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Legal Report

Palestinian National Authority

Land Administration Project

Ministry of Planning

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March 2008



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Palestinian National Authority Land Administration Project

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FINAL REPORT



Land Equity International

This Report has been prepared for:



Palestinian National Authority
Ministry of Planning

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Acronyms

LAP	Land Administration Project
LPTF	Land Policy Task Force
MOF	Ministry of Finance
MOJ	Ministry of Justice
MOLG	Ministry of Local Government
MOP	Ministry of Planning
MPWH	Ministry of Public Works and Housing
PECDAR	Palestinian Economic Council for Development and Construction
PLA	Palestine Land Authority
PLC	Palestinian Legislative Council
PLC Draft Land Law	the draft land law submitted to the PLC for review in 2004.
PNA	Palestinian National Authority
STOC	Stakeholder Technical Oversight Committee

Executive Summary

Legal Framework. Present day legislation relies on the British Mandate laws, Jordanian laws and the Palestinian National Authority (PNA) laws enacted since 1994. PNA enacted legislation serves a dual purpose (1) harmonization of the West Bank and Gaza and (2) modernization. Land related laws have not been harmonized nor updated. Existing laws generally are well drafted but somewhat dated or reflect policies that no longer reflect the national interest of the emerging Palestinian state. Most importantly, of critical national interest is the need to harmonize the land laws and land-related legislation including the institutional structure of the Palestinian Land Authority ("PLA").

Laws related to land administration and management applicable in the West Bank and Gaza reflect a mixture of common and civil law principles and this mixture underlies the need for harmonization. An attempt at harmonization was made in 2004 when a draft Land Law ("PLC Draft Land Law") was submitted to the Palestinian Legislative Council ("PLC"). This PLC Draft Land Law is not well structured and mixes many substantive issues that belong in other legislation like the administrative functions of the land authority or matters related to contract law. It also fails to meet the legislative drafting minimums recognized and followed in Palestine. More importantly, it is inconsistent with the Basic Law (amended 2003) and other related legislation. These deficiencies led the PLC to suspend the review of the draft pending further review and policy direction.

The existing fragmentation in the legislative framework will be eliminated through consolidation. An extensive participatory policy review and analysis was undertaken. It was concluded that the fragmentation is best addressed by preparing four laws which will constitute land-related legal framework: (1) Land Rights Law, (2) PLA Law (Land Authority Institutional Framework), (3) Land Registration Law and (4) Eminent Domain Law.

The Study. Many of the prevailing land-related laws¹ in both the West Bank and Gaza provide a solid foundation for drafting a suitable legal framework. For example, the Jordanian Land and Water Adjudication Law of 1952, provides a good general basis for systematic land adjudication. However, this Study has been carried out because the current framework is not entirely sufficient to meet present and future needs of the emerging state, and is therefore, a critical area for legislative review given the high priority to improve the land registration environment. The same is true, for example, of the Land Conveyance Law of 1953 which deals with rights or the Law on the Division of Common Shares of 1953 which deals with division of common property.² The same is true of the Ottoman Land Conveyance Law of 1329 Hijri.³ Related laws like the Condominium Law of 1996 need to ensure full ownership rights are accorded to owners of this type of property. The substantive legal framework for public land management has to also be developed.

Although Gaza and the West Bank have a shared legal legacy dating back to the Ottoman and British Mandate periods, yet they have distinct legal heritages. Consolidation of existing laws has been underway since 1994 when the PNA assumed power over its legal system, however to date laws covering land-related issues have not been fully

¹ Throughout this Legal Report, reference to the land laws means land rights, registration, eminent domain and PLA institutional structure law.

² Both of these laws are applicable in the West Bank.

³ This law is applicable in the Gaza Strip; amended by Law No. 25 of 1933 during the British Mandate.

consolidated. Moreover, the West Bank's legal framework reflects the influence of Jordanian law in its system of civil law, and some measure of common law principles. In contrast, Gaza's heritage more clearly retained the legal concepts from the Ottoman and British mandate periods. Islamic and Christian laws for personal status matters (marriage, divorce, child custody and inheritance) continue to apply equally in both the West Bank and the Gaza Strip.

Both legal systems were paralyzed by the Israeli military occupation. Approximately 2,500 Israeli military orders remain in force today. Judicial control was severely restricted prior to the Oslo Agreements, and the Palestinian court systems were dismantled in many respects and rendered almost entirely ineffective and in-operative in others. Today efforts to resurrect and reinvent the formal justice system to serve Palestine are underway, but slow and yet to be realized.

With respect the legal issues of this Study, and in particular regarding PLC Draft Land Law, the legal team has determined that it shows inconsistencies with the 2003 amended Basic Law (in effect the constitution of the Palestine National Authority) and other legislation. It also reflects certain outdated and incorrect references that need to be reconciled. A high priority for the Palestinian land policy is upgrading the land rights legal framework, the institutional legal framework, taking of private property under eminent domain, and the registration environment to support improved procedures and property rights security.

