
- 3. This joint submission is submitted by The Community Action Center/ Al-Quds university, Women's Centre for Legal Aid and Counselling (WCLAC), Al Mezan Center for Human Rights and The Civic Coalition for Palestinian Rights in Jerusalem, and it will address three main pressing issues in East Jerusalem, where Israel is furthering its settler colonial policies for the realization of the above-mentioned objectives: 1. the land title settlement, 2. collective punishment, and 3. the use of excessive and lethal force against protected civilians.

II. The land title settlement:iii

- 4. In 2018 the Israeli government passed resolution No. 3790, iv according to which a final settlement of land title and registration plan will be carried out on the lands of occupied and illegally annexed East Jerusalem, effectively ending the freeze on the land title settlement, and registering the lands in Israel's land registrar. The process has started and is expected to be completed by the end of 2025.
- 5. The land title settlement is a legal procedure, carried out by government authorities to create a comprehensive land registry, in order to determine definitively and conclusively, ownership over the land. The process entails multiple steps, first defining an area by surveying and mapping it and dividing it into blocks and parcels, then meticulously investigating the land title of claimants for property rights vis-a-vis the examined plot of land, concluding by registering the land titles in the official land registrar. In order to conclude a final settlement of title, the settlement clerk has to determine whether the claimant for proprietary rights has crossed the evidentiary bar required for proving their ownership claims. In instances in which competing arguments for land title are submitted, the dispute is transferred to the district court for a final resolution. The conclusions of the land title settlement process are final and irreversible. They set up the foundations for legitimate land tenure, determining the spatial distribution of estates and establishing the basis according to which a legal and agreed-upon system of transactions can be undertaken.

- 6. The process of land registration in East Jerusalem is based on a set of Israeli property laws, including the Israeli Land Settlement Ordinance (1969), the Absentee Property Law (1950), the Legal and Administrative Matters Law (1970), and other tax law provisions that will be levied on property retroactively since 1967. These laws, whose application in occupied and illegally annexed East Jerusalem is illegal under article 43 of the Hague regulations, if are inherently discriminatory and were purposely designed to dispossess Palestinians from their property and transfer them to the state of Israel or to its Jewish population.
- 7. Under international customary law, Israel, the occupying power, is obliged to facilitate the proper work of the institutions of the occupied territory, and not replace or abolish them. Thus, both the Israeli settlement clerk and the Israeli district court, which are an integral part of the land title settlement, are not deemed competent under international law to operate in occupied and illegally annexed East Jerusalem.^{viii}
- 8. Critically, Israel, the occupying power, is considered to be a temporary administrator of the occupied land, and accordingly it may not extend its sovereignty nor acquire permanent possession over it. This temporary role of Israel is governed by international humanitarian law and international customary law, which provides protection against abusive exploitation of property in occupied territories by the occupying power. Under article 55 of the Hague Regulations, Israel as the occupying power is regarded only as the administrator of public immovable property, and it must safeguard the capital of these properties and administer them according to the rules of usufruct. This is a legal right accorded to a party, that confers the temporary right to use someone else's property without changing the character of the property. Any transfer of property to the permanent ownership of the occupant or their use for the benefit of their own population or economy is absolutely prohibited. Under article 46 to the Hague Regulations, private property cannot be confiscated unless it is imperatively demanded by war, and under article 17 to the Universal Declaration of Human Rights private property is protected as a right that no one shall be "arbitrarily deprived of," a ban that is a constitutive of international customary law as well.^{ix}

The Ramifications of Conducting a Land Title Settlement by Israel in East Jerusalem:

- 9. Israel had established a special supervisory committee composed of, among others, the Custodian of Absentee Property and the General Custodian, to accompany the process of land registration and to examine the proprietary rights and the chain of title. Under article 22 to the Israeli Land Settlement Ordinance (1969),* inability to prove ownership over a piece of land will automatically convert it into Israeli state property, which is categorically prohibited under international law and amounts to a war crime.
- 10. The first and foremost challenge Palestinians are facing is the application of the Absentee Property Law from 1950. As one of the most draconian laws Israel has ever enacted, this legislative tool was devised for one purpose: to transfer the Palestinian refugees' property into the hands of Israel, and then, with the implementation of other Israeli laws, the reallocation of part of the properties appropriated, to Israel's Jewish population.xi It is estimated that

approximately 70 percent of the land in pre-1967 Israel was appropriated based on its implementation.xii

