



AL-HAQ



Finding David:

**Unlawful Settlement Tourism in Jerusalem's
so-called 'City of David'**



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1

Background

For decades, Israel has established and maintained a regime of settler colonialism and apartheid over the Palestinian people on both sides of the Green Line. Israel's plan is to control the territory of historic Palestine and realise its self-proclaimed status as a Jewish state. Consequently, since 1948, the indigenous Palestinian people have endured an ongoing Nakba of prolonged and sustained refugeehood, ethnic cleansing, forced displacement including mass population transfer and systematic oppression. They have also been subject to dispossession, pillage, and destruction of their institutions, lands and properties. This is all part of Israel's strategy to eradicate the indigenous Palestinian people from their land, and is achieved through policies and practices, which repeatedly violate and continue to violate fundamental human rights as guaranteed under international law. This includes the Palestinian people's collective and inalienable right to self-determination. Throughout, Israel commits the most serious crimes under international law, namely crimes against humanity and war crimes.

In the context of Israel's colonial-settler and apartheid regime, this report seeks to highlight how the illegal 'City of David' archaeological and tourist settlement in the Palestinian neighbourhood of Silwan, in Jerusalem, is a tool used by Israel to further entrench control over Palestine's capital city of Jerusalem and strengthen the coercive environment imposed over Palestinians. The report builds on previous extensive Al-Haq reports, including 'Annexing a City, Israel's Illegal Measures to Annex Jerusalem Since 1948',¹ 'Occupying Jerusalem's Old City, Israeli Policies of Isolation, Intimidation and Transformation',² and 'House Demolitions and Forced Evictions in Silwan – Israel's Transfer of Palestinians from Jerusalem'.³

Following the background provided in Chapter 1, the report progresses with Chapter 2 highlighting how the 'City of David' unlawful settlement serves to forcibly displace Palestinians from their homes, lands and properties in the context of Israel's plan to organise a demographic change in Jerusalem. Chapter 3 explains how archaeology in the 'City of David' is a political tool to provide legitimacy to the Zionist colonial project and is used as a pretext to destroy Palestinian cultural property. Finally, the Zionist narrative spread by Elad through tourism is presented in Chapter 4, as well as the involvement of business enterprises in the illegal 'City of David' settlement.

1 Dalia Qumsieh, 'Annexing a City, Israel's Illegal Measures to Annex Jerusalem Since 1948' (Al-Haq 2020).

2 Marya Farah, 'Occupying Jerusalem's Old City, Israeli Policies of Isolation, Intimidation and Transformation' (Al-Haq 2019).

3 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan, Israel's Transfer of Palestinians from Jerusalem' (Al-Haq 2020).

1.1 Entrenching Israel's Settler Colonial and Apartheid Regime in Jerusalem

Israel has established and maintained its settler colonial and apartheid regime over Palestine's capital city, Jerusalem.⁴ Following the unlawful annexation of West Jerusalem in 1948, Israel also annexed East Jerusalem in 1967 in a unilateral move that was unequivocally condemned by the international community and established the city as its 'unified capital'.⁵ Since then, the Israeli authorities have consistently carried out a wide range of policies and practises aimed at driving Palestinians out of the city. This is done to realise and maintain a Jewish-Israeli demographic majority and thus further entrench Israel's control over the city.⁶

Most recently, the Israeli authorities have increased pressure on Palestinian residents in Jerusalem by intensifying ethnic cleaning. Palestinians, in particular in Sheikh Jarrah and Silwan, are subjected to highly restrictive zoning, planning and building policies, evictions, destructions of houses and properties, as well as forced displacement.⁷ In late 2021, Israeli Occupying Forces (IOF) unscrupulously uprooted graves in the Palestinian Al-Yousufiya Cemetery – also known as Bab al-Rahma Cemetery – located a few metres away from the Old City eastern walls, to build a national park.⁸ Moreover, the Israeli authorities regularly revoke the residency permits of Palestinian Jerusalem residents, including more recently, that of the human rights defender Salah Hammouri in October 2021, whose residency was

4 Dalia Qumsieh, 'Annexing a City' (n 1).

5 UN Security Council Resolution 242 (22 November 1967) S/RES/242; Dalia Qumsieh, 'Annexing a City' (n 1) 24-26.

6 Marya Farah, 'Occupying Jerusalem's Old City' (n 2); Dalia Qumsieh, 'Annexing a City' (n 1); Al-Haq, 'Action Alert: International Community Must Take Immediate and Concrete Measures to Halt Israel's Aggression against Palestinian Jerusalemites' (10 May 2021) <www.alhaq.org/advocacy/18289.html>; Al-Haq, 'In Repression of Palestinian Assembly, Israel Instigates a Campaign of Collective Punishment in Jerusalem' (5 June 2021) <www.alhaq.org/advocacy/18478.html>

7 Al-Haq, 'Sheikh Jarrah and Silwan: Ongoing Nakba and Israeli Dispossession of Palestinians' (27 May 2021) <www.alhaq.org/advocacy/18442.html>

8 Sara Sleiman, 'No Rest for the Dead: Israel Uproots Palestinian Graves and History' *TRT World* (9 November 2021) <www.trtworld.com/magazine/no-rest-for-the-dead-israel-uproots-palestinian-graves-and-history-51434>; Samah Dweik, 'Palestinians Vow to Defend Graves in Jerusalem Cemetery' *Al Jazeera* (31 October 2021) <www.aljazeera.com/features/2021/10/31/palestinians-vow-to-defend-graves-in-jerusalem-cemetery>.

revoked for breach of allegiance to Israel.⁹ Residents are systematically discriminated against in their access to municipal services and thus denied fundamental rights, such as the right to health, to education,¹⁰ to take part in cultural life,¹¹ amongst others.¹²

As part of Israel's campaign to displace Jerusalem's Palestinian residents, the IOF, assisted by settlers, maintain a highly oppressive environment and a climate of domination in the city.¹³ This is achieved through daily brutality, humiliation and intimidation, the arbitrary arrest of Palestinian residents, including children, administrative detention, and excessive use of force.¹⁴ The IOF have repeatedly been condemned for committing extrajudicial killings in the city.¹⁵

Meanwhile, in September 2022, Israeli authorities pursued their unlawful policy of population transfer into the OPT.¹⁶ In particular, they advanced the project to expand settlements in Jerusalem's E1 area with more than

9 For instance, Al-Haq, 'Al-Haq Condemns the Revocation of Lawyer and Human Rights Defender Salah Hammouri's Jerusalem Residency' (19 October 2021) <www.alhaq.org/advocacy/18995.html>

10 ICESCR, Article 13.

11 ICESCR, Article 15.

12 Marya Farah, 'Occupying Jerusalem's Old City' (n 2).; Al-Haq, JLAC, and MAP, Joint Briefing Paper 'COVID-19 and the Systematic Neglect of Palestinians in East Jerusalem' (2020); Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3).

13 Marya Farah, 'Occupying Jerusalem's Old City' (n 2).

14 Al-Haq, 'In Brief: Escalations in Jerusalem' (7 December 2021) <www.alhaq.org/advocacy/19286.html> Marya Farah, 'Occupying Jerusalem's Old City' (n 2).

15 Al-Haq, 'Extrajudicial Killing of Mohammad Salima: Paradigm Needs to Be Shifted Over Israel Military's Excessive Force that Deprives Palestinians of Their Right to Life' (22 December 2021) <www.alhaq.org/advocacy/19377.html>

16 Nir Hasson, 'Jerusalem Approves Construction of 540 Housing Units Beyond City's 1967 Lines' *Hareetz* (7 April 2021) <www.haaretz.com/israel-news/premium-jerusalem-approves-construction-of-540-housing-units-beyond-city-s-1967-lines-1.9691885>; Ir Amim and Bimkom, 'Israel Initiates Land Registration Procedures in Sheikh Jarrah to Advance Jewish Settlement' (4 May 2021) <www.ir-amim.org.il/en/node/2639>; Ir Amim, 'Date Set for Advancement of New Atarot Settlement in East Jerusalem' (8 August 2021) <www.ir-amim.org.il/en/node/2701>; Times of Israel Staff, 'PM Meets Settler Heads, Said to Tell Them He Won't Freeze West Bank Construction' *Times of Israel* (9 September 2021) <www.timesofisrael.com/pm-meets-settler-heads-said-to-tell-them-he-wont-freeze-west-bank-construction/>; 'Israel Advances Plan for New Settlement Homes, in First for Bennett Era' *New York Times* (27 October 2021) <www.nytimes.com/2021/10/27/world/middleeast/israel-settlements-west-bank.html>

3,000 building units,¹⁷ and promoted the creation of other settlements in Palestinian-inhabited neighbourhoods.¹⁸ The plan is to enclose East Jerusalem's Palestinian neighbourhoods and further isolate Jerusalem from the rest of the West Bank, creating a 'Greater Jerusalem'. This weakens the Palestinian hold on the capital and, by adding thousands of Jewish residents, realises the Judaisation of the city.¹⁹

The tourism industry plays a key role in Israel's strategy to entrench its control over Jerusalem. Recently, the Israeli authorities have promoted numerous development projects in Jerusalem. This includes a cable car to run from annexed West Jerusalem to East Jerusalem,²⁰ a light rail to the Old City,²¹ an underground railway to the Old City,²² and three touristic promenades in unlawfully annexed East Jerusalem.²³ Notably, the Uzziah Promenade will connect two illegal settlement complexes in East Jerusalem, further fragmenting the Palestinian people and territory and entrenching

17 'Israeli occupation to approve 3,412 settlement units in Jerusalem' *Wafa* (4 September 2022) <<https://english.wafa.ps/Pages/Details/130717>>

18 Nir Hasson and Jonathan Lis, 'Israel Advances Thousands of Housing Units in East Jerusalem as Biden Remains Silent' *Haaretz* (14 October 2021) <www.haaretz.com/israel-news/.premium.HIGHLIGHT-israel-advances-thousands-of-housing-units-in-east-jerusalem-as-biden-remains-silent-1.10292574>; Tovah Lazaroff, 'Israel Advances 2,600 East Jerusalem Jewish Homes, Puts E1 on Hold' *The Jerusalem Post* (5 January 2022) <www.jpost.com/israel-news/article-691655>

19 Rachel Poser, 'Common Ground: The Politics of Archaeology in Jerusalem' [2019] *Harper's Magazine* <<https://harpers.org/archive/2019/09/common-ground-archeology-israel-palestine/>>

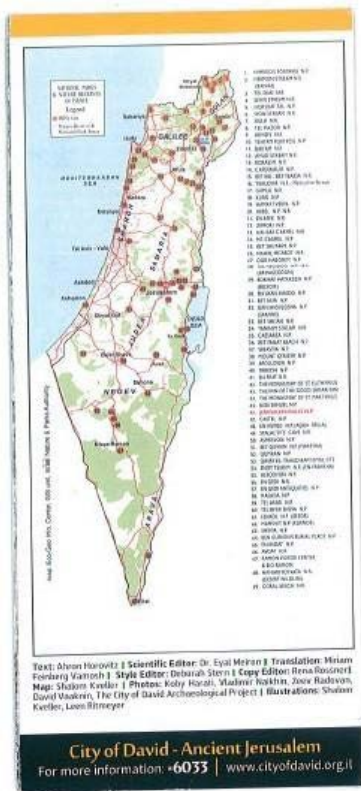
20 Section 2.2.

21 Municipality of Jerusalem, 'Momentum of Building the Jerusalem Light Rail Network' <www.jerusalem.muni.il/en/newsandarticles/parking/building-the-jerusalem-light-rail-network/>; Guy Nardi, 'Jerusalem Light Rail Golden Line Approved' (15 December 2020) <<https://en.globes.co.il/en/article-jerusalem-light-rail-golden-line-approved-1001353221>>; Emek Shaveh, Maps 'Sites Under Development in Jerusalem's Historic Basin' (14 June 2021) <<https://emekshaveh.org/en/development-historic-basin/>>

22 Nir Hasson, 'Israel Approves Extending Tel Aviv-Jerusalem Line to Western Wall, Over Experts' Objections' *Haaretz* (18 February 2020) <www.haaretz.com/israel-news/.premium-israel-approves-extending-tel-aviv-j-lem-line-to-kotel-over-experts-objections-1.8555367>; Emek Shaveh, Maps 'Sites Under Development in Jerusalem's Historic Basin' (14 June 2021) <<https://emekshaveh.org/en/development-historic-basin/>>

23 Emek Shaveh, Maps 'Sites Under Development in Jerusalem's Historic Basin' (14 June 2021) <<https://emekshaveh.org/en/development-historic-basin/>>

the Israeli settler-colonial regime.²⁴ It is worth highlighting that of the 20 development projects in Jerusalem listed by Emek Shaveh in 2021, six are developed and/or executed by the settler organisation Elad.²⁵ For the Israeli authorities, these developments help to attract more tourists to Jerusalem, thus spreading abroad the Zionist narrative and the idea of Israeli rights to Palestine's capital city. At the same time, tourist projects constitute a pretext for unlawful appropriation or destruction of Palestinian lands, houses and cultural heritage.



The back of the 'City of David' tourist map shows both sides of the Green Line, including Jerusalem, as a single unified territory – illustrating the goal of the Israeli settler-colonial regime. (© Al-Haq, 2022)

24 Ir Amim, 'Settlement Ring around the Old City, 2019' (13 February 2019) <www.ir-amim.org.il/en/node/2278>; Emek Shaveh, Maps 'Sites Under Development in Jerusalem's Historic Basin' (14 June 2021) <<https://emekshaveh.org/en/development-historic-basin/>>

25 Emek Shaveh, Maps 'Sites Under Development in Jerusalem's Historic Basin' (14 June 2021) <<https://emekshaveh.org/en/development-historic-basin/>>

1.2 Targeting Silwan

The Palestinian neighbourhood of Silwan is spread over 5,640 dunums of land (about 1,393 acres), located within Jerusalem's municipal boundaries at the southeast of the Old City walls.²⁶ Silwan includes nine neighbourhoods: Wadi Qadoun, Ras al-Amoud, Ein al-Loza, Abu Tor, a-Shayyah, Wasat al-Balad, Hart a-Tanak, Bir Ayoub, Hart al-Yaman, Al-Bustan, Wadi Hilweh and Wadi Yasul.²⁷ As in other Palestinian areas of the city, such as Sheikh Jarrah, residents have endured Israel's orchestrated policy of forced displacement.²⁸ Notably, Palestinian inhabitants of Silwan have been considered residents since the unlawful annexation of East Jerusalem in 1967, but they do not have Israeli citizenship.²⁹ Consequently, they are hindered from realising their rights and face discrimination in their access to municipal services and building permits.³⁰

Due to the highly restrictive zoning, planning and building policies imposed by Israel since 1967, Silwan is characterised by a high population density and a climate of tensions which exists between the indigenous Palestinians and Jewish settlers. For more than two decades, the two settler organisations, Elad and Ateret Cohanim, have actively sought to evict Palestinian families in Silwan to facilitate the illegal transfer in of settlers.³¹ As of early 2022, between 60,000 and 65,000 indigenous Palestinians live in the area alongside approximately 1,000 Jewish settlers under heavy protection.³² As Frère noted, "Silwan serves as a dynamic example of the ongoing oppression of the Palestinian people and the confiscation of their property in unlawfully annexed East Jerusalem, with

26 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3) 10.

27 Civic Coalition for Defending the Palestinians' Rights in Jerusalem 'Judaization and Forced Displacement in Jerusalem: The Case of Silwan' (2011).

28 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3).

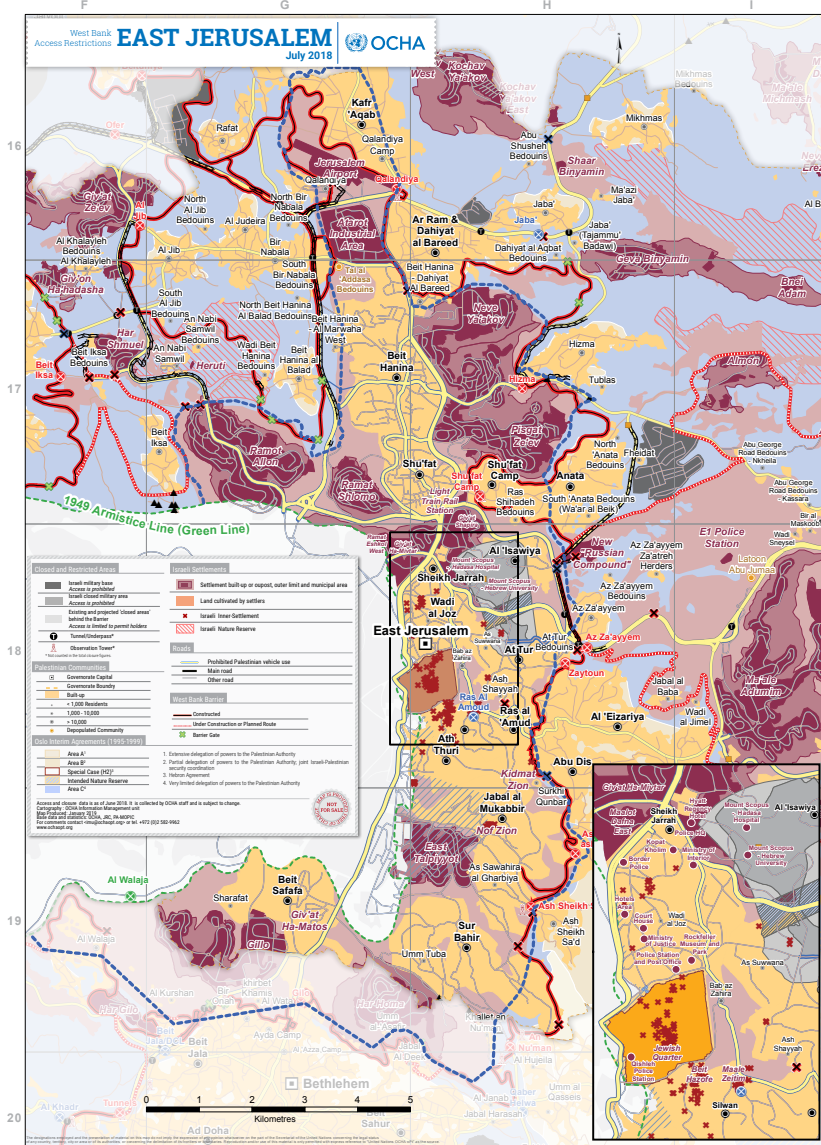
29 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (Emek Shaveh 2013) 33.

30 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3).

31 Daniel Eisenbud, 'Jewish Group Denies Palestinian Claim of "Ethnic Cleansing" in Jerusalem Neighborhood' *The Jerusalem Post* (26 August 2015) <www.jpost.com/arab-israeli-conflict/jewish-group-denies-palestinian-claim-of-ethnic-cleansing-in-jerusalem-neighborhood-413243>

32 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3) 10; Yonathan Mizrachi, Interview with the authors, 17 November 2021.

almost all Israeli Government institutions actively involved in settling and altering the character of Silwan".³³



33 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3) 12.



On the left, the Al-Aqsa Mosque; at the centre, the Old City walls; on the right, part of Silwan neighbourhood. (© Al-Haq, 2022)

The Israeli authorities have shown a specific eagerness to entrench their control over Silwan, with Naftali Bennet gloating in 2014 that “[t]here is now a Jewish majority in the City of David – formerly known as Silwan. That means the City of David will always remain in Israel. This is a historic event.³⁴ In addition to the ‘City of David’ site and its archaeological remains constituting a useful tool to substantiate Israel’s purported claim of historical legitimacy over Jerusalem, Silwan also appears to be a strategic location for Israel to strengthen its grip on East Jerusalem and pursue Judaisation of the area. Thousands of Palestinian residents pass through Silwan, in particular the neighbourhood of Wadi Hilweh, on their way

³⁴ ‘There is now a Jewish majority in the City of David – formerly known as Silwan. That means the City of David will always remain in Israel. This is a historic event.’ (Israel’s Minister for the Economy, Naftali Bennet, 2014). Nir Hasson, ‘Hidden Links Unearthed Between State, Settler Group at Israel’s Most Controversial Dig’ *Haaretz* (17 November 2014) <www.haaretz.com/.premium-links-between-state-and-settler-group-at-city-of-david-dig-1.5329984>

to work in North and West Jerusalem.³⁵ Judaising Silwan would isolate southern Palestinian neighbourhoods such as Abu Tor from other East Jerusalem neighbourhoods and limit Palestinians' freedom of movement, thus entrenching Israeli sovereignty over East Jerusalem.³⁶ Moreover, the illegal 'City of David' tourist complex enables territorial contiguity between the touristic settlement enterprise in the Old City and the settlements in East Jerusalem.³⁷

35 Emek Shaveh, 'Fissures and Cracks, Damage to Homes in the Wadi Hilweh Neighborhood of Silwan' (2020) 4.

36 Kelly Kunzl, 'Bulldozers Bring Heartbreak to Silwan' *The Electronic Intifada* (14 September 2021) <<https://electronicintifada.net/content/bulldozers-bring-heartbreak-silwan/33801>>; Emek Shaveh (n 35) 4.

37 Kunzl (n 36); Emek Shaveh, Submission to the OHCHR 'Israeli Activities in Archaeological Sites in East Jerusalem and the West Bank: Five Case Studies' (2016) <www.ohchr.org/Documents/Issues/CulturalRights/DeconstructionHeritage/NGOS/EmekShaveh.pdf>



The entrance of the illegal 'City of David' settlement. The symbol of the touristic settlement is a lyre, an element traditionally associated with King David. (© Al-Haq, 2022)

1.3 The 'City of David' Settlement

The 'City of David' is an illegal Israeli settlement and archaeological touristic site located in unlawfully annexed East Jerusalem. It is at the centre of the Palestinian neighbourhood of Silwan, outside Jerusalem's city walls close to Dung Gate. Zionist organisations allege,³⁸ that the site was formerly the royal city of King David. At the 'City of David', visitors are invited to take a guided tour of biblical Jerusalem, during which they can "journey through the underground tunnels through which the city was conquered",³⁹ and experience a water adventure trek,⁴⁰ when exploring "the underground mysteries of Hezekiah's Tunnel, where water has flowed since the time of the prophets".⁴¹ Meanwhile, Palestinian residents are prevented from

38 See Section 3.1.1.

39 'Tours of Biblical Jerusalem' (*City of David*) <www.cityofdavid.org.il/en/tours/city-david/city-david-tours-biblical-jerusalem>

40 "The tour continues underground to the Gihon Spring, the major water source of Jerusalem for over 1,000 years. Visitors seeking adventure can trek through knee deep water in King Hezekiah's 2,700-year-old water tunnel, one of the wonders of early engineering". 'About Us – Rediscover Biblical Jerusalem' (*City of David*) <www.cityofdavid.org.il/en/about>

41 'Tours of Biblical Jerusalem' (*City of David*) <www.cityofdavid.org.il/en/tours/city-david/city-david-tours-biblical-jerusalem>

freely accessing their now settler occupied public spaces, such as the Silwan pool (so-called 'Pool of Shiloah' or 'Siloam Pool'). Those living above the underground tunnels have seen their houses damaged by cracks caused by the tunnel excavations. All Palestinian residents routinely see their daily life ruined in some way by the expansion of the unlawful Israeli Jewish settlements and the administrative and physical violence that ensues.

In 1970, the Jerusalem Municipality approved the designation of approximately 110 hectares of land surrounding the Jerusalem city walls as a national park.⁴² This was somewhat unusual given that the national park included the densely populated Palestinian neighbourhood of Wadi Hilweh and the archaeological site of the so-called 'City of David'.⁴³

In 1997, the Ir David Foundation (also known by the acronym Elad, meaning 'City of David'), a private settler organisation, took over the management of the archaeological site.⁴⁴ Elad became the sole operative of the national park in 2005.⁴⁵ Since then, Elad has developed the 'City of David' settlement in the national park into a tourist visitor centre, shop, amphitheatre, and underground water tunnel trek. Elad has further plans to build a six storey Kedem visitor centre, create a replica 'King David' garden, link the 'City of David' by cable car to other key attractions on the Jewish tourist trail and build a suspension bridge.⁴⁶ A tourist train brings tourists from Jaffa Gate through the Armenian and Jewish Quarters to the Dung Gate.⁴⁷ Meanwhile, indigenous Palestinians living in Silwan are systematically denied building permits, preventing the natural growth of the village because of the location of their properties in the national park.⁴⁸

Elad's objective is to use the archaeological remains in the Palestinian

42 Local Master Plan No. 6.

43 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3) 10-11.

44 'Shalem Plan Overview, The Plan to Reveal Ancient Jerusalem' (Emek Shaveh 2020) 3.

45 The Ir David Foundation <<http://www.cityofdavid.org.il/en/The-Ir-David-Foundation>>

46 See Section 2.3 below.

47 'New! Old City Train to the City of David' (*City of David*) <www.cityofdavid.org.il/en/news/new-old-city-train-city-david>

48 'Israeli Forces Deliver 13 Demolition Notices to Palestinian Neighbourhood in Jerusalem' *Ma'an News Agency*, (10 December 2016) <www.maannews.com/Content.aspx?id=774349>

neighbourhood of Silwan to support Israel's political claim over Jerusalem, Judaise the space and forge links with Jewish tourists through education and tourism programmes at the 'City of David' settlement.⁴⁹ Presenting a Zionist Jewish tourism narrative operates in parallel with the State goals of inviting Jews to move to Israel and colonise unlawfully appropriated Palestinian lands.⁵⁰ Elad concurrently operates a settlement programme deep into the heart of the picturesque Palestinian hilltop neighbourhood of Silwan and forcing the removal of Palestinian families. In doing so, the systematic erasure of the Palestinian past (through archaeology) and Palestinian present (through tourism) is an integral part of the colonisation and Judaisation of Silwan.

49 Johanna Mannergren Selimovic, Lisa Strombom, 'Whose Place?: Emplaced Narratives and the Politics of Belonging in East Jerusalem's Contested Neighbourhood of Silwan' (2015) 19(2) *Space and Polity* 191.

50 In the aftermath of the Charlie Hebdo attacks in France, Prime Minister Netanyahu stated: "You have the right to live in peace and quiet as equal citizens wherever you choose, including here in France... [there is]... an additional privilege...to join your Jewish brothers in our historical homeland in the land of Israel, the privilege to live in the free state, the only one of the Jewish people, the State of Israel". Anshel Pfeffer, 'The Jews Who Said "No Thank You" to Netanyahu' *Haaretz* (14 January 2016) <[www.haaretz.com/israel-news/.premium-1.697066?>](http://www.haaretz.com/israel-news/.premium-1.697066?)

1.4 Elad and its Funders

Elad was established in 1986, by the Zionist settler David Be'eri and former commander of an 'elite' Israeli military unit. The settler organisation has never hidden its goal; the "Jewish people ['] return to Jerusalem after 2,000 years".⁵¹ In other words, Elad aims at forcing the transfer of Palestinians out of their homes, which Be'eri argues, belong to former Jews who abandoned Silwan after the 1936 riots, replacing them today, with Israeli Jewish settlers. Elad considers the 'City of David' as 'an epicentre', and a 'national birthplace' for the Jewish people.⁵² This is a desperate attempt to forge the concept of continuity to ancient Jerusalem and present archaeological findings as proof of an ownership of the past and a claim to the present.⁵³ In 1998, Elad spokesperson Yigal Kaufman outlined:

Our aim is to Judaize East Jerusalem... The City of David is the most ancient core of Jerusalem, and we want it to become a Jewish neighborhood.⁵⁴

In 2007, Israel's Registrar of Non-Profit Organisations reported that Elad took in USD \$7 million in 2005. Elad has long refused to name its donors, leading the Registrar to consider "demanding the dissolution of Elad".⁵⁵ Notwithstanding, it has since emerged that Elad's donors include Lev Leviev, a diamond minor in Angola (LLD Diamonds), the Greater Miami Chapter of Friends of the IDF, Farleigh International Ltd, Onion Foundation, the Smolokowski Foundation Lichtenstein, Ovington Worldwide Ltd, Leiston

51 'The Ir David Foundation' (City of David) <www.cityof david.org.il/en/The-Ir-David-Foundation>

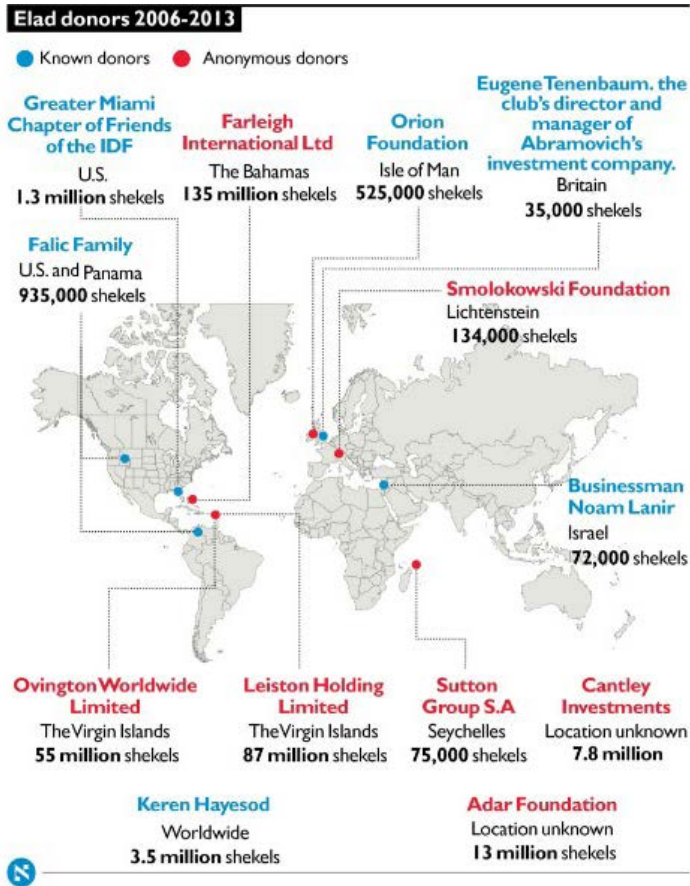
52 Johanna Mannergren Selimovic, Lisa Strombom, 'Whose Place?' (n 49) 194.

53 'The Ir David Foundation' (n 51). The City of David website explains the beginnings of the enterprise when David Be'eri the commander of an elite military unit was inspired by the former archaeological excavations in occupied East Jerusalem and decided to set up the 'City of David': 'When David Be'eri (David'le), commander of an elite military unit, first visited the City of David in the mid-1980s, the city was in such a state of disrepair and neglect that the former excavations that had been conducted in the area were once again concealed beneath garbage and waste. Inspired by the incredible archaeological significance of the site, and the longing of the Jewish people to return to Jerusalem after 2,000 years, David left his army career to establish the Ir David Foundation.'