The existing fragmentation in the legislative framework can be eliminated through consolidation. Therefore, four laws have been recommended to constitute the consolidated legal framework for land laws: (1) Land Rights Law, (2) PLA Law (Land Authority Institutional Framework), (3) Land Registration Law and (4) Eminent Domain Law. Although a general framework for the structure of the PLA Law has been provided in this report, a final draft has not been completed. Restructuring the PLA is a complex and political delicate undertaking. Furthermore, recently the PLA's chair was replaced. The incoming chairman is in the process of getting acquainted with the policies and legal issues considered in this Project and as such the final policy-determination and legal framework for the institutional structure remain outstanding pending further review and consensus. With respect to land-related issues, the main underlying feature has been to install consistencies between all land-related laws and across both jurisdictions and to establish legislative authority and mandates to apply a holistic land policy. In this regard and concerning the PLC Draft Land Law, this Study determined that it was a commendable attempt at consolidation and harmonization, but it was overly simplistic and did not capture all issues related to land rights. Further, the institutional structure of the PLA constituted part of this PLC Draft Land Law. Both local and international experience shows that it is best to separate institutional frameworks from other legal details. In that regard, a separate PLA institutional law has been suggested. Registration related issues are mechanical, but detailed. The best approach for registration issues was to have them grouped together and to provide the legal text for all types of registration including systematic registration. Eminent Domain has been also separated because it is a stand alone area of law and does not fit well with one general/global law. Thus, an extensive participatory policy process analysis was undertaken to formulate and determine the best course of action and the foundation for the legal framework. The policies are reflected in these 4 laws which are detailed later in this Study Report.

1 Introduction

1.1 Background

In 2005 the Palestinian Liberation Organization received a “Learning and Innovation Grant” from the World Bank for the implementation of a Land Administration Project in West Bank and Gaza for the benefit of the Palestinian National Authority (PNA). Responsible authorities are the Ministry of Planning (MOP) and the Palestinian Land Authority (PLA). In addition, complementary Technical Assistance has been provided by the Finnish Government.

The objective of the Land Administration Project (LAP) is to assess the feasibility of introducing reforms in land administration within an emerging government structure by enabling the formulation of policy, legal and institutional changes to achieve efficient procedures for the issuance of land titles and registration of property transactions, and transparent processes for the management and disposal of public land. The aim is to enhance economic growth by improving land tenure security and facilitating the development of efficient land and property markets in rural and urban areas through the development of an efficient system of land titling and registration based on clear, transparent and coherent policies and laws that are supported by an appropriate institutional structure.

Overall the LAP is intended to assess the different stakeholders’ commitment to reforming land administration and the capacity requirements of the PLA, court system, local authorities, and the private sector serving the sector, in addition to testing proposed recommendations for strengthening the land administration policy, regulatory and institutional framework and capacity building strategies. This study has been being undertaken as part of Component 1 of LAP: Land Policy Formulation and Development of Regulatory Framework. Within Component 1, there were 6 studies. These studies were:

1. Study of Register Accuracy and Factors Limiting Registry Utilization
2. Land Market Study
3. Land Disputes Study
4. Public and Municipal Land Management Study
5. Property Fees and Finance and Valuation Studies
6. Legal and Institutional Framework for Land Administration: Review and Recommendations for Improvement.

This report is the report for study 6 on the legal and institutional framework which draws on the results of the other 5 studies.

1.2 Approach

The Study on legal framework is part of the Study on Legal and Institutional Framework. The inception report for the project states the following:

In the first week of the commencement of each policy Study other than the Education Study, the advisers will prepare a brief paper that sets out the following information:

- A revised work plan for the pilot Study, based on the work plan information set out in Annex 2;
- A revised list of identified stakeholders based on the information set out in Table 2;
- An outline of the structure and content of the proposed report;
- The proposal for the creation of the Stakeholder Committee to oversight the policy Study;
- Any critical information or support that is required to complete the Study.

Work Plan. The work plan had been used as a planning tool to deal with input from key participants. This included Birzeit University, who was responsible for carrying out a review of the current PLC Draft Land Law. The major change in the work plan was to extend the period of work for Part 1 as it was found necessary to devote more resources and time to Part 1. This did not delay the work of Part 2 nor require additional project resources.

The Inception Report states:

The frequent failure to deliver desired reforms in a country often reflects a lack of ownership. Ownership can have both a political and procedural dimension: (i) the degree of government commitment to the reform program; and (ii) the government's engagement in developing the proposed reforms to respond to the country's circumstances.⁴

It has been agreed with the Project Management Coordinating Committee (PMCC) that the policy studies will be undertaken in a consultative manner that will facilitate participation. Participation through consultation can improve the effectiveness, relevance and sustainability of the policy development activities and can help legislators and agencies to anticipate and respond to potential implementation problems. It can contribute to good governance through improving the transparency and accountability of government in the public policy process and by empowering groups, often excluded from policy debates, to participate and shape national land policy.

Participation can also threaten rigid governments, or exacerbate conflicts or cleavages in government. Therefore it is important to have continued Palestinian Authority support for consultation and participation if we are to avoid falsely raising the expectations of stakeholders that their concerns will influence government actions. These risks must be mitigated through flexible approaches tailored to the changing context of Palestinian politics. The success of the proposed participatory process would be indicated both by the behavioural response/responsiveness of various public entities as well as the resulting progress in law and policymaking.