- 11. Under this law, any person who is the legal owner of a property located within Israel's sovereign territory, including occupied and illegally annexed East Jerusalem at any time between 19 November 1947 (the date of the UN General Assembly resolution to partition Palestine) and the day on which the end of the state of emergency shall be declared (which is still in effect til this day), xiii but who fled, were expelled or abandoned his/her place of residence, regardless of whether he/she returned in the course of the 1948 Nakba, is considered an Absentee. In turn, his/her property is classified as *Absentee Property*, and as such transferred to the Custodian of Absentee Property who automatically retains ownership rights over them. The law further stipulates that any person who lives in any place on the land of Israel, which is not the state of Israel, namely the West Bank and the Gaza Strip, shall be regarded as absentee, and his/her property will be transferred to the custodian of absentee property.
- 12. Following the annexation of East Jerusalem, Israel applied its domestic laws over the occupied city, including the Absentee Property Law. Nonetheless, and despite its application, Israel did not implement it comprehensively, rather strategically on specific plots of land, depending on the changing policies determined by the government of Israel.xiv However, within the land title settlement, the Absentee Property Law is being implemented systematically in every block of land examined in East Jerusalem. As a result, properties belonging to Palestinians living in the West Bank, the Gaza Strip, or in exile will be confiscated and transferred to the custodian of absentee property, and the Palestinians will forfeit their claims for their land. In addition, when examining the chain of title, which refers to the chain of transactions between previous owners of the property, if one transaction was carried out in the past involving a Palestinian who falls within the definition of absentee, under Israeli law, it is enough to deny the current owner of his/her property rights. It should be mentioned that historically, many plots of land that were confiscated from their original Palestinian owners in East Jerusalem under the Absentee Property Law, were transferred to private Jewish settlers associations, with the state of Israel, through its organs, investing millions of Shekels to facilitate and complete the transfer.xv
- 13. The second challenge is the application of the Legal and Administrative Matters Law from 1970, which addresses the question of alleged Jewish property prior to 1948, and has alarming consequences in the context of land title settlement. The law first transfers all properties that were allegedly owned by Jews in annexed Jerusalem prior to 1948, and that came under the administration of the Jordanian custodian of enemy property, from Palestinians to the administration of the Israeli General Custodian. Then, under article 5, upon the request of the original Jewish owners, or whoever comes in their place, the General Custodian is allowed to release the allegedly Jewish owned property to them. This law applies only to Jews, denying Palestinians right in their properties that they lost during the 1948 Nakba and the 1967 Naksa, despite the fact that Jews who allegedly lost property during 1948, received compensation from the Israeli government in the form of property in West Jerusalem, effectively making them eligible for a double compensation.

- 14. The Israeli authorities are utilizing the legal and administrative matters law within the land title settlement to advance the takeover of Palestinian land, and have already provided financial incentives to the Jewish National Fund (hereinafter: JNF) to submit ownership claims for lands they allegedly owned before 1948 through the land title settlement. The collaboration between the state of Israel and the JNF has alarming consequences, and it demonstrates, above all, the intent behind the land title settlement. It is estimated that the JNF allegedly owned at least 2,500 dunams of land in East Jerusalem, many of which are currently Palestinian residential areas. This effectively means that after the JNF completes registering the land under its ownership, many eviction orders against Palestinians will be issued.^{xvi}
- 15. It should be stressed that pre-1948 alleged Jewish property may have included ownership, long term lease, protected tenancy in Islamic Waqf and other complex property rights that were all later construed as full ownership, a position that was validated by the Israeli courts.
- 16. In addition, the Israeli property tax regime will be applied retroactively, and taxes will be calculated from 1967 until the day of the property registration. At least three kinds of Israeli property taxes will be levied, and in some cases the sum of taxes might reach the value of the asset itself. Prior to registration, and in case the Palestinians proved their property rights, they will be required to pay the taxes calculated retroactively since 1967, and if not paid, their assets will be seized by the tax authorities.
- 17. Thus, the Israeli land title settlement is being carried out unlawfully, and in violation of Palestinians' property rights under international law, and will ultimately result in the extensive appropriation of Palestinian property in East Jerusalem. This amounts to grave breach of the Geneva Conventions and war crimes and crimes against humanity under the Rome Statute on the International Criminal Court.^{xvii}

