Dispossession and Eviction in Jerusalem: A summary of the story of Sheikh Jarrah December 2009

The Civic Coalition for Defending Palestinian Rights in Jerusalem

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

in Jerusalem.

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Introduction^[1]

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

Since the 1970's Sheikh Jarrah has emerged as a focal point for private Jewish groups and organizations who seek to gain possession of property they believe to have been inhabited by Jewish communities prior to 1948, and, to additionally purchase new property in an attempt to facilitate the increase of private Jewish residency in strategically located areas of occupied East Jerusalem.

At times intertwined and at others divergent, the story of the 28 Palestinian families in Sheikh Jarrah presents a myriad of contentious issues. Beginning with an overview of the historical development of the land ownership disputes, this report aspires to develop a brief domestic and international legal analysis of the Sheikh Jarrah housing evictions.

^[1] This report is a summary of, 'A Neighbourhood Divided: The cases and stories of Sheikh Jarrah'. It does not purport to offer a full overview and consideration of all issues relevant to Sheikh Jarrah. The views expressed here are attributable exclusively to the Civic Coalition for Defending Palestinian Rights in Jerusalem.

Historical Development in Sheikh Jarrah

In 1956, 28 Palestinian refugee families who had been registered under the auspice of the United Nations Relief and Works Agency (UNRWA), were selected to benefit from a humanitarian initiative in cooperation with the Jordanian government. The agreement stipulated that in exchange for nominal rental payments, adherence to various conditions, and the forfeiture of their refugee ration cards, the families would lease the homes for three years at which point they would then receive legal title to the property. After the indicated duration lapsed the families did not receive legal title to the homes despite having kept to the terms of the contract.

After the 1967 war and the annexation of East Jerusalem the land in Sheikh Jarrah came under the authority of the Israeli General Custodian. In 1972 members of the Sephardic Community Committee and the Knesset Israel Committee sought to assume ownership on the basis of a *koshan* document that alleged that they held a historical affiliation to the land. This provided a primary form of ownership registration however the validity of this document is questionable based on concerns regarding its accuracy and authenticity that have never been adequately substantiated. Despite this, and Israeli authorities indicating that the truncated nature of the Committees' primary registration should not carry adverse effects on the rights of third parties, the majority of the 28 families in Sheikh Jarrah began to receive demands of payment from the two Committees.

This initiated a long series of legal proceedings aimed as ascertaining ownership over the land. Despite an Israeli court previously denying the Committees' claim that four of the Palestinian families were illegally present on the land, actions aimed at removing the families from their homes began to mount.

During the ensuing proceedings, in 1982, Yitzhak Toussia-Cohen, a lawyer representing 17 of the families, reached an agreement under which he did not challenge the validity of the Committees' ownership claims but instead accepted the status of "protected tenants" for his clients.

This ensured that the 17 families could remain in their homes without threat of eviction provided that they made regular rental payments to the Committees and adhered to strict regulations that restricted their ability to renovate or change the property. The Toussia-Cohen agreement was sanctioned by the Court making it legally binding and has come to be regarded as the modern precedent for subsequent disputes in the Karm Al-Ja'ouni neighbourhood.

The 1982 Toussia-Cohen agreement underpins much of the contemporary controversy surrounding Sheikh Jarrah. Its failure to address the legitimacy of the Committees' property claim was a significant omission. In addition it also appears to have been reached without the knowledge or consent of the 17 families represented by Toussia-Cohen. The terms of the agreement did not confer any additional benefit to the 17 families to which they were not previously legally entitled. Protected tenancy is a statutory status derived from the *Tenant Protection Law of 1972*. It is intended to provide, *inter alia*, protection from evictions and was applied to residents of East Jerusalem after the imposition of Israeli law. Recognition of the families' status did not require the acknowledgement of the Committees and an agreement predicated on recognition of the Committees' ownership only served to create an estopple against future challenges to their purported position.