The stakeholders identified in the Inception report for the Legal and Institutional Study were: MOP, PLA, MOF, MOA, MOJ (Notaries) MOLG, Palestine Water Authority, and the PLC committees of Land, Economy and Legal. The list was revised to focus consultation on legal issues. MPWH and MOLG were directly involved in the Legal Framework Study. Their input in the formulation of land policies came through the Institutional and Public Land studies. The Study consists of two components: Part I presented a diagnostic of the regulatory framework while Part II presents recommendations for improvement of the regulatory framework.

Part I. This part of the Study supported the review of the prevailing land-related laws dealing with land issues, including but not limited to land registration, eminent domain, land and property taxation, property rights settlement, land survey and notary public. At the outset of the project, an abundance of laws governing land administration was identified, including 38 key laws which had been introduced over a long period of time under different legal regimes but had never been updated or consolidated. Some laws date as far back as the mid 1800s (namely the Land Law prevailing in the Gaza Strip) and the rest date back to 1920's. Some laws in for the West Bank come from the 1950s

⁴ Al-Mustakbal Foundation, 2006. Developing a Palestinian Roadmap for Legislative Reform in the Business Sector

and 1960s. As stated earlier, the result is a fragmented and sometimes incoherent legal framework which makes it difficult to operate an efficient and equitable land administration system. As a result, this Study aimed to identify gaps, weaknesses and instances of conflict and inconsistencies in the regulatory framework for land administration and recommend improvements to the existing framework through the identification of laws and regulations in need of development, revision, rationalization or consolidation.

The Study also reviewed the existing institutional framework for land administration with a view of identifying the key government stakeholders involved in the process, including the PLA, MOP, MOF, MOJ, MOLG, MPWH, Higher Judicial Council and local government units, especially municipalities. This review examined the de jure institutional mandates in land administration and management relative to their de facto practice, highlighting areas of unclear/overlapping jurisdiction and the actions/situations that cause confusion in the mind of the community concerning agency jurisdiction. The review also identified gaps, weaknesses, strengths and opportunities in the existing institutional framework for land administration. Particular attention was paid to clarifying the mandate of the PLA, which was partially defined in the Presidential decree that established it (Decree No. 10, 2002).

In addition, Part I consisted of a thorough diagnostic review where the legal team collected and prepared an inventory of all land related laws to establish a useful template for the harmonization of Gaza and West Bank laws. Each law was annotated reflecting amendments to date. In addition, a format of the laws which describe the main differences between the West Bank and Gaza laws was created. The initial description of the differences in laws in the West Bank and Gaza provide a strong basis for the gap/weakness analysis of the laws. The legal team also created useful outlines that aim to provide the foundation for the harmonization and unification of the land-related laws. This was first carried out for the similar West Bank and Gaza provisions then with the provisions that require policy decisions pending resolution. The main objective of Part I was to identify gaps, weaknesses and instances of conflict in the existing regulatory framework for institutions involved in land administration, identify the strengths and opportunities in the existing land administration system and draw recommendations for the improvement of the existing regulatory framework.

Part II. This part of the Study supported the development, revision, rationalization and/or consolidation of laws and regulations governing land administration, as identified by the review Study. The overall objective of this part was to provide the Palestinian National Authority and the Palestinian Legislative Council with sound advice to lay the legal foundation in land policy, management and administration consistent with the principles of good governance, efficiency and equity. This part of the Study consisted of drafting revised laws with supporting rationale and options. The draft laws were developed with appropriate consultations with stakeholders, particularly relevant members of the Palestinian Legislative Council, in the committees on land, legislation, and the economy.

This Study was closely coordinated with all abovementioned policy studies, which provided the technical perspective on the strengths and weaknesses of the regulatory and institutional framework for each aspect of land administration and management (registration, valuation, management of public lands, etc). Meetings were held with the Minister of Justice, judges, lawyers and other representatives where initial recommendations made by the other studies assisted the legal team in developing initial drafts in the areas where harmonization was deemed to be required.

As mentioned earlier, this Study is of paramount importance for it provides the opportunity of addressing the legal framework governing land administration in an

integrated manner (as opposed to a piecemeal approach of recommending improvements to each piece of legislation in isolation of other related issues).

Mobilization of the Legal Team. The local and international consultants were mobilized at the inception stage on 25 January 2007. Through team meetings, discussions with the client and thorough review of legislation and literature, a revised approach to the Study was developed. This included criteria for identifying shortcomings in the legal framework and the identification of stakeholders. An inventory of laws was prepared and the work of compiling them begun. A detailed work plan was prepared and presented to the client, containing identification of stakeholders and a breakdown of tasks and outputs. The Legal Team worked closely with the international advisors on the studies of land registration, land markets, public land, and valuation.

The diagnostic report and recommendations were completed in time for a stakeholders workshop held on 8 May 2007. Following the workshop and in conjunction with the client's request, it was agreed that a total of four laws would be re-drafted. These four laws are the following: (1) The Land Rights Law; (2); PLA Institutional Law; (3) Land Registration Law; and (4) Eminent Domain Law.