<u>Thereupon we strongly propose the following recommendations:</u>

- Immediately halt the implementation of the land title settlement in East Jerusalem.
- Immediately cease the application of Israel's laws in the eastern part of Jerusalem, most notably the Absentee Property Law and the legal and administrative matters law, and ensure respect for international legal standards that govern occupied territories.
- Ensure that the planning regime in East Jerusalem conforms with international legal standards and is in the best interests of the protected Palestinian population.
- Ensure that Palestinians' property rights in East Jerusalem are respected and protected, and immediately stop implementing policies that further the dispossession and the forcible transfer of Palestinians from their city.

 Return all designated state lands in the occupied Palestinian territories to the Palestinians, and to stop the pillage of Palestinians' lands for the benefit of its Jewish settler population, and to immediately stop building illegal settlements on the occupied Palestinian land, and dismantle its existing settlements therein, in compliance with international law.

Suggested questions to ask Israel:

- Which solutions, if any, Israel has for the severe housing crisis Palestinians are facing in East Jerusalem?
- How is the Israeli government planning to implement the Absentee Property Law in East Jerusalem, knowing that many Palestinians who reside elsewhere own property therein? Is there a policy, procedure or any regulations for its implementation?
- For the implementation of the Absentee Property Law, would the old city and the surrounding areas be subject to its implementation as well? Under which conditions? Also, do the Israeli authorities have a desirable ratio for a demographic composition between Palestinians and Jews specifically in the Old City of Jerusalem?

III. Collective punishment in the form of canceling family unification:

- 18. Since 2003, Israel has enacted a temporary order that has been annually renewed, which bans family unification between Palestinians from East Jerusalem and the rest of the OPT on the principle level.xviii Nonetheless, within the ban on family unification, the temporary order outlines exceptions according to which the Minister of Interior (hereinafter: MOI) is competent to grant residency licenses and stay permits to Palestinians from the West Bank only, and not from Gaza, given certain criteria is met, and subject to a rigorous security check.
- 19. On September 20, 2022, the Israeli Appeals Tribunal in Jerusalem ruled, in a precedential decision, xix to authorize the MOI decision to revoke the stay permits of seven Palestinians from Jerusalem five spouses and two children, and to downgrade the temporary residency license of another four Palestinian Jerusalemites to stay permits, which all were granted within the exceptions outlined in the ban on family unification. The revocation decision was made based on an alleged attack carried out by a relative of theirs during 2017, in which, according to Israeli sources, the alleged assailant rammed Israeli soldiers with his truck in Jabal Mukabber neighborhood in Jerusalem, killing four and injuring 18 others. Effectively, the ruling implemented once again collective punishment, and disenfranchised Palestinians' right to live with their families in their occupied and illegally annexed city despite the fact that they did not commit any wrongful act. The reasoning that stood at the heart of the MOI decision was to deter other Palestinians from carrying out attacks against Israel or its citizens, and to let any potential assailant know that not only they will be punished, but also their families.

- 20. In one of the cases, which was represented by the CAC's lawyers, the victim of this decision was not even a family member of the alleged assailant. Rather, the alleged assailant was the uncle of his permanent-residency-holder Jerusalemite wife. Despite the absence of any direct family ties, and the alleged assailant being a second-degree relative of his wife, the MOI decided to revoke his stay permit, and the Israeli appeals tribunal gave its seal of approval to the MOI's decision,
- 22. On September 29, 2022, the MOI sent a letter to the seven Palestinians who lost their stay permits following the appeals tribunal ruling and ordered them to leave areas under Israeli sovereign jurisdiction, including occupied East Jerusalem, within seven days.
- 23. Collective punishment, in all its forms, including measures of intimidation against protected populations is strictly prohibited under article 33 to the Geneva convention and article 50 of the Hague Regulations. However, the recurrent use of collective punishment by Israel exclusively against Palestinians in different forms serves two objectives: First to maintain a demographic ratio, where Jerusalem's Jewish population will remain a majority, and second to stifle the Palestinian identity and all its components under a cruel system of Jewish domination and oppression to ensure Jewish superiority and hegemony.
- 24. The appeals tribunal decision shows that Israel perceives Palestinians as means for deterrence, and not human beings entitled to human rights, making the Israeli courts complicit in the war crime of forcible transfer according to article 46 to the fourth Geneva convention, and article 7 and 8 of the Rome Statute of the International Criminal Court.