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

The primary example of this became evident in 1997 with the emergence of Suleiman Al-Hijazi, whose competing property claim in Sheikh Jarrah produced much of the relevant documentation that undermined the factual basis upon which the Toussia-Cohen agreement relies. Hijazi produced several documents from the Ottoman and Jordanian archives all of which comprehensively traced ownership over the land through different periods. Hijazi's family had owned much of the land around Sheikh Jarrah until the 1930s when they sold it to a land merchant who

worked within the British Land Registry. Wishing to regain much of the property his family previously owned Hijazi began repurchasing property throughout East Jerusalem.

The Supreme Court rejected Hijazi's claim on a number of grounds including upon the basis that they believed the documents he produced to be unverifiable despite the existence of a corresponding copy in Amman and expert testimony attesting to the validity of his claim.

Most recently the Sabbagh family, who were not been party to the Toussia-Cohen agreement, received a court order indicating the intention of the Jewish groups to assert their claim over the land. The case raises several interesting points, as the Sabbagh family is the first who are not party to the agreement to have their ownership status challenged since the unsuccessful attempt against the four families in 1974.

Forced Evictions in Sheikh Jarrah

On 9 November 2008, the Al-Kurd family became the first to of four families to be evicted from their home in Sheikh Jarrah. After a protracted legal struggle an Israeli court accepted the Committees' position that based on the Toussia-Cohen agreement, the Al-Kurds had renovated the home illegally and refused to pay rent.

Subsequent appeals by the family failed and after years of uncertainly police entered the home of Fawzyeh and Mohammed Al-Kurd. In the middle of the night the front door of the house was broken in. Police, masked and heavily armed, quickly filled the residence after surrounding and locking down the neighbourhood.



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

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

The Hanoun and Al-Ghawi proceedings followed a similar pattern. In two separate lawsuits filed against each of the families respectively, the Committees' requested a verdict for dispossession and eviction. Their claims were based on violations to the Toussia-Cohen agreement including both rent delinquency and illegal renovations. The Magistrate Court accepted both suits in their entirety quoting the agreement at length to demonstrate the families' recognition of the Committees' ownership rights.

In August 2009 both families were forced from their homes as a wave of Israeli forces again descended upon Sheikh Jarrah. Today Mr. Hanoun sits beneath a solitary olive tree adjacent to his home. He remains eager to meet and talk with passers-by and speaks of the hardships that accompany his new life on the street. "We refused to accept a tent from the UN or Red Cross; we will not become refugees for a second time."

Like Hanoun, Fuad Al-Ghawi's steadfast principles remain unmoved no matter the extent to which mounting disenchantment bred through the harshness of street life has led him to consider seeking alternative accommodation. "We are waiting for someone to help us. I am struggling to stay in Jerusalem. Our options are limited; the cost of a new house here is very high. I don't know what we are going to do, but we won't leave, or else we will never be allowed back."

The most recent eviction relates to two 1999 legal proceedings filed against the Rfqha Al-Kurd family. Both actions claimed that an

extension to the existing property was built without the requisite permit and constituted a violation of the terms contained within the 1982 Toussia-Cohen agreement. Following the initial decisions, the Court imposed a substantial fine, sealed the renovated section of the home, and took possession of the house's keys. Over the following years the family was party to several legal challenges until, in 2007, the Magistrate Court ruled that the Rfqha Al-Kurd family could not use the renovated rooms as, in accordance with the Toussia-Cohen agreement, they were not the legal owners of the land.

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

Israeli Development Plans in Sheikh Jarrah

Upon first inspection the Al-Kurd, Hanoun, Al-Ghawi, and Rfqha Al-Kurd evictions are presented as isolated actions stemming from the individual family's failure to comply with the terms of their tenancy agreement. Closer examination reveals that their attempted removals go beyond the purported apolitical terms of the 1982 Toussia-Cohen agreement and have been the focus of a long-term legal strategy developed and implemented by the Committees and Nahalat Shimon International.