2 Study Approach and Methodology

This section describes the approach and methodology followed in reaching the decision to prepare 4 distinct pieces of land-related legislation in an effort to consolidate the prevailing laws in both the West Bank and Gaza and to permit a comprehensive review of the PLC Draft Land Law. This approach and methodology also included policy analysis, consultations and workshops and meetings. It further included the preparation of outlines of laws (maps) that highlighted key issues in legislative reform and consensus building. It also included the engagement of Birzeit University Institute of Law to conduct an analysis of the PLC Draft Law and related reports and then hold consultations and prepare legislation. These steps permitted the legal team to formulate the foundation for its recommendation and to prepare four draft laws covering relevant land-related issues.

Methodology. The methodology for the legal framework for land administration included: (1) legislative review of all land-related laws; (2) identification and analysis of gaps and weaknesses through data collection, research and structured interviews; (3) review of the PLC Draft Land Law presently pending before the legislature whose review was suspended at the request of the Ministry of Planning pending the conclusion of the legal review and analysis of the entire relevant land administration legal framework; and (4) identification of the proper format for the proposed legal framework and preparing a new set of land-related laws.

Legal Status Quo. This included a review of all laws which regulate land-related issues in force in the PNA-controlled territories, including: The Palestinian Basic Law as well as conventions and agreements providing for international obligations; laws in force, including those in force in each of the West Bank and Gaza Strip; secondary legislation regulating land-related issues; and Israeli military orders.

2.1 Legislative Review

This included collection, review, analysis of laws and rules governing land rights and land laws in the West Bank and Gaza. As a result of ongoing activity in legislative drafting, a particular approach was established as follows:

Prepare legislative policy for the proposed laws. Legislative policy analysis was undertaken which included a study of all aspects pertaining to the proposed items of legislation. The aim was to enable the drafting team to understand the objective of developing each item of legislation to facilitate drafting. This included having legal reference; relevant materials; relevant legislation; national legislation; and comparative legislation. It also included a review of the theoretical and legal dimension relating to the subject matter of the legislation through an examination of theoretical and legal principles in an effort to ascertain best international practice applicable to the local context; a review of comparative Arab legislation; and an in-depth Study of the Palestinian legal system.

Relevant items of legislation. This included a review of all items of legislation which may intersect with those provisions regulating land-related issues in Palestine and thus they were examined, including: Basic Law, Rules of the Civil Law; and the Local Government Law, the Law on Investment Promotion, etc.

The Maps, a precursor to drafting legislation. Four maps (outlines) were created to lay the foundation for the Land Administrative Legal Framework and to provide the necessary analytical and policy foundation for the new legislation. Each map served as a basis for the drafting of the law itself and their form and content were geared towards providing the rationale for recommended changes in the law, setting out unresolved policy issues clearly, and ultimately constituting instructions for drafting the legislation.

Furthermore, each map was designed to supply an adequate analysis that reflects the various compilations and summaries and discussions performed since the start of this Study. Additionally, the maps are intended to reflect the recommendations made by the legal experts and the LEI team of consultants. Research and analysis had been based on the existing West Bank and Gaza and related Military Orders. The legal team was also supported by Birzeit University, Institute of Law Input (BZU) for the analysis of the land rights law which has been prepared as part of this study and the various recommendations made in the different studies. The maps made a good attempt to harmonize and fill in the gaps and treat the weaknesses in the existing laws. The basis of the maps took into consideration the Basic Law, related laws like contracts, civil code, among others, as identified in the BZU Study. The maps formed the basis for the consultation process to be undertaken and for the drafting of the Land Administration Legal Framework consisting of the four draft laws. LEI's project team prepared the maps for the Land Registration, Eminent Domain and Land Administration Law and BZU prepared the map for the Land Rights Law.

Practical Dimension. After examining the subject of legislation as well as how comparative legislation tackles it, the practical dimension of the subject in question was clarified. This addressed the important issues of achieving practical implementation of the legislation on the ground in Palestine. This covered the following:

- a. **A study on relevant institutions and authorities:** The Study required that the legal team meet with various PNA institutions, e.g. MoJ and judiciary, judges, lawyers, among others.
- b. **Examination of land regulation procedures:** This included a review of current practices with respect to land registration at the PLA and the issuance of treasury deeds by MoF, sporadic registration, settlement procedures as applied during the pilot carried out at Qarawat Bani Zeid. It also included a review of the expropriation procedures and land administration in general.

Consultation: After having developed the legislative policy framework and the maps, the legal team conducted a number of consultative meetings with concerned parties/stakeholders with these documents. A presentation was then made on the outcomes of the previous phases of the Study. Based on observations adopted in these consultations, amendments were introduced to the documents, thereby forming the basis on which subsequent work was implemented.

2.2 Content of Legislation

In this phase, activities focused on the following:

Approval of the content of legislation. In light of the legal analysis carried out and the practical assessments, a proposal on the content of the legislation in question was made addressing aspects such as: Title and scope, definitions, general provisions and subject of each section and corresponding articles, legislation content such as enforcement and implementation, promulgation, and signatures and date.