54 Joel Greenberg, 'Settlers Move into Four Homes in East Jerusalem' *New York Times* (9 June 1998) <www.nytimes.com/1998/06/09/world/settlers-move-into-4-homes-in-east-jerusalem.html>

55 Adina Hoffman, 'Archaeological Digs Stoke Conflict in Jerusalem' *The Nations* (20 July 2008) <www.thenation.com/article/archive/archaeological-digs-stoke-conflict-jerusalem/>

Holding Ltd, Sutton Group SA, Cantley Investments, Karen Hayesod, Adar Foundation, Falic family and Noam Lanir, and Roman Abramovich, owner of Millhouse Investments and Chelsea Football Club.⁵⁶



Elad donors (Haaretz)⁵⁷

56 Ahdaf Soueif, 'The Dig Dividing Jerusalem' *The Guardian* (26 May 2010) <www.theguardian.com/world/2010/may/26/jerusalem-city-of-david-palestinians-archaeology>

57 Uri Blau, Nir Hasson, 'Right-wing Israeli Group Elad Received Millions from Shadowy Private Donors, Donations to the NGO, Which Champions Jewish Settlement in East Jerusalem, Topped \$115 Million Over Eight Years, Much From Companies Based in Global Tax Shelters' *Haaretz* (6 March 2016) <www.haaretz.com/settlementdollars/.premium-1.707158>

It has been reported that Russian-Jewish billionaire Roman Abramovich is Elad's largest funder, with donations between NIS 350 million between 2005 and 2018.⁵⁸ Nearly half of the donations Elad received between 2005 and 2018 came from four companies registered in the tax haven of the British Virgin Islands (BVI). Roman Abramovich appears in the FinCEN Files as the ultimate beneficial owner of three of the BVI companies, and in control of the fourth.⁵⁹ The vast hidden wealth of Russian oligarchs offers opportunities to influence politics and advance the settler-colonial enterprise.⁶⁰ Elad relies on donors to fund its work and, without those funds, Elad would not have been able to so quickly and successfully strengthen the Jewish presence in the Palestinian neighbourhood.⁶¹

Aside from being one of the main funders of Elad,⁶² Abramovich also makes significant donations to other Jewish causes.⁶³ Even as other countries added Roman Abramovich to their sanctions list of Russian oligarchs with ties to the Russian government and to President Putin,⁶⁴ (for example the UK government and the European Union),⁶⁵ Israel sought to protect

58 Uri Blau, 'Companies Linked to Roman Abramovich Donated \$100 million to E. Jerusalem Right-Wing Group' *Hareetz* (21 September 2020) <www.haaretz.com/israel-news/.premium-companies-linked-to-roman-abramovich-donated-100-million-to-right-wing-group-1.9173187>

59 Uri Blau, 'FinCEN Files Show Roman Abramovich Helped Fund Israeli Settlement' *OCCRP* (22 September 2020) <www.occrp.org/en/the-fincen-files/fincen-files-show-roman-abramovich-helped-fund-israeli-settlement>

60 Anders Åslund, 'Money laundering involving Russian individuals and their effect on the EU' *Atlantic Council* (29 January 2019) <www.atlanticcouncil.org/commentary/transcript/money-laundering-involving-russian-individuals-and-their-effect-on-the-eu/>

61 Uri Blau, 'FinCEN Files Show Roman Abramovich Helped Fund Israeli Settlement' *OCCRP* (22 September 2020) <www.occrp.org/en/the-fincen-files/fincen-files-show-roman-abramovich-helped-fund-israeli-settlement>

62 Al Jazeera, 'Chelsea Owner Abramovich 'Donated \$100m' to Israeli Settler Group' (22 September 2020) <www.aljazeera.com/news/2020/9/22/chelsea-fc-owner-donates-100m-to-israeli-settler-group-2>

63 Middle East Eye, 'Russia-Ukraine War: Israeli Figures 'Appealed to US' Not to Sanction Roman Abramovich' (1 March 2022) <www.middleeasteye.net/news/russia-ukraine-war-israel-figures-appeal-us-not-sanction-abramovich>

64 BBC, 'Ukraine War: Roman Abramovich Sanctioned by UK' (10 March 2022) <www.bbc.com/news/uk-politics-60690362>

65 Daniel Boffey and Jennifer Rankin, 'EU Hits Roman Abramovich with Sanctions in New Action Against Russia' *The Guardian* (15 March 2022) <www.theguardian.com/world/2022/mar/15/eu-roman-abramovich-sanctions-russia-tv-protester>

the Russian oligarch from sanctions.⁶⁶ Israeli figures wrote to the U.S. ambassador urging him not to sanction the Russian billionaire following reports that the U.S. was assembling a sanctions list before Russia invaded Ukraine.⁶⁷ In response, a senior U.S. official warned Israel not to be the last haven for 'dirty money' fuelling Putin's wars.⁶⁸ These donations of 'dirty money' not only fuel Putin's wars but they also fund the illegal 'City of David' settlement.

Another significant overseas donor is Friends of Ir David, which is registered as a non-profit company in New York and thus provides a tax write-off for its American donors. Form 990 filings for Friends of Ir David state that the charities aim is:

To create a charitable fund to provide financial aid and other reasonable assistance to benefit the welfare of the people of the old city of Jerusalem and the ancient City of David, to teach about the history and uncover the archaeology of the old city of Jerusalem and the ancient City of David, and to purchase property for use in archaeological discovery and beautification of the ancient City of David.⁶⁹

In 2015, the Friends of Ir David granted Elad \$5,480,000 USD for ongoing archaeological excavations in the illegal 'City of David' settlement.⁷⁰ Al-Haq's researchers documented a number of additional donors from plaques on the wall around the settlement, commemorating those who have partnered with Ir David Foundation in 'Rebuilding Jerusalem'. These include Roland and Dawn Arnall; Dr. Irving and Cherna Moskowitz – notably funds donated from Dr. Irving and Cherna Moskowitz derive from a

66 Shira Rubin, 'Israel's Holocaust Museum is so Dependent on a Russian Oligarch That It Wants to Protect Him from Sanctions' *Washington Post* (2 March 2022) <www.washingtonpost.com/world/2022/03/02/israel-russia-oligarch-yad-vashem-ukraine/>

67 *Ibid.*

68 Ben Samuels, 'Senior U.S. Official Warns Israel: Don't Be Last Haven for Dirty Money Fueling Putin's Wars' *Haaretz* (12 March 2022) <www.haaretz.com/israel-news/.premium-senior-u-s-official-warns-israel-don-t-be-last-haven-for-dirty-money-fueling-putin-1.10670139>

69 ProPublica, 'Friends of Ir David Inc', 'Full Text of "Form 990" for Fiscal Year Ending Dec. 2015' <<https://projects.propublica.org/nonprofits/organizations/113466176/201613189349300606/IRS990>>

70 *Ibid.*

charitable bingo operation in Hawaiian Gardens in California –;⁷¹ the David H. and Carol Feinberg Foundation; and Nissan and Louise Khakshouri. All of the named donors who had plaques dedicated to them were located in prominent parts of the premises. In a cavernous area at the entrance to the water tunnel, another display of plaques is dedicated to “our partners in the rebuilding of Jerusalem”.



Plaques dedicated to Elad's donors (© Al-Haq, 2019)



71 Margot Patterson, 'Blocking Mideast Peace, Bingo Tycoon Subsidizes Extremism in Israel' *National Catholic Reporter* (18 October 2002) republished on *StopMoskowitz: The Coalition for Justice in Hawaiian Gardens and Jerusalem*, <<http://stopmoskowitz.org/article0045.shtml>>



2

Colonising Silwan

There is now a Jewish majority in the City of David – formerly known as Silwan. That means the City of David will always remain in Israel. This is a historic event.

Israel's Minister for the Economy, Naftali Bennet, 2014⁷²

2.1 Organising a Demographic Change: Erasure of Palestinian Presence and Transfer of Settlers into the 'City of David'

As introduced in Chapter 1, Israeli authorities and their allied private and public companies have conducted a decades-long strategy to erase the Palestinian presence from Silwan. Together they have used an extensive set of unlawful policies and practices to further Israel's colonial aim of

⁷² Hasson, 'Hidden Links Unearthed Between State, Settler Group at Israel's Most Controversial Dig' (n 34).

entrenching full control over Jerusalem.⁷³ The illegal colonial settlement of the 'City of David', run by Elad is no exception and has entailed grave consequences for the residents of Silwan. Palestinians there have faced dispossession, demolitions of their houses amounting to forced evictions, and the fragmentation of their neighbourhood as coercive environments to force their transfer.⁷⁴ Meanwhile, the Israeli settler community has grown to about 1,000 individuals and Palestinian residents have been forced to confront the settler's violence.⁷⁵



The 'City of David' settlement reveals a timeline outlining the settler-colonialist markers (City of David)⁷⁶

Meanwhile, an interactive map on the 'City of David' website with a sliding scale zooms in and out of modern day Jerusalem and is overlaid with an emergent translucent artist's impression of a 'City of David', to emphasise

73 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3).

74 Farah (n 2); Qumsieh (n 1).

75 Yonathan Mizrachi, Interview with the authors (17 November 2021); Section 2.1.2.

76 'Interactive Jerusalem Virtual Tour' (*City of David*) <www.cityof david.org.il/en/virtual-tours/interactive-jerusalem-virtual-tour>

the historical 'authenticity' of the annexed city.⁷⁷ The 'City of David' website presents a 'historical timeline' explaining that Jews were 'banned' from visiting their Holy Sites from 1948 to 1967, making no reference to the ethnic cleansing of Palestinian's during the Nakba, acts which at the time, and still do, amount to war crimes and crimes against humanity of forcible transfer.⁷⁸ It falsely presents the 1967 six-day war and unlawful occupation of the Palestinian territory, as "the liberation of Jerusalem".⁷⁹ The timeline finishes by explaining that:

In 1991, Jews began to return and live on the City of David hill. Today, there are around forty families, and the 'City of David Visitors Centre' operates onsite to bring as many people to visit and experience the place where [...] it all began.⁸⁰

This narrative presents the crime of forcible transfer of Jewish settlers into the 'City of David' hill, in Palestinian territory, as the crescendo of the 'City of David' cultural experience.

2.1.1 Restrictive Building Policies, Demolition of Houses and Forced Evictions

Roots of Silwan Residents' Forced Evictions: Israel Restrictive Zoning and Planning Policies

To establish the illegal 'City of David' settlement, Elad has primarily relied on Israel's severely restrictive network of discriminatory zoning, planning and housing policies, that was instituted to prevent the development of Palestinian neighbourhoods in Jerusalem while encouraging the

77 'Interactive Jerusalem Virtual Tour' (*City of David*) <www.cityof david.org.il/en/virtual-tours/interactive-jerusalem-virtual-tour>

78 'City of David Timeline' (*City of David*) <www.cityof david.org.il/en/virtual-tours/city-david-time-line>

79 *Ibid*; United Nations Special Rapporteur Michael Lynk, characterised Israel's unending occupation of the Palestinian territory as an illegal occupation. See 'Israel Must Face New International Legal Push to End Illegal Occupation of Palestine, UN Expert Says' <www.ohchr.org/en/press-releases/2017/10/israel-must-face-new-international-legal-push-end-illegal-occupation>

80 'City of David Timeline' (n 77).

establishment of Israeli Jewish settlements.⁸¹ Through an unlawful extension of its domestic law to the OPT, Israel has applied in Jerusalem its domestic Planning and Building Law 5725-1965, which establishes a planning process regulating all building and land use management in Israel and a general framework for land planning.⁸²

According to Israel's official plans, 35 percent of unlawfully annexed East Jerusalem territory has been zoned for the construction of Israeli Jewish settlements; 22 percent has been designated as a 'green area' where Palestinian construction is prohibited; 30 percent does not have a Local Planning Scheme, which is necessary for the granting of building permits; and only 13 percent of zoned land is dedicated to Palestinian construction.⁸³ In the area zoned for Palestinian buildings, construction has often already reached or exceeded its legal limit. In the 30 percent of East Jerusalem built in the absence of Local Planning Schemes, houses are at risk of being demolished for lacking building permits.⁸⁴ This area includes the Silwan neighbourhoods of Al-Bustan and Wadi Hilweh, where thousands of Palestinians live.⁸⁵ To offset the lack of a Local Planning Scheme and to avoid the ensuing risk of demolitions, residents are forced to submit their own planning schemes that may, if approved, allow them to obtain building permits.⁸⁶ The process is extremely long, complex and expensive, as well as intrinsically discriminatory – Palestinian planning approval for *existing* communities averages around ten years, while it takes around three

81 'Knesset 'Adding Insult to Injury' with Approval of Kaminitz Law' (*Adalah*, 12 April 2017) <www.adalah.org/en/content/view/9074>; Mustafa Abu Sneineh, 'Israel's Kaminitz Law: Can Mansour Abbas Save Palestinian Homes from Demolition?' *Middle East Eye* (22 June 2021) www.middleeasteye.net/news/israel-palestinian-citizen-kaminitz-law-home-demolition; Kunzl (n 36).

82 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3) 14.

83 Human Rights Watch, 'Separate and Unequal, Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories' (2010) 131.

84 *Ibid.*, 132.

85 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3); Human Rights Watch, 'Separate and Unequal' (n 83) 132.

86 Ahmad El-Atrash, 'Right to Develop, Planning Palestinian Communities in East Jerusalem' (United Nations Human Settlements Programme 2015) 14.

years for Jewish *new* communities.⁸⁷ Moreover, it is subject to political considerations, as the Israeli Ministry of Interior can free the plan at its own discretion.⁸⁸



Part of the Silwan neighbourhood seen from the illegal 'City of David' settlement (© Al-Haq, 2022)

In addition to this intricate process, the validation of a planning scheme is conditional on the 1972 demographic ratio. In 1973, the Government of Israel adopted a recommendation from the Inter-Ministerial Committee to Examine the Rate of Development for Jerusalem (also known as the 'Gafni Committee'), which called for maintaining the demographic 'balance' at its 1972 ratio of 73.5 percent Israeli Jews to 26.5 Palestinians.⁸⁹ Israeli policies

⁸⁷ Centre on Housing Rights and Evictions and BADIL Resource Center for Palestinian Residency and Refugee Rights, 'Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine' (2005) 127.

⁸⁸ Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3) 4.

⁸⁹ Centre on Housing Rights and Evictions and BADIL Resource Center for Palestinian Residency and Refugee Rights (n 87) 126.

have largely followed this recommendation ever since.⁹⁰

As for restrictive policies applied in Silwan specifically, in 1974 Israel declared the area encircling the Old City walls – about 1,110 dunams – a national park, despite the zone being a densely populated Palestinian residential neighbourhood. The park comprises nearly all of the Wadi Hilweh neighbourhood of Silwan.⁹¹ Two years later, in 1976, the Jerusalem Municipality approved the Local Master Plan No. 9 which zones the entire neighbourhood of Wadi Hilweh as a 'special open area' and bans any construction of residential or public buildings in the zone. Building for any other activity requires special approval from the municipal planning authorities. Building is only allowed to expand existing structures for the purpose of improving sanitation.⁹² In contrast, the Jewish neighbourhood of Yemin Mosheh, also situated within the national park but on the other side of the Green Line, was zoned as a 'special residential area' where construction of residential and public buildings is permitted, contingent on preservation considerations.⁹³ Due to this policy, almost all constructions in Wadi Hilweh – which are necessary given the population's natural growth rate – have been carried out without permits.⁹⁴

In 2007, the Jerusalem Municipality initiated a master plan for the Wadi Hilweh neighbourhood and the slopes of Jabal Sahyoun (also known as Mount Zion).⁹⁵ While the Palestinian residents' involvement was not sought, Elad took part in the planning process and financially contributed to it.⁹⁶ The plan dedicates 70 percent of the zone for parking lots, parks, antiquity sites, in order to further develop tourism in the area.⁹⁷ For the first time, the plan included a proposal to zone areas in the neighbourhood for

90 Ahmad El-Atrash, 'Right to Develop, Planning Palestinian Communities in East Jerusalem' (United Nations Human Settlements Programme 2015) 5.

91 'Jerusalem Walls National Park' *B'Tselem*, (16 September 2014) <www.btselem.org/jerusalem/national_parks_jerusalem_walls>

92 *Ibid.*

93 *Ibid.*

94 *Ibid.*

95 *Ibid.*

96 *Ibid.*

97 *Ibid.*

residential purposes, retroactively approving most of the existing buildings – both for Palestinians and settlers.⁹⁸

According to an OCHA 2019 report, at least one third of Palestinian homes in East Jerusalem do not have an Israeli building permit, putting at risk of displacement more than 100,000 residents.⁹⁹ Indeed, the 'illegality' status of the Palestinian buildings puts them at risk of being demolished at any time under Israeli law. However, Palestinians are disproportionately targeted by demolitions, while illegally built Jewish settlements are more likely to be retroactively approved.¹⁰⁰ Palestinians also face other penalties for illegal housing, such as expensive fines, the payment of which does not exclude the risk of demolition.¹⁰¹

This brutal policy has worsened in the last few years. Until 2017, the Israeli authorities had to submit a request to court to issue a demolition order. However Amendment 116 to the Planning and Building Law, also known as the Kaminitz Law,¹⁰² expands the executive authorities' power to enforce demolition and eviction orders, while imposing severe constraints on judicial interventions in the cases.¹⁰³ The Kaminitz Law also included a sharp increase in fines and the length of prison sentences, all of which serve to penalise any building violations.¹⁰⁴ Moreover, in May 2018, the Israeli government adopted resolution No. 3790 entitled "Reducing Economic and Social Disparities and Promoting Economic Development in

98 *Ibid.*

99 OCHA, 'Humanitarian Bulletin, Occupied Palestinian Territory' (OCHA 2019) 10.

100 Centre on Housing Rights and Evictions and BADIL Resource Center for Palestinian Residency & Refugee Rights (n 87) 127.

101 OCHA, 'Humanitarian Bulletin, Occupied Palestinian Territory' (OCHA 2019) 10.

102 Draft Planning and Building Law (Amendment No. 109), 5776-2016 (the "Kaminitz Law").

103 ACRI et al, 'Kaminitz Law (Draft Planning and Construction Law) (Amendment 109) 5776-2016', Position Paper (29 January 2017) 6; Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3) 37; 'Knesset "Adding Insult to Injury" with Approval of Kaminitz Law' (Adalah, 12 April 2017) <www.adalah.org/en/content/view/9074>; Mustafa Abu Sneineh, 'Israel's Kaminitz Law: Can Mansour Abbas Save Palestinian Homes from Demolition?' *Middle East Eye* (22 June 2021) <www.middleeasteye.net/news/israel-palestinian-citizen-kaminitz-law-home-demolition>

104 'Demolitions in East Jerusalem, 2020 Annual Summary' (Ir Amin 2021) 3.

East Jerusalem",¹⁰⁵ according to which the government approved a budget of US\$ 650 million to reinforce Israel's sovereignty in unlawfully annexed Jerusalem. The resolution provided for an Israeli land title settlement and registration plan for East Jerusalem.

The plan provides that 50 percent of the land in East Jerusalem would be registered by the end of 2021, and the rest by 2025.¹⁰⁶ The resolution explicitly aims at entrenching the Israeli *de facto* annexation of East Jerusalem; the introduction stating that the resolution was adopted "[i]n light of the need to integrate the Arab residents of East Jerusalem in the Israeli society and economy".¹⁰⁷ Consequently, the Israeli zoning and planning policies carried out since 1967 have made it extremely difficult for Palestinians to obtain any building permits. This has significantly facilitated the wave of demolition orders that have faced Palestinian residents of Silwan in the last couple of decades.

Demolition of Houses and Forced Evictions

Elad and the Israeli authorities have largely relied on restrictive zoning and planning policies, as described in the previous subsection, to issue demolition orders targeting Palestinian houses and to progressively expand the illegal 'City of David' settlement. The inhabitants of the Silwan neighbourhood of Al-Bustan first started to receive demolition orders in 2005.¹⁰⁸ Back then, the municipality urged an evacuation of the area in order to build the tourist park named King David's Valley.¹⁰⁹ Redesigned in 2010 by the municipality's 'King's Garden' Plan, the implementation of the project then slowed down before its revitalisation in recent years, which

105 'Reducing economic and social disparities and economic development in East Jerusalem' Resolution No. 3790 (2018) <www.gov.il/he/departments/policies/dec3790_2018> (in Hebrew).

106 Community Action Center - AlQuds University, Civic Coalition for Palestinian Rights in Jerusalem, Palestinian Human Rights Organisation Council, 'Joint Urgent Appeal to the United Nations Special Procedures on Israel's Permanent Illegal Annexation of Jerusalem' (8 November 2021) <www.alhaq.org/cached_uploads/download/2021/11/13/joint-urgent-appeal-to-un-sp-land-title-settlement-in-jerusalem-as-sent-1636786906.pdf>.

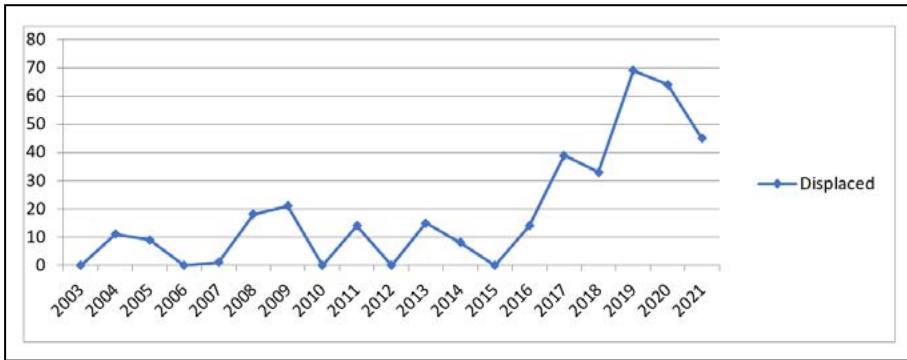
107 'Reducing economic and social disparities and economic development in East Jerusalem' Resolution No. 3790 (2018) <www.gov.il/he/departments/policies/dec3790_2018> (in Hebrew).

108 Kunzl (n 36).

109 Kunzl (n 36).

coincided with an acceleration in forced evictions.¹¹⁰

The number of demolitions in East Jerusalem grew significantly after the Kaminitz Law came into full effect in 2019.¹¹¹ According to Al-Haq's documentation, the number of Silwan residents that were displaced because of house demolitions more than doubled in 2019 compared to 2018. The number remained stable in 2020¹¹² with some 56 percent of those displaced in 2019 and 2020 being children.¹¹³ In 2021, Al-Haq documented 21 house demolitions in Silwan, leaving 93 people displaced, including 51 children and as of November 2022, Al-Haq documented 10 house demolitions in Silwan, displacing 41 people including 22 children.



Number of Palestinian residents displaced because of demolition orders as of the beginning of October 2021 (Al-Haq)

Another consequence of the Kaminitz Law is the rise in the number of 'self-demolitions'.¹¹⁴ Families who have been issued with a demolition order are forced to demolish their own home to avoid extortionate fines, which supposedly cover the demolition costs incurred by the municipality.¹¹⁵

¹¹⁰ See Section 2.3.3; Kunzl (n 36).

¹¹¹ 'Demolitions in East Jerusalem, 2020 Annual Summary' (n 104).

¹¹² According to Al-Haq's documentation, 33 Palestinians living in Silwan were displaced because of house demolitions in 2018; 69 in 2019; 64 in 2020.

¹¹³ In 2019, 41 of the 69 displaced Palestinians from Silwan were children. In 2020, there were 33 children out of 64 displaced persons.

¹¹⁴ '61 Demolitions in East Jerusalem since Start of 2021 While Threat of Mass Demolition in Al Bustan, Silwan Looms' *Ir Amim*, (14 June 2021) <<https://www.ir-amim.org.il/en/node/2672>>

¹¹⁵ *Ibid.*

Depending on the zoning and Local Planning Schemes, Silwan neighbourhoods are at risk of house demolitions for varying reasons. As mentioned in the previous subsection, most houses in Al-Bustan – around a hundred – are considered illegal, rendering the neighbourhood where about 1,500 indigenous Palestinians live and where the municipality intends to build the 'King's Garden', at risk of largescale demolition.¹¹⁶ In other areas, for instance Batn al-Hawa, the Israeli authorities have forcibly displaced Palestinian residents based on the allegation that the land is owned by a Jewish trust previously active in the zone a century ago.¹¹⁷

2.1.2 Transfer of Jewish Settlers and Violence

As of late 2021, approximately 1,000 Jewish-Israeli settlers live in Silwan taking up residence in around 100 buildings in the neighbourhood.¹¹⁸ Elad's plan to 'Judaize' Silwan, has been trenchantly supported by the Israeli authorities who aim at increasing the number of settlers in East Jerusalem. Between 1991 and 2018, Jerusalem municipal planners granted only 9,536 building permits to Palestinians, while approving more than 48,000 permits for Israeli-Jewish residents, including 21,834 permits in settlements.¹¹⁹

Notably, Elad has cooperated with the Jewish National Fund (JNF) to conduct legal proceedings aimed at the eviction of Palestinian families. The JNF is a quasi-governmental Israeli agency which played a major role prior in the Zionist colonisation of Palestine, prior to Israel's creation in 1948, through purchasing land, displacing the native Palestinian residents and establishing

116 Aseel Jundi, 'Palestinian Man Resists Self-Demolition of Jerusalem Home' *Middle East Eye* (4 October 2021) <www.middleeasteye.net/news/israel-palestine-silwan-palestinian-resists-self-demolish-home-jerusalem>; '61 Demolitions in East Jerusalem since Start of 2021' (n 114); see Section 2.3.1. below.

117 'Israeli Court Delays Ruling on Expulsion of Families in Silwan' *Al Jazeera* (26 May 2021) <www.aljazeera.com/news/2021/5/26/israeli-court-delays-appeal-session-of-families-in-silwan>

118 Yonathan Mizrachi, Interview with the authors, 17 November 2021.

119 'Jerusalem Municipal Data Reveals Stark Israeli-Palestinian Discrepancy in Construction Permits in Jerusalem' *Peace Now*, (12 September 2019) <<https://peacenow.org.il/en/jerusalem-municipal-data-reveals-stark-israeli-palestinian-discrepancy-in-construction-permits-in-jerusalem>>

Jewish settlements.¹²⁰ The JNF is still active in aiding and abetting the distribution of illegally appropriated Palestinian land, now reclassified as 'State land', as it owns 13 percent of the land in Israel. In the OPT, the JNF has conducted campaigns to evict Palestinian residents, including in Silwan.¹²¹ In October 2020, a lawsuit revealed that Elad, under JNF's name, was able to bring eviction proceedings against indigenous Palestinian residents.¹²² According to a decade-long agreement between Elad and the JNF, Elad funds and manages the eviction proceedings, and in return receives the property after the eviction.¹²³ Once Elad has taken hold of the property, it organises the transfer in of Jewish-Israeli settlers. Police officers and private security guards accompany the settlers' arrival in the Palestinian neighbourhood.¹²⁴

Moreover, Elad has relentlessly harassed Palestinian residents to realise its goal of transforming Silwan into a Jewish neighbourhood.¹²⁵ In 2015, in an affidavit to Al-Haq, a resident of the Wadi Hilweh neighbourhood beside the 'City of David' settlement, described how Elad had taken over four Palestinian houses on the street where the 'City of David' tourist centre is located. Elad produced false documentation asserting that the resident's house belonged to a fictitious character named 'Muhammad Salim Darwish' who allegedly fled to Amman and claiming that as a result,

120 'Elad, the Jewish National Fund and the US Taxpayer-Subsidized "Judaization" of Silwan' (*Institute for Middle East Understanding*, 28 October 2014) <<https://imeu.org/article/elad-the-jewish-national-fund-the-us-taxpayer-subsidized-judaization-of-sil>>

121 'Jewish National Fund Helps Settlers Plant Roots in Silwan' (T'ruah, The Rabbinic Call for Human Rights) <<https://web.archive.org/web/20141109035305/http://www.truah.org/issuescampaigns/supportpeace/insideneighborhoods/silwan/jnf-in-silwan.html>>

122 'A New Proceeding Reveals That Elad Is Using the JNF's Name to Conduct the Eviction Proceedings of the Sumarin Family' *Peace Now*, (13 October 2020) <<https://peacenow.org.il/en/a-new-proceeding-reveals-that-elad-is-using-the-jnfs-name-to-conduct-the-eviction-proceedings-of-the-sumarin-family>>

123 'A New Proceeding Reveals That Elad Is Using the JNF's Name to Conduct the Eviction Proceedings of the Sumarin Family' (n 122).

124 Nir Hasson, 'Settlers Move Into 25 East Jerusalem Homes, Marking Biggest Influx in Decades' *Haaretz* (30 September 2014) <www.haaretz.com/.premium-settlers-move-into-25-e-j-lem-homes-1.5309362>

125 El'Ad spokesperson Yigal Kaufman affirmed in 1998: "Our aim is to Judaize East Jerusalem... The City of David is the most ancient core of Jerusalem, and we want it to become a Jewish neighborhood". Joel Greenberg, 'Settlers Move into Four Homes in East Jerusalem' *New York Times* (9 June 1998) <www.nytimes.com/1998/06/09/world/settlers-move-into-4-homes-in-east-jerusalem.html>.

the family home was in fact absentee property.¹²⁶ The same family was also subjected to extreme settler violence throughout the years as Elad tried to force their transfer. In 1990, settlers assaulted the uncle of the resident, beating him and stabbing him with an 'electricity [taser]'. Later a group of ten armed settlers and settler guards, accompanied by David Be'eri, beat members of the family to the point where the residents' sister, his sister's uncle and the uncle's wife were hospitalised.¹²⁷

Daily settler harassment and violence towards Palestinian residents enables the settlement growth in Silwan, which is sporadic, but enabled by extreme Israeli security. One child from Silwan described to Al-Haq how a settler boy sprayed pepper spray into her and her brother's eyes and how he tried to gouge out her left eye with his hand.¹²⁸ She was afraid to play in the park near the 'City of David' settlement for fear that he would return. Another man relayed to Al-Haq how his brother, a child, was surrounded by three young settler men who sprayed his face with pepper spray and as he collapsed, carried him and threw him off the road down a slope, where he rolled until he grabbed a tree.¹²⁹



Settlers in Silwan (© Al-Haq)

Following the attack the child was hospitalised suffering from dizziness, pains in his head and right arm, shortness of breath and swelling in the left side of his face. Al-Haq also documented an incident where a 63-year-old man, returning to Silwan after his Saturday prayers at Al-Aqsa Mosque,

126 Al-Haq, Affidavit No 2015/10558.

127 *Ibid.*

128 Al-Haq Affidavit, 2013/8636.

129 Al-Haq Affidavit, 2012/8060.

was surrounded and attacked by approximately nine settler children, who pushed him and punched his face, leaving blue bruises under his eyes.¹³⁰ The media have also regularly reported attacks perpetrated by settlers against Palestinians living in Silwan. For instance, in August 2021, a Jewish settler brutally assaulted a 47-year-old Palestinian bus driver, inflicting cuts on his face and neck.¹³¹

Settlers are systematically supported by the police and security forces in their violence. Indeed, B'Tselem noted that police violence "is part of Israel's policy [...] to ensure Jewish supremacy in the city".¹³² A 17-year-old boy from Silwan reported to Al-Haq that he was stripped and severely beaten by security forces, who he reported were wearing helmets and green uniforms, and left him hospitalised from his injuries.¹³³ Another resident, a 48-year-old man, reported to Al-Haq that he witnessed the abuse of Palestinian residents by settlers and border guards, and that he had called the occupation police to ask them to intervene to stop the attack. After a long delay during which sound bombs and rubber bullets were fired and shot at residents, the occupation police put an end to the settlers' violence and the latter were taken to another settlement in a nearby street. Meanwhile, some of the Palestinian residents that had been injured during the assault, as well as witnesses who opposed the police's order to withdraw, were arrested.¹³⁴

In some cases, illegally transferred-in settlers move into buildings in which Palestinian families live on the other floors, increasing daily tensions in an already overcrowded neighbourhood.¹³⁵ A resident living underneath a

130 Al-Haq Affidavit, 2015/10550.

131 'Palestinian Bus Driver Injured in Jewish Settler Attack in Jerusalem' *Palestine Chronicle* (13 August 2021) <www.palestinechronicle.com/palestinian-bus-driver-injured-in-jewish-settler-attack-in-jerusalem/>

132 B'Tselem, "Abuse and Collective Punishment in al-'Esawiya, East Jerusalem" *Youtube* (19 May 2020) <www.youtube.com/watch?v=wsu394CrDSs&t=87s>; see also Eyal Hareuveni, 'This Is Jerusalem: Violence and Dispossession in al-'Esawiyah' (B'Tselem).