In viewing the developments in Sheikh Jarrah from a broader perspective it appears that the apolitical means employed to facilitate the removal of the Palestinian families from Sheikh Jarrah is only one of several initiatives undertaken by both public and private actors intent on creating a Jewish demographic majority throughout occupied East Jerusalem.

At present four town planning schemes in Sheikh Jarrah are undergoing different stages of the approval process at Jerusalem's Local Planning Commission. The largest of these is TPS 12705 which was submitted by Nahalat Shimon International in August 2008 and applies directly to

the land where the Palestinian families now live. If approved the scheme would provide for the construction of 200 new residential units for Jewish families and lead directly to the eviction of nearly 500 Palestinian residents and the destruction of their homes. If implemented this would allow Nahalat Shimon International to begin development of a new settlement, Shimon HaTzadik, however recent accounts indicate that this scheme has been closed pending further action.

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

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

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

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

International Legal Analysis

Under the 1947 partition plan attached to United Nations General Assembly Resolution 181, Jerusalem was to be internationalized as a *corpus separatum* – a separated body, and placed under a special international

regime to be administered by the United Nations Trusteeship Council. However, rather than the political will of a majority of its residents, the international community, or the principles of international law, the fate of Jerusalem was determined through military conquest. As such international law holds that the imposition of Israeli control, claims to sovereignty, and the application of Israeli law do not hold validity in East Jerusalem. As East Jerusalem remains occupied



territory, international humanitarian law (IHL) is applicable. Together, the Hague Regulations and the Geneva Conventions form the core body of occupation law under IHL.

Stemming from these basic legal obligations, violations to Israel's most essential commitments under IHL emerge. Present in occupied territory, the Palestinian residents of East Jerusalem are Protected Persons as defined under Article 4 of the Fourth Geneva Convention. The "protected tenant" status derived from the 1982 Toussia-Cohen Agreement can in no way deprive the Palestinian residents of Sheikh Jarrah of their status as Protected Persons, or relieve Israel's obligations towards them. Despite this the 28 families in Sheikh Jarrah have been subjected to a series of violations contrary to Israel's commitments under humanitarian law.

The confiscation and proposed destruction of Palestinian homes in Sheikh Jarrah for the construction of Jewish settlements breaches the limited exceptions under which the seizure and destruction of private Palestinian property is permitted under international humanitarian law. The Fourth Geneva Convention and the Hague Regulations allow for the confiscation of property only when it is required by absolute military necessity. Stemming from the recent evictions, the proposed destruction of Palestinian homes is presented as the adjudicated results of the resident's failure to fulfill the conditions of a tenancy agreement. Their removal serves as a prerequisite to Nahalat Shimon International's planning scheme requesting the construction of a 200 unit Jewish settlement. Such actions fail to satisfy the military necessity exception and are described in Article 147 as a grave breach of the Fourth Geneva Convention. Directly derived from this text, Article 8(2)(a)(iv) of the Rome Statute qualifies such destruction and appropriation as a war crime.

Both conventional and customary international humanitarian law prohibits the deportation or forcible transfer of Protected Persons from or within occupied territory. Article 49(1) of the Fourth Geneva Convention provides, "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, are prohibited, regardless of their motive." The forcible eviction of Palestinian residents from their homes in Sheikh Jarrah resulted in the displacement of over one hundred Protected Persons. The evictions occurred on a pretext derived from the 1982 Toussia-Cohen agreement in an attempt to provide a thin veil of legitimacy through the application of Israeli law. These actions equate to violations of IHL as they were involuntary and go far beyond the legislative competence of an occupying power.

International Human Rights Law

Human rights law directly addresses the issue of housing and property rights. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) allows a direct approach through the positive obligations contained in Article 11(1) that specifically guarantees the right to housing.