Drafting phase. This step included developing a first draft of the proposed legislation. The drafts were reviewed in a consultative approach and redrafts were prepared for external review. This also included translation of the draft Land Registration Law and Eminent Domain Law into English for external review. Following the external review, another set of drafts were prepared. The draft three laws are now prepared in Arabic and English attached as Annex 4, along with the PLA Memo.

Birzeit University, Institute of Law Input (BZU). As mentioned above, BZU was engaged to provide a review of the PLC Draft Land Law that had been prepared by the PLA and MoJ and submitted to the PLC in 2004. The PLC consideration and adoption of the PLC Draft Land Law was suspended, at the request of MOP, pending further consideration and the outcome of this Legal Study and other studies undertaken in this Project. Part I of this Study was to make recommendations concerning the form and content of the land-related laws in an effort to improve this pending PLC Draft Land Law of 2004 and further ameliorate the legal framework. To augment the effort of the legal team, special independent legal advisors from the West Bank and Gaza were engaged to provide opinions on the draft legislation.

Additionally, the PLC Draft Land Law was the subject of a review and analysis carried out for USAID, with a report produced on 20 December 2005 ("the USAID Report"). BZU was asked review this report. Further BZU was asked to analyze the PLC Draft Land Law in light of the objective of Part I of the Study, and in particular to comment on issues that presented themselves in reviewing the PLC Draft Land Law which included: Categories of land; Water-related issues since a separate Water Law exists; Scope of ownership (land and the space below and the space above); Rights attaching to the land; restrictions on rights (e.g. pre-emptive rights), and priorities; Restrictions on use; Common ownership; other matters discussed in the USAID Report; any other matters that BZU identified; and comment on the findings and recommendations of the USAID Report.

BZU was also tasked with reviewing the three maps stated above. BZU provided detailed comments on the maps in a consultative approach which focused on: Identifying weaknesses in the maps and providing gap analysis to ensure that the maps were comprehensive and provided sufficient basis to draft the laws; Identifying any inconsistencies and providing required detailed feedback and; Making recommendations to amend the maps on the basis of this participatory process which is described below. In addition, one workshop session was held on May 7 2007 for the legal Study in conjunction with BZU.

2.3 Approach to Legislative Reform

After BZU completed the review of the three maps, BZU consulted with stakeholders which included the legal community. The main objective of the consultation sessions was to acquaint participants with the legislative strategy set out in the maps, raise the outstanding issues with them, and receive their comments. BZU was also responsible for commenting on what extent the maps should be amended in light of the consultation and the LEI legal team were responsible for preparing the amendments. Stakeholder workshops took place on the following dates:

Activity	Date
Registration Law "Map"	4/9/2007
Land Rights Law "Map"	10/9/2007
Eminent Domain "Map"	12/9/2007
Draft Land Rights Law Consultation	22/10/2007
Draft Eminent Domain Law-Consultation	22/11/2007
Draft Registration Law-Consultation	21/11/2007

Based on the foregoing approach, the legal team determined that the PLC Draft Land Law succeeded in updating, consolidating and harmonising the existing legislation. However, one of our main findings was that this PLC Draft Land Law covered disparate subjects that are more appropriately treated in separate pieces of legislation. Therefore it was proposed that 4 laws would be prepared on the following topics:

1. A Land Rights Law describing the rights attaching to land ownership and possession, any restrictions on them, and rules concerning transactions. This law would replace the Ottoman Land Code (as amended) and other legislation on the subject. (In effect it will cover the provisions of the PLC Draft Land Law minus the provisions concerning the 3 laws listed below.)
2. An Institutional Land Framework Law concerning the roles and responsibilities of the Palestinian Land Authority and the management and disposal of public land and municipal land and the administration of registries.
3. A Land Registration Law covering the land registry, first registration of title, and registration of transactions.
4. An Eminent Domain Law covering the mechanism for expropriation of land and compensation at fair market value.

The first goal of the new legislation was to update references, unify the Gaza and West Bank legislation, incorporate amendments, and resolve gaps, weaknesses and inconsistencies that were apparent from the analysis. The second goal was to reform provisions of the legislation where called for in order to address issues raised in the other project studies.

2.4 Stakeholder Consultation

The Inception report stated that it was proposed that technical oversight committees be established for each policy Study. These committees were drawn from the key stakeholders for each Study and in a way that ensured that the stakeholder committee reflects a wide range of interests. Members of the stakeholder committee known as the Stakeholder Technical Oversight Committee (STOC) for the legislative framework consisted of governmental institutions and advisors who are familiar with the policy issues that this Legal Study covers and were responsible for ensuring that the content of the laws developed reflect agreed general policies in all the other studies. All of the work falls under the guidance of the Land Policy Task Force (LPTF). To start the legal framework activities, a kick-off workshop took place on 18 February, 2007.