133 Al-Haq Affidavit 2015/10417.

134 Al-Haq Affidavit, 2020/37.

135 Patrick Kingsley, 'A House Divided: A Palestinian, a Settler and the Struggle for East Jerusalem' *The New York Times* (7 June 2021) <www.nytimes.com/2021/06/07/world/middleeast/east-jerusalem-house-divided.html>

settler outpost reported to Middle East Eye that settlers leak wastewater onto his house, and their children throw waste such as dirty diapers or stones at his children where they are playing.¹³⁶ According to the Palestinian author and editor of *The Palestine Chronicle*, Ramzy Baroud, "Jewish settler violence should not be analysed separately from the violence meted out by the Israeli army, but seen within the larger context of the violent Zionist ideology that governs Israeli society entirely".¹³⁷

2.1.3 Impact of the 'City of David' Settlement and its Archaeological Excavations on Residents: Morphing of Silwan

The development of the illegal 'City of David' settlement disrupts the residents' daily lives in many ways, including fragmenting the neighbourhood of Silwan. Some of the archaeological excavations conducted at the 'City of David' are underground, in networks of tunnels running beneath Palestinian homes. Approval for the excavations is not sought and Palestinian residents are often not even prewarned about the digging.¹³⁸ For over a decade, residents of the neighbourhood, in particular families living along Wadi Hilweh's main street, have reported damage to their houses.¹³⁹ Buildings show cracks and fissures in the walls and floors, and the stability of the buildings is affected.¹⁴⁰

Some inhabitants have been compelled to move out due to the severity of the damage. For instance, Abu Rmeleh's nephew, interviewed by Al Jazeera in July 2019, used to live in Wadi Hilweh until the ground of his house weakened so much that it barely supported the walls which had multiple,

136 Aseel Jundi, "Between Fire and Fuel": Palestinians in Jerusalem Town Face Eviction Orders' *Middle East Eye* <www.middleeasteye.net/news/palestine-israel-settlers-jerusalem-silwan-courts-remain-homes>

137 Ramzy Baroud, 'Killing Tariq: Why We Must Rethink the Roots of Jewish Settlers Violence' [2019] *Foreign Policy Journal* <www.foreignpolicyjournal.com/2019/07/26/killing-tariq-why-we-must-rethink-the-roots-of-jewish-settlers-violence/>

138 Emek Shaveh, 'Information for Visitors to the City of David National Park' (2019) 5 <https://emekshaveh.org/en/wp-content/uploads/2019/12/visitors_info_web_eng-1.pdf>; Mustafa Abu Sneh and Lubna Masarwa, 'Silwan, a Palestinian Community Torn Apart by Israel's Dig to Find "Lost City"' *Middle East Eye* (23 February 2018) <www.middleeasteye.net/news/silwan-palestinian-community-torn-apart-israels-dig-find-lost-city>

139 Emek Shaveh, 'Fissures and Cracks' (n 35) 3.

140 Emek Shaveh, 'Information for Visitors' (n 138) 5.

long cracks.¹⁴¹ Others have been forced to evacuate their homes for a few months, but returned despite the lack of repairs and the threat of more damage, for fear that if they did not move back in, settlers would take over their homes.¹⁴² The residents also expressed their concerns that moving elsewhere in the West Bank would jeopardise their Jerusalem residency status.¹⁴³



*The so-called 'Herodian Channel' is a 500-metre tunnel which runs beneath Palestinian homes.
(© Al-Haq, 2022)*

Residents have also been affected by the noise of digging and drilling as the excavations are reportedly carried out almost daily from 7am to 9pm.¹⁴⁴ An inhabitant has compared the noise of the digging to the sound of an earthquake striking the area.¹⁴⁵ "Since the City of David opened, life in Wadi

141 Mersiha Gadzo, 'How "Archaeological Settlements" Are Destroying Palestinian Homes' *Al Jazeera* (8 July 2019) <www.aljazeera.com/features/2019/7/8/how-archaeological-settlements-are-destroying-palestinian-homes>

142 Emek Shaveh, 'Fissures and Cracks' (n 35) 7; Abu Sneh and Masarwa (n 138).

143 Abu Sneh and Masarwa (n 138).

144 *Ibid.*

145 *Ibid.*

Hilweh has become unbearable”, said Fuad Mokhtar, a shop owner in Wadi Hilweh.¹⁴⁶

In 2019, the Israeli NGO Emek Shaveh documented damage to 38 housing units in the Wadi Hilweh neighbourhood of Silwan, where over 200 people live.¹⁴⁷ They confirmed that all the structures that have been damaged are located along the ‘Pilgrim’s Road’ excavation route.¹⁴⁸ However, the Israeli Antiquities Authorities and Elad have rejected any connection between the damages and the excavations.¹⁴⁹ According to Sami Arshied, a lawyer for the Palestinian residents, when the inhabitants asked the municipality to repair their houses, the municipality claimed it did not know what had caused the damage and that house refurbishment was not the municipality’s responsibility.¹⁵⁰

Not only have homes been materially damaged, but over the past decade, gaping pits have emerged in public areas.¹⁵¹ In 2010, several pits opened due to the archaeological excavations carried out by Elad and the Israeli Antiquities Authorities.¹⁵² Since then, Emek Shaveh has regularly reported the appearance of new pits and public spaces collapsing, including steps which caved in, leading to the Gihon Spring from the visitors’ centre, and the same occurrence to a parking lot in the middle of Wadi Hilweh street.¹⁵³ While the Jerusalem Municipality has conducted maintenance and stabilisation work in the aftermath of collapses, the excavations have not been permanently halted.¹⁵⁴

146 *Ibid.*

147 Emek Shaveh, ‘Fissures and Cracks’ (n 35) 5.

148 *Ibid.*, 3.

149 Emek Shaveh, ‘Information for Visitors’ (n 138) 5.

150 Abu Sneineh and Masarwa (n 138).

151 Emek Shaveh, ‘Fissures and Cracks’ (n 35) 8.

152 Nir Hasson, ‘Jerusalem Mayor to Retroactively Legalize East Jerusalem Buildings’ *Haaretz* (2 March 2010) <www.haaretz.com/1.5035271>

153 Emek Shaveh, ‘Fissures and Cracks’ (n 35) 8.

154 Emek Shaveh (n 35) 8; Nir Hasson, ‘Fearing Structural Collapse, Israel Halts Archaeological Dig in East Jerusalem’ *Haaretz* (15 June 2020) <www.haaretz.com/israel-news/.premium-fearing-structural-collapse-israel-halts-archaeological-dig-in-east-jerusalem-1.8921374>; Times of Israel Staff, ‘Archaeologists Briefly Pause Jerusalem Dig in Fear of Damage to Ancient Road’ *The Times of Israel* (16 June 2020) <www.timesofisrael.com/archaeologists-said-to-pause-east-jerusalem-dig-due-to-fears-of-home-collapse/>

Through funding the excavations, Elad is able to exercise physical control over Silwan.¹⁵⁵ B'Tselem alarmingly noted in 2014 that the construction of the visitor centre and the excavation sites in Wadi Hilweh had led to 25 percent of its open spaces becoming inaccessible to residents.¹⁵⁶ These public spaces were at the heart of neighbourhood life, but have become unreachable. To gain access would involve security checks, or the payment of fees.¹⁵⁷

The presence of settlers and tourists has contributed to the morphing of Silwan. Every day there is an influx of tourists arriving in buses at the 'City of David' visitor centre, causing traffic jams in the narrow streets of the neighbourhood.¹⁵⁸ The daily presence of hundreds of tourists and the transfer-in of settlers has also resulted in the intensification of security arrangements, including the installation of dozens of surveillance cameras and armed security guards using loud communication devices.¹⁵⁹ The Israeli approach has long been to create, in the illustrative words of the Association for Civil Rights in Israel, "bastions of guarded Jewish fortresses in the heart of Palestinian neighbourhoods".¹⁶⁰ Therefore, not only is Silwan disconnected from the rest of Jerusalem because of the location of the 'City of David', its contiguity is also fragmented by Elad-backed settlements.

155 'From Public to National, National Parks in East Jerusalem' *Bimkom - Planners for Planning Rights* (2012) 18.

156 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29) 16; Emek Shaveh, 'Press Release – The High Court Ordered the State to Ensure Public Spaces for Silwan's Residents' (19 December 2017) <<https://emekshaveh.org/en/press-release-the-high-court-ordered-the-state-to-ensure-public-spaces-for-silwans-residents/>>; 'Jerusalem Walls National Park' (n 91).

157 'Jerusalem Walls National Park' (n 91).

158 *Ibid.*

159 *Ibid.*

160 'Unsafe Space, The Israeli Authorities' Failure to Protect Human Rights amid Settlements in East Jerusalem' *Association for Civil Rights in Israel* (2010) 16.



Behind the fence on the left, the archaeological excavations of the Givati Parking Lot, which used to be a public lot; on the right, Palestinian houses (© Al-Haq, 2022)

2.2 Focus: Appropriating the Natural Resources of Silwan

The Gihon Spring, known locally as Ein Umm al-Daraj, is the historic water source of Silwan and Jerusalem and the largest spring in the area.¹⁶¹ Notably, the Gihon Spring is a natural resource integral to the religious and cultural practices of Palestinians.¹⁶² For example, the Gihon Spring is considered to contain holy water similar to the Zamzam Spring in Mecca, and Palestinians have traditionally used the Spring to bathe in on holy days, weekends and before weddings and family events. Pilgrims from the Hajj have a tradition to go to the Gihon Spring before praying on the Temple Mount.¹⁶³

161 Nir Hasson, 'Planned Western Wall Train Will Threaten Historic Jerusalem Spring, Report Says' *Haaretz* (27 February 2020) <www.haaretz.com/israel-news/.premium-planned-western-wall-train-will-threaten-historic-jerusalem-spring-report-says-1.8592985>

162 Emek Shaveh, 'Press Release – Petition: Nature and Parks Authority discriminate against residents of Silwan at the Gihon Spring' (22 October 2018) <<https://alt-arch.org/en/release-release-petition-gihon-spring/>>

163 *Ibid*; Emek Shaveh, 'Press Release – Putting an end to Elad's religious discrimination at the Gihon Spring' (11 May 2019) <<https://emekshaveh.org/en/discrimination-at-the-gihon-spring/>>

However, Elad unlawfully appropriated the Gihon Spring which is part of the 'City of David' tour, as well as the Silwan Pool – into which the waters of the spring flow – and uses the spring to employ discriminatory practices. In the 1990s, Elad started charging entrance fees to the Gihon Spring. Later, Elad closed access to the spring and the Silwan pool to Palestinian residents by linking access via the 'City of David' settlement.¹⁶⁴ As a result, Palestinians' free access to the spring was prohibited whereas Israeli Jewish settlers were permitted to enter the site as they wished, beyond the official opening hours and without paying an entrance fee.¹⁶⁵ Following a 2018 Israeli High Court of Justice (HCJ) petition against the Israeli Nature and Parks Authority and Elad, to restore Palestinian access to the Gihon Spring and end the discriminatory policies and practices, the HCJ ruled that equal entry for all who wish to bathe in the spring should be allowed.¹⁶⁶

Consequently, in June 2019, the Nature and Parks Authority issued a new rule allowing entrance on the settlement for the purpose of religious ceremonies beyond opening hours. Nonetheless, visitors are required to pay an entrance fee and to organise their visit ahead of time. Therefore, while the court order seems to have put an end to the discriminatory practices, free access to the site for Palestinian residents and worshippers is still denied.

Moreover, the Israeli authorities have advanced a plan for an underground train in the vicinity of the Old City to serve the Western Wall – an extension of the Tel Aviv-Jerusalem line.¹⁶⁷ Alarming, an expert report highlighted that the excavation of a tunnel for the train would jeopardise the flow of the Gihon Spring. Indeed, the entire Old City is in the drainage area of the spring, so tunnelling under the Old City is likely to cut across the flow of the

164 Nir Hasson, 'Israel Ordered to Explain Why Jerusalem Park in Palestinian Neighborhood Closed Off to Public' *Haaretz*, (19 January 2019) <www.haaretz.com/israel-news/.premium-israel-ordered-to-explain-why-park-in-east-j-lem-neighborhood-closed-off-to-public-1.6851661>

165 Emek Shaveh (n 138) 5.

166 'Press Release – Putting an end to Elad's religious discrimination at the Gihon Spring' (11 May 2019) <<https://emekshaveh.org/en/discrimination-at-the-gihon-spring/>>

167 Nir Hasson, 'Israel Approves Extending Tel Aviv-Jerusalem Line to Western Wall, Over Experts' Objections' *Haaretz* (18 February 2020) <www.haaretz.com/israel-news/.premium-israel-approves-extending-tel-aviv-j-lem-line-to-kotel-over-experts-objections-1.8555367>

water system or entirely cut off the spring from its aquifer.¹⁶⁸ After the Israeli government approved the plan in February 2020, experimental drillings started in May of the same year.¹⁶⁹ The project has not advanced much within the last couple of years but the Israeli authorities have not announced the abandonment of the plan. This highly problematic development project illustrates the extent of the appropriation of Palestinians' natural resources by the Israeli authorities, who do not even consult residents before approving plans.

Notably, Israel as Occupying Power is not sovereign over the occupied Palestinian territory and its natural resources.¹⁷⁰ Under Article 55 of the Hague Regulations, the Occupying Power may only administer public immovable property, including natural resources, under the conservatory principles of *usufruct* and must maintain intact the capital of the resources for the returning sovereign.¹⁷¹ This provision echoes the conservation principle which underlies the law of occupation and prevents the Occupying Power from conducting durable changes in the occupied territory.¹⁷² Consequently, in addition to being unlawful *per se* as a violation of the prohibition on forced population transfer under Article 49 of the Fourth Geneva Convention, permanent settlements on public immovable property contravene the temporary nature of *usufruct*.¹⁷³ Only two conditions qualify the utilisation of public immovable property by the occupant. First, as *usufructuary*, the Occupying Power may only use the fruits of the property and should not use the property in a wasteful or negligent way which might

168 Hasson, 'Planned Western Wall Train Will Threaten Historic Jerusalem Spring, Report Says' (n 161).

169 Hasson, 'Israel Approves Extending Tel Aviv-Jerusalem Line to Western Wall, Over Experts' Objections' (n 167); Sue Surkes, 'Experimental Drilling Starts for Controversial Train Route to Jerusalem Old City' (11 May 2020) <www.timesofisrael.com/experimental-drilling-starts-for-railway-extension-to-old-city/>

170 Belligerent occupation does not confer sovereignty. See Eyal Benvenisti, *The International Law of Occupation* (2nd edn OUP 2012) 6; Hanne Cuyckens, *Revisiting the Law of Occupation* (Brill Nijhoff 2018) 69-72.

171 Hague Regulations, Article 55; Susan Power, 'Annexing Energy, Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory' *Al-Haq* (2015).

172 Hanne Cuyckens, *Revisiting the Law of Occupation* (Brill Nijhoff 2018) 72, 74.

173 Susan Power, 'Annexing Energy' (n 171) 94.

cause serious impairment to the capital value.¹⁷⁴ Second, the occupant may only use the property to meet its security needs, to defray the occupation administration's costs and to promote the needs of the local population.¹⁷⁵ Procuring the use of immovable property for commercial profit is also prohibited under Article 55 of the Hague Regulations.¹⁷⁶

Moreover, under international law, the occupied Palestinian population has an inherent right of self-determination which includes the right to "freely determine political status and freely pursue their economic, social and cultural development".¹⁷⁷ The right to self-determination constitutes a core principle of international law, *jus cogens* in nature,¹⁷⁸ recognised as a peremptory norm from which no derogation is permitted.¹⁷⁹ Since 1948, the UN General Assembly and the Security Council, have repeatedly affirmed the right of the Palestinian people to self-determination.¹⁸⁰ Associated with the fundamental right to self-determination is the right to exercise permanent sovereignty over natural resources, in other words the right to "freely dispose of their natural wealth and resources".¹⁸¹ The General Assembly has emphasised that the "right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realisation of their right to self-determination".¹⁸² This explicitly indicates that revenues from Palestinian natural resources

174 *Ibid*, 95; Eyal Benvenisti, 'Water Conflicts During the Occupation of Iraq' (2003) 97 *The American Journal of International Law* 860, 869.

175 Eyal Benvenisti, 'Water Conflicts During the Occupation of Iraq' (2003) 97 *The American Journal of International Law* 860, 869.

176 Antonio Cassese, 'Powers and Duties of an Occupant in Relation to Land and Natural Resources' in *The Human Dimension of International Law: Selected Papers of Antonio Cassese* (OUP 2008) 428; Susan Power, 'Annexing Energy' (n 171) 97.

177 ICCPR, Article 1(1); ICESR, Article 1(1).

178 UN Human Rights Commission, Res 2003/3; G Espiel, 'Self-Determination and Jus Cogens' in Antonio Cassese, *UN Law/Fundamental Rights* (1979) 167-171; John Dugard, *Recognition and the United Nations* (1987) 158ff.

179 Armed Activities Congo/Uganda [64]; *Ibid*, Separate Opinion of Judge Ad Hoc Dugard [4], [10]. See also Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (CUP 1995) 320.

180 For instance, see UNGA Res 58/163 (22 December 2003) UN Doc. A/RES/58/163; UNSC Res 242 (22 November 1967) UN Doc. S/RES/242.

181 ICCPR, Article 1(2), ICESR, Article 1(2).

182 UN General Assembly, 'Right of the Palestinian People to Self-Determination (24 March 2014) A/HRC/25/L.36.

must be used to uphold their right to self-determination.¹⁸³

Therefore, the appropriation of the Gihon Spring, a Palestinian natural resource, for the purposes of development into a privately run Israeli tourist attraction constitutes a grave violation of the law of occupation as well as of the right to permanent sovereignty over natural resources, which is *ipso facto* a violation of the *jus cogens* right to self-determination. Moreover, the severe damage to the Gihon Spring from the underground train line project as advanced by the Israeli authorities would also result in grave violations of the law of occupation and of Palestinians' inalienable right to self-determination.



The Silwan Pool in dry season. Free access is denied to Palestinian residents. (© Al-Haq, 2022)

183 Susan Power, 'Annexing Energy' (n 171) 90.

2.3 Expanding the 'City of David' Colonial Settlement

Elad is currently expanding the 'City of David' to include the 'King's Garden', the Kedem Centre, and a Cable Car, while it pursues its goal to further Judaize the Ben Hinnom Valley through a suspension bridge and other projects. All these development projects involve building on appropriated Palestinian property in occupied territory.

2.3.1 The 'King's Garden'

Below the 'City of David' settlement, the Jerusalem Municipality is planning to expand the 'City of David' by establishing a national park called the 'King's Garden'.¹⁸⁴ The project will result in the destruction of many Palestinian homes in the Al-Bustan neighbourhood of Silwan.¹⁸⁵ In 1976, after Jerusalem Master Plan No. 9 prohibited building in Al-Bustan— which was reserved as an open space— residents had no option but to build without permits to provide for natural village growth and expansion.¹⁸⁶ In 2009, the Jerusalem Municipality announced plans for the demolition of 88 unlicensed constructions in Al-Bustan and the forced transfer of Palestinians to Beit Hanina.¹⁸⁷ In 2010, the Jerusalem municipality tabled a new plan for the neighbourhood, "turning the King's Garden into a flourishing park that will bloom alongside a residential neighbourhood with restaurants, artist workshops, souvenir shops, local art and more".¹⁸⁸ This would require the demolition of 22 Palestinian homes, and the retroactive approval of the building rights of 66 others.¹⁸⁹ At the time, MK Yariv Levine from the Likud party called for the decision to be implemented right away and that the "police must allocate the necessary manpower for the razing of the

184 Nir Hasson, TAU to Take Part in East Jerusalem Dig Funded by Pro-settlement Group *Haaretz* (25 October 2012) <www.haaretz.com/.premium-tel-aviv-u-to-take-part-in-east-jerusalem-dig-1.5194677>

185 'Reignited Plan for "King's Garden" Park Threatens to Displace Over 1000 Palestinians from Al Bustan, Silwan' *Ir Amim* (25 March 2021) <<https://mailchi.mp/ir-amim/reignited-plan-for-kings-garden-park-threatens-to-displace-over-1000-palestinians-from-al-bustan-silwan?e=%5bUNIQID%5d>>

186 B'Tselem, 'Al-Bustan Neighborhood – Garden of the King' (16 September 2014) <www.btselem.org/jerusalem/national_parks_al_bustan_garden_of_the_king>

187 Ma'an News, 'Israeli Authorities Deliver 16 Demolition Orders in Silwan' (12 February 2017) <www.maannews.com/Content.aspx?id=775407>

188 B'Tselem, 'Al-Bustan Neighborhood' (n 186).

189 *Ibid.*

buildings. This will strengthen our sovereignty in Jerusalem".¹⁹⁰

In 2017, following the issuance of demolition orders for 16 Palestinian homes in Al-Bustan, affecting 118 residents, unusual private negotiations began between the residents and the city.¹⁹¹ They agreed to the demolition of the majority of houses in the neighbourhood in exchange for building permits in adjacent plots on the condition that the buildings were only destroyed once the new ones were constructed.¹⁹² Nevertheless, 21 demolition orders were issued in Al-Bustan in December 2020, and the residents were required to demolish their own houses or pay the costs of demolition – around USD \$6,000.¹⁹³

At the end of March 2021, the Jerusalem Municipality asked the courts to reactivate the demolition orders, putting 70 houses under acute threat of demolition.¹⁹⁴ On 7 June 2021, the city issued demolition orders to 13 families from Al-Bustan, consisting of 130 people who were given 21 days to evacuate and demolish their houses.¹⁹⁵ The first demolition took place on 29 June 2021, leaving residents concerned that there would be a subsequent string of demolitions.¹⁹⁶ On 9 August 2021, a court ruling froze most of the demolition orders for six months until February 2022, but

190 Hillel Fendel, 'Jerusalem City Approves King's Garden Plan' *Israel National News* (21 June 2010) <www.israelnationalnews.com/News/News.aspx/138188>

191 Ma'an News, 'Israeli Authorities Deliver 16 Demolition Orders in Silwan' (12 February 2017) <www.maannews.com/Content.aspx?id=775407>

192 Nir Hasson, 'Jerusalem Seeks to Reactivate Demolition Orders in Palestinian Area, Backing Out of Agreement' *Haaretz* (17 March 2021) <www.haaretz.com/israel-news/.premium-jerusalem-seeks-to-reactivate-demolition-orders-in-palestinian-neighborhood-1.9625467?v=1634132015700>

193 Ibrahim Hussein, 'Israel Orders Wave of New House Demolitions in Silwan, Jerusalem' *Al Jazeera* (31 December 2020) <www.aljazeera.com/features/2020/12/31/israel-orders-wave-of-new-house-demolitions-in-silwan-jerusalem>

194 'Reignited Plan for "King's Garden" Park Threatens to Displace Over 1000 Palestinians from Al Bustan, Silwan' (n 185); Hasson, 'Jerusalem Seeks to Reactivate Demolition Orders in Palestinian Area, Backing Out of Agreement' (n 192).

195 'Demolitions Begin in Occupied East Jerusalem's Silwan' *Al Jazeera* (29 June 2021) <www.aljazeera.com/news/2021/6/29/demolitions-begin-in-occupied-east-jerusalem-silwan>

196 *Ibid*; Kareem Khadder, 'Demolition in East Jerusalem Neighborhood Heightens Tensions in the City' *CNN* (29 June 2021) <www.cnn.com/2021/06/29/middleeast/jerusalem-al-bustan-demolition-intl/index.html>

allowed for 16 houses to be razed with immediate effect.¹⁹⁷ It is highly likely that the demolitions will resume when the court order expires in line with the 'King's Garden' project.

Upon completion, the 'King's Garden' would essentially constitute "a seamless extension of the City of David's tourist attractions, further eroding the character of the neighbourhood and its fabric of life, while leading to the forcible transfer of nearly an entire community".¹⁹⁸ The 'King's Garden' plan, like the 'City of David', is yet another measure to morph a densely populated Palestinian residential area into a touristic settlement, entrenching Israel's colonialist historical narrative, while erasing the Palestinian community.

2.3.2 The Kedem Centre

Elad plans to fund and construct a visitor centre called the 'Kedem Centre' at the entrance to Silwan, in the area the Jerusalem Municipality designated as a national park in occupied Palestinian territory.¹⁹⁹ The site will comprise 16,000 square kilometres (4 dunams of land) located above the archaeological excavation known as the Givati Parking Lot.²⁰⁰ The Kedem Centre will house a six-story building operating as a museum centre, a Bible Centre – a government-funded enterprise to educate Jewish-Israelis about their biblical heritage –,²⁰¹ and a parking lot, and will also be the location of a Cable Car station.²⁰² The Minister of the Interior stated that the site was key to the development of tourism in the area to "address the needs of the million and a half annual visitors to the national park".²⁰³

197 'Israeli Court Freezes Demolition of Some Palestinian Homes in East Jerusalem' *Al Arabiya News* (11 August 2021) <<https://english.alarabiya.net/News/middle-east/2021/08/11/Israeli-court-freezes-demolition-of-some-Palestinian-homes-in-East-Jerusalem>>

198 'Reignited Plan for "King's Garden" Park Threatens to Displace Over 1000 Palestinians from Al Bustan, Silwan' (n 185).

199 'Shalem Plan Overview, The Plan to Reveal Ancient Jerusalem' (n 44) 7.

200 Emek Shaveh, *The Temple Mount/ Haram al-Sharif – Archaeology in a Political Context* (2015) 15 <<http://alt-arch.org/en/wp-content/uploads/2017/03/Politics-and-Arch-2017-Eng-Web.pdf>>.

201 Talya Ezrahi and Yonathan Mizrahi, 'Archaeology and Politics in Jerusalem's Historic Basin' (Emek Shaveh 2018) 5.

202 UNGA, Israeli Settlements in the Occupied Palestinian Territory, Including East Jerusalem, and the Occupied Syrian Golan, Report by the Secretary-General (31 August 2015) A/70/351, para 36.

203 Nir Hasson, Israel Approves New East Jerusalem Visitor's Centre Compound *Haaretz* (13 February 2012) <www.haaretz.com/1.5185218>



The Kedem Centre project (source: City of David)²⁰⁴

On 13 February 2012, the Israel Nature and Parks Authority razed a Palestinian playground and community centre on the area now designated for the Kedem Centre.²⁰⁵ In April 2014, the Jerusalem Regional Planning and Building Committee approved the construction plans for the Kedem Centre submitted jointly by Elad and the Israel Nature and Parks Authority with the support of the Jerusalem Municipality.²⁰⁶ Despite significant objections, Israel's Ministry of Interior considered that the Kedem Centre would "expos[e] the important archaeological finds to the broader public and serve as a focus for tourism that [would] help in developing the city of

204 Tovah Lazaroff, 'Israel to Complete East Jerusalem Centre after UNESCO Vote' *Jerusalem Post* (9 July 2017) <www.jpost.com/Israel-News/Israel-to-complete-contested-east-Jerusalem-center-after-UNESCO-vote-499175>

205 Nir Hasson, 'Interior Min. Approves Plan for City of David Visitors Center' *Haaretz* (14 February 2012) <www.haaretz.com/1.5185344>

206 Nir Hasson, 'Jerusalem Panel Approves Controversial City of David Visitors Centre' *Haaretz* (4 April 2014) <www.haaretz.com/middle-east-news/1.583763>

Jerusalem".²⁰⁷ Similarly, the Israel Antiquities Authority argued that there was an "important link here between the Ophel Garden, the City of David and the Western Wall and the creation of a direct link between the sites. We led the way to this result".²⁰⁸ On 7 June 2015, the Appeals Subcommittee of the National Planning Council approved plans for the Kedem Compound in Silwan, only 20 metres from the Walls of the Old City.²⁰⁹



*The archaeological excavations at the Givati Parking Lot. In the background, Palestinian houses.
(© Al-Haq, 2022)*

In July 2017, Prime Minister Netanyahu stated at a weekly cabinet meeting: "Today I have instructed that procedures be completed for the construction

207 *Ibid.*

208 Nir Hasson, 'Israel Approves New East Jerusalem Visitor's Centre' (n 203).

209 UNGA, 'Israeli Settlements in the Occupied Palestinian Territory, Including East Jerusalem, and the Occupied Syrian Golan, Report by the Secretary-General (31 August 2015) A/70/351, para 19.

of the Kedem Centre for displaying the historical and archaeological findings for the City of David".²¹⁰ This announcement came two weeks after UNESCO's World Heritage Committee disclaimed Israel's sovereignty over Jerusalem and inscribed the Tomb of the Patriarchs on the List of World Heritage in Danger, under the 'State of Palestine'.²¹¹ The Kedem Centre site is currently being excavated before the construction begins.²¹²

2.3.3 The Cable Car

The Israeli authorities have been pushing for a controversial cable car to run from annexed West Jerusalem²¹³ to East Jerusalem.²¹⁴ The cable car infrastructure will effectively skew tourism away from the Palestinian tourist sector around Damascus Gate and direct it towards Israel's archaeological settlements at Dung Gate to the Khan Theatre, Mount Zion (Jabal Sahyoun). A second stage of the cable car route will bring visitors to the Silwan Pool on Elad's administered park, the Mount of Olives and the Garden of Gethsemane.²¹⁵ The cable car project will cost approximately 220 million shekels (\$62 million), allowing 3,000 visitors per hour in each

210 Tovah Lazaroff, 'Israel to Complete East Jerusalem Centre after UNESCO Vote' *Jerusalem Post* (9 July 2017) <www.jpost.com/Israel-News/Israel-to-complete-contested-east-Jerusalem-center-after-UNESCO-vote-499175>

211 *Ibid.*

212 Yuval Gadot and Yiftah Shalev, 'The Giv'ati Parking Lot 2020 Excavations' (2021) 7 TAU Archaeology Newsletter 8; Emek Shaveh, 'The Debate Over "King David's Palace", The Case of the Large Stone Structure at the City of David' (2020) 6 (maps).