Therefore, we strongly propose the following recommendations:

- Immediately reinstate the residency status of the eleven Palestinians and respect their right to live with their families in occupied Jerusalem.
- Comply with the ban on collective punishment according to international law and immediately cease its implementation against Palestinians.
- Call on the Israeli courts to comply with international legal standards, and to respect the prohibition on collective punishment.

Suggested questions to ask Israel:

 How will the collective punishment measures, and broadining the MOI discretionary powers to cancel family unification applications affect the family unification of Palestinians in East Jerusalem with their Palestinian spouses from the West Bank? With the absence of evidence that punishing family members who have not committed any wrongful act will achieve the desirable result of deterring potential future assailants, don't you think such extreme measures would fuel more resentment among the Palestinians and can potentially lead to more acts of resistance?

IV. The use of lethal and excessive force against Palestinians in Jerusalem:

- 25. Israeli attempts to eradicate the Palestinian identity of the Palestinian residents of Jerusalem, and erase the Palestinian carachter of their occupied city are coupled with lethal and excessive use of force by the Israeli occupation authorities, most notably during national ceremonies and events, and religious holidays.
- 26. During Ramadan 2021, the Palestinian residents of Jerusalem were subject to sinister use of excessive force against them by Israel's law enforcement authorities, who used skunk water, stun grenades, tear gas grenades, police batons and physically attacked peaceful assemblies. This injured hundreds of Palestinians, including worshipers, minors, and elderly men and women. Between April 13, 2021 and May 10, 2021, at least 1298 Palestinians were injured due to the Israeli occupation police brutality, of whom 574 needed to be transferred to hospital for further medical treatment. Among these, 17 Palestinians received medical treatment for eye injuries, due to the use of rubber-coated metal bullets by the Israeli police, four of them were minors under the age of 18, resulting in seven of the injured losing sight in one eye, and one losing sight in two eyes.**
- 27. Following the events that unfolded in May 2021, the Israeli police adopted new regulations for the use of force that curtails restrictions on using police batons, and adds new means to disperse assemblies, such as launching teargas capsules from drones.^{xxi}
- 28. The new procedure was systematically implemented during Ramadan 2022. Between Apr 2, 2022 and May 1, 2022 at least 306 Palestinians were injured in Jerusalem by the Israeli occupation Police, mainly at the Damascus gate area and in Al-Aqsa mosque, including inside prayer halls, 53 of whom were minors under 18 years old. The Israeli occupation police used batons as allowed per the new regulations, to beat Palestinians relentlessly, in addition to reckless shooting with sponge-tipped metal bullets, stun grenades, and teargas grenades. At least 173 of the injured needed to be transferred to the hospital for additional medical treatment.
- 29. The epicenter of violence was on Apr 15, 2022, when the Israeli occupation police raided Al-Aqsa mosque compound early in the morning, indiscriminately attacked Palestinian worshipers using their batons, and raided inside Al-Qibli prayer hall. They walked with their boots on the carpets of the prayer hall, threw stun grenades at Palestinians who were inside the mosque, and broke the windows of Al-Qibli prayer hall.xxii At least 400 Palestinians were arrested in the raid the Israeli occupation forces conducted in Al-Aqsa on that day.xxiii
- 30. On April 22, 2022, which marked the third Friday of Ramadan, the Israeli occupation forces launched teargas grenades using drones against Palestinian worshipers in Al-Aqsa courtyard.