The following individuals constituted the STOC:

- Atef Al-Khudari, General Manager, PLA
- Salma Suleiman, Legal Counsel, PLA

- Issa Abu Sharar, Higher Judicial Council
- Mohammed Faraj Al-Ghoul, PLC Legal Committee member
- Waleed Atef, PLC Land Committee member
- Jamal Saleh, Nassar, PLC Economy Committee member.

The role of STOC was to:

- Actively participate in the workshops.
- Review final reports from the Legal Framework Study.

In addition interviews were conducted with the following judges: Hani Al Nator and Muhammed Al Haj Yaseen. The following attorneys were also interviewed: Hattem Abbas, Alaa' Albakri, Shukri Al Abudi, Muatasseem Awawdeh, Salameh Beseiso, Safi Ad Dahdouh, Amani Hamdan, Muhammed Abu Hilal, Raed Imayyeh, Faissal Jasser, Mufeed Khalelah, Nihad Miswadi, Nabil Mushahwar, Abdul Raheem An Najjar, Ziad An Najjar, Ahmed Bani Odeh, Rabi' Rabi', Saher Ar Rifaai, Sabah Sabah, Hamzeh Abu Saleh, Naheda Al Saqaa, Mohammad Shaheen, Adnan Shuaibi, Nabeeh Saleh and Rashad Shawer.

Minister of Justice, Dr. Ali Khashan and former Minister of Justice, Dr. Ali Sartawi were also interviewed and consulted at key stages during the Study.

3 Legal Issues Arising from the Other Studies

This Chapter examines the interplay between the legal framework and the other policy studies conducted under the Project. These issues are set below:

Institutional Framework for Land Administration. Presidential Decree 10 of 2002 gave the PLA supervisory control of land registration and surveying operations. However, the PLA's legal authority has not been fully detailed as there is no legislation that sets out its powers and functions. Further, the powers of the PLA Chairman as presently exercised undermine principles of good governance. The ambiguity in the institutional framework weakens accountability for the acquisition and disposal of public land; all the more at risk of corrupt practices because there is no inventory of public land. Further, the PLC Draft Land Law attempted to address the institutional structure issue, but the arrangements proposed did not meet the fundamental principles of efficiency and accountability.

Institutional responsibility for public land management was not clearly defined in the Presidential Decree and which has over the past 10 year resulted in both overlaps and gaps among various PNA authorities. The PLA does not have authority for public land management functions nor for municipal planning and zoning.

Other institutional recommendations are developed to improve the functioning of the state's capacity for public land management and land administration. Recommendations included:

- Relocate current land functions for cost-effectiveness and efficiency.
- Revise and develop PLA functions and structure for land administration specialization.
- Establish a Public Land Management Secretariat (PLMA) to manage the public estate – commercial purposes.
- Develop comprehensive planning strategies to address public land disposition, acquisition, and compensation for compulsory acquisition, etc.
- Designate public reserves (State and Municipal) in planning schemes and acquire this through the parcelisation and development process.
- Develop a clear statement for the documented legal procedure that must be followed in creating a public-sector institution.

There is a push for the PLA to be self-funding, however a number of issues constrain this eventuating. If it is to be self-funding and, subsequently profitable, it must:

- Establish a critical mass of titles in the registration system;
- Levy affordable, equitable fees and charges, and
- Build up the volume of secondary transaction registrations.

The Palestinian Land Authority has a small number of titles in its system (approximately 30% registered parcels in West Bank) and business volumes are very low because not all transactions are lodged for registration. This situation arises from the:

- Absence of a registration culture – the community has yet to perceive the value of registration;
- Use of powers of attorney rather than sale conveyances – this practice causes uncertainty in rights and does not encourage community members to participate in the registration system;

- High registration fees – the community is relatively poor. The government needs consider the “public good” before focusing on revenue;
- Relatively low number of mortgage registrations – there is no compulsion to register and little advantage perceived by the community. The banking sector must be brought into the system; and,
- Low level of trust that the community accords the registration system – the Government must establish itself, through the Palestinian Land Authority, as a worthy provider of valuable services. There is much work to be done on publicity.

More specific survey and registration recommendations to combat the current environment are to:

- Adopt systematic land titling to capture ALL land in the formal system;
- Eliminate fees for settlement registration;
- Establish workflows, business processes and define standards of operation for the land registry;
- Improve land registration procedures – focus on quality/efficiency of the manual system before computerisation;
- Adopt a computerisation strategy for data capture, processing, and archiving - linking spatial and textual databases
- Adopt a data model for an efficient IT System (for both the land registration and land administration systems) that is appropriate to the current situation in Palestine.
- Improve the system for registering rights of absentees;
- Adopt an interim strategy to deal with the Irrevocable Power of Attorney ‘IPA’, possibly through a system of registration to integrate them in the formal system;
- Open lines of communication and accessibility of information between agencies and to the public;
- Adopt a new PNA coordinate system and GPS network;
- Improve skills and resources through training and upgrading of equipment within PLA;
- Outsource field work to the private sector to cope with resource deficiencies; and,
- Devise and implement public awareness campaigns for initial and subsequent registrations.