213 Al-Haq, 'Al-Haq Condemns United States Recognition of Jerusalem, in the occupied State of Palestine, as Israel's Capital' (6 December 2017) <www.alhaq.org/advocacy/targets/third-party-states/1156-al-haq-condemns-united-states-recognition-of-jerusalem-in-the-occupied-state-of-palestine-as-israels-capital>

214 Times of Israel Staff, 'Government Tells Top Court It Supports Controversial Jerusalem Cable Car Plan' *Times of Israel* (30 December 2021) <www.timesofisrael.com/government-tells-top-court-it-supports-controversial-jerusalem-cable-car-plan/>; 'Israel to Begin Excavation for Controversial Jerusalem Cable Car' *Middle East Eye* (9 November 2020) <www.middleeasteye.net/news/jerusalem-israel-cable-car-excavation-mount-zion>; For a 3-D simulation of the cable car project, see Jerusalem cable car plan by Simplex 3D city model <www.youtube.com/watch?v=LenAtSI46b4>

215 Mosche Gilad, 'Floating over Jerusalem without Ever Seeing the City's Arab Residents' *Haaretz* (9 July 2017) <www.haaretz.com/israel-news/.premium-1.799905>

direction.²¹⁶ Underscoring the settler colonialism objective of the planned tourism infrastructure, Israel's Minister for Tourism on the 50th anniversary of the occupation indicated that the cable car was intended:

To provide easy and convenient access to tourists and visitors at the Western Wall [...]. There is no better time than the marking of the 50th anniversary of the reunification of Jerusalem to commence such a revolutionary project.²¹⁷

In 2016, then Jerusalem Mayor Nir Barkat did not hide the ideological goals of the project, explaining that the cable car would include a stop in the Palestinian neighbourhood of Silwan so that passengers will "understand who really owns this city".²¹⁸

Elad approved of the project reiterating its manufactured colonialist biblical narrative that the "government initiative [...] strengthens tourist accessibility to ancient Jerusalem and helps broaden historical interest in the place where it all began".²¹⁹ Two cable car stops would be located within the Elad-run 'City of David': the cable car will land on the roof of the Kedem Centre,²²⁰ while an additional planned section of the cable car will serve the Silwan pool.²²¹ Notably, the cable car station next to the Silwan pool will be called the 'Shiloah Station', signalling another step towards the renaming and erasure of key Palestinian heritage sites.²²²

216 Oren Liebermann, Michael Schwartz and Abeer Salman, 'Israel Approves Controversial Cable Cars in Jerusalem' *CNN* (6 November 2019) <www.cnn.com/2019/11/05/middleeast/jerusalem-old-city-cable-car-scli-intl/index.html>

217 Itamer Eichmer, 'Express Cable Car to the Western Wall' *YNet* (29 May 2017) <www.ynetnews.com/articles/0,7340,L-4968672,00.html>

218 Nir Hasson, 'Jerusalem Mayor: Cable Car Stop in Palestinian Neighborhood Will Clarify "Who Really Owns This City"' *Haaretz* (25 August 2016) <www.haaretz.com/israel-news/.premium-barkat-east-jerusalem-cable-car-will-clarify-who-really-owns-city-1.5428939>

219 Mosche Gilad, 'Floating over Jerusalem without Ever Seeing the City's Arab Residents' *Haaretz* (9 July 2017) <www.haaretz.com/israel-news/.premium-1.799905>

220 *Ibid.*

221 'The Planned Cable Car and Train Routes to the Historic Basin (Maps)' *Emek Shaveh* (18 February 2020) <<https://emekshaveh.org/en/the-planned-cable-car-and-train/>>; Mosche Gilad, 'Floating over Jerusalem' (n 219).

222 'The Planned Cable Car and Train Routes to the Historic Basin (Maps)' (n 221).

Moreover, the cable car infrastructure will further fragment Silwan. For example, residents denounced that land from the village cemetery in Silwan is earmarked for use for the cable car.²²³ Also, the cable car will not pick up Palestinians from Silwan and is therefore discriminatory in its design to solely facilitate tourists. This serves to reinforce tourism apartheid which entrenches and restrictively promotes 'Jewish' tourist attractions.

Following the Israeli Planning Committee's approval of the cable car project in 2019,²²⁴ the government's Housing Cabinet gave final planning authorisation in November 2019 and a budget of USD \$54 million was set aside for the project.²²⁵ However, in 2020, after opponents submitted an appeal against the project, the High Court ordered the government and other bodies involved in the cable car planning to provide evidence that the project will boost tourism.²²⁶ On 23 February 2021, the High Court issued an order against the construction of the cable car, requiring the State of Israel to answer five questions. The questions suggest that the Court is concerned with the irregular planning process and the destructive potential to minority groups, in particular the Karaite community –²²⁷ the Jewish minority has opposed the cable car project because the route would desecrate one of

223 Mosche Gilad, 'Floating over Jerusalem' (n 219); Most notably, the cable car would harm a Karaite cemetery: see Ilan Ben Zion, 'Tiny Israeli Sect Protests Jerusalem Cable Car Plan' *ABC News* (7 March 2019) <<https://abcnews.go.com/Lifestyle/wireStory/tiny-israeli-sect-protests-jerusalem-cable-car-plan-61524290>>

224 Nir Hasson, 'Israeli Planning Committee Approves Controversial Jerusalem Old City Cable Car' *Haaretz* (3 June 2019) <www.haaretz.com/israel-news/.premium-israeli-planning-committee-approves-controversial-jerusalem-old-city-cable-car-1.7329521>

225 Nir Hasson, 'Israel's Housing Cabinet Green Lights Controversial Jerusalem Old City Cable Car Plan' *Haaretz* (4 November 2019) <www.haaretz.com/israel-news/.premium-israel-s-housing-cabinet-green-lights-controversial-j-lem-old-city-cable-car-plan-1.8083510>; Times of Israel Staff, 'Ministerial Panel Okays Maligned Old City Cable Car Plan' (4 November 2019) <www.timesofisrael.com/ministerial-panel-okays-maligned-western-wall-cable-car-plan/>; GLAN and SOMO, 'Tainted Tourism, Package Tourism's Contribution to the Illegal Settlement Economy in Israeli Occupied Territories' (2021) 12.

226 Sue Surkes, 'High Court Demands Proof Controversial Old City Cable Car Will Boost Tourism' *Times of Israel* (26 July 2020) <www.timesofisrael.com/high-court-demands-proof-controversial-old-city-cable-car-will-boost-tourism/>

227 'Settlement and Annexation Report: February 25, 2021' *Foundation for Middle East Peace* (25 February 2021) <<https://fmep.org/resource/settlement-annexation-report-february-25-2021/>> ; 'The High Court Issues Order Nisi Against State for Cable Car to Jerusalem's Old City (Press Release)' *Emek Shaveh* (24 February 2021) <<https://emekshaveh.org/en/high-court-issues-order-cable-car/>>.

its most ancient cemeteries.²²⁸ The destructive potential to the Palestinian neighbourhood was not mentioned.

On 15 May 2022, the High Court rejected four petitions against the cable car project.²²⁹ The petitions were submitted to the Court by the NGOs Emek Shaveh and the Israel Union for Environmental Defense, Palestinian residents of the area, members of the Karaite community (a small Jewish sect) and various academic figures.²³⁰ Attorney Sami Arshid, representing the residents of Silwan, said:

The ruling green-lights the cable car project, which does serious damage to the historical, cultural, religious and social fabric of Jerusalem. This is a controversial, megalomaniacal project that promotes a political agenda.... The cable car project will cause grave damage to the lives and the property of the residents of Silwan and the Old City, in particular. The residents of Silwan see that all this is being done to strengthen the presence and control of the Elad association in the area, and to promote a controversial political agenda regarding management of the lifestyle of the residents of East Jerusalem.²³¹

The project is expected to begin immediately. Project director Shmulik Tzabari declared in November 2020 that the start of the excavation work was imminent and that preliminary excavation works had already begun in April 2021, regardless of the fact that the Court was at that time still

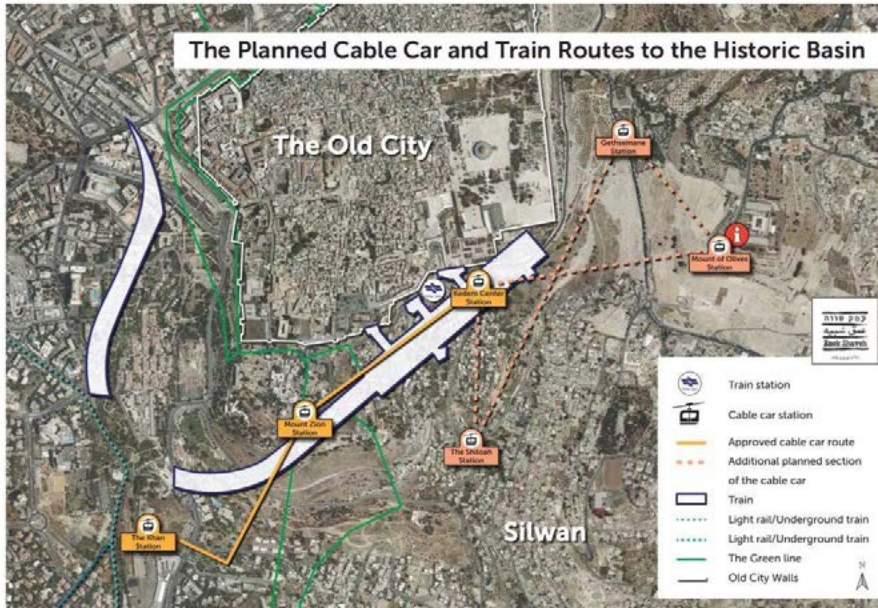
228 'Jerusalem Cable Car Could Damage Ancient Karaite Cemetery - Report' *Jerusalem Post* (10 March 2019) <www.jpost.com/israel-news/jerusalem-cable-car-could-damage-ancient-karaite-cemetery-report-582964> ; Ilan Ben Zion, 'Tiny Israeli Sect Protests Jerusalem Cable Car Plan' *ABC News* (7 March 2019) <<https://abcnews.go.com/Lifestyle/wireStory/tiny-israeli-sect-protests-jerusalem-cable-car-plan-61524290>>

229 The Times of Israel, 'High Court rejects petitions against plan to build cable car to Jerusalem's Old City' (15 May 2022) <<https://www.timesofisrael.com/high-court-rejects-petitions-against-plan-to-build-cable-car-to-jerusalem-old-city/>>

230 Haaretz, 'High Court Okays Controversial Western Wall Cable Car Project.' (15 May 2022) <<https://www.haaretz.com/israel-news/.premium-high-court-okays-controversial-western-wall-cable-car-project-1.10800806>>

231 *Ibid.*

considering the petitions.²³² The project constitutes a significant step towards normalising settler-run tourism projects such as the 'City of David'.²³³



*The Planned Cable Car and Train Routes to the Historic Basin (Emek Shaveh)*²³⁴

Developments in the Ben Hinnom Valley

Israeli authorities plan to build a 180-metre-long pedestrian suspension bridge 35-metres above the Ben Hinnom Valley, while Elad develops diverse

232 'Israel to Begin Excavation for Controversial Jerusalem Cable Car' *Middle East Eye* (9 November 2020) <www.middleeasteye.net/news/jerusalem-israel-cable-car-excavation-mount-zion>; Sue Surkes, 'Jerusalem Cable Car Excavation Work to Begin in Next Few Days' *Times of Israel* (4 November 2020) <www.timesofisrael.com/jerusalem-cable-car-excavation-work-to-begin/>; Times of Israel Staff, 'With Court to Debate Controversial Jerusalem Cable Car, Ministry Voices Opposition' (27 November 2021) <www.timesofisrael.com/with-court-to-debate-jerusalem-cable-car-ministry-announces-opposition/>

233 Nathan Jeffay, 'Nimbys Go to War Over Jerusalem Cable Car Project' *The Jerusalem Chronicle* (9 June 2017) <www.thejc.com/news/israel/nimbys-go-to-war-over-jerusalem-cable-car-project-1.439801>

234 'The Planned Cable Car and Train Routes to the Historic Basin (Maps)' (n 221).

projects and activities to Judaize the area.²³⁵ The Ben Hinnom Valley, known as 'Wadi Rababa' in Arabic, is located within the Jerusalem Walls National Park. On one side of its slopes are the Jewish and Palestinian neighbourhoods of Yemin Moshe and Abu Tor, while the Old City walls, Jabal Sahyoun (also known as Mount Zion) and Silwan are on the other side.²³⁶

The Israeli Land Authorities declared in January 2014 that it was investing 6 million shekels (USD \$1.9 million) for the 'Judaisation' of the Ben Hinnom Valley, in particular for the construction of a suspension bridge and pedestrian paths.²³⁷ The suspension bridge would connect an Elad-controlled parcel in the south bank of the valley with the southern slopes of Jabal Sahyoun.²³⁸ In March 2016, the Jerusalem Development Authority submitted a request for a building permit for the construction of the bridge.²³⁹ The Jerusalem Municipality approved the bridge in May 2017,²⁴⁰ and the Israeli authorities dug the foundations of the suspension bridge in early 2018.²⁴¹ Although the project has made little progress since then it is still slated by the Israeli authorities for development.²⁴²

Alongside the bridge, Elad is planning to build a café and events complex on the slopes of the valley, while an educational farm has already opened its

235 'Peace Now and Emek Shaveh Have Filed an Appeal Regarding the Construction of a Bridge in the Hinnom Valley' *Peace Now* (29 April 2018) <<https://peacenow.org.il/en/peace-now-emek-shaveh-filed-appeal-regarding-construction-bridge-hinnom-valley>>

236 Ezrahi and Mizrahi (n 201) 7.

237 'From Territorial Contiguity to Historical Continuity: Asserting Israeli Control through National Parks in East Jerusalem' *Emek Shaveh* (28 March 2014) <<https://emekshaveh.org/en/national-parks-in-east-jerusalem-update-2014/>>; Rayhan Uddin, 'Silwan Explained: How History and Religion Are Exploited to Displace Palestinians' *Middle East Eye* (14 June 2021) <www.middleeasteye.net/news/israel-palestine-silwan-explained-history-religion-exploited-displaced>

238 'Peace Now and Emek Shaveh Have Filed an Appeal Regarding the Construction of a Bridge in the Hinnom Valley' (n 235).

239 *Ibid.*

240 *Ibid.*

241 Uddin, 'Silwan Explained' (n 237).

242 Nir Hasson, 'Jerusalem Officials Plan Ferris Wheel on Promenade Overlooking Old City, Despite Objections of Walkway Donors' *Haaretz* (19 July 2020) <www.haaretz.com/israel-news/.premium-jerusalem-officials-planning-ferris-wheel-on-promenade-overlooking-old-city-1.8998720>

doors.²⁴³ The farm, which supposedly teaches ancient agricultural methods, is built on Palestinian parcels of land appropriated by the Israel Nature and Parks Authority based on dubious claims to the land.²⁴⁴ Uri Ehrlich, spokesperson for Emek Shaveh, said about the farm: "The infuriating thing about what's happening in the Hinnom Valley is that in the name of development that masquerades as an ancient agricultural landscape, they are displacing the traditional Palestinian agriculture that has preserved the historic character of the place".²⁴⁵ It is worth noting that the indigenous Palestinian residents of Abu Tor and Silwan who own land within the valley have not been allowed to build on it since the area was declared a national park in 1974.²⁴⁶ Meanwhile, in 2018, the Jerusalem Municipality took possession for gardening purposes of 27 plots in Silwan and Abu Tor, amounting to approximately 60 dunams.²⁴⁷

243 Emek Shaveh, Map 'Sites Under Development in Jerusalem's Historic Basin' (14 June 2021) <<https://emekshaveh.org/en/development-historic-basin/>>; Nurit Malkin, 'A Quest to Recreate Davidic Jerusalem Carves a Valley of Shadow Palestinians' *Times of Israel* (4 December 2021) <www.timesofisrael.com/a-quest-to-recreate-davidic-jerusalem-carves-a-valley-of-shadow-palestinians/>.

244 Emek Shaveh, Map 'Sites Under Development in Jerusalem's Historic Basin' (14 June 2021) <<https://emekshaveh.org/en/development-historic-basin/>>; Malkin, 'A Quest to Recreate Davidic Jerusalem' (n 243).

245 Malkin, 'A Quest to Recreate Davidic Jerusalem' (n 243).

246 Ezrahi and Mizrahi (n 201) 7.

247 'Update: Jerusalem Municipality Announces Taking Possession of 60 Dunams of Private Land in Silwan and Abu Tor for Gardening Purposes' *Emek Shaveh* (23 August 2018) <<https://emekshaveh.org/en/update-jerusalem-municipality-announces-taking-possession-of-60-dunams-of-private-land-in-silwan-and-abu-tor-for-gardening-purposes/>>

2.4 Legal Analysis

Israel's claim of sovereignty over Jerusalem does not affect the status of Jerusalem as occupied under international law. International humanitarian law (IHL), specifically its subset occupation law, is the legal framework which governs the occupation of the Palestinian territory.²⁴⁸ IHL applies concomitantly with international human rights law (IHRL),²⁴⁹ as well as general international law, including the prohibition of apartheid.²⁵⁰ Israel is a party to a number of human rights treaties, namely the International Covenant on Civil and Political Rights (ICCPR),²⁵¹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁵² the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),²⁵³ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²⁵⁴ the Convention on the Rights of the Child (CRC),²⁵⁵ the Convention Against Torture and Other Cruel, Inhuman or Degrading

248 *Inter alia*, Security Council resolutions 252 (1968), 267 (1969), 471 (1980), 476 (1980) and 478 (1980). Because the annexation of Jerusalem since 1948 is a manifest violation of international law prohibiting annexation, the international community have further duties to not recognise the illegal annexation of Jerusalem, to not render aid or assistance to maintain the unlawful situation, and cooperate together to bring the unlawful situation to an end (Article 42, Draft Articles on State Responsibility). See Dalia Qumsieh, 'Annexing a City' (n 1) 67-72.

249 *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1995] ICJ Rep 288 [25]; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136 [106]; *Armed Activities on the Territory of the Congo* (DRC v Uganda) (Judgment) [2005] ICJ Rep 168 [216]. See also HRC, 'General Comment No. 36, Article 6: Right to Life' (3 September 2019) CCPR/C/GC/35 para 64; ECtHR, *Loizidou v Turkey*, App. No. 15318/89, 23 March 1995; ECtHR, *Al-Skeini v United Kingdom*, App. no. 55721/07, 7 July 2011.

250 Yoram Dinstein, *The International Law of Belligerent Occupation* (2nd edn, CUP 2019) 81; see also Art 85(4)(c) Additional Protocol I.

251 UN General Assembly, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

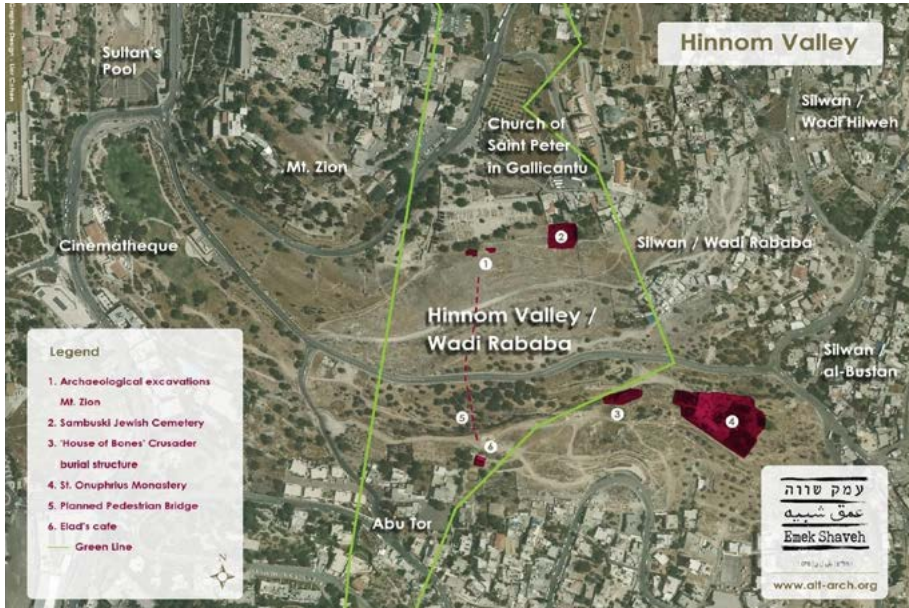
252 UN General Assembly, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

253 UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.

254 UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) A/RES/34/180.

255 UN General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

Treatment or Punishment (CAT),²⁵⁶ and the Convention on the Rights of Persons with Disabilities (CRPD).²⁵⁷



While there is significant overlap between IHL and IHRL, the two bodies of law might appear to conflict in some specific situations.²⁵⁸ In such cases, the respective provisions are generally conciliated through the principle of legal reasoning *lex specialis*, which states that the general rule (IHRL) should be interpreted in a way that obviates the eventual conflict with the more specific rule (IHL).²⁵⁹ More generally, the principle of *lex specialis* also governs the interplay between other legal frameworks and rules of

256 UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

257 UN General Assembly, Convention on the Rights of Persons with Disabilities (adopted 24 January 2007) A/RES/61/106.

258 See Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (ICRC 2019) 27–30.

259 Milanović, 'A Norm Conflict Perspective' (2010) 476. See also Frowein, 'The Relationship between Human Rights Regimes and Regimes of Belligerent Occupation' (1998) 28 IYHR 1, 9-10; Heike Krieger, 'A Conflict of Norms: The Relationship between Humanitarian Law and Human Rights Law in the ICRC Customary Law Study' (2006) 11 JCSL 265.

international law when of equivalent status in the hierarchy of norms.²⁶⁰

Finally, international criminal law is the relevant legal framework to analyse the Israeli authorities' criminal responsibility regarding unlawful acts conducted in the context of Israel's apartheid and settler-colonial regime in the OPT, including in Jerusalem.²⁶¹ This section highlights the numerous provisions of IHL and IHRL that the 'City of David' settlement and its expansion violates.

2.4.1 Demolition and Confiscation of Private Property

Demolition and Confiscation under IHL

Article 43 of the Hague Regulations (1907)²⁶² obliges the Occupying Power to *de facto* administer the occupied territory, respecting the laws in force in the occupied territory and to not exercise sovereignty over it and its population.²⁶³ As such, Israel's extraterritorial application of its domestic Planning and Building Law 5725 (1965) to Jerusalem is unlawful. Instead, Israel must continue to apply local civil laws in force in the occupied territory, in the present case the Jordanian Planning Law (1966), which grants Palestinian Village Councils exclusive competence over planning, zoning and building policies.²⁶⁴

Furthermore, private properties are protected under IHL. Article 46 of the Hague Regulations requires that the Occupying Power respect private property and prohibits its confiscation.²⁶⁵ Under the Fourth Geneva Convention, the destruction of any real or personal property, whether it

260 Gleider Hernández, 'International Law' (OUP 2019) 31.

261 'Justice for Palestine: Historic Day for Palestinian Victims of Israeli Crimes' *Al-Haq* (3 March 2021) <www.alhaq.org/advocacy/17960.html>.

262 International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907 (hereinafter 'Hague Regulations'), Article 43.

263 Geneva Convention relative to the protection of civilian persons in time of war (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (hereinafter 'Fourth Geneva Convention'), Article 47.

264 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3) 40.

265 Hague Regulations, Article 46. See also ICRC, Customary IHL Database, Rule 51 <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule51>.

belongs to private persons, to the State or to any other entity, is prohibited.²⁶⁶ The only exception is when such destruction is 'absolutely necessary' for the purpose of military operations.²⁶⁷ Given the absence of active hostilities or military imperatives in Silwan, the destruction of Palestinian private property cannot be justified under IHL.

Concerning confiscations, the Hague Regulations indicate that requisitions of private property is limited solely for the "the needs of the army of occupation".²⁶⁸ Two types of confiscation have been taking place in Silwan – confiscation *de facto* and confiscation *de jure*. In cases of *de facto* confiscation, Israeli measures result in the denial of the landowner's rights over the property.²⁶⁹ The most illustrative example is the zoning of Wadi Hilweh in Silwan as a national park which has seriously hindered the landowner's rights to fully dispose of their land. *De jure* confiscation has also occurred, through the official transfer of ownership to Jewish Israeli entities,²⁷⁰ notably settlers.²⁷¹ In both cases, property is not seized to meet the needs of the occupation forces; the requisition is thus unlawful.

Worth noting is that the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly",²⁷² is considered a grave breach of the Fourth Geneva Convention and constitutes a war crime under the Rome Statute of the International Criminal Court (ICC).²⁷³ As neither appropriation of property nor destruction

266 Article 53, Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (adopted 18 October 1907, entry into force 26 January 1910) (hereinafter 'Hague Regulations').

267 Hague Regulations, Article 53.

268 Hague Regulations, Article 52.

269 BADIL Resource Center for Palestinian Residency and Refugee Rights, Written Submission to the Attention of Mr. Balakrishnan Rajagopal, Special Rapporteur on the Right to Adequate Housing, 'Special Rapporteur's Reports on Discrimination, Segregation, and the Right to Adequate Housing to the General Assembly and Human Rights Council' (13 May 2021) 1.

270 *Ibid.*

271 'Elad's Settlement in Silwan' *Emek Shaveh* (10 September 2013) <<https://emekshaveh.org/en/settlers/>>

272 Fourth Geneva Convention, Article 147.

273 Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (hereinafter 'Rome Statute'), Article 8(2)(a)(iv).

of houses in Silwan are justified by military necessity, Israel's long-standing and well-orchestrated practice of property destruction and confiscation in the neighbourhood constitutes a war crime.

Confiscation of Displaced Persons' Property under IHL

Besides these provisions, specific rules protect the property belonging to displaced persons, whose property rights must be respected according to the ICRC's Customary IHL Database.²⁷⁴ The UN Guiding Principles on Internal Displacement further states: "property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use".²⁷⁵ Meanwhile, the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons formulate refugees and displaced persons' rights regarding their property: "All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal".²⁷⁶

One of the main instruments used by Israel for appropriating Palestinian property is the Absentee Property Law 5710-1950, which provides for the seizing of all 'absentee' property. Any owner who lived anytime between 29 November and 19 May 1948, outside the 1948 borders of the Israeli State is considered an 'absentee' and his or her property is automatically transferred to the tenure of the Israeli Custodian for Absentee Property with no compensation.²⁷⁷ In practice, the law targeted Palestinians who fled their homes due to Zionist violence during the Nakba. Israel extended this legislation in 1970 with the Legal and Administrative Matters Law 5730-

274 ICRC, Customary IHL Database, Rule 133 <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule133>

275 OCHA, Guiding Principles on Internal Displacement (2nd edn, 2004) Principle 21(3).

276 UN Economic and Social Council, 'Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons. Final Report of the Special Rapporteur, Paulo Sérgio Pinheiro. Principles on Housing and Property Restitution for Refugees and Displaced Persons' (28 June 2005) UN Doc. E/CN.4/Sub.2/2005/17, 2.

277 Absentees' Property Law 5710-1950 (passed by the Knesset 14 March 1950) Article 1.

1970, which prescribes the application of Israeli domestic law in occupied East Jerusalem, unlawfully annexed since 1967.²⁷⁸ House owners who could not provide evidence of their presence in the annexed territory on 28 June 1967 would be declared as 'present absentees'. This legislation resulted in the widespread and systematic seizure of Palestinian property by the State of Israel, including in Silwan.²⁷⁹ In Silwan, settler organisations carry out investigations to identify 'absentees' amongst Palestinian residents and notify Israel's Custodian of Absentee Property which, based on often partial or incorrect information, confiscates the property.²⁸⁰ Protected tenancy or long-term leases are then granted to settlers, who are from then on entitled to seize the property.²⁸¹ Therefore, far from ensuring the rights of displaced persons, for decades Israel has applied discriminatory legislation prescribing the systematic appropriation of property belonging to purportedly 'absent' persons, including in Silwan, and thus violating the rights of displaced persons as guaranteed under international law.

The Right to Adequate Housing under IHRL

Under IHRL, the right to adequate housing is recognised as a prerequisite for the enjoyment of other human rights such as the right to work, health, and education. In the words of the UN Committee on Economic, Social and Cultural Rights (CESCR), the right to adequate housing is the right to live somewhere in security, peace and dignity.²⁸² It is enshrined in Article 25(1) of the 1948 Universal Declaration of Human Rights, while Article 11(1) of the 1966 International Covenant on Economic, Social and Cultural Rights recognises the "right to an adequate standard of living", including housing. States must undertake positive steps, to the maximum of their available resources, to achieve the full realisation of these rights without discrimination.²⁸³

278 Legal and Administrative Matters Law, 5730-1970.

279 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3) 47.

280 'Elad's Settlement in Silwan' *Emek Shaveh* (10 September 2013) <<https://emekshaveh.org/en/settlers/>>; Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3) 47.

281 Antoine Frère, 'House Demolitions and Forced Evictions in Silwan' (n 3) 47.

282 CESCR, 'General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)' (13 December 1991) UN Doc. E/1992/23 (hereinafter 'CESCR, General Comment No. 4'), para. 7.

283 Article 2(1) and (2), ICESCR.



Part of the Silwan neighbourhood seen from the 'City of David' settlement (© Al-Haq, 2022)

The right to adequate housing contains four entitlements according to the Office of the High Commissioner for Human Rights and UN Habitat: “security of tenure; housing, land and property restitution; equal and non-discriminatory access to adequate housing; Participation in housing-related decision-making at the national and community levels”.²⁸⁴ House demolitions and confiscations that are taking place in Silwan constitute a breach of the right to housing as it is opposed to security of tenure.²⁸⁵ The limited participation of Palestinians in housing-related decision-making, as well as the differentiated treatment of Israeli Jewish settlers and Palestinians regarding their right to adequate housing, are also highly problematic and amount to violations of the right to housing.

Israel's practices of house demolitions and confiscations also breach other

284 'The Right to Adequate Housing' (OHCHR and UN Habitat 2015) Fact Sheet No. 21/Rev.1 3.

285 *Ibid.*

internationally recognised human rights. The practice of confiscating private property constitutes a violation of the right to property which is recognised in the Universal Declaration of Human Rights (Article 17), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(d)(v)), and in other regional human rights treaties.²⁸⁶ Moreover, the highly restrictive Israeli zoning and planning policies which prevent Palestinians from expanding their houses and neighbourhoods, contrary to demands of natural population growth, infringe the right to development - a group right for all people, as proclaimed by the United Nations in 1986.²⁸⁷

2.4.2 Forced Evictions, Forced Displacements and the Transfer of Settlers

Forced Evictions under IHRL

The Committee on Economic, Social and Cultural Rights (CESCR) defines forced evictions as the “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.²⁸⁸ Forced evictions infringe upon the right to non-interference with one’s home, family, and privacy as affirmed in Article 17 of the ICCPR. If the practice of forced evictions targets minority groups specifically, it constitutes discriminatory practice. According to the OHCHR, forced evictions may violate the full spectrum of human rights.²⁸⁹ However, forced evictions are not illegal *per se*. Evictions can be justified if carried out: “(a) only in the most exceptional circumstances; (b) after all feasible alternatives to eviction [...] are explored in consultation with affected community; and

286 The right to property is enshrined in the American Convention on Human Rights (art. 21), the African Charter on Human and Peoples’ Rights (art. 14), and the Charter of Fundamental Rights of the European Union (art. 17).

287 UNGA ‘Declaration on the Right to Development: Resolution Adopted by the General Assembly’ (4 December 1986) A/RES/41/128.

288 CESCR, ‘General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions’ (20 May 1997) E/1998/22, annex IV, para. 4.