In addition, the Israeli occupation police ruthlessly beat Palestinian worshipers, including women and children who were in Al-Agsa compound to pray, and indiscriminately shot them with sponge-tiped metal bullets. On the same day, Waleed El-Shareef, a 23-yearold Palestinian male, was severely wounded in the head. Eyewitnesses told CAC field researchers that he was shot in the head with a sponge-tipped metal bullet at Al-Aqsa courtyards. The Israeli occupation police claimed he fell while running and as a result he was injured, in a gross attempt to shrug off the responsibility of his injury. After his injury, Israeli police officials carried Waleed recklessly, without leaving his treatment to professional medical staff.xxiv Later, his death was announced on May 14, 2022 by Haddasah hospital, which is an Israeli hospital Waleed was treated in after his injury. Haddasah hospital did not determine the cause of his death, stressing that Waleed arrived at the hospital with a serious head injury and had been in a coma since then until his death .xxv

31. Furthermore, on May 11, 2022, Rami Srour, a 24 years old Palestinian male was shot by the Israeli occupation police with live ammunition on one of the entrances to Al-Aqsa mosque, merely for shouting "Allahu Akbar". Rami was severely injured and hospitalized in Hadassah hospital in critical condition.xxvi

Due to its alarming nature, we suggest the following recommendations to be made:

- Immediately cease the application of the new regulations regarding the use of force by Israel's law enforcement authorities, and comply with the international human rights standards that govern law enforcement operations in the context of occupation.xxvii
- Respect Palestinians' right to peaceful assembly and worship in their occupied city.
- Open a transparent and immediate investigation to hold police personnel accountable for using unproportionate and indiscriminate force against Palestinians in Jerusalem during Ramadan 2021 and Ramadan 2022.

Endnotes

ⁱ Bimkom, "Trapped by Planning: Israeli Policy, Planning and Development in the Palestinian Neighborhoods of East Jerusalem" (2014), P. 20, http://bimkom.org/eng/wpcontent/uploads/TrappedbyPlanning.pdf

ⁱⁱ *Israel: Basic Law of 1980, Jerusalem, Capital of Israel*, 5 August 1980, available at: https://www.refworld.org/docid/3ae6b52f14.html [accessed 6 October 2022]

iii See: Urgent Appeal to the United Nation Special Procedures on Israel's permanent Illegal Annexation of Jerusalem, available at: https://www.alhaq.org/cached_uploads/download/2021/11/13/joint-urgent-appealto-un-sp-land-title-settlement-in-jerusalem-as-sent-1636786906.pdf

iv Reducing economic and social disparities and economic development in East Jerusalem, Resolution No. 3790, 2018, available (in Hebrew) at: https://www.gov.il/he/departments/policies/dec3790 2018.

- ^v For seeing Israel's progress in the land title settlement in East Jerusalem, see the interactive map: https://experience.arcgis.com/experience/05a7bec8c51f4ddbb9d923554ffabef3/page/English-Map-/?locale=he
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- ^x Land Title Settlement Ordinance [New version], Art. 22, 1969, available (in Hebrew) at: https://www.nevo.co.il/law.html/law01/286 031.htm#Seif22.
- xi See: Kedar, A., Forman, G., 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 2004, volume 22, P. 813, Available at:
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- xiv See: https://www.nrc.no/globalassets/pdf/legal-opinions/absentee law memo.pdf
- xv Peace Now, The Klugman Report, 9 May 2019, available at: https://peacenow.org.il/en/the-klugman-report
- xvi See: https://www.ir-amim.org.il/en/node/2704
- xvii Article 147, Fourth Geneva Convention (1949); Rome Statute of the International Criminal Court, (last amended 2010), 17 July 1998, art. 8(2)(a)(iv); art. 7(1)(d)
- xviii See: https://www.btselem.org/publications/summaries/200401 forbidden families
- xix See: https://hamoked.org/document.php?dID=Updates2328
- xx See: https://cac.alguds.edu/phocadownloadpap/reports/Ramadan In Jerusalem 2021.pdf
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- xxvii See: https://cac.alguds.edu/phocadownloadpap/reports/Ramadan In Jerusalem 2021.pdf p. 17