Study of Register Accuracy and Factors Limiting Registry Utilization. Land registration in Gaza and the West Bank were attempted during Egyptian and Jordanian administrations respectively. During this period 98% of land parcels in Gaza were registered. Only 30% of West Bank was surveyed and registered. However subsequent land transactions have not been recorded and consequently the registration records do not reflect current ownership. Field investigations find that only 48% of current owners match the registry records.

Registration Legal Issues: Recommendations requiring a legislative response include the following:

- Provide for unchallengeable security of title upon completion of registration. (Already the case in Gaza.)
- Enhance notice requirements.

- Be clear about acceptable types of evidence for title and property boundaries.
- Relax survey requirements and allow orthophoto maps to be used as a basis for titling.
- Enable the register to be held in digital form.
- Put details concerning procedures, notice, forms, survey/mapping and administrative matters in a regulation or in a manual approved by the minister or director.
- Waive fees for first registration.
- Establish safeguards on use of irrevocable powers of attorney (IPAs).

Land Market Study: The Palestinian property market is marked by a variety of regulatory anachronisms that have resulted in people relying on local social networks to secure land.

The entry barriers and difficulties to remain in the formal market are seen as:

- High transactions costs rendering both first and subsequent registration costly and cumbersome;
- Lack of trust in the public service agencies;
- Subsequent transactions are not registered and the benefits of remaining registered are not evident to property owners;
- The requirement that current owners who wish to register their property pay the property taxes for all previous owners who did not register the property;
- Unpredictability in the application of rules and regulations due to a high level of discretion;
- Enforcement of property rights through the judiciary is costly and time consuming;
- The absence of a coherent land and property management policy framework to provide guidance to those operating in the land market.

These difficulties have resulted in a small formal market that is unlikely to expand until such time as the PNA can create reliable and secure registries of property that will provide the basis of an enabling environment for local and international investment.

Land Market Legal Issues

1. A civil service reform agenda focusing on land should be the starting point;
2. Registration procedures should facilitate formalization of the accumulated unregistered claims stemming from Inheritances and Absentees;
3. Eliminate the requirement to present taxation clearance receipts for processing property rights and issuing property registration at the PLA;
4. Reduce and Streamline procedures created by the Municipality and encourage application of the Condominium Law;
5. Eliminate legal and regulatory barriers that hinder the robust development of a formal financial market based on property;
 - a. Rent protection should be abolished.
 - b. Introduce leasing as a formal instrument.

- c. Foreclosure should not be inhibited by legal procedures. Law of Court Procedures of 2001 must be revised. Foreclosure should become administrative also in Gaza.
6. Legal, regulatory, and document streamlining for the facilitation of the formalization of property owners. Establish a legal division within PLA for legal dispute resolution;
7. Create accountability for all private players involved in the property market. Brokers and other property transactions facilitators should be registered either at the PLA or in a union of professionals;
8. Systematic settlements surveys should continue.

Study of Land Disputes. Informal, formal, and hybrid systems of dispute resolution currently operate in Palestine but are not harmonized. Instead, informal, formal, and hybrid systems operate simultaneously, on somewhat parallel tracks, creating and sustaining a pluralistic legal dispute resolution environment. Several consequences to equity and efficiency result from such pluralism. First, those with the understanding and economic ability to do so can elect their dispute resolution system depending on their needs, and can play one system against another to their advantage. Those without the understanding, education, and economic means rarely have the same options. Second, because several forums exist and apply different standards, many of which may be unwritten and unknown outside the community, rights are less certain. Third, the results of various informal and hybrid systems can always be thwarted by application of the formal law.

Land Dispute Policy Issues: Integrated, Systematic Mechanism for Land Dispute Resolution: An integrated, systematic mechanism should be adopted for resolution of land disputes. Such a mechanism is composed of the following components:

1. Adoption of mechanisms to formalize Sulh and mediation decisions or certify uncertified arbitration awards to integrate decisions within the formal judiciary.
2. Adoption of procedures and/or amendment of laws to enable certification of Sulh and mediation decisions or arbitration awards by the formal judicial process.
3. Adoption of principles and regulations which will enable the PLA to resolve administrative issues without referring every matter to the courts.
4. Adoption of efficient rules and procedures to facilitate and promote an effective settlement and adjudication process by the judiciary.
5. Establishment of a land court, which will have sole and exclusive jurisdiction to review land disputes related to rights, ensuring that the judicial staff is well qualified.

Land Disputes Legal Issues:

1. **Create regulations for the Land and Water Dispute Settlement Law (Law Number 40 of 1952).** The *Land and Water Dispute Settlement Law* has no implementing regulations. As a consequence, ambiguities and gaps in the law are open to interpretation by institutions and officials implementing the law, private parties subject to the law, and third parties potentially impacted by the settlement process. Absent regulations, actions taken under the law create fertile ground for legal challenge. Regulations will close the gaps and clarify the ambiguities, reducing the opportunities for legitimate claims relating to the settlement process.



The pilot provides the opportunity to draft and test procedures that are regulation-quality in their content and comprehensiveness.