289 Human Rights Council, ‘Basic Principles and Guidelines on Development-Based Evictions and Displacement’ (5 February 2007) A/HRC/4/18 Annex I, para 7.

(c) after due process protections are afforded to the individual, group or community".²⁹⁰ Evictions must also not result in homelessness.²⁹¹

The highly restrictive and racially discriminatory zoning, planning and housing policies that Israel has carried out for decades in Silwan result in unlawful forced evictions. Indeed, the way Israeli authorities plan, decide, and carry out the evictions do not meet the aforementioned criteria. Evictions of Palestinian residents in Silwan are not carried out because of exceptional circumstances; they are driven by political considerations, aimed at the Judaisation of the neighbourhood and rooted in long-term discriminatory zoning and planning policies. The process does not include due representation or consultation of Palestinian residents, and most of the time no alternative is offered. Accordingly, the forced evictions carried out by the Israeli authorities are unlawful.

Forced Displacement of the Protected Population and Transfer of Settlers

More generally, the building destruction and property confiscations carried out by Israel result in forced displacement of the Palestinian population. The forcible transfer of a protected population, comprising both individual cases and mass transfer, is prohibited under IHL unless for reasons of civilian security or military imperative.²⁹² Forcible transfer constitutes a grave breach of the Fourth Geneva Convention.²⁹³ Under the Rome Statute of the ICC, the transfer of a population from occupied territory within or outside this territory may constitute a war crime,²⁹⁴ and the forcible transfer of persons, when committed in the context of a widespread or systematic attack against the civilian population, may amount to crimes against humanity.²⁹⁵

290 UN Habitat and OHCHR, 'Forced Evictions' (2014) Fact Sheet No 25/Rev1 27.

291 Human Rights Committee, *Naidenova et al v Bulgaria*, Communication No. 2073/2011 (27 November 2012) CCPR/C/106/D/2073/2011, para 3.8.

292 Fourth Geneva Convention, Article 49(1); ICRC, Customary IHL Database, Rule 129 <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule129>

293 Fourth Geneva Convention, Article 147.

294 Rome Statute, Article 8(2)(b)(viii). See also Rome Statute, Article 8(2)(a)(vi).

295 Rome Statute, Article 7(1)(d).

In the same vein, the transfer of the Occupying Power's population is clearly and strictly prohibited under Article 49(6) of the Fourth Geneva Convention and constitutes war crimes under Article 8(2)(b)(viii) of the Rome Statute. As Pictet explained in 1958, the prohibition was:

intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race.²⁹⁶

Since 1948, Israel's zoning, planning and housing policies in Palestine have all aimed at gradually increasing the Jewish Israeli population at the expense of the Palestinian residents. In Silwan, Palestinian residents have endured a wide range of policies and practices aimed at forcing their displacement while Jewish-Israeli settlers have been transferred in. These policies and practices constitute a grave breach of the Fourth Geneva Convention and war crimes under the Rome Statute.

2.4.3 Israel's Apartheid Regime

Apartheid is unequivocally prohibited under international law. Notably, the International Law Commission has recognised the prohibition against apartheid as a peremptory norm of international law.²⁹⁷ Moreover, apartheid is considered a crime against humanity by the 1976 International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention)²⁹⁸ and the Rome Statute of the ICC.²⁹⁹ Specifically,

296 Jean Pictet (ed), *The Geneva Conventions of 12 August 1949: Commentary, (IV) Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC 1958) 283.

297 UN, International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (adopted November 2001) Supplement No. 10, A/56/10, Commentary of art 40, para 4.

298 UNGA, International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted and opened for signature 30 November 1973, entry into force 18 July 1976) A/RES/3068(XXVIII) art 1(1).

299 Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (hereinafter 'Rome Statute'), Article 7(1)(j).

the Rome Statute indicates that the crime of apartheid is characterised when inhumane acts are committed “in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups [...] with the intention of maintaining that regime”.³⁰⁰ Meanwhile, the Apartheid Convention further specifies measures that amount to “inhuman acts”, notably mentioning “legislative measures [...] calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups”.³⁰¹ Finally, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which 182 are State Parties, including Palestine and Israel, condemns racial segregation and apartheid. State Parties “undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction”.³⁰² In this context, in 2018 the State of Palestine filed an inter-state complaint against Israel alleging violations of the CERD. The Committee found the complaint admissible and established a Conciliation Commission in 2021.³⁰³

In East Jerusalem, including in Silwan, the unequal access to housing and building permits between Palestinian residents and Jewish Israeli settlers is systematic and institutional. These deeply discriminatory policies and practices, conducted with the intention of oppressing and dominating the Palestinian people, amount to inhumane acts, and as such, are part of Israel’s apartheid regime,³⁰⁴ that a growing number of organisations,

300 Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (hereinafter ‘Rome Statute’), Article 7(2)(h).

301 UNGA, International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted and opened for signature 30 November 1973, entry into force 18 July 1976) A/RES/3068(XXVIII) art 2(c).

302 UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, art 3.

303 Al-Haq, ‘An Explainer on Recent Developments at the Committee on the Elimination of Racial Discrimination in State of Palestine v. Israel’ (July 2021) <www.alhaq.org/advocacy/18610.html>; Al-Haq, ‘PHROC Submits Petition in Response to Palestine’s Inter-State Complaint against Israel under ICERD’ (11 April 2021) <www.alhaq.org/palestinian-human-rights-organizations-council/18170.html>

304 See Omar Shakir, ‘A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution’ (Human Rights Watch 2021) 108–116.

States and personalities have been tenaciously denouncing.³⁰⁵ In 2011, the Russel Tribunal concluded that “Israel’s rule over the Palestinian people, wherever they reside, collectively amounts to a single integrated regime of apartheid”.³⁰⁶ The Committee on the Elimination of Racial Discrimination reiterated these conclusions in its 2019 Concluding Observations and urged Israel to eradicate all policies and practices of racial segregation and apartheid that affects “severely and disproportionately”³⁰⁷ the Palestinian population, both in Israel and in the occupied Palestinian territory.



A woman and a child visit the 'City of David' settlement. (© Al-Haq, 2022)

305 See, for instance: 'Al-Haq Highlights Israel's Apartheid Regime and Calls for Accountability at the 46th Session of the Human Rights Council' *Al-Haq* (12 April 2021) <<https://www.alhaq.org/advocacy/18174.html>>; 'A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid' (B'Tselem 2021) <www.btselem.org/sites/default/files/publications/202101_this_is_apartheid_eng.pdf>; 'Former UN Secretary General Ban Ki Moon Calls Israeli Policies in Occupied Territories Apartheid' *Peoples Dispatch* (30 June 2021) <<https://peoplesdispatch.org/2021/06/30/former-un-secretary-general-ban-ki-moon-calls-israeli-policies-in-occupied-territories-apartheid/>>.

306 Russell Tribunal on Palestine, Findings of the South Africa Session (November 2011) paras 5.44 and 5.45.

307 Committee on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel (12 December 2019) CERD/C/ISR/CO/17-19 para 23.



3

Archaeology as Controlled Destruction of Palestinian Remains in Silwan and a Tool to Legitimise Israel's Colonial Regime

The work of archaeology in Palestine/Israel is a cardinal institutional location for the ongoing practice of colonial nationhood, producing facts through which historical-national claims, territorial transformations, heritage objects, and historicities [sic] 'happen.'

Nadia Abu El-Haj, *Facts on the Ground: Archaeological Practice and Territorial Self-Fashioning in Israeli Society* (2001)³⁰⁸

308 Nadia Abu El-Haj, *Facts on the Ground: Archaeological Practice and Territorial Self-Fashioning in Israeli Society* (University of Chicago Press 2001) 6.

Archaeology has been weaponised as a political tool by the Israeli authorities in their attempt to legitimise Israel's settler colonial and apartheid regime.³⁰⁹ Nadia Abu El-Haj has described Israeli archaeology as a cardinal instrument in the creation of modern Israel's "origin myth",³¹⁰ allowing the "formation and enactment of the colonial-historical imagination and the substantiation of its territorial claims".³¹¹ As to confirm Abu El-Haj's observation, in 2013 in a CNN interview, future Israeli Prime Minister, Naftali Bennett brandished a two-thousand-year old Judaeen coin as justification against calling Israel's control of the West Bank an 'occupation'.³¹²

At the illegal 'City of David' settlement, archaeologists, settler organisations, and the Israeli authorities similarly use archaeology in a political manner, attempting to draw historical continuity between the ancient 'Kingdom of Israel' and the modern, colonialist Israeli State. At the same time, ancient Palestinian, Muslim and other non-Jewish vestiges are erased to provide legitimacy for Israel's colonial narrative.

309 Notably, a Diakonia report indicates: 'More generally, reports have repeatedly noted that information concerning West Bank artefacts and sites supports Israeli/Jewish cultural heritage in the West Bank, denouncing the over-emphasis of biblical archaeology, while entrenching the under-representation of Muslim and other heritage. Beyond that, substantive critical bias in archaeological activities are seen not only in the undermining of the Arabic language in publications and dissemination activities but also in the phenomenon of renaming traditional sites to Israeli (or Hebraic) names. [...] The above examples [of archaeological sites renamed] reflect the change of local customs and traditions from Palestinian ones to Israeli ones with the spirit of advancing and reinforcing the historic ties of Israeli culture in the occupied territory.' Diakonia IHL Resource Centre, 'Occupation Remains, A Legal Analysis of the Israeli Archaeology Policies in the West Bank: An International Law Perspective' *Diakonia* (2015) 29.

310 Abu El-Haj (n 307) 3.

311 *Ibid.*, 2.

312 Poser, 'Common Ground' (n 19).



Archaeological excavations at the illegal 'City of David' settlement. In the background on the left, Palestinian houses. In the background on the right, the Old City walls. (© Al-Haq, 2022)

3.1 Selective Use of Archaeology: Zionist Search for Legitimacy Through Historical Continuity

3.1.1 Archaeology at the 'City of David'

In Silwan, archaeologists and their work are intrinsically political. The first reason for the politicisation of their work is the location of the excavations they conduct, in unlawfully annexed territory. Moreover, the excavations conducted at the 'City of David' are almost entirely funded by Elad, a settler organisation, whose stated objective is to strengthen the Jewish connection to Jerusalem.³¹³ Archaeologists identified with Elad are also working to help

³¹³ 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29) 23.

achieve the foundation's objectives.³¹⁴

The illegal 'City of David' settlement is the alleged birthplace of ancient Jerusalem and hosts artefacts that straddle a large number of periods, from Prehistory through to the Early Islamic Period. The most ancient remains unearthed at the settlement date to approximately 5000 BCE. In addition, the site is speculated to constitute the original settlement core of Bronze and Iron Age Jerusalem.

The archaeological site in Silwan is alleged by Elad to be the ancient royal city of King David – despite archaeological controversy around the topic (see Section 3.4); the entire Elad-run touristic settlement of the 'City of David' is based on this hypothesis. As Emek Shaveh opines:

Many Israelis see the remains from the Kingdom of Judea (the 10th - 6th centuries BCE) as evidence of a Jewish past. They consider the fact that the area is identified with the biblical story as proof that the Jewish people, or Israeli society, have inherited the right to take possession of the site.³¹⁵

This biased reasoning explains the importance given to the archaeological sites of Silwan by Elad and the Israeli authorities, as well as the politicisation of the excavations.

3.1.2 Management by Elad and implications

The rich archaeological settlement of the 'City of David' is managed by the right-wing non-governmental organisation Elad, that has continuously displayed its ambition to unlawfully transfer in Israeli Jews in occupied East Jerusalem. The Ir David Foundation proudly affirms its commitment, "to continuing King David's legacy as well as revealing and connecting people to Ancient Jerusalem's glorious past".³¹⁶ Indeed, despite the presence at the 'City of David', of remains from a large number of prehistoric and historical periods, the archaeological excavations are conducted in an ethno-centric

314 *Ibid.*

315 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29) 25.

316 'The Ir David Foundation' (n 51).

way, with a focus on the Jewish vestiges of the site. The site signages mainly focus on two periods identified with Jewish history: the Judean Kingdom and the late Second Temple period.³¹⁷

Similarly, most of the archaeologists on the website of the 'City of David' are specialised in the Israelite period. Archaeologists play a central role in the construction of narratives around the discovered artefacts and their political opinion may influence the interpretation of the unearthed remains. According to Emek Shaveh:

Archaeology is not an exact science and the archaeologist's conclusions are influenced by his/her subjective opinions. Every excavator has a personal and collective identity and an agenda which shapes the focus of his/her research and conclusions. It is only natural, for example, that the discovery of an ancient synagogue will interest a Jewish researcher more than others.³¹⁸

However, these artefacts are located on occupied Palestinian territory, on lands over which the Palestinian people reserve their collective right to self-determination and permanent sovereignty over their cultural national heritage and archaeological resources. Israel is merely a temporary Occupying Power with no sovereign rights to either appropriate or exploit the site.

In this context, Israel's decision, as Occupying Power, to hand over the management of the archaeological site of ancient Jerusalem to a private foundation with an extreme ideology such as Elad's, is not neutral. Those who control the archaeological remains have the power to decide which narrative about the past to emphasise, how to fashion the story and its significance.³¹⁹ In the context of the Israeli colonisation of Palestine, archaeology becomes a powerful political tool for Israel's erasure of a Palestinian presence from Jerusalem, and an expression of its animus to annex the city.

317 Emek Shaveh, 'Jerusalem Beneath the Surface, Archaeology in the Service of Politics' (interactive map), 'The City of David' <<https://intermap.alt-arch.org/en/>>.

318 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29) 3.

319 Ibid., 26.



A tourist guide at the 'City of David' showing a timeline of periods associated with the Jewish history (© Al-Haq, 2019)

The Givati Parking Excavations

From May to December 2003, excavations conducted on the site of the underground Givati car park near Dung Gate, uncovered buildings related to the Byzantine, Islamic, Roman and Second Temple periods. Although significant Islamic finds were unearthed including a stone structure with a water cistern, and two pillars and a ceramic lamp – Israeli archaeologists focused on the discovery of an inscription with Hebrew figures located within the same stratum. The inscription was used as archaeological 'evidence' to establish 'ancient' Jewish ties to the Palestinian village of Silwan with archaeologists claiming that "the current excavation area lies exactly in the centre of the proposed area [Silwan village] and the Hebrew

inscription fragment confirms this proposal".³²⁰

The 'Pilgrims' Road'

The recent excavation of the 'Pilgrims' Road' - an underground dig along an ancient Roman road, demonstrates clearly that archaeology in Silwan is driven by ideological and political considerations. Elad named the excavation 'Pilgrims' Road' as the route was allegedly taken by pilgrims heading to the Temple during the Second Temple period.³²¹ However, the name has been described as misleading, as the route was a segment of a road bordering the western side of the Temple compound without directly leading to it.³²² The name of the excavation is thus part of the strategic narrative built to artificially underline the links of the site with its Jewish past while excluding the non-Jewish story of the place. Moreover, excavations of 'Pilgrims' Road' were conducted in an unorthodox way, using horizontal tunnels running beneath the Silwan neighbourhood (as further explained below in Section 3.2.2).³²³ Finally, as no academic or scientific report on the data gathered during the excavations has been released, uncertainty remains concerning the authenticity of the tunnel.³²⁴

However, the inauguration of the 'Pilgrims' Road' tunnel in 2019 was showcased as an opportunity for the U.S. to support Israeli settlement policy in Jerusalem, with the attendance of the then U.S. Ambassador to

320 'The neighbourhood was identified and located, according to historical sources, in the southern part of Jerusalem, between the Temple Mount in the north and the Shiloah Pool in the south. Some scholars identified this area with the Karaite quarter, known also from historical sources, whereas others recognized it in the Silwan Village. The remains of the 'Menorot House' revealed in B. Mazar's excavations near the southwestern corner of the Temple Mount were related to the same Jewish neighbourhood. The current excavation area lies exactly in the center of the proposed area and the Hebrew inscription fragment confirms this proposal'. Eli Shukron and Ronny Reich, 'Jerusalem, City of David, the Giv'ati Car Park' (2005) *Hadashot Arkheologiyot, Excavations and Surveys in Israel* 117 <www.hadashot-esi.org.il/report_detail_eng.aspx?id=250&mag_id=110>.

321 Emek Shaveh, 'Information for Visitors' (n 138) 5.

322 *Ibid.*

323 Yonathan Mizrahi and Chemi Shiff, 'Using Archeology in the Service of Nationalism' *+972 Magazine* (5 July 2019) <www.972mag.com/pilgrimage-road-archeology-nationalism-east-jerusalem/>

324 *Ibid*; Gadzo (n 141).

Israel, David Friedman and Middle East Envoy, Jason Greenblatt.³²⁵ Friedman ceremoniously opened the tunnel and declared, using Elad's favourite narrative: "The City of David brings biblical Jerusalem back to life. [...] It enables every one of us to stroll the corridors where the ancient prophets of Israel gave voice to revolutionary ideals of freedom, liberty and human dignity".³²⁶ A painfully ironic statement, linking the excavation and settler colonial Judaisation of Palestine's capital city Jerusalem with past presumed ideals of freedom, liberty and human dignity.



The entrance of the 'Pilgrims' Road' tunnel (© Al-Haq, 2022)

325 Hagay Hacoen, 'Friedman, Greenblatt Attend Archaeological Inauguration in City of David' *The Jerusalem Post* (1 July 2019) <www.jpost.com/israel-news/pilgrim-road-sparks-political-tensions-as-ngo-claims-its-about-politics-594181>; 'The Expected Presence of the American Ambassador at the Dedication Ceremony for the "Pilgrims' Road" in Silwan Will Be the Closest the US Will Have Come to Date to Recognizing Israeli Sovereignty over the Old City Basin' *Emek Shaveh* (28 June 2019) <<https://emekshaveh.org/en/the-pilgrimage-road-dedication-ceremony/>>

326 Khaled Abu Toameh, 'Palestinians on Pilgrimage Road Inauguration: Israel Falsifying History' *The Jerusalem Post* (1 July 2019) <www.jpost.com/arab-israeli-conflict/palestinians-israel-falsifying-history-594191>

3.2 Permanent Damage to Palestinian Cultural Heritage: Hiding and Destroying Non-Jewish History

In 2016, a survey commissioned by Emek Shaveh revealed that 44 percent of Palestinians in East Jerusalem consider archaeological excavations as a matter of most concern.³²⁷ More than half said they believe the purpose of the excavations is to strengthen Israeli control over Jerusalem and to erase all remnants of the city's Muslim history.³²⁸ Indeed, the 'City of David' site more aptly represents an area of historical erasure of anything not connected to a Jewish past and the pillaging of Palestinian cultural property.

3.2.1 Ignoring the Non-Jewish Past of the Place, Reshaping History

As previously explained, archaeological excavations in Silwan specifically pursue and focus on Jewish archaeological finds in order to substantiate the claim that the area once hosted the 'City of David'; thus, Elad does not give much attention when artefacts from other periods of time are excavated. For instance, digs conducted between 2014 and 2015 revealed major Byzantine discoveries including a paved road of limestone slabs worn from use. Above the paved road lay a dirt road from the Islamic period with a stone drainage channel excavated intact.³²⁹ However the 'City of David' tourist settlement deliberately does not showcase the rich fabric of excavated Byzantine and Islamic period buildings.³³⁰ Instead, one would be forgiven for concluding that little else of interest was excavated at the 'City of David' beyond Jewish First Temple 'findings'.

Israel's repurposing of the Khan Daraj al-'Eyn, a Mamluk hammam (bathhouse) in the illegal 'City of David' settlement illustrates the suppression of non-Jewish history. The 14th-century hammam is one of

327 'Survey Shows Palestinian Residents of East Jerusalem Experience the Archaeological Activities as a Tool to Undermine Jerusalem's National and Religious Identity', survey commissioned by Emek Shaveh and carried out by the Smith Institute (July 2016) <www.emekshaveh.org/en/wp-content/uploads/2013/07/Survey-on-archaeological-sites-and-excavations-in-Jerusalem.pdf>

328 *Ibid.*

329 Moran Hagbi and Joe Uziel, 'Jerusalem, City of David, the Byzantine Street' (27 March 2017) Hadashot Arkheologiyot, Excavations and Surveys in Israel 129, <www.hadashot-esi.org.il/report_detail_eng.aspx?id=25185&mag_id=125>

330 Emek Shaveh (n 138) 1, 2.

the largest spaces excavated in the Western Wall Tunnels, but it has been turned into an exhibition on Jewish ancestry, which reveals the story of Jewish pilgrimage to Jerusalem.³³¹ Nothing informs the visitor of the historical importance of the site, that it is a Mamluk structure or that it was erected by the governor of Damascus who is responsible for some of the most remarkable buildings of the period.³³²

3.2.2 Destruction and Misappropriation of Archaeological Remains

Destruction and misappropriation of Palestinian cultural property is a hallmark of Israel's settler colonial enterprise.³³³ Two days after the 1967 annexation, the Israeli Occupying Forces (IOF) completely erased the Mughrabi Quarter off the Palestinian map, forcing 135 Palestinian families, amounting to 650 individuals, into displacement.³³⁴ This prominent Palestinian neighbourhood was located in the southeastern corner of the Old City of Jerusalem, beside the sacred site of Haram esh-Sharif and dated back to the 12th century.³³⁵ It was razed by the IOF to create a new Israeli-Jewish, Western Wall plaza.³³⁶ Such policies of destruction continue today in Silwan, where the seizure, misappropriation and destruction of Palestinian cultural property through archaeological excavations is conducted under

331 Gadzo (n 141).

332 Talya Ezrahi and Yonathan Mizrahi, 'Israel Is Using Archaeology To Erase Non-Jewish History' *Forward* (29 May 2019) <<https://forward.com/opinion/425059/jeruselems-archaeological-sites-are-now-a-battle-ground-for-israeli/>>

333 According to Diakonia, 'Destruction of archaeological findings and heritage in locations where excavations are taking place in the West Bank and East Jerusalem is estimated to amount to at least 200 sites since 1967.' Diakonia IHL Resource Centre, 'Occupation Remains, A Legal Analysis of the Israeli Archaeology Policies in the West Bank: An International Law Perspective' (Diakonia 2015) 19.

334 John Reynolds, 'Where Villages Stood, Israel's Continuing Violations of International Law in Occupied Latroun, 1967-2007' (Al-Haq 2007) 48; UN Security Council, 'Report of the Secretary-General Under General Assembly Resolution 2254 (ES-V) Relating to Jerusalem' (12 September 1967) S/8146 para 113.

335 ARCH – The Alliance to Restore Cultural Heritage in Jerusalem, 'The Story of the Mughrabi Quarter' <<https://mughrabiquarter.info/#menu-section>>

336 Hasson, 'Hidden Links Unearthed Between State, Settler Group at Israel's Most Controversial Dig' (n 34).

the IAA's auspices, with Elad's funding and support.³³⁷

Use of Horizontal Excavation Methods

Archaeologists working under Elad's auspices employ horizontal excavation methods, although these have been internationally considered unacceptable for a century and even criticised by senior officials of the IAA.³³⁸ In the words of the Israeli archaeologist Mizrachi: "When you excavate horizontally, you don't have the ability to understand exactly how the periods have developed in the soil; you don't properly understand what you find because you look at it from a section to the side, not from above".³³⁹ Archaeologists ordinarily excavate from the surface down, inspecting layers one by one to avoid conflating eras and noting slight changes in the colour, density or texture of the soil as signs which may suggest change in time periods.³⁴⁰ Such horizontal tunnelling does not allow for precise analysis,³⁴¹ and horizontal excavations risk further damage and destruction of the archaeological layers.³⁴²

As mentioned earlier, horizontal excavation methods were used in order to open the tunnels of the so-called 'Pilgrims' Path' to the public. Elad removed the dirt lying atop the remains of the route and inserted a concrete sleeve braced by steel arches, forming subway-size tunnels.³⁴³ These underground excavations have caused severe damage to the Palestinian houses and businesses under which the tunnels run.³⁴⁴

337 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29) 5, 24, 34. Notably, Emek Shaveh states: 'In parts of the area [of the Givati Parking lot], Abbasid and Byzantine structures were dismantled in order to reveal remains from the early Roman ("Second Temple") period. Elsewhere only structures post-dating the Byzantine period were dismantled.'

338 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29) 27; Gadzo (n 141); Emek Shaveh (n 138) 5.

339 Gadzo (n 141).

340 Poser (n 19).

341 Gadzo (n 141).

342 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29) 27, 39.

343 Poser (n 19).

344 See Section 2.1.3.



Section of the 'Pilgrims' Road' (© Al-Haq, 2022)

Removal of a Muslim Cemetery

Internal documents of the IAA, made public by Haaretz, reveal that an 11th-century Muslim cemetery was dismantled in the 'City of David' settlement in 2008.³⁴⁵ Several dozen skeletons, skulls and bone fragments from the early Islamic period were then removed without inspection, filling 100 boxes which were stored and eventually buried, according to Haaretz.³⁴⁶ Contrary to the IAA regulations, the finds were not reported to the Ministry of Religious Services, which learned of the discovery two weeks later.³⁴⁷

345 Hasson, 'Hidden Links Unearthed Between State, Settler Group at Israel's Most Controversial Dig' (n 34).

346 *Ibid.*

347 Meron Rapoport, 'Islamic-Era Skeletons "Disappeared" From Elad-Sponsored Dig' *Haaretz* (1 June 2008) <www.haaretz.com/1.4986908?lts=1637104461600<s=1637184415400>.

Seizure and Misappropriation of Archaeological Remains

Since Israel unlawfully annexed East Jerusalem in 1967, artefacts unearthed in Jerusalem have been confiscated by Israel. According to Yonathan Mizrachi, Director of Emek Shaveh, the remains that have been discovered in the 'City of David' settlement are highly likely to have been stored by the IAA.³⁴⁸ The seizure and misappropriation of Palestinian cultural property, enables Israeli authorities to further exploit the remains. For example, the Israel Museum willingly organised the exhibition "Herod the Great – The King's Final Journey" in which numerous findings from Palestinian archaeological sites at Herodium and Jericho were unlawfully transferred to Israel.³⁴⁹



The illegal 'City of David' settlement (© Al-Haq, 2019)

348 Yonathan Mizrachi, interview with the authors, 17 November 2021.

349 Yonatan Mizrachi, 'Exhibition on Loan: How Israel's Cultural Institutions Contribute to Occupation' *+972 Magazine*, (4 May 2013) <<https://972mag.com/exhibition-on-loan-how-israels-cultural-institutions-contribute-to-occupation/70447/>>

3.2.3 Criticism of Elad's practices and petitions

In general, Elad has not always observed the IAA's standard practices. Already in 1997, when the IAA learnt that Israel was planning to grant Elad management of the public administered archaeological site in Silwan, its legal adviser vociferously protested: "In recent years, Elad has been directly responsible for offences of damaging antiquities and of illegal construction, forcing the IAA to summon the police".³⁵⁰ Similarly, in 1998, a number of Israeli archaeologists petitioned the Supreme Court arguing that Elad had wilfully damaged antiquities and ignored court orders. The petition was later withdrawn after the authorities promised to issue a tender.³⁵¹ However, the Courts halted development in 2008 when it emerged that Elad was digging without a licence. Later petitions in 2010 were overruled with nonconsequential changes to Elad contracts.³⁵²

Since then, the IAA's position regarding Elad has seriously shifted, from opposant to one of its strongest supporters.³⁵³ This has not stopped Elad from ignoring the IAA's recommendations, as Haaretz revealed in 2014. In June 2012, the director of the IAA's conservation department, Raanan Kislev, said that Elad had not integrated an architect from the department and had ignored their requests. He underlined that standard conservation practices for preserving essential archaeological discoveries *in situ* were not being respected.³⁵⁴ The excavation director Ben-Ami declared three months later: "Conservation has been carried out only for a few days; Elad did not accede to our requests to do conservation work".³⁵⁵

350 Hasson, 'Hidden Links Unearthed Between State, Settler Group at Israel's Most Controversial Dig' (n 34).

351 Adina Hoffman, 'Archaeological Digs Stoke Conflict in Jerusalem' *The Nation* (20 July 2008) <www.thenation.com/article/archaeological-digs-stoke-conflict-jerusalem/>.

352 Melanie Lidman, 'Court Favors Right-Wing Group on City of David Park' *The Jerusalem Post* (26 March 2012) <www.jpost.com/National-News/Court-favors-right-wing-group-on-City-of-David-park>

353 See Section 3.5.1.

354 Hasson, 'Hidden Links Unearthed Between State, Settler Group at Israel's Most Controversial Dig' (n 34).

355 *Ibid.*

3.3 Is Another Archaeology Possible in Silwan?

The organisation Emek Shaveh has widely criticised Elad, the IAA and other actors involved in the archaeological excavations in Silwan for malpractice, explaining that an archaeological site should include the “excavated layers of a site but also to its present-day attributes – the people living in it or near it, their culture, their daily life and their needs” – in this case, the Palestinians from Silwan.³⁵⁶ In this respect, they ask “When should we stop digging?”, as to preserve the daily lives of the local residents but also to ensure a qualitative, unrushed analysis of the finds and conservation of resources for future research.³⁵⁷

In doing so, Emek Shaveh promotes “responsible archaeology” on the illegal ‘City of David’ settlement rather than a definite end to the archaeology. They see Israel’s claim to allocate licences and permit archaeology on another’s property as legitimate and advocate for:

A more responsible, involved and democratic approach would be to include the residents in shaping the development plans and research schedule. Such an approach would demonstrate a sensitivity to their needs, and would reassure the residents that the archaeologists will keep them informed about the various developments and latest finds.³⁵⁸

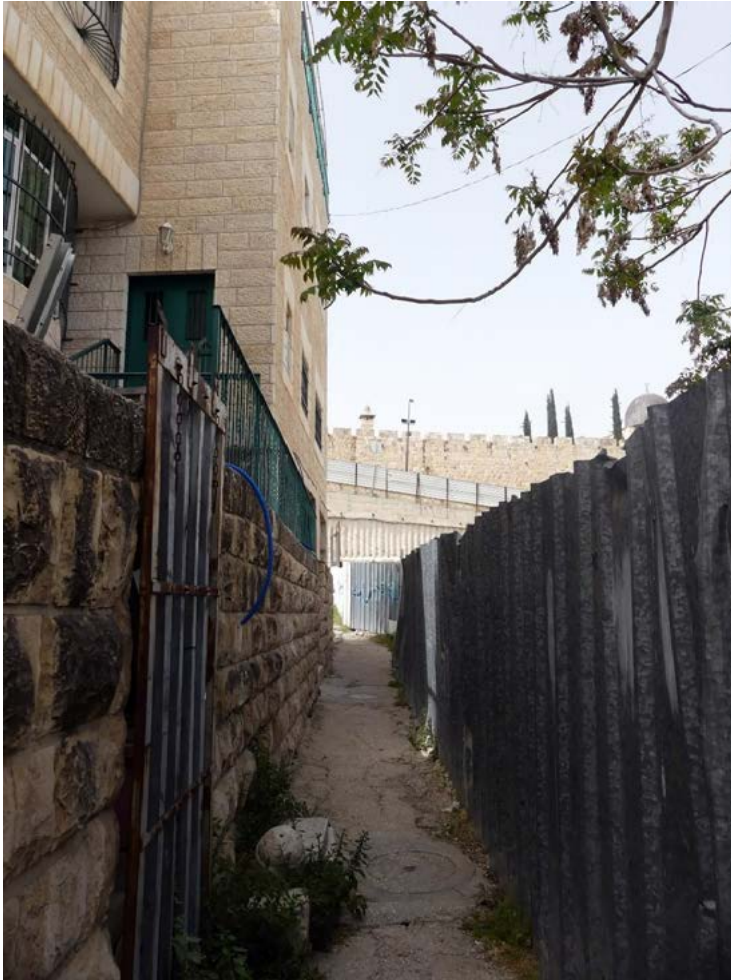
However, the issues surrounding archaeological malpractice are far graver than Emek Shaveh suggests. The question “When should we stop digging?” is the wrong question, because digging in occupied territory is illegal and should not have started – Israel as a mere Occupying Power does not have the authority to allocate public immovable Palestinian land for excavation. The digs are conducted in territory which does not belong to the State of Israel, on confiscated Palestinian land, and the cultural property of the protected population has been destroyed in the process. In this way, Emek Shevah are a symptom of the problem in advocating for better archaeology

356 ‘Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan’ (n 29) 17.