The broad application of these rights has come to directly address the issue of forced evictions. The term forced evictions refers to the direct or indirect involvement of a government in the involuntary removal of persons from their land or home. The practice of forced eviction has been widely condemned by a number of human rights bodies and instruments. The international human rights framework addresses the issue of forced evictions through a number of means. The act of forcible removal primarily demonstrates the absence of legally secure tenure, which has been confirmed as an essential element of the right to adequate housing as guaranteed through the ICESR.

After initially residing in their respective homes through the Jordan-UNRWA agreement, the families had received full assurances that after three years they would receive legal title to the home. When the contract was not honoured the families were placed in a precarious position from the onset. The vulnerability of the families was accentuated when the Israeli authorities failed to recognize or enforce the families' standing under the *Tenant Protection Law 1972* to which they were legally entitled before the questionable Toussia-Cohen agreement afforded it in exchange for the recognition of the Committees' purported ownership.

Since 1956, the 28 families in Sheikh Jarrah have lacked any degree of secure tenure, as it is understood to form a core element of the right to adequate housing under international law. Even absent an eviction, the lack of legally secure tenure represents a virtually perpetual violation of the right to adequate housing, the ultimate effects of which were experienced by the Al-Kurd, Hanoun, Al-Ghawi, and Rfqha Al-Kurd families.

An interpretive explanation of the content of the right to housing and focusing on forced evictions was provided by the Committee on Economic, Social, and Cultural Rights, the UN body tasked with the implementation of the ICESCR. They held that the practice of forced evictions is, *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law.

The framework makes clear that such circumstances include the persistent non-payment of rent and the destruction of rented property as potentially permissible grounds. However to ensure that forced evictions are only permitted in exceptional circumstances, a subsequent interpretive explanation declared that any justifiable forced evictions must be carried out in a manner warranted by a law that is compatible with the Covenant.

The legal basis for the Sheikh Jarrah evictions was gained in an indirect manner. Individual court orders were themselves fixated on either rent delinquency or illegal construction, while the purported ownership agreement that provided for the requirement to pay rent and refrain from construction was derived from the Committees' 1972 koshan registration. This in turn was facilitated by the Law and Administrative Matters Law of 1970.

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

The prescribed exceptions permitting forced evictions must be carried out in a manner warranted by a law that is compatible with the Covenant. The inherently discriminatory nature of the *Law and Administrative Matters Law of 1970* does not withstand the scrutiny of the non-discrimination clause prescribed through Article 2(2) of the ICESCR. The singular nature of the legislation's intent to facilitate the acquisition of Jewish land in East Jerusalem coupled with the absence of a corresponding piece of legislation allowing Palestinians to make similar claims in West Jerusalem equates to a failure to guarantee the rights enunciated in the Convention in a non-discriminate manner.

Conclusion

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

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

Recognizing both the political hindrances and humanitarian consequences that Sheikh Jarrah has come to signify, the international community broke their silence. The recent evictions have sparked widespread condemnation from a multitude of international actors. The US Department of State has expressed its concern that the evictions constitute impediments to the peace process, while the UN Special Coordinator for the Middle East Peace Process labeled the events in Sheikh Jarrah as 'deplorable' and 'totally unacceptable'. The UN Secretary General noted that such 'provocative actions create inevitable tensions, undermine trust, often have tragic human consequences and make resuming negotiations and achieving a two state solution more difficult'. The Presidency of the European Union expressed its 'serious concerns' over the 'unacceptable evictions' in Sheikh Jarrah and recalled that Israel's actions are illegal under international law.

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

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

Despite the commitments and ensuing rhetoric, East Jerusalem appears to be in a constant state of exclusion. A recent proposal by Prime Minister Netanyhu aimed at implementing a 10-month settlement freeze in the West Bank pointedly omits East Jerusalem from a potential moratorium. The existence and continuous expansion of Jewish settlements throughout the occupied Palestinian territory, in particular East Jerusalem, is fast foreclosing any future possibility of a viable Palestinian State with East Jerusalem as its capital, and therefore a just and lasting resolution to the conflict.

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