357 *Ibid.*, 19.

358 Emek Shaveh, Archaeology in the Shadow of Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan 3 (2013) 17 <http://alt-arch.org/en/wp-content/uploads/2013/04/Booklet-English-04_Low-Res.pdf>

to cater for the needs of Palestinians rather than calling for a discontinuation of unlawful archaeological digging of Palestinian land on the basis that it constitutes illegal annexation, land appropriation and the destruction of property; all war crimes under international law.



On the left, a Palestinian house; on the right, behind the fence, the Givati Parking Lot excavations. While archaeology is omnipresent in the lives of the residents, the latter are not included in the decision-making process. (© Al-Haq, 2022)

3.4 Bogus Archaeology and the Fiction of the 'City of David'

Despite the name, the 'City of David', there is substantial controversy around the authenticity of evidence supposedly revealing that the biblical 'City of David' once stood there.³⁵⁹ Already in 2008, the Israeli archaeologist Mizrachi affirmed that there has been no physical evidence that King David ever used the buildings of the so-called 'City of David', despite the site being one of the most studied in Israel.³⁶⁰ Similarly, archaeologists digging in 2014 from the Givati Parking Lot dismissed claims that the 'City of David' ridge was fortified in the Iron Age IIA.³⁶¹

It is the biblical story that guides Elad and its archaeologists' interpretation of findings.³⁶² Even when theories developed by Elad's archaeologists are seriously challenged, Elad does not always mention the scientific controversy, continuing with its Jewish-centred biblical narrative. For instance, in 2005, the archaeologist Eilat Mazar declared that she had discovered the 'house of cedar' – the palace purportedly built for David by Hiram, King of Tyre – at the location of the City of David Visitor's Centre, dating the building to the tenth century BCE.³⁶³ The theory has been almost unanimously rejected by the archaeology community; archaeologists have suggested instead that the structure dates to the Kingdom of Judah at the earliest (ninth to eighth centuries BCE).³⁶⁴ They also point out that even if

359 Emek Shaveh, 'Jerusalem Beneath the Surface, Archaeology in the Service of Politics' (interactive map), 'The City of David' <<https://intermap.alt-arch.org/en/>>

360 Jonathan Cook, 'Archaeology Used Politically to Push out Jerusalem Palestinians' *The Electronic Intifada* (26 September 2008) <<https://electronicintifada.net/content/archaeology-used-politically-push-out-jerusalem-palestinians/7733>>

361 Doron Ben-Ami, 'Notes on the Iron IIA Settlement in Jerusalem in Light of Excavations in the Northwest of the City of David' (2014) 41 *Journal of the Institute of Archaeology of Tel Aviv University* 3 <www.tandfonline.com/doi/abs/10.1179/0334435514Z.00000000030>

362 Emek Shaveh's report 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan', suggests so through its call for better archaeology practices in Silwan. As examples of findings interpreted based on the Bible, see the 'Shiloah inscription' found on a stone tablet (while the stone tablet was discovered in the 19th century, Elad spotlights the biblical interpretation) or the 'stone structure' discovered by Eilat Mazar, among others. 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29).

363 Eilat Mazar, 'Did I Find King David's Palace?' (2006) 32 *Biblical Archaeology Review* 16.

364 Emek Shaveh, 'Jerusalem Beneath the Surface, Archaeology in the Service of Politics' (interactive map), 'The Large Stone Structure (The City of David)' <<https://intermap.alt-arch.org/en/>>

the remains were from the tenth century BCE, there is no evidence that connects the purpose of the building or the identity of the builders with the 'City of David'. Nevertheless, the 'City of David' signage, labels the 'large stone structure' as "The Remains of King David's Palace?".³⁶⁵

In 2017, Yuval Gadot, from Tel Aviv University, and Elisabetta Boaretto, from the Weizmann Institute in Rehovot, joined IAA archaeologists for the project, "Setting the Clock in the City of David" that carbon dates monuments around Jerusalem.³⁶⁶ Only ten reliable carbon dates existed from all the digs in Jerusalem when they started the work; according to Gadot, there was "not a single place where the dating is proven beyond doubt" and the chronology of the city was consequently "an assumption on an assumption on an assumption".³⁶⁷ The first building the team of researchers dated was the Gihon Spring tower in the 'City of David'. The tower, a massive fortification constructed to preserve the water source from capture, had been discovered in 2004 and was dated to the Middle Bronze Age II (1,800-1,600 BCE).³⁶⁸ Elad's signage implies that the Gihon Spring tower is the 'fortress of Zion' which, according to the Book of Samuel, was captured by King David when he attacked Jerusalem. The text reads: "King David apparently stood opposite this tower when he came to conquer the Jebusite city 3,000 years ago".³⁶⁹ However, in 2017 the radiocarbon revealed the structure dates from the ninth century BCE, almost a thousand years earlier than previously thought.³⁷⁰ The new dating

365 Al-Haq's documentation, September 2019. In full, the signage reads: 'The Remains of King David's Palace? / "And Hiram king of Tyre sent messengers to David, and cedar-trees, and carpenters, and masons; and they built David a house" (II Samuel 5:11) / Excavations in progress at this site since May 2005 conducted by Eilat Mazar, have revealed the remains of a large building, known as the Large Stone Structure. Finds uncovered in relation to the structure indicate that it was built in the early 10th century BCE during the reign of King David. In Mazar's opinion the building can be identified with the royal "House of Cedar", King David's Palace. Other scholars contest this view. / The excavation is still underway and many of the City of David's secrets remain hidden in the ground.' See also 'King David's Palace?' (*City Of David*) <www.cityofdavid.org.il/en/archeology/excavations/king-david%E2%80%99s-palace>

366 Poser, 'Common Ground' (n 19).

367 *Ibid.*

368 Johanna Regev et. al., 'Absolute Dating of the Gihon Spring Fortifications, Jerusalem' (2017) 59 *Radiocarbon* 1171.

369 Al-Haq's documentation, September 2019.

370 Regev et. al., 'Absolute Dating' (n 368).

would make it impossible for David to conquer the building as the latter did not exist during the King's purported lifetime.³⁷¹ Yet, the signage of the Gihon Spring tower has not changed to include the researchers' findings.³⁷² When the then-Harpers editor Rachel Poser asked the archaeologist Yuval Gagal, who has led excavations at the 'City of David', whether he had had conversations with Elad about the wrong or misleading signage on the site, he answered: "Conversations, yes. Successful conversations, not yet".³⁷³ Thus, Elad persists in distorting the story, basing its whole policy of Judaisation of East Jerusalem, on a fiction.

It is worth mentioning that given the controversies around the authenticity and even existence of any evidence that the 'City of David' once stood at the location of the current archaeological site, scholars have formulated other hypotheses. In January 2017, prominent Israeli archaeologists Lipschits, Finklestein, and Koch from Tel Aviv University dismissed the claim that the 'City of David' was actually located on Mount Moriah, but instead on the Temple Mount, higher up on the Eastern Ridge.³⁷⁴ They claim that there is no evidence from the 'City of David' site to locate the ancient city there. The claims point towards a new directed focus on the archaeology of the Temple Mount, sacred to Islam as the Harem esh-Sharif (the Noble Sanctuary). The article suggests that "absence of evidence is not evidence of absence" argument has been substantially refuted by the lack of archaeological evidence.³⁷⁵ The archaeologists question "whether a few pockets of pottery in the centre of the City of David – without evidence for the construction of a single building—can represent Jerusalem of the Amarna period".³⁷⁶ Instead, the 'City of David' tourist attraction was more likely "an open area outside of the city, which probably featured agricultural installations, sporadic activity areas and several buildings, mainly near the spring".³⁷⁷

371 Poser, 'Common Ground' (n 19).

372 *Ibid.*

373 *Ibid.*

374 Israel Finklestein, Ido Koch, Oded Lipschits, 'The Mound on the Mount: A Possible Solution to the "Problem with Jerusalem"' (2011) 11 (12) *The Journal of Hebrew Scriptures* 2.

375 *Ibid.*

376 *Ibid.*, 6.

377 *Ibid.*, 9.

3.5 Actors Complicit in Unlawful Archaeological Digs in the 'City of David' Settlement

3.5.1 The Israel Antiquities Authority

The Israel Antiquities Authority (IAA), a statutory body created under the Antiquities Law of the State of Israel 1978, is the official entity in charge of antiquities in Israel, declaring archaeological sites, managing the excavations of artefacts, their preservation, conservation, study and publication thereof.³⁷⁸ The Antiquities Law of 1978 considers an 'antiquity' as, "any object, whether detached or fixed, which was made by man before the year 1700 of the general era" as well as "any object [...] made by man in or after the year 1700 of the general era, which is of historical value, and which the Minister has declared to be an antiquity",³⁷⁹ while Chapter 2(a) of the Law vests all antiquities found in Israel into State ownership.³⁸⁰

The IAA carries out about 90 percent of archaeological excavations in Israel and almost all the digs in East Jerusalem.³⁸¹ It is the executive body, digs supervisor, and decision-maker with regard to all antiquity-related issues.³⁸² It is worth noting that the IAA has closely cooperated with the COGAT in colonising Palestine, notably through the conduct of a mapping

378 'The Israel Antiquities Authority - Vision and Goals' (*Israel Antiquities Authority*) <www.antiquities.org.il/article_eng.aspx?sec_id=40&subj_id=226>.

379 Antiquities Law 1978, 'Chapter One: Interpretation', <www.antiquities.org.il/article_eng.aspx?sec_id=42&subj_id=228>

1. In this Law "antiquity" means -

- 1) Any object, whether detached or fixed, which was made by man before the year 1700 of the general era, and includes anything subsequently added thereto which forms an integral part thereof;
- 2) Any object referred to in paragraph (1) which was made by man in or after the year 1700 of the general era, which is of historical value, and which the Minister has declared to be an antiquity;
- 3) Zoological or botanical remains from before the year 1300 of the general era".

380 Antiquities Law 1978, 'Chapter Two: State Ownership of Antiquities', <www.antiquities.org.il/Article_eng.aspx?sec_id=42&subj_id=228&id=448>.

381 Emek Shaveh, 'Jerusalem Beneath the Surface, Archaeology in the Service of Politics' (interactive map), 'The Israel Antiquities Authority (IAA)' <<https://intermap.alt-arch.org/en/>>

382 *Ibid.*

survey.³⁸³ The survey was initiated in 1982 and jointly funded and implemented by the military occupying authority, the Civil Administration in Judea and Samaria.³⁸⁴

Today, the IAA excavates three sites in the illegal 'City of David' settlement, sponsored by Elad.³⁸⁵ From opposant to one of its strongest supporters, the IAA's policy regarding Elad has shifted between 2001 and 2012. In 2014, Haaretz revealed the tangled relations between the two entities based on hundreds of internal documents, which Emek Shaveh has obtained under the Freedom of Information Law.³⁸⁶ As previously mentioned, when in 1997 the IAA learned that it was likely Elad would be put in charge of the state-owned parts of Silwan, it strongly opposed the decision.³⁸⁷ In particular, it opposed Elad's plan to build a large visitor's centre as well as any construction on the site, its legal advisor stating: "The Antiquities Authority's unequivocal position is that it is vital to preserve the City of David, and no construction whatsoever should be conducted within its limits. Only archaeological excavations and conservation or reconstruction work should be undertaken in the City of David".³⁸⁸

The IAA progressively changed its position over the following decade. In 2002, the then authority's director, Yehoshua Dorfman, authorised Elad-

383 The Israel Antiquities Authority has mapped the entirety of Israel and the occupied territories, the West Bank, East Jerusalem, and the Gaza Strip into survey squares, each 100 sq km (10 x 10 km). Israel Antiquities Authority, 'The Archaeological Survey of Israel' <[https://survey.antiquities.org.il/index_Eng.html#/>](https://survey.antiquities.org.il/index_Eng.html#/).

384 Further the Civil Administration for Judea and Samaria funded the publication of the book by Amir Feldstein, Giora Kidron, Nizan Hanin, Yair Kamaisky and David Eitam, *Archaeological Survey of the Hill Country of Benjamin* (1993), demonstrating the interrelationship and control of the military authority in using financial resources belonging to the occupied territory to fund Israel's unlawful archaeological digs. Israel Antiquities Authority, *The Archaeological Survey of Israel*, <www.antiquities.org.il/survey/new/default_en.aspx>

385 'The Ir David Foundation' (n 51).

386 Hasson, 'Hidden Links Unearthed Between State, Settler Group at Israel's Most Controversial Dig' (n 34).

387 *Ibid.*

388 Letter of the IAA's legal advisor, Yoram Bar-Sela's, to the Attorney General (1997) referenced in Raphael Greenberg, 'A Privatized Heritage: How the Israel Antiquities Authority Relinquished Jerusalem's Past' (Emek Shaveh 2014) 12.

planned work on an underground parking during an internal meeting.³⁸⁹ Haaretz noted the contradiction in the meeting minutes as it is stated that “if distinctive antiquities are found, no construction at all will be permitted” while also indicating that “the archaeological findings will be integrated into the structure”.³⁹⁰ At the time, the project included parking and an entryway on the so-called Givati Brigade parking lot. To pursue the dig without damaging a nearby road, Elad and the IAA built a concrete wall to consolidate the sides of the excavation trench. Following this construction, Peace Now and inhabitants of Silwan challenged the legality of the wall and excavations in a petition to the High Court of Justice.³⁹¹ The IAA replied that it would not consider any building plan before a full excavation of the entire property had been carried out: “Only after all the finds in the area are revealed and discovered will the IAA be in a position to decide whether or not it agrees to construction and under what conditions”.³⁹² The IAA did not mention that it had already supported Elad’s building plan in 2006.³⁹³ The High Court accepted the IAA’s position and authorised the excavation and wall, stating: “The City of David tells the story of the thousands of years of Jerusalem’s history, as can be gleaned from the Bible and elsewhere. National and international importance attaches to revealing the secrets of the City of David”.³⁹⁴

Since then, the original plan, consisting of parking and an entryway, has turned into the Kedem Centre project,³⁹⁵ a six-storey building the size of a mall with a cable car station at the top – architecturally foreign to

389 Hasson, ‘Hidden Links Unearthed Between State, Settler Group at Israel’s Most Controversial Dig’ (n 34).

390 *Ibid.*

391 Akiva Eldar, ‘Court Orders State to Explain Construction in Jerusalem’s Holy Basin’ *Haaretz* (13 November 2008) <www.haaretz.com/1.5058235>.

392 Greenberg, ‘A Privatized Heritage’ (n 388) 27 and document 16 in Annex (Hebrew).

393 *Ibid.*

394 Hasson, ‘Hidden Links Unearthed Between State, Settler Group at Israel’s Most Controversial Dig’ (n 34).

395 Section 2.3.2.

the landscape.³⁹⁶ This alternative role of the IAA demonstrates its active involvement in Elad's aim to Judaize Jerusalem.

In 2014, the appointment of the politician Israel Hasson as the next director of the IAA was criticised due to Hasson's lack of experience in archaeology and his ties to Elad.³⁹⁷ In 2011, after the NGO Ir Amim filed a petition affirming that Elad's administration of the 'City of David' archaeological site and national park amounted to its privatisation, Hasson proposed a bill authorising the management of national parks by NGOs, to avoid court action.³⁹⁸ He recognised that he was motivated by a desire to help Elad.³⁹⁹ Questioned on his link with Elad in 2014, he answered: "I am not close or distant to anyone. [...] I have acted because I've thought the value of what is known as the City of David is an important value".⁴⁰⁰

The tangled links between the IAA and the settler organisation are internationally known. In 2015, the British Foreign Office Minister Baroness Anelay said she was "concerned that this link [between Elad and the IAA] has led to Israel Antiquities Authority's support of radical settler activities in and around the Old City under the guise of tourism and protection of Jewish history".⁴⁰¹

396 Hasson, 'Hidden Links Unearthed Between State, Settler Group at Israel's Most Controversial Dig' (n 34); Emek Shaveh, 'Jerusalem Beneath the Surface, Archaeology in the Service of Politics' (interactive maps), 'Kedem Compound' <<https://intermap.alt-arch.org/en/>>.

397 Nir Hasson, 'Israel Antiquities Authority Taps Politician with Ties to Rightist NGO' *Haaretz* (29 October 2014) <www.haaretz.com/.premium-israeli-antiquity-authority-taps-chief-1.5321318>

398 Zafir Rinat, 'Despite Jurists' Opposition, Government to Privatize National Parks' *Haaretz* (21 March 2011) <www.haaretz.com/1.5139505>.

399 Hasson, 'Israel Antiquities Authority Taps Politician with Ties to Rightist NGO' (n 397).

400 *Ibid.*

401 Jon Stone, 'Israeli Settlers Are Using Archaeological Digs as Cover to Take Palestinian Land, British Government Says' *The Independent* (24 March 2015) <www.independent.co.uk/news/world/middle-east/israeli-settlers-are-using-archaeological-digs-as-cover-to-take-palestinian-land-british-government-says-10127250.html>

3.5.2 State Funded Archaeology at the 'City of David'

In terms of the archaeological excavations at the 'City of David' settlement, the State of Israel directly pays the IAA, who in turn credits the amount to Elad. Between 2011 and 2013 some USD \$6.9 million was transferred from Israel's Culture and Sports Ministry and Tourism Ministry to the IAA for excavations carried out at the 'City of David'. The Tourism Ministry has stated:

As part of a comprehensive investment in tourism infrastructures in Jerusalem, the Tourism Ministry has invested about 7 million shekels in the development of the City of David. This includes landscaping, parking, lighting, shade and archaeological digs (as part of the excavations in the national park around the Old City wall). The site is now a major attraction, is being maintained at a high level and constitutes a model of success.⁴⁰²

In addition to funding the IAA, the Israel government provided about USD \$13 million for excavations at the 'City of David' in May 2018.⁴⁰³

Finally, archaeological research at the 'City of David' is state funded through monetary grants for specific projects. Recently, the Israel Science Foundation – whose budget is provided by the State of Israel –⁴⁰⁴ has been financing through a grant of more than 1 million shekels (USD \$293,000) the radiocarbon dating project "Setting the Clock in the City of David". The four-year project is led by Yuval Gadot (Tel-Aviv University), Elisabetta Boaretto and two Israel Antiquities Authority archaeologists, Doron Ben-Ami and Joe Uziel.⁴⁰⁵

402 Nir Hasson, 'Hidden Links Unearthed Between State, Settler Group at Israel's Most Controversial Dig' *Haaretz* (17 November 2014) <www.haaretz.com/.premium-links-between-state-and-settler-group-at-city-of-david-dig-1.5329984>

403 GLAN and SOMO, 'Tainted Tourism' (n 225) 12; Juman Abu Arafah, 'How Israel's Archaeological Excavations Work to Rewrite History in Jerusalem' *Middle East Eye* (27 July 2020) <www.middleeasteye.net/news/jerusalem-israeli-tunnels-archaeology-history-palestinians-silwan>

404 The Israel Academy of Sciences and Humanities, 'Israel Science Foundation', <www.academy.ac.il/RichText/GeneralPage.aspx?nodeId=860>; Tel-Aviv University, Research and Publication Archives, 'Israel Science Foundation' <<https://en-arts.tau.ac.il/Researches/prize/inter>>

405 Ariel David, 'Archaeologists Drop Bible, Pick Up Science to Solve Jerusalem Puzzles' *Haaretz* (27 January 2018) <www.haaretz.com/archaeology/MAGAZINE-archaeologists-drop-bible-pick-up-science-to-solve-jerusalem-puzzles-1.5746304>; Weizmann Institute of Science, 'Elisabetta Boaretto Lab, Setting the Clock in the City of David: Establishing a Radiocarbon Chronology for Jerusalem's Archaeology in Proto-historical and Historical Times' <www.weizmann.ac.il/Sci-Arch/Boaretto/research-activities/timing-cultural-change-southern-levant-chronology>

3.5.3 The University of Tel Aviv

In late 2012, the University of Tel Aviv (TAU) began to conduct excavations at the 'City of David' settlement.⁴⁰⁶ The University side-stepped the illegality of the archaeological licence for immovable Palestinian property, arguing that the work would not contribute to the strengthening of settlements in the area. The TAU Institute of Archaeology Director Prof Oded Lipschits defended the University's decision to excavate at the settlement:

The heart of biblical archaeology is in Jerusalem and the City of David. For that reason, I approached the Antiquities Authority and expressed our will to carry out work in the area. [...] The goal of the digging at the City of David is to carry out a form of 'clean' archaeology. Of course the project has to take into consideration the elements active in the site and running the national park. We will cooperate with Elad, since they run the site, but we will maintain our standards. We won't agree to be subjected to political interests.⁴⁰⁷

However, the work carried out included tunnelling under local Palestinian houses, and hastily performed excavations have been criticised as contravening international standards.⁴⁰⁸

In October 2012, Haaretz reported that the IAA and the TAU had signed a contract under which the IAA would partially finance the excavations conducted by the TAU. In particular, the IAA would transfer to the TAU funding for the salary of project leader Yuval Gadot and for TAU's analysis of the findings.⁴⁰⁹ The archaeologist Yoni Mizrahi, from Emek Shaveh, questioned the role of Elad in the funding, expressing doubts that the IAA has "suddenly found sources to fund someone else's projects".⁴¹⁰ The excavation, as with other IAA excavations in the 'City of David', would also be financed by Elad.⁴¹¹

406 Nir Hasson, 'Petition Slams Tel Aviv University's Involvement in East Jerusalem Dig' *Haaretz* (25 December 2012) <www.haaretz.com/.premium-academics-urge-tel-aviv-u-not-to-join-e-j-lem-dig-1.5281799>

407 Nir Hasson, 'TAU to Take Part in East Jerusalem Dig Funded by Pro-Settlement Group' *Haaretz* (25 October 2012) <www.haaretz.com/.premium-tel-aviv-u-to-take-part-in-east-jerusalem-dig-1.5194677>

408 *Ibid.*

409 *Ibid.*

410 *Ibid.*

411 Hasson, 'Petition Slams Tel Aviv University's Involvement in East Jerusalem Dig' (n 406).

After cooperation between the IAA and the TAU was revealed, almost 90 academics signed a petition calling the University administration to withdraw its participation in the excavations.⁴¹² Talking about a “partnership with an extreme political organisation and thus a *de facto* stance on a very contentious issue, both politically and morally”, the petition affirmed: “the university is thereby giving the NGO [Elad] the professional recognition it desires, which academic institutions in Israel and abroad have so far refused to grant”.⁴¹³ The University answered:

[The] area designated for the excavation is located far from the houses of Silwan. The dig will be carried out using modern scientific methods, at the highest professional standards, with particular attention paid to professional ethics. In the dig, a great deal of attention will be paid to the needs of those living nearby and the dig will be open to visits by local residents and tourists.

Other than cooperation and professional oversight by the Israel Antiquities Authority, as required by law, no directives from any other organization will be accepted and there will be no supervision by any other group of the Tel Aviv University excavation.⁴¹⁴

Yet, documents obtained by Haaretz in 2013 revealed that Elad had been involved in the excavations from the beginning.⁴¹⁵ It also indicated that Elad had entirely financed the excavations and was financing Yuval Gadot's salary, confirming Yoni Mizrahi's supposition.⁴¹⁶ The TAU, despite affirming that it had “no connection and no contact with Elad”, was aware of Elad's role. Since then, the TAU has pursued its involvement in the 'City of David' excavations in collaboration with the IAA.⁴¹⁷ Therefore, the TAU's

412 *Ibid.*

413 *Ibid.*

414 *Ibid.*

415 Nir Hasson, 'Right-Wing NGO Funding Tel Aviv University Dig in East Jerusalem' *Haaretz* (13 June 2013) <www.haaretz.com/right-wing-ngo-funding-e-j-lem-dig-1.5279147>.

416 *Ibid.*

417 Yuval Gadot and Yiftah Shalev, 'The Giv'ati Parking Lot 2020 Excavations' (2021) 7 *TAU Archaeology Newsletter* 8; Yuval Gadot and Yiftah Shalev, 'Giv'ati Excavations' (2020) 6 *TAU Archaeology Newsletter* 45. Older TAU Archaeology Newsletters can be found at <<https://en-humanities.tau.ac.il/Archaeology/publications/newsletter>>.

partnership with the IAA and archaeological work in the 'City of David' settlement is rooted in the illegal annexation of East Jerusalem and ongoing settlement expansion in the Palestinian neighbourhood of Silwan. The TAU has therefore participated in changing the status quo in East Jerusalem.

3.6 Legal Analysis

As indicated in Section 2.4 the international legal framework for analysing Israel's policies and practices in Jerusalem is composed of IHL and its subset, occupation law; international human rights law; and international criminal law.

3.6.1 Protection of Cultural Property Under IHL

Under IHL, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (Hague Convention),⁴¹⁸ which reflects customary international law, accompanied by its Protocol,⁴¹⁹ protects cultural property in the widest possible sense.⁴²⁰ Israel signed and ratified the Hague Convention and its Protocol in 1957 and 1958 respectively. The 1999 Second Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict, which has neither been signed nor ratified by Israel, integrates customary international law. Notably, customary international humanitarian law prohibits the seizure, destruction, and wilful damage, as well as the theft, pillage or misappropriation of cultural property, and any acts of vandalism.⁴²¹ The only exception to the protection of cultural objects is when the latter are legitimate military objectives.⁴²²

In situations of belligerent occupation, Article 43 of the Hague Regulations requires the military commander to ensure public order and civil life in the occupied territory, while Article 27 of the Fourth Geneva Convention requires respect for local convictions, manners, and customs of the protected population. Notably, actions taken by the Occupying Power must not undermine the minimum humanitarian guarantees afforded to the

418 UN Educational, Scientific and Cultural Organisation (UNESCO), Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954, entered into force 7 August 1956).

419 UNESCO, Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (14 May 1954) 249 UNTS 358.

420 Convention for the Protection of Cultural Property in the Event of Armed Conflict, Articles 1 and 2; Additional Protocol I, Article 52.

421 Hague Regulations, Article 56; Hague Convention, Articles 4(1) and 4(3); ICRC Study, Rule 40.

422 Additional Protocol I, Article 52.

protected population under the Fourth Geneva Convention.⁴²³ In the case of the protection of cultural property for instance, provisions regarding respect for private property and the prohibition against destruction of civilian property,⁴²⁴ settlements,⁴²⁵ and forcible transfer must still be observed.⁴²⁶ Furthermore, the general rules regarding the protection of cultural property apply in situations of occupation, including: the obligation to support the competent national authorities of the occupied territory in safeguarding and preserving its cultural property;⁴²⁷ limitations on excavations;⁴²⁸ the prohibition against the transfer of artefacts outside the occupied territory and the obligation to return them back.⁴²⁹

The duty to support the national authorities of the occupied territory contained in Article 5 of the Hague Convention is *lex specialis* in relation to Article 43 of the Hague Regulations. In other words, the ownership and management of cultural property by the local population cannot be undermined for any reason.⁴³⁰ Worth highlighting is that customary international law obliges all states to support the national authorities in safeguarding and preserving cultural property.⁴³¹

As an Occupying Power, Israel must support the Palestinian national authorities in preserving its cultural property, and refrain from excavating and transferring Palestinian cultural property into its own territory.

423 Fourth Geneva Convention (1949), Article 47.

424 Hague Regulations, Articles 42, 46; Fourth Geneva Convention, Articles 53, 147.

425 Fourth Geneva Convention, Article 49(6); Additional Protocol I, Article 85(4)(a).

426 Fourth Geneva Convention, Article 49(1); Additional Protocol I, Article 85(4)(a).

427 Convention for the Protection of Cultural Property in the Event of Armed Conflict, Article 5.

428 Second Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict, Article 9(2). Article 9(2) prohibits archaeological excavations in occupied territory unless 'carried out in close co-operation with the competent national authorities of the occupied territory'. This obligation derived from the primary customary obligation on the Occupying Power to support national authorities and to ensure public order and civil life. See Diakonia IHL Resource Centre, 'Occupation Remains, A Legal Analysis of the Israeli Archaeology Policies in the West Bank: An International Law Perspective' *Diakonia* (2015) 18.

429 UNESCO, Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (14 May 1954) 249 UNTS 358, para 1-3; ICRC Study, Rule 41.

430 Diakonia IHL Resource Centre (n 309) 12.

431 Convention for the Protection of Cultural Property in the Event of Armed Conflict, Article 5.

Instead, to entrench its unlawful annexation of Jerusalem, Israel conducts excavation after excavation in the 'City of David' settlement to the detriment of the indigenous Palestinian population whose civil rights are infringed upon on a daily basis, while also denying competence to the Palestinian local authorities.



Part of the Silwan neighbourhood as seen from the illegal 'City of David' settlement (© Al-Haq, 2019)

3.6.2 International Human Rights Law

As explained in Section 2.4, IHL is *lex specialis* in the occupied territory, with IHRL applying simultaneously and complementarily with IHL.⁴³² In addition to the main IHRL instruments to which Israel is a party, namely the ICCPR, the ICESCR, the CERD, the CEDAW, the CRC, the CAT, the CRPD,⁴³³ three areas of IHRL more specifically concern the protection of cultural property: the right to take part in cultural life; the UNESCO legal regime; and the development of legal mechanisms with regard to indigenous people's rights.

432 Diakonia IHL Resource Centre (n 309) 12.

433 Section 2.4.

Article 15 of the ICESCR: The Right to Take Part in Cultural Life

The right to take part in cultural life is enacted in Article 15 of the ICESCR. It shall be applied in line with the obligation of non-discrimination as enacted in Article 2(2). According to the Committee on Economic, Social and Cultural Rights (CESCR), the notion of “cultural life” is “an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future”.⁴³⁴

The CESCR distinguishes three components of the right to participate or take part in cultural life: participation in, access to, and contribution. Notably, *access* includes the right of everyone to “know and understand his or her own culture and that of others through education and information”;⁴³⁵ as well as to “follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities”.⁴³⁶ It is also worth noting that General Comment No. 21 indicates that the presence of cultural goods and services, including “shared open spaces essential to cultural interaction” is an element of the right to take part in cultural life.⁴³⁷

Due to the selective use of archaeology and the damage to Palestinian cultural heritage by Elad, with the support of the Israeli authorities, Palestinians’ right to know and understand their own culture and to benefit from their cultural heritage is infringed. It is worth noting that other Israeli practices in Silwan highlighted earlier in the report, in particular the closing of shared open spaces (e.g., the Givati Parking Lot)⁴³⁸ or the limited access to cultural resources (e.g., the Gihon Spring),⁴³⁹ also constitute violations of Palestinians’ right to take part in cultural life.

434 CESCR, ‘General Comment No. 21, Right of Everyone to Take Part in Cultural Life (Article 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights)’ (21 December 2009) E/C.12/GC/21 [General Comment No. 21] para 11.

435 CESCR, General Comment No. 21, para 15(b).

436 CESCR, General Comment No. 21, para 15(b).

437 CESCR, General Comment No. 21, para 16.

438 Sections 2.3.2. and 3.1.2.

439 Sections 2.1.3 and 2.2.

The UNESCO Legal Framework

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) adopted in 1956 the 'Recommendation on International Principles Applicable to Archaeological Excavations' which states that the Occupying Power should "refrain from carrying out archaeological excavations in the occupied territory" and further indicates that in the case of fortuitous unearthing of remains, in particular during military work, the occupant should "take all possible measures to protect these finds, which should be handed over, on the termination of hostilities, to the competent authorities of the territory previously occupied, together with all documentation relating thereto".⁴⁴⁰ In 1970, UNESCO presented the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Notably, this Convention includes a definition of illicit trade that covers receiving state imports of illicit cultural objects; intended to stop the unlawful cross-border sale of artefacts. Israel has neither signed nor ratified the Convention and the Recommendation is nonbinding. Nonetheless, these instruments provide a framework for international consensus on the protection of cultural property.⁴⁴¹

Moreover, UNESCO has maintained the Old City of Jerusalem and its Walls on the List of World Heritage in Danger since 1982.⁴⁴² This list, initiated and maintained by the UNESCO World Heritage Convention (WHC) of 1972, aims at promoting the protection, conservation, and transmission to future generations of cultural and natural world heritage. The State designated is responsible for ensuring the preservation and conservation of any sites.⁴⁴³ In 1980, the Advisory Body Evaluation of the International Council on Monuments and Sites specifically mentioned the village of Silwan, as well as the Gihon Spring and the Silwan pool, as sites that should be part of the

440 UNESCO, 'Recommendation on International Principles Applicable to Archaeological Excavations' (adopted 5 December 1956) Article 32, in Records of the General Conference, 9th session, New Delhi, 1956: Resolutions (1957) 9 C/Resolutions, CPG.57.VI.9, 40, 44.

441 Marya Farah, 'Hidden in Plain Sight: The Village of Nabi Samwil' *Al-Haq* (2018).

442 Decision 44 COM 7A.10.

443 UNESCO, Convention for the Protection of the World Cultural and Natural Heritage (signed 16 November 1972, entered into force 17 December 1975) 1037 UNTS 151, Article 11(4); UNESCO, Operational Guidelines for the Implementation of the World Heritage Convention (July 2013) WHC. 13/01, paras. 177-91; Gleider Hernández, *International Law* (OUP 2019) pt 19.7.4.2.

zone of protection.⁴⁴⁴ The Old City of Jerusalem and its Walls was listed on the List of World Heritage in Danger due to numerous threats, including “significant loss of historical authenticity”, “lack of conservation policy” and “threatening effects of town planning”, among others.⁴⁴⁵ The 2021 state of conservation report highlighted once again numerous threats, including the “impact of archaeological excavations” and the “changes in local population and community”.⁴⁴⁶ Moreover, during its 44th session in 2021, the World Heritage Committee stated that it:

Regrets the failure of the Israeli occupying authorities to cease the persistent excavations, tunneling, works, projects and other illegal practices in East Jerusalem, particularly in and around the Old City of Jerusalem, which are illegal under international law and reiterates its request to Israel, the Occupying Power, to prohibit all violations which are not in conformity with the provisions of the relevant UNESCO conventions, resolutions and decisions.⁴⁴⁷

Israel contravenes the UNESCO framework as the Occupying Power by conducting archaeological excavations in the OPT, notably through unorthodox archaeological methods which damage the remains,⁴⁴⁸ and by refraining from taking necessary measures of protection and conservation of the Silwan neighbourhood, including the cultural sites the latter hosts in accordance with IHL. Moreover, the transfer of artefacts unearthed in the ‘City of David’ settlement to Israeli territory constitutes illicit transfer of cultural property.⁴⁴⁹ This is not only about the loss of cultural objects, but also concerns a much broader issue, as Gabriel Fahel points out, namely that: “if these issues are not adequately addressed in final status negotiations, the

444 International Council on Monuments and Sites, Advisory Body Evaluation, ‘World Heritage List N°148 (Rev.) (16 December 1980) <<https://whc.unesco.org/document/152790>>

445 UNESCO World Heritage Committee, ‘Report of the Rapporteur’ (17 January 1983) CLT.82/CH/CONF.015/8, para 31.

446 UNESCO, ‘State of Conservation, Old City of Jerusalem and its Walls (Jerusalem [Site proposed by Jordan]), (2021) <<https://whc.unesco.org/en/soc/4039>>

447 UNESCO World Heritage Committee, ‘Decisions adopted during the extended 44th session of the World Heritage Committee (Fuzhou (China) / Online meeting, 2021)’ (31 July 2021) WHC/21/44.COM/18, para 10, ‘Decision 44 COM 7A.10’, Annex, para 7 [emphasis in the text].

448 Section 3.2.

449 Section 3.2.2.

emerging Palestinian State and the Palestinian people will lose an important link to their history and heritage, and will, unlike other sovereign States, be stripped of the historic context and attachment to their State".⁴⁵⁰



The so-called 'Royal Quarter' in the illegal 'City of David' settlement (© Al-Haq, 2022)

450 Gabriel Fahel, 'Repatriating Palestinian Patrimony: An Overview of Palestinian Preparations for Negotiations on Archaeology' 2 *Present Pasts* (2010) 26, 28.

Indigenous Rights

The International Council on Monuments and Sites Charter for the Protection and Management of the Archaeological Heritage (ICOMOS) underlines in the Charter for the Protection and Management of the Archaeological Heritage that “elements of the archaeological heritage constitute part of the living traditions of indigenous peoples, and for such sites and monuments the participation of local cultural groups is essential for their protection and preservation”.⁴⁵¹ Though the Charter is non-binding, it has some importance as ICOMOS is the advisory body of the World Heritage Committee for the implementation of UNESCO’s 1972 Convention Concerning the Protection of World Cultural and Natural Heritage, to which Israel is a party.⁴⁵² Notably, Article 2 of the Charter reads:

Active participation by the general public must form part of policies for the protection of the archaeological heritage. This is essential where the heritage of indigenous peoples is involved. Participation must be based upon access to the knowledge necessary for decision-making. The provision of information to the general public is therefore an important element in integrated protection.

Indigenous rights shall be read in parallel with the law of occupation. As explained in Section 3.6.1, the ownership and management of cultural property by the local population cannot be undermined for any reason in a situation of belligerent occupation.

The Palestinian population of Silwan is not involved in any way in the management of the archaeological sites of the neighbourhood. Far from being consulted, the residents are not even informed of the conduct of archaeological excavations nearby or beneath their houses, which reduce the available open public space, and are denied access to the excavation

451 ICOMOS, Charter for the Protection and Management of the Archaeological Heritage, Prepared by the International Committee for the Management of the Archaeological Heritage (ICAHM) and approved by the 9th General Assembly in Lausanne in 1990 (1990) 1 <www.icomos.org/en/about-the-centre/179-articles-en-francais/ressources/charters-and-standards/160-charter-for-the-protection-and-management-of-the-archaeological-heritage>

452 UNESCO, Convention concerning the Protection of the World Cultural and Natural Heritage (16 November 1972) 1037 UNTS 151.

sites.⁴⁵³ The Occupying Power cannot replace the local population or its representative, the Palestinian Authority. The only lawful archaeology in Silwan would be the one decided and managed by Palestinians, including the active participation of the residents of Silwan.



The archaeological excavations at the Givati Parking Lot. In the foreground, a Palestinian family.
(© Al-Haq, 2022)

3.6.3 International Criminal Law

International criminalisation concerning cultural property is codified in the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict of 1999 (Hague Protocol II) as well as in the Rome Statute. Chapter 4 of the Hague Protocol II is the most elaborated legal instrument fostering individual criminal responsibility for severe violations against cultural property and heritage.⁴⁵⁴ Notably, the list

453 Section 2.1.3.

454 Diakonia IHL Resource Centre (n 309) 15.

of crimes in Article 15(1) includes the “theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention”.⁴⁵⁵ Meanwhile, Article 8(2)(b)(ix) of the Rome Statute prohibits the intentional targeting of “buildings dedicated to religion, education, art, science, or charitable purposes [and] historic monuments” – except when the object qualifies as a military objective. Incidental destruction of cultural property is covered by the more general Article 8(2)(b)(iv) of the Rome Statute.

Moreover, it is worth mentioning the ICC case *Prosecutor v. Ahmad Al Faqi Al Mahdi* as for the first time the war crime of destroying cultural heritage was the central subject matter of a case before the International Criminal Court (ICC).⁴⁵⁶ In the case in point, a series of attacks in the city of Timbuktu had been conducted against at least nine mausoleums, two mosques and two historical monuments with designated World Cultural Heritage status.⁴⁵⁷ Notably, the case makes clear the connection between the category of cultural property crimes and the attempts at cultural erasure, and thus “reinforces the legal principle that attacks on culture, like attacks against people, constitute war crimes subject to international criminal prosecution”.⁴⁵⁸ Describing the impact of the loss, the ICC Prosecutor stated: “To destroy Timbuktu’s mausoleums is therefore to erase an element of collective identity built through the ages. It is to eradicate a civilisation’s landmark. It is the destruction of the roots of an entire people, which irremediably affects its social attitudes, practices and structures”.⁴⁵⁹ This statement echoes the suffering endured by Palestinians witnessing the progressive destruction and appropriation of their cultural property.

455 Hague Protocol II, Article 15(1).

456 Amy Strecker, ‘ICC Confirms Charges Against Al-Mahdi for Destruction of Monuments at Timbuktu: Case to Proceed’ *Centre of Global Heritage and Development* (2 June 2016) <www.globalheritage.nl/news/icc-confirms-charges-against-al-mahdi-for-destruction-of-monuments-at-timbuktu-case-to-proceed>

457 Situation in Mali, ICC-Office of the Prosecutor, Article 53(1) Report, (Jan. 16, 2013) paras 5-6.

458 Mark S Ellis, ‘The ICC’s Role in Combatting the Destruction of Cultural Heritage’ (2017) 49 *Case Western Reserve Journal of International Law* 23, 25.

459 *Prosecutor v Al Mahdi*, Statement of the Prosecutor of the International Criminal Court (22 August 2016) ICC-01/12-01/15 <www.icc-cpi.int/Pages/item.aspx?name=otp-stat-al-mahdi-160822>

Given the context of the occupation of East Jerusalem, it is necessary to clarify whether war crimes may be committed outside the 'conduct of hostilities' phase of armed conflict. There has been divergence at the ICC on this question. In particular, the Trial Chamber surprisingly held in the *Ntaganda* case that "[a]s with the war crime of attacking civilians, the crime of attacking protected objects belongs to the category of offences committed during the actual conduct of hostilities"⁴⁶⁰ and as such must be committed before such objects or civilians "have fallen into the hands of the attacking party".⁴⁶¹ However, this position, neither adopted in the *Al Mahdi*⁴⁶² nor in the *Al Hassan*⁴⁶³ cases, clearly runs against the central purpose of the Rome Statute's war crimes provisions, which is to protect civilians from attack, a purpose underpinned by humanitarian principles.⁴⁶⁴ As there is no support for such an approach in the drafting history of the Rome Statute nor in any rule of IHL, Clancy and Kearney note that "[r]estrictions on the application of such protections, through the application of elements not included in the Statute are to be cautioned against".⁴⁶⁵ Consequently, adopting the position held in the ICC cases of *Al Mahdi* and *Al Hassan*, the ongoing destruction and misappropriation of Palestinian cultural property in the village of Silwan through unlawful archaeological excavations, with the intention of erasing the Palestinian presence, constitutes war crimes for which those responsible must be prosecuted.

460 Trial Chamber Judgment, *Prosecutor v. Bosco Ntaganda* (8 July 2019) ICC-01/04-02/06, para 1136.

461 *Ibid.*, para 904.

462 Judgment and Sentence, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, ICC-01/12-01/15-171, (27 September 2016), paras 14-16.

463 Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, paras 521-2.

464 Pearce Clancy and Michael Kearney, 'Amicus Curiae Submission Pursuant to Rule 103 of the Rules of Procedure and Evidence', *Prosecutor v. Bosco Ntaganda* (18 September 2020) ICC-01/04-02/06, 5.

465 *Ibid.*, 7-8.

The Meyuchas house, an illegal settlement. In the background, the Palestinian village of Silwan. (© Al-Haq, 2022)



4

Developing Mass Tourism at the 'City of David'

Only by first projecting an idea of Jerusalem could Israel then proceed to the changes on the ground [which.] would then correspond to the images and projections.

Edward Said, 1995⁴⁶⁶

The 'City of David' touristic settlement welcomed thousands of visitors each year before the Covid-19 pandemic, a figure that had steadily increased to 3.8 million in 2018.⁴⁶⁷ In 2015 and 2016 respectively, 26 percent and 33 percent of the tourists leaving Israel interviewed for the purposes of Israel's Ministry of Tourism annual tourism survey, indicated that they had visited

466 Edward Said, 'Projecting Jerusalem' (Autumn 1995) 25(1) *Journal of Palestine Studies* 5, 7.

467 Eran Feitelson, 'Accessing the Divine and the Past: Jerusalem's Cable Car Dilemmas' *Journal of Transport Geography* (February 2021) 91.

the 'City of David' during their stay.⁴⁶⁸ The latter, a mix between Israeli nationals, mainly children, soldiers, and foreign tourists, are presented with tours of remains and artefacts associated with biblical Jewish history.⁴⁶⁹ Meanwhile, the tour is organised in a manner to erase the Palestinian past and present. At the end of the tour, visitors are left with the impression that the history of the site is mainly, if not only, Jewish, and that Israel is legitimately conducting archaeological excavations.

4.1 Tourism as a Means of Spreading the Zionist Colonial Narrative: Gathering Support for the Colonial and Apartheid Project

4.1.1 A Jewish Settlement, with an Over-Emphasis on the Biblical Story

At the 'City of David' settlement, visitors are provided with a Jewish-centred historical narrative, disproportionately based on the biblical story. In this way, Elad aims at strengthening the connection of the Jewish people to the land of Israel, Judaising the Palestinian neighbourhood of Silwan and progressing Israel's settler-colonial project. An analysis of 'City of David' comments on Tripadvisor, reveal that most visitors appear unaware of Elad's underlying ideology and consider the site a fascinating archaeological site.⁴⁷⁰

Each tour of the site begins with a 15-minute video that lays down the Zionist narrative and the idea of Jewish biblical rights to the territory. The

468 It is worth pointing out that the number falls to 17.5 percent in 2017. The annual survey has not included the question relating to the sites tourists had visited during their stay since 2017. Israel Ministry of Tourism, 'Inbound Tourism Survey Annual Report 2015' (June 2016) 6 <https://motwebmediastg01.blob.core.windows.net/nop-attachment/7522_English%20brief.pdf>; Israel Ministry of Tourism, 'Inbound Tourism Survey Annual Report 2016' (May 2017) 6 <https://motwebmediastg01.blob.core.windows.net/nop-attachment/7740_Inbound_Tourism_Survey_2016_en.pdf>; Israel Ministry of Tourism, 'Inbound Tourism Survey Annual Report 2017' (May 2018) 7 <https://motwebmediastg01.blob.core.windows.net/nop-attachment/8862_english5.pdf>

469 David Landy, 'The Place of Palestinians in Tourist and Zionist Discourses in the "City of David", Occupied East Jerusalem' (2017) 14 *Critical Discourse Studies* 309, 315.

470 *Ibid.*, 318.

story that is told abruptly stops around 2,000 years ago, when the Second Temple was destroyed, and starts again with the arrival of British surveyor Charles Warren and a small group of Yemenite Jews at the end of the 19th century.⁴⁷¹ The narrator implies a historic link between Jerusalem's first conquest and the ongoing settler project stating:⁴⁷²

Jerusalem was resettled in the days of the second temple, then was ruined by the Romans. For 2,000 years the city passed from hand to hand. But the Jewish people never forgot its eternal capital... In the early 1990s, the year Ir David foundation re-established a Jewish residential community in the City of David, within the national parks surrounding Jerusalem.⁴⁷³

Similarly, in the tour, the guide's presentation jumps from the findings dating back to the Second Temple period to the Meyuchas house – the first illegal settlement house built in the modern period in the 'City of David' area, by a Jewish family. The guide concludes: "Today, Jews once again live in the Meyuchas house, because in the 'City of David', past and present come together".⁴⁷⁴

Emek Shaveh has criticised the presentation of archaeological material at the 'City of David' settlement as being focused on an archaeological distortion, aiming to focus on the Jewish, 'biblical' layer while ignoring the other layers and the variety of archaeological stories they offer.⁴⁷⁵ Specifically, the tour is designed to offer a visit of a Jerusalem dominated by remains from two historical periods: the Judean monarchy and the period of the Second Temple.⁴⁷⁶ Meanwhile, the 'City of David' tourist settlement

471 Adina Hoffman, 'Archaeological Digs Stoke Conflict in Jerusalem' *The Nation* (30 July 2008) <www.thenation.com/article/archive/archaeological-digs-stoke-conflict-jerusalem/>

472 Samuel Nelson Gilbert, 'Israeli Land Claims: Archaeology and Ideology' *Al Jazeera* (16 November 2013) <www.aljazeera.com/features/2013/11/16/israeli-land-claims-archaeology-and-ideology>

473 *Ibid.*

474 'Meyuchas House at the City of David' (*City of David*) <www.cityof david.org.il/en/virtual_tour/meyuchas-house-city-david>

475 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29) 11.

476 Emek Shaveh, Submission to the OHCHR 'Israeli Activities in Archaeological Sites in East Jerusalem and the West Bank: Five Case Studies' (2016) 3 <www.ohchr.org/Documents/Issues/CulturalRights/ DestructionHeritage/NGOS/EmekShaveh.pdf>

deliberately does not showcase the rich fabric of excavated Byzantine and Islamic period buildings.⁴⁷⁷ Thus, one would be forgiven for concluding that little else of interest was excavated at the 'City of David' settlement beyond Jewish Second Temple 'findings'. As Mirzachi points out:

After three hours on an Elad tour, you are convinced that you are at a site that is solely Jewish. Canaanite, Byzantine, Muslim and of course Palestinian findings are shunted aside. Jerusalem has 4000 years of history, and they concentrate on the glorious stories of Solomon, David and Hezekiah, for whom there are no archaeological findings linking them to the site. When you present the story this way to hundreds of thousands of visitors from all over the world, it is a tool with a great deal of political power and a way of justifying the act of settling the area.⁴⁷⁸

Moreover, the presentation of the 'City of David' puts exaggerated emphasis on the biblical story, to the extent that Elad's Doron Spielman declared in 2008, "This is a biblical Disney World that's actually real".⁴⁷⁹ From the very beginning of the visit, in the movie at the start of the tour, archaeology and the bible are established as the site's guiding themes. Landy notes that the Elad movie presents "biblical history [...] as fact, with the narrator's words being interspersed with another voice intoning readings from the bible". He further analyses:

In terms of relationships established by this narrative, the identification of tourists with 'the soldiers of King David' is key, and also features later in the film where the viewers are invited to take the point of view of these soldiers, thereby establishing a sense of connection between tourists and the biblical Jewish past.⁴⁸⁰

During the tour, visitors learn about various "biblical incidents" that took place along the site. Professor Ronny Reich, from the IAA, said: "I found a

477 For instance, see Section 3.2.1. and the example of Khan Daraj al-'Eyn.

478 Salaamedia, 'Archaeology – A Tool of Zionist Occupation/Archaeology – Enabling Palestinian Dispossession' *Salaamedia* (21 April 2017) <<https://salaamedia.com/2017/04/21/archaeology-a-tool-of-zionist-occupationarchaeology-enabling-palestinian-dispossession/>>

479 Wendy Pullan et. al., *The Struggle for Jerusalem's Holy Places* (Routledge 2013) 85.

480 Landy, 'The Place of Palestinians' (n 469) 316.

Byzantine water pit. [...] They [Elad] said it was Jeremiah's pit. I told them that was nonsense".⁴⁸¹ Tourists have long since been told that the hole was the one Jeremiah had been thrown into.⁴⁸² Similar examples abound. The so-called 'Pool of Siloam' (Silwan Pool) is linked with the New Testament story of Jesus' healing of a blind man.⁴⁸³ The tunnel linking the Silwan spring to Silwan Pool is renamed 'Hezekiah's Tunnel', based on biblical mention of a channel and a pool constructed by this King.⁴⁸⁴

Meanwhile, the tour guide, dressed in an explorer 'Indiana Jones' outfit, waves a black leather-bound Bible at the crowd and links random excavated pillars to passages from the Bible:

Now why are we going through this whole song and dance here? Cause right down over here in the 1970's an archaeologist named Migon Shiloh finds 51 of these seal impressions. So he picks one up, dusts one off and looks at the name on it. He opens up his Bible to the exact same passage from which we were just reading from...

Now if we go back to our story Jeremiah ultimately is saved by a slave. He witnesses the siege of Jerusalem, the destruction of the city, the burning of the city, before he goes off into exile as well.⁴⁸⁵

Elad uses the religious narrative to strengthen the connection of Jewish Israelis to the area and legitimise Israel's colonial project. Within the Zionist narrative, the 'City of David' has the symbolic function of a 'heritage site'. De Boeck explains that institutionalising visits to these sites, notably for schoolchildren and army conscripts, contributes to "the invention of tradition"⁴⁸⁶ and strengthening of the national mythology of the State of Israel. Israeli citizens thus develop, first as schoolchildren, then as soldiers,

481 Ahdaf Soueif, 'The Dig Dividing Jerusalem' *The Guardian* (26 May 2010) <www.theguardian.com/world/2010/may/26/jerusalem-city-of-david-palestinians-archaeology>.

482 *Ibid.*

483 Israel Finkelstein, 'In the Eye of Jerusalem's Archaeological Storm' *Forward* (26 April 2011) <<https://forward.com/opinion/137273/in-the-eye-of-jerusalem-s-archaeological-storm/>>

484 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29) 37.

485 Al-Haq's documentation, September 2019.

486 Eric Hobsbawm and Terence Ranger, 'The Invention of Tradition', Past and Present Publications (CUP 1983).

a certain attachment to the place and a conviction that the illegal 'City of David' settlement is deeply linked with the history of the State of Israel, with all mention of Palestine artfully erased.⁴⁸⁷

4.1.2 A Definite Story – How Elad Omits to Mention the Lack of Scientific Evidence

Section 3.4 explained that archaeological findings have left much ambiguity around the actual location of the historical 'City of David'. Yet, at the illegal 'City of David' tourist attraction, the tour guides impart a singular narrative, presenting the archaeological finds as the definitive location of King David's palace;

If you look in the corner over there you will see a pile of stones right? Well, if you go from the cliff to the first of the metal pillars, that is the thickness of one wall. She [Dr. Eilat Mazar] found a monumental building. And that wall rose. And this wall runs in that direction, the entire length of this whole complex. So, she dates this building to the tenth century BCE, the time that King David lived. She said the following: 'I found a massive building on the place that I would expect to find the palace, I found David's palace'- that you my friends are standing in right now.

I suspect not everyone agrees with me? Right. Why not? For one, take a look around – you all see David's palace? What [do] you all see? Ruins, we have not found any inscriptions that say welcome to King David's palace. No hard evidence. While people don't agree on whether or not this is the palace, they will agree that if it isn't here, she is looking in the right spot. So, it may be ten metres this way, five metres that way. They still agree that these are the stones that David used, that Soloman used, the prophets that prophesied about used. When you open the Bible and read about Jerusalem, this is the place we are talking about. Questions? [There are no questions from anyone].⁴⁸⁸

487 Robin De Boeck, 'The Politics of Archaeology and Biblical Tourism, A Case Study of "the City of David" in Silwan' (Master's Thesis, Gent University 2015) 39.

488 Al-Haq's documentation, September 2019.



*A tourist guide compares a drawing of ancient Jerusalem with a picture of modern Jerusalem
(© Al-Haq, 2019)*

4.1.3 Hiding the Palestinian Presence from Visitors

The Palestinian residents of Silwan are entirely absent from the story that is told to visitors at the 'City of David'. Neither their past nor their present is mentioned on the touristic tour and the tourists' brochures.⁴⁸⁹ For Emek Shaveh, Elad does not consider the Palestinian community as the latest community living in the area and thus makes their presence in the neighbourhood appear temporary and insignificant.⁴⁹⁰

489 Hoffman, 'Archaeological Digs Stoke Conflict in Jerusalem' (n 471).

490 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29); see also Landy, 'The Place of Palestinians' (n 469) 320.



Map (the one above with additional details or another one) showing how the tourist tour has been designed in such a way that visitors to the 'City of David' settlement do not encounter any Palestinians due to underground tunnels (with water or dry, in blue on the map), cable car, tunnel (pilgrims' path, in brown on the map) Source: Emek Shaveh, <https://intermap.alt-arch.org/en/>

The tourist route has been designed in such a way that visitors do not witness any aspect of the Palestinian reality. They walk through the tunnels and water channels that run beneath Silwan neighbourhood without seeing or encountering Palestinians. All excavations and places in the 'City of David' settlement are only accessible to visitors that have paid an entrance fee of around USD \$20, rendering access to the site for Palestinian residents expensive. The planned cable car would allow visitors to travel from the Kedem Centre at the 'City of David' to other touristic sites, such as the Hinnom Valley, thereby travelling above Palestinian neighbourhoods. A journalist relates his visit to the 'City of David':

During the tour there is no mention of Palestinians or the city the compound was built on top of. When asked about Silwan, the guide described it as an 'Arabian village... not very old at all' with 'many important remains of Jewish people held underneath'. The Palestinian boys from Silwan encountered by our group playing in the pool at end of tunnel were said to have come from a 'village nearby'.⁴⁹¹

Moreover, Elad's narrative itself seeks to symbolically erase Palestinian presence. The journalist's testimony above demonstrates how Palestinians are linguistically erased from Elad's discourse, by having Silwan described as a "village nearby" or "over there", on the far slope, as related by Landy.⁴⁹² In that regard, Chaim Noy also explains that Elad has reused the larger and pervasive Zionist practice of Hebraising Arab names of locations.⁴⁹³ The main example of this practice is the appellation of the Silwan neighbourhood as the 'City of David'. Elad uses alternative, Hebraic names for designating traditional places within the Palestinian neighbourhood, for instance calling the Silwan pool, the 'Pool of Shiloah'. In the same vein, tourist maps omit Arab names. The map entitled 'A Day of Adventure in Ancient Jerusalem' omits significant Palestinian landmarks in occupied East Jerusalem. Noy notes that while this omission is supposed to correspond with the 'Ancient Jerusalem' mentioned in the title of the map, many of the buildings indicated in the map are contemporary.⁴⁹⁴ He further writes:

The image communicates the notions that (a) in the past, Ancient Jerusalem was completely sealed, and (b) that the area around it was completely void of people. What is in effect conveyed by this image is not an archeologically informed figure of an ancient city, but a purist fantasy of a homogenized ethno-national (Jewish) life. [...] [It] is a cleansed image that tells not so much of a mythic past, but of a projected mythic future and of the fantasies of an eradication of the Other, i.e., the Palestinians.⁴⁹⁵

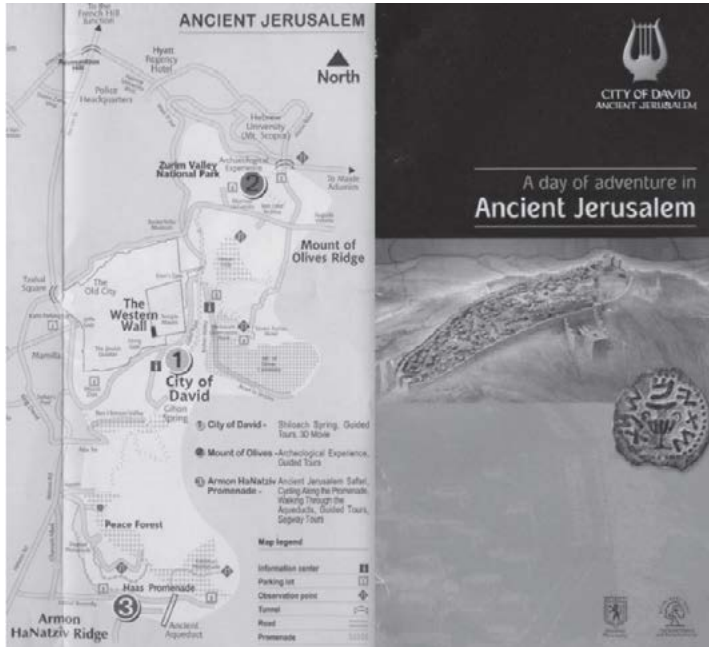
491 Gilbert, 'Israeli Land Claims' (n 472).

492 Landy, 'The Place of Palestinians' (n 469) 321.

493 Chaim Noy, 'The Political Ends of Tourism, Voices and Narratives of Silwan/the City of David in East Jerusalem' in Irena Ateljevic, Nigel Morgan and Annette Pritchard (eds), *The Critical Turn in Tourism Studies: Creating an Academy of Hope* (2nd edn, Elsevier 2012) 31–32.

494 *Ibid.*, 32–34.

495 *Ibid.*, 34.



A tourist map⁴⁹⁶

Thus, the Palestinian presence in the village of Silwan is completely ignored in Elad's discourse, replaced with a narrative of righteous return and Jewish ownership.⁴⁹⁷

4.1.4 Apartheid Narrative

The narrative that is told at the illegal 'City of David' settlement derives from Israel's apartheid regime. The discourse is centred on areas linked with Jewish history and does not mention Muslim or Palestinian heritage. Palestinian presence is completely erased from the touristic visit. The Palestinian resident who would visit the 'City of David' settlement would learn about the stories of Kings David and Solomon but would not learn anything about early Muslim empires.⁴⁹⁸

496 Ibid., 33.

497 Gilbert, 'Israeli Land Claims' (n 472).

498 Despite significant remains from this period being unearthed. See 'Archaeology in the Shadow of the Conflict: The Mound of Ancient Jerusalem (City of David) in Silwan' (n 29) 18.

Emek Shaveh has denounced the creation of an “exclusively Jewish narrative” at the Kedem Centre, arguing that such a discourse “violates the heritage rights of the general public in its broadest sense: members of all cultures and faiths for whom Jerusalem’s past constitutes part of their cultural identity and heritage”.⁴⁹⁹ More specifically, as earlier explained, this narrative violates Palestinians’ right to take part in cultural life and impedes their right to self-determination.⁵⁰⁰ Since the discourse presents the history of the ‘City of David’ location as exclusively Jewish, erasing the Palestinian and non-Jewish stories, it supports the Israeli claim to the land and the settlers’ narrative of a ‘return’ to the land of Israel. Donal Rallis, Professor of Geography, compared the archaeologically-based dispossession in Silwan with his experience in South Africa:

I found this story all too familiar. As a child growing up in South Africa, I was taught the apartheid version of South African history. Prior to the 17th century, I learned, South Africa was devoid of human inhabitants. Then, in about 1652, just as white settlers arrived at the southern tip of Africa, black Africans crossed the Limpopo River moving south. As whites moved north into the central parts of South Africa, blacks settled along the fringes of the country, producing a ‘natural’ geography of settlement and segregation that the policies of apartheid, I was told, recognized and respected. My school syllabus didn’t include any mention of places like Mapungubwe, an archaeological site in northern South Africa where evidence had been found of a thriving African kingdom a millennium earlier. Artifacts from the site, including an impressive collection of gold objects, were closeted away in a safe at the University of Pretoria. Like the Muslim skeletons of Silwan, their existence would have undermined the settlers’ historical narrative.⁵⁰¹

499 Emek Shaveh, Submission to the OHCHR ‘Israeli Activities in Archaeological Sites in East Jerusalem and the West Bank: Five Case Studies’ (2016) 6 <<https://www.ohchr.org/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/EmekShaveh.pdf>>

500 Section 3.6.2; General Comment No. 21 reads: ‘Access covers in particular the right of everyone — alone, in association with others or as a community — to know and understand his or her own culture and that of others through education and information, and to receive quality education and training with due regard for cultural identity.’ CESCR, General Comment No. 21, para 15(b).

501 Donald Rallis, ‘Archaeology and History as “Tools of Dispossession”’: Jerusalem’s Silwan Neighborhood’ *Regional Geog Blog* (20 August 2009) <<https://regionalgeography.org/101blog/?p=470>>

4.2 Business Enterprises Involved in the 'City of David' Touristic Settlement

Numerous actors are involved in each unlawful Israeli settlement, including in the 'City of David', who contribute to maintaining, furthering and normalising the settlement enterprise. Obviously, the Israeli authorities bear primary responsibility for the international crimes being committed, characterised by the population transfer into the OPT, as well as for the related humanitarian law violations and human rights abuses. However, business enterprises also play a critical role in the normalisation and the growth of unlawful settlements, by operating in and promoting the sites. Several business enterprises are involved in the tourist settlement of the 'City of David', for instance TripAdvisor, which has already been placed on notice on the UN database of business enterprises involved in the Israeli settlements.⁵⁰²

While under international law, business enterprises have a responsibility to ensure they are neither complicit in international crimes nor contributing to adverse human rights impacts deriving from their activities, companies maintain and further the Israeli settlement enterprise by promoting settlement tourism in the OPT.⁵⁰³ Finally, diverse financial institutions support these crimes by funding the business enterprises that are involved in the Israeli settlements. These institutions also have a responsibility to prevent international crime and human rights violations in the context of their business activities.⁵⁰⁴ While the financial relationships between business enterprises involved in the illegal Israeli settlement enterprise and European financial institutions were highlighted in the 2021 *Don't*

502 Human Rights Council, 'Database of All Business Enterprises Involved in the Activities Detailed In Paragraph 96 of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People Throughout the Occupied Palestinian Territory, Including East Jerusalem, Report of the United Nations High Commissioner for Human Rights' (12 February 2020) A/HRC/43/71 [UN Database of Business Enterprises Involved in the OPT] paras 6(e) and 31(a)(82).

503 Human Rights Watch and Kerem Navot, 'Bed and Breakfast on Stolen Land, Tourist Rental Listings in West Bank Settlements' *Human Rights Watch* (2018) 46.

504 UN Office of the High Commissioner for Human Rights, 'Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy Framework' (2011) HR/PUB/11/04 (UNGPs).

Buy Into Occupation report,⁵⁰⁵ this section focuses on the involvement and responsibility of enterprises providing services directly related to the 'City of David' settlement.

4.2.1 Legal Framework: Responsibilities of Business Enterprises under International Law

Business enterprises that are directly or indirectly involved in the Israeli settlement enterprise risk involvement in grave violations of international humanitarian law; of complicity in, or profiting from, war crimes and crimes against humanity; and of contributing to human rights violations.

Different sources of international law dictate business enterprises' responsibilities. First of all, in the context of armed conflict and more specifically belligerent occupation, non-state actors shall respect the relevant provisions of International Humanitarian Law (IHL).⁵⁰⁶ The ICRC Guidelines on Business and International Humanitarian Law highlight the risk of criminal liability for business enterprises or their representants where they commit grave breaches of IHL or knowingly assist violations committed by others.⁵⁰⁷ Touristic enterprises involved in the illegal 'City of David' settlement are thus likely involved in violations of IHL and potential complicity in war crimes and crimes against humanity, and must be aware of the associated risk of criminal liability.

Then, the UN Guiding Principles on Business and Human Rights (UNGPs), adopted by the UN General Assembly in 2011, provide the respective obligations and responsibilities of States and business enterprises to prevent, address, and remedy human rights violations in the context of business activities.⁵⁰⁸ According to the UNGPs, all business enterprises have

505 DBIO Coalition, 'Don't Buy Into Occupation - Exposing the Financial Flows Into Illegal Israeli Settlements' (2021).

506 'Business and International Humanitarian Law' ICRC (30 November 2006) <www.icrc.org/en/doc/resources/documents/misc/business-ihl-150806.htm>

507 *Ibid.*

508 UN Office of the High Commissioner for Human Rights, 'Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy Framework' (2011) HR/PUB/11/04 (UNGPs).

a responsibility to undertake human rights due diligence. In particular, the UNGPs require business enterprises to:

- a. Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and
- b. Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.⁵⁰⁹

Given the higher risk of human rights and international law violations in situations of belligerent occupation, and more generally of conflicts, business enterprises should adopt continuing enhanced due diligence measures to identify actual and potential adverse human rights impacts.⁵¹⁰ Indeed, given the number of international law violations committed by Israel in the course of the 55-year occupation of the Palestinian territory, enhanced and ongoing human rights due diligence is particularly necessary in the context of the OPT, with a particular focus on business activities conducted in settlements.⁵¹¹ Regarding the situation in Palestine, the UN Working Group on Business and Human Rights stated in 2014:

Business enterprises doing business, or seeking to do business, in or connected to the Israeli settlements in the OPT need to be able to demonstrate that they neither support the continuation of an international illegality nor are complicit in human rights abuses; that they can effectively prevent or mitigate human rights risks; and are able to account for their efforts in this regard – including, where necessary, by terminating their business interests or activities. Failure to undertake effective human rights due diligence can lead to adverse human rights impacts or to complicity in abuses

509 UNGPs, art 13 (a) and (b).

510 Marya Farah, 'Business and Human Rights in Occupied Territory, Guidance for Upholding Human Rights' Al-Haq (2020) 58ff; Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory (6 June 2014) 9-10.

511 DBIO Coalition, 'Don't Buy Into Occupation' (n 505) 27.

committed by other actors.⁵¹²

Notably, the OHCHR indicated in January 2018:

Considering the weight of the international legal consensus concerning the illegal nature of settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in activities in the settlements in a way that is consistent with the UN Guiding Principles and with international law.⁵¹³

Other guidelines and initiatives underline the importance for business enterprises of carrying ongoing human rights due diligence. The Organisation for Economic Cooperation and Development (OECD) has released the OECD Guidelines for Multinational Enterprises, which integrate the UNGPs and state that enterprises should conduct human rights due diligence.⁵¹⁴ The voluntary initiative for business UN Global Compact also includes human rights in its 10 Principles. According to Principles 1 and 2, businesses should “support and respect the protection of internationally proclaimed human rights; and make sure that they are not complicit in human rights abuses”.⁵¹⁵

4.2.2 Implicated Enterprises

Companies that provide services in Israeli settlements participate in the normalisation and acceptance of these settlements despite their illegality, and contribute to their economic autonomy.⁵¹⁶ Under the auspices of the Israeli authorities, Israeli and multinational business enterprises have

512 UN OHCHR, ‘Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory’ (6 June 2014) 11.

513 OHCHR, ‘UN rights office issues report on business and human rights in settlements in the occupied Palestinian territory’ (31 January 2018) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22617>

514 See OECD, ‘OECD Guidelines for Multinational Enterprises’ (2011).

515 UN Global Compact, ‘The Ten Principles of the UN Global Compact’, Principles 1 and 2 <www.unglobalcompact.org/what-is-gc/mission/principles>

516 Barbara Kuepper and Ward Warmerdam, ‘Doing Business with the Occupation, Economic and Financial Relationships of Foreign Companies with Israel’s Settlement Enterprise’ (Profundo, commissioned by 11:11:11 and CNCD 11:11:11 2018) 17.

played a key role in the normalisation, maintenance and expansion of the 'City of David' illegal tourist settlement for the benefit of the Israeli economy and its population, at the expense of Palestinians. A number of Israeli companies profit from the 'City of David' settlement by providing tours and travel packages to the settlement, such as Dynamic Square Ltd, which does business under the name of Tourist Israel;⁵¹⁷ Bein Harim Tourism Services Ltd;⁵¹⁸ and Egged Heseim, Tours and Recreation.⁵¹⁹ Moreover, many foreign companies provide tourist services and package tours in the 'City of David' settlement, including Tripadvisor (US); Kensington Tours (US);⁵²⁰ and the TUI Group's UK branch.⁵²¹

Numerous other business companies participate in the maintenance and expansion of the 'City of David' settlement in other ways. Notably, the following business enterprises have provided security services to the 'City of David' settlers under the aegis of the Israeli authorities: TopSkyLine Engineering Ltd.;⁵²² BriefCam;⁵²³ RAD-Bynet Group;⁵²⁴ and ENI Advanced Security Solutions.⁵²⁵ While this section focuses on business enterprises providing touristic services, responsibilities ensuing from international law concerning human rights are the same for enterprises carrying out other types of activities.

517 E.g., Tourist Israel Tours, 'City of David & Underground Jerusalem Day Tour' <www.touristisrael.com/tours/jewish-jerusalem-day-tour/>

518 E.g., Bein Harim Tourism Services, 'City of David Jerusalem Tour' <www.beinharimtours.com/visit-the-city-of-david-and-underground-jerusalem/>

519 Egged Tours, 'Jerusalem & City of David Tour' <www.eggedtours.com/tour/jerusalem-walking-tour/>

520 Kensington Tours, 'Israel Tours with a Local Private Guide' <www.kensingtontours.com/tours/egypt-and-middle-east/israel>

521 GLAN and SOMO, 'Tainted Tourism' (n 225) 22.

522 Who Profits, 'Top Sky Line Engineering Systems' (23 February 2020) <<https://whoprofits.org/company/top-sky-line-engineering-systems/>>

523 Who Profits, 'BriefCam' (7 January 2020) <<https://whoprofits.org/company/briefcam/>>

524 Who Profits, 'Rad-Bynet Group' (23 June 2019) <<https://whoprofits.org/company/rad-bynet/>>

525 Who Profits, 'ENI Advanced Security Solutions' (30 October 2018) <<https://whoprofits.org/company/eni-advanced-security-solutions/>>

Case Study: Tripadvisor

Tripadvisor is a U.S.-based tourism company that owns and operates online travel brands and websites, including Viator, Inc. and Tripadvisor.com. Tripadvisor is listed on the UN database of business enterprises involved in the Israeli settlements in the occupied Palestinian territory as an enterprise providing “services and utilities supporting the maintenance and existence of settlements, including transport”.⁵²⁶

Tripadvisor and its subsidiaries provide information and booking options for ‘City of David’ tours centred on biblical history, as the following screenshots show.⁵²⁷



Screenshot of Tripadvisor's website.⁵²⁸ In the picture, two children are playing in the Silwan pool.

- 526 Human Rights Council, UN Database of Business Enterprises Involved in the OPT, paras 6(e) and 31(a)(82).
- 527 For more details on Tripadvisor and its subsidiaries' activities in Israeli settlements, see Who Profits, 'Trip Advisor' (28 February 2017) <<https://whoprofits.org/company/trip-advisor/>>
- 528 Tripadvisor, 'Guided Tour of Jerusalem: The Biblical City of David' <www.tripadvisor.com/AttractionProductReview-g293983-d11466476-Guided_Tour_of_Jerusalem_The_Biblical_City_of_David-Jerusalem_Jerusalem_District.html>



Screenshot of Viator's website.⁵²⁹ In the picture, excavations at the 'City of David'.

Tripadvisor prominently features the 'City of David'. Not only does Tripadvisor rank the illegal 'City of David' site “#15 of 334 things to do in Jerusalem”, it also advertises several tours encompassing visits to the 'City of David', which are managed by Elad.⁵³⁰ Further, Tripadvisor provides an option for booking these attractions through its website in exchange for a fee. Thus, the enterprise encourages visits to the 'City of David', ignoring the illegality of the settlement, while boosting Elad's commercial activities and itself profiting from the settlement.⁵³¹

This involvement in an Israeli settlement requires Tripadvisor to carry out enhanced human rights due diligence to ensure it is not involved in any human rights abuses. Critically, by providing touristic services that support the 'City of David's' unlawful archaeological and touristic settlement, Tripadvisor may be contributing to grave violations of human rights and

529 Viator, 'Guided Tour of Jerusalem: The Biblical City of David' <<https://www.viator.com/tours/Jerusalem/Guided-Tour-of-the-Biblical-City-of-David/d921-13107P2>>

530 For instance, 'Guided Tour of Jerusalem: The Biblical City of David', 'City of David and Underground Jerusalem Day Tour'; 'The City of David's Night-Time Spectacular Show Admission Ticket'; 'Yaturu Extended Reality Jerusalem & City of David Tour'.

531 Amnesty International, 'Destination: Occupation, Digital Tourism and Israel's Illegal Settlements in the Occupied Palestinian Territories' (Amnesty International 2019) 63.

profiting from war crimes and crimes against humanity.

Tripadvisor has financial relationships with major European companies. In the period from 2018 to May 2021, the France-based creditor BNP Paribas and the United Kingdom-based Barclays respectively granted USD \$175 million and USD \$96 million of loans and underwritings to Tripadvisor.⁵³² The latter also benefits from investment (shareholdings and bondholdings) from the following enterprises: Allianz (Germany); Polar Capital Holdings (United Kingdom); Government Pension Fund Global (Norway); Assenagon (Luxembourg); Azimut (Italy); Legal & General (United Kingdom); Van Lanschot Kempen (Netherlands); BPCE Group (France); Schrodgers (United Kingdom); Pensioenfonds Zorg en Welzijn (Netherlands).⁵³³ All these enterprises and their managers must carry out human rights due diligence regarding Tripadvisor's activities in Israeli settlements, including the 'City of David'. Failure to do so may result, along with Tripadvisor, in complicity for international humanitarian law violations, human rights abuses and international crimes.

Al-Haq reached out to Tripadvisor for comment on this report. Tripadvisor's comments, and Al-Haq's response to their comments, is included in the appendix of this report.

532 DBIO Coalition, 'Don't Buy Into Occupation' (n 505) 88.

533 *Ibid.*, 88–89.



Part of the Palestinian village of Silwan (© Al-Haq, 2022)

5

Conclusion and Recommendations

The 'City of David' is a political tool in Israel's strategy to maintain and entrench its apartheid and settler-colonial regime over Jerusalem. The settlement exemplifies the importance of narratives in Israel's settler-colonial enterprise, where the search for purported historical legitimacy becomes a national goal. At the illegal 'City of David' settlement, the Israeli state, archaeologists (both local and international) and settler organisations work to erase Palestinian presence; historically through the destruction and designation of the Palestinian artefacts and contemporaneously through the forced removal of Palestinians from their archaeologically rich lands. Meanwhile, hundreds of thousands of tourists stroll through the settlement each year, failing to see what happens around them.

As Israel continues to further entrench its apartheid and settler-colonial regime over Jerusalem and the OPT, the international community must begin to take effective action to protect Palestinians, end the occupation, and ensure accountability for Israel's ongoing crimes.

In light of the above, Al-Haq reminds that Third States have an obligation to ensure respect for international humanitarian law in the OPT and urges them, as well as the international community, to:

1. Reject Israel's annexation of the eastern and western parts of Jerusalem, in line with international law and UN resolutions specific to the status of Jerusalem;
2. Recognise and declare that the laws and policies Israel has created, and continues to maintain, form part of its institutionalised regime of racial domination and oppression over the Palestinian people as a whole, which amounts to the crime of apartheid;
3. Cooperate to bring to an end, including through coercive measures such as sanctions, Israel's occupation, colonisation, and apartheid regime, as well as the prolonged denial of the right to self-determination for the Palestinian people, and the right of return for Palestinian refugees and those displaced from their homes, lands, and property, as mandated by international law;
4. Ensure international justice and accountability, including by supporting a full, thorough, and comprehensive investigation into the Situation in Palestine by the International Criminal Court, inclusive of an examination of Elad and the 'City of David' settlement enterprise;
5. Ensure that business enterprises operating within their jurisdiction, in particular tourism businesses, undertake enhanced human rights due diligence procedures to prevent involvement in violations of human rights in the OPT, in line with the UNGPs, the OECD Guidelines, and relevant responsibilities and obligations under international human rights and humanitarian law. Businesses should introduce urgent and immediate preventive measures, divestment and disengagement policies to curb corporate involvement in violations throughout their activities and relationships in such context;
6. Regulate tourism operators and other tourism businesses domiciled within their territory to ensure that their operations

respect both domestic law, including that regarding the status of the OPT and Jerusalem, and international law, including European Union legislation on unfair commercial practices;⁵³⁴

7. Ensure that non-profit organisations registered within their territory do not provide funding for Israeli settler organisations, including Elad;
8. Provide political and financial support to the Office of the High Commissioner for Human Rights to fulfil its mandate to annually update and publish the UN database of business enterprises involved in certain activities relating to settlements in the OPT, and support the continued inclusion of TripAdvisor, as well as the addition of the 'City of David' tourist settlement, in the database;
9. Refrain from acquiring, either temporarily or permanently, any artefacts from the OPT, and ensure that all archaeological artefacts from the OPT, including those which are already in museums or in private institutions due to Israel's unlawful transfer of them, are returned to the Palestinian Authority.

In addition, Al-Haq calls the settler-organisation Elad to:

1. Engage in immediate and responsible divestment from illegal Israeli settlements in East Jerusalem, including the 'City of David' settlement and the related development projects, in accordance with international humanitarian law;
2. End its support for all practices of forced evictions and house demolitions targeting the Palestinian people, including in East Jerusalem;
3. Immediately cease to promote unlawful archaeological excavations in the OPT and support the return of all artefacts to the relevant Palestinian Authority;
4. Ensure the immediate transfer of the management of the 'City

534 Directive (EU) 2005/29/EC of the European Parliament and of the Council [2005] OJ L149/22 [Unfair Commercial Practices Directive]; Directive (EU) 2019/2161 of the European Parliament and of the Council [2019] OJ L328/7.

of David' archaeological and tourist settlement to the Palestinian Authority or Palestinian organisations, in line with international humanitarian law.

Finally, business enterprises and financial institutions should:

1. Responsibly cease all activities and relationships with, as well as responsibly disengage from illegal Israeli settlements, in line with the UNGPs, OECD guidelines and all relevant responsibilities under international human rights and humanitarian law;
2. Introduce strong and enhanced human rights due diligence procedures – including through human rights impact assessments –, on all business relationships with enterprises that are known to be involved in activities linked to the settlements in the OPT, to ensure that partner and client enterprises, operations and activities abroad and through subsidiaries fully respect international law;
3. Exercise leverage on business enterprises known to be involved in activities linked to the settlements in the OPT in order to ensure these companies cease any activities and relationships. In cases where exercising leverage is not an available course of action, responsibly terminate the business or financial relationship with the enterprise in question.



6 Appendix

6.1 Comments from Tripadvisor

Brian Hoyt
Head of Global Communications and Industry Affairs
Tripadvisor, Inc.

Over the years, there have been some misleading claims about Tripadvisor and how the company displays information about travel and hospitality businesses that operate within Israeli Settlements in the Palestinian Territories.

Tripadvisor would like to be clear about our position:

Tripadvisor believes that travelers, including those coming to our site or app, should have access to all relevant information available about a destination, including information about businesses operating in those locations.

Tripadvisor's aim is to provide travelers with an unbiased, accurate and useful overview of all travel and hospitality businesses that are open for business,

anywhere in the world.

We understand that the issues raised by Al-Haq are a sensitive matter with deep emotional, cultural and political implications. The listing of a property or business on Tripadvisor does not represent our endorsement of that establishment or a region's public policies. We provide the listing as a platform for guests to share their genuine experiences with other travelers, and to ensure all travelers have access to the most up-to-date and useful information about the places to which they intend to visit. As such, we do not remove listings of properties or businesses that remain active and open for business.

With respect to where a location is listed on a map, including disputed regions, Tripadvisor – in its role as an information platform – intends to be as consistent as possible with the travel industry and Internet search display standards.

Tripadvisor will continue to monitor how other travel and Internet search companies list information about properties in countries and regions like Israel and the Palestinian Territories as we aim to deliver a consistent experience to all of our users across the globe.

6.2 Response from Al-Haq

Dear Mr. Hoyt,

Al-Haq welcomes Tripadvisor's response to our letter, highlighting Tripadvisor's active involvement in the dispossession of Palestinian land and cultural heritage. As a leading Palestinian human rights organization, dedicated to upholding human rights and the rule of law in the Occupied Palestinian Territory (OPT), we value opportunities to engage with corporations regarding their business practices in the OPT.

Tripadvisor's position, asserting that its promotion of illegal Israeli settlements is limited to the supplying of information to travelers, is an inaccurate depiction of how Tripadvisor is legitimizing and maintaining an illegal business enterprise that blatantly violates fundamental human rights of the protected Palestinian population, including the freedom of movement, property, family, home, health, education, work and an adequate standard of living.⁵³⁵ As outlined in Al-Haq's upcoming report, Tripadvisor prominently features the illegal 'City of David,' including tours of the park and provides options to book these tours through its website, in exchange for a fee.⁵³⁶ By actively connecting tourists with, and advertising for, businesses operating on appropriated Palestinian land, Tripadvisor does more than just inform tourists. Tripadvisor actively enables the expansion and development of Israel's illegal settlement enterprise, which has been condemned as apartheid by the former UN Special Rapporteur for the Occupied Palestinian Territory, Michael Lynk, reaffirmed as illegal by the UN Security Council, and denounced by the UN Human Rights Committee.⁵³⁷

535 See Report of the independent international fact-finding missions to investigate the implications of the Israeli settlements on civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 Feb. 2013, p 6-8, available at <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf>.

536 Tripadvisor, 'City of David National Park,' (*Tripadvisor*) available at <https://www.tripadvisor.com/Attraction_Review-g293983-d1059048-Reviews-City_of_David_National_Park_Jerusalem_Jerusalem_District.html>.

537 United Nations, "Israel's 55-year occupation of Palestinian Territory is apartheid – UN human rights expert" (25 March 2022), available at <<https://www.ohchr.org/en/press-releases/2022/03/israels-55-year-occupation-palestinian-territory-apartheid-un-human-rights>>; UNSC Resolution 2334 (23 December 2016), p.1 (reaffirming Resolution 465 (1980)); UN Human Rights Committee, *Concluding observations on the fourth periodic report of the United States of America*, 23 April 2014, CCPR/C/USA/CO/4; CCPR/C/ISR/CO/5, Human Rights Committee, *Concluding observations on the fifth periodic report of Israel*, p. 3, para. 15(a).

In its response, Tripadvisor asserts that its listings are not an endorsement of the establishment in question. Yet, profiting from, and facilitating the monetary sustainment of an illegal place of business, is an act of exercising support, against TripAdvisor's pledge to "avoid directly infringing on human rights"⁵³⁸ and is a failure of its duty to exercise the heightened human rights due diligence required when conducting business in conflict-affected areas under the UN Guiding Principles on Business and Human Rights.⁵³⁹ Notably, Tripadvisor's own Global Human Rights Policy affirms its commitment to respecting human rights, conducting business affairs in accordance to standards of ethical conduct, and mitigating adverse human rights impacts, which Tripadvisor blatantly undermines and profits from through its involvement with the illegal 'City of David'.⁵⁴⁰

Further, it is Tripadvisor's policy that, as a global leader in the travel industry, it should use its "platform to effect positive change [. . .] including the advancement of human rights through [its] business activities."⁵⁴¹ Tripadvisor's withdrawal of its support of the illegal 'City of David' is not only an opportunity to set a standard for corporate adherence to human rights, but is also **the only manner through which the alignment of its actions and its internal policies can be accomplished.**

The fabricated 'City of David' is a political tool in Israel's strategy to maintain and entrench its settler colonial and apartheid regime over Jerusalem. The establishment of the illegal 'City of David' settlement was only possible upon the forced transfer of Palestinians and demolition of Palestinian homes in Silwan. Between 2018 and 2020, 166 Palestinians living in Silwan, where the illegal 'City of David' is located, were displaced due to house demolitions. Meanwhile, illegally transferred Israeli settlers' in Silwan have grown to about 1,000 individuals, forcing indigenous Palestinian residents to confront intensifying violence from these

538 Tripadvisor, 'Global Human Rights Policy' (*Tripadvisor*, 21 August 2021) available at <https://www.google.com/search?q=tripadvisor+Global+Human+Rights+Policy+Effective+Date%3A+August+16%2C+2021&rlz=1C5MACD_enGB821GB824&oq=tripadvisor+Global+Human+Rights+Policy+Effective+Date%3A+August+16%2C+2021&aqs=chrome..69i57.2969j0j4&sourceid=chrome&ie=UTF-8#:~:text=Search%20Results-,Global%20Human%20Rights%20Policy%20Effective%20Date%3A%20August%2016%2C%202021,https%3A//ir.tripadvisor.com%20E2%80%BA%20static%2Dfiles,-PDF>

539 Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Principle 12 Commentary, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011). See also, United National Development Programme, *Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts* (UNDP, 2022).

540 *Ibid.* n.538.

541 *Ibid.*

settlers.⁵⁴² Notably, illegal settlers have been transferred into the City of David site.⁵⁴³

Further, Israeli authorities, archaeologists, and settler organisations are working to erase Palestinian history from Jerusalem through the destruction of Palestinian artefacts. Official tours at the illegal 'City of David' spread a false, manufactured colonial narrative, misinforming tourists that, despite archaeological evidence, the history of the site is mainly, if not only, Jewish, and that Israel is legitimately conducting excavations of the site. In reality, archaeologists at the illegal 'City of David' site have irreversibly damaged authentic Muslim artefacts in its attempt to erase Palestinian history from the site and have built tunnels that run beneath Palestinian homes, without warning or approval from Palestinian homeowners. For over a decade, Palestinians from Silwan have reported damage to their houses, including cracks and fissures in the walls and floors, affecting the stability of their homes.

Israel's development of the illegal 'City of David,' as well as its unlawful construction and expansion of settlements in occupied territory, results in the forcible transfer of the protected population and the intentional transfer of Israel's civilian population into occupied territory, prohibited under Article 49(6) of the 1949 Fourth Geneva Convention and a war crime under Article 8(2)(b)(viii) of the Rome Statute of the International Criminal Court, for which there is individual criminal responsibility, including for corporate agents who are complicit in such actions.⁵⁴⁴ By providing touristic services that support the 'City of David's' unlawful archaeological and touristic settlement, **Tripadvisor may be complicit in grave violations of human rights, war crimes and crimes against humanity.**

Given that Tripadvisor is listed on the UN database of business enterprises involved in certain activities relating to settlements in the OPT for its provision of services and utilities supporting the maintenance and existence of settlements, Tripadvisor's role in the furtherance of this enterprise has raised "human rights concerns" at the

542 See upcoming Al-Haq report on the illegal City of David.

543 City of David, Timeline, available at: <<https://www.cityof david.org.il/en/virtual-tours/city-david-time-line>>

544 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287, Article 147, (hereafter Fourth Geneva Convention); 275 Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (hereinafter 'Rome Statute'), Article 8(2)(a)(iv).

international level.⁵⁴⁵ Underpinning the grave human rights violations committed by Israel against the protected Palestinian population are corporations, like Tripadvisor, who continue to actively profit from its system of apartheid under which Palestinians are subjected. It is imperative to the realization of Palestinian human rights that Tripadvisor remove all listings and withdraw all financial support of illegal settlement enterprises, including the illegal 'City of David.'

Al-Haq asks that Tripadvisor, along with its subsidiaries and affiliates, abide by international human rights and humanitarian laws and discontinue their operations in the illegal 'City of David.' We welcome any further comments and thank you for your attention to this matter.

Sincerely,
Shawan Jabarin

545 Database of all business enterprises involved in the activities detailed in paragraph 96 of the independent international factfinding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/43/71, 28 February 2020, <<https://undocs.org/en/A/HRC/43/71>>



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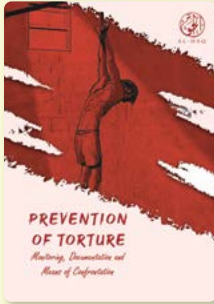
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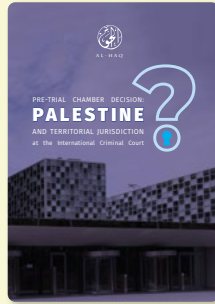
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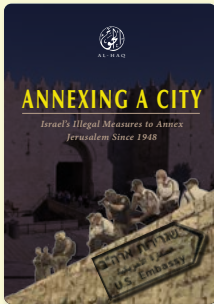
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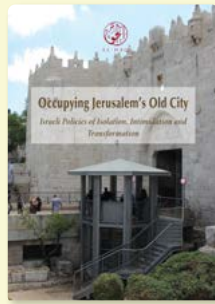
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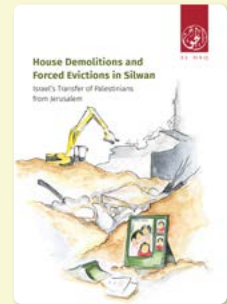
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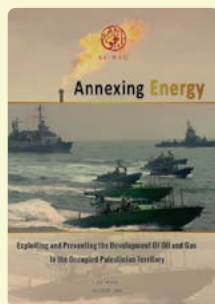
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AL - HAQ

About Al-Haq

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah in the Occupied Palestinian Territory (OPT). Established in 1979 to protect and promote human rights and the rule of law in the OPT, the organisation has special consultative status with the United Nations Economic and Social Council. Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. Al-Haq conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. Al-Haq has a specialised international law library for the use of its staff and the local community.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), ESCR-Net – The International Network for Economic, Social and Cultural Rights, the Palestinian Human Rights Organizations Council (PHROC), and the Palestinian NGO Network (PNGO). In 2018, Al-Haq was a co-recipient of the French Republic Human Rights Award, whereas in 2019, Al-Haq was the recipient of the Human Rights and Business Award. In 2020, Al-Haq received the Gwynne Skinner Human Rights Award presented by the International Corporate Accountability Roundtable (ICAR) for its outstanding work in the field of corporate accountability. On 17 June 2021, Al-Haq received the Human Rights Award during the Second International Solidarity with Palestine Award Ceremony, by the Center for Islam and Global Affairs (CIGA). On 23 June 2022, Al-Haq was awarded the prestigious Bruno Kreisky Prize for Human Rights, in honour of the late Austrian Chancellor, Bruno Kreisky.