2. **Establishment of a Specialized Land Court.** The *Land and Water Dispute Settlement Law* establishes a Land and Water Dispute Settlement Court, also known as the Court of Dispute Settlement, that has exclusive authority to review claims brought pursuant to the Table of Rights. The project pilot has activated this Court of Dispute Settlement and created an opportunity to test the feasibility and effectiveness of a court operating in this limited arena. However, the court envisioned by the Land and Water Dispute Settlement Law has very limited jurisdiction and thus very little potential impact over land disputes.

In order to increase the value of the judicial and court resources dedicated to the pilot, the project could seek (in consultation with, and with the approval and support of the High Judicial Council, Ministry of Justice, and other relevant parties) to establish a specialized land court.

3. **Link Informal and Formal Dispute Resolution Systems.** Research indicates that a significant percentage of the population of the West Bank and Gaza prefers to resolve land disputes through informal, mostly conciliatory processes. The practice has grown from traditional practices, played a key role in maintaining public order and security in the last thirty years, and reflects a lack of trust in and the weaknesses of the formal institutions. Informal institutions are, however, often ill-suited to resolution of land disputes: they lack an independent judiciary, can reinforce bias and prejudice while supporting existing hierarchies, and can perpetuate the insecurity of land rights.

Activating existing laws establishing alternative dispute resolution procedures within the formal system (such as the provision for the establishment of conciliation courts under *Conciliation Courts Law No 45 of 1947* and the *Law on Arbitration No (3) of 2000*) and creating simple links between existing informal systems and the formal systems will begin a process of integrating the two systems. The ultimate goal of such integration will be the regularization the informal system to meet principles of equity and the rule of law and to create strong links to the formal system that allow for the transfer of public trust to the formal system as it grows in capacity and activates its alternative dispute resolution mechanisms.

4. **Adopt measures to increase security of land rights.** Land rights-based claims are likely to be reduced if land rights are more secure. Steps to increase the security of land rights (in addition to the settlement and registration of all unsettled and unregistered land) include:
 - Creating incentives for subsequent registration of land rights and land transactions;
 - Requiring probate (i.e., settlement and division) of estates within one year of death and registration of new interests within three months of decision; and
 - Determining the reason for the number of cases appealed claims of prevention of challenge and determine if action can be taken to reduce claims or appeals of such claim.
5. **Circumscribe the Irrevocable Power of Attorney.** The irrevocable power of attorney is a favourite candidate for the source of a wide variety of disputes ranging from breach of contract claims to fraud. Nonetheless, most practicing lawyers interviewed recognize that the tool is a means of transferring interests in unregistered land and, as such, plays a valuable role, especially in the West Bank.

For the time being, the Study team does not recommend extinguishing the mechanism. First, any effort to do so would require substantial attention and resources to implement. Second, the effort would likely be unsuccessful and simply result in driving the informal land transactions underground, increasing the insecurity of land rights.

However, in the interim period until the time when the land is settled and registered and the IPA has lost much of its usefulness, some of the ambiguity and uncertainty created by the use of the tool can be reduced by the following actions:

- (a) establish a system for recording IPAs with Notary Publics and the Registry Office so that the existence of an IPA attached to a land parcel, the parties, and the terms is a matter of record;
- (b) require parties with existing IPAs to record them under the new system;
- (c) require parties executing new IPAs to provide evidence of the legal ability to transfer the land right that is the subject of the IPA; and
- (d) limit the duration of IPAs to no longer than one or two years.

Public and Municipal Land Management Study. The public and municipal land management study made the following key policy recommendations:

- There should be a universal public land classification system for all Government and Local Government bodies including in land inventories and planning schemes;
- Public land ideally should be registered ultimately in the name of the Government or a Local Government entity;
- There should be an official government public land inventory in which the classification of all public land is to be documented;
- Planning schemes coming into existence after the recording of public land in an official inventory should identify the public land parcels using the official classification system;
- A *Public Land Management Agency* (PLMA) should be established to maintain the Public Land Inventory, assign public land to and resume public land from line agencies and local government, undertake dealings in public land and development and apply protocols related to public land management;
- Policy should be adopted to promote the achievement of planning objectives through management of public land assets. This should be done at the National, Regional and Local (Masterplan) levels;
- When land is developed such that a need for additional public land is directly created there should be a contribution towards fulfilling this need. This should be either through providing suitable land directly or where this is impractical through a cash-in-lieu payment.

The public land management policy recommendations have legal implications in the following areas:

- Use of the official land classification system should be to be mandated in the land law(s).

- Laws affecting dealings in public land and the management of public land should be dealt with in the regulations for the new land law(s).
- The new land law(s) and planning and building laws should set out the basic requirements for the public land inventory obligating all parties to adopt the common land classification system and requiring the exchange of information.
- There will need to be a law creating the *PLMA* to define its functions and powers and to create the power to make regulations. Depending on the institutional structure adopted there may be a need to review Presidential Decree No. 10 (2002).
- There will be a requirement to review planning and building law and related regulations.

Property Fees and Finance and Valuation Studies (Land Related Revenue). Initial investigations show varying taxes are applied to land between Gaza and the West Bank. Taxes are collected by the Property Tax Directorate in the Ministry of Finance in West Bank. In Gaza municipalities define and collect property taxes based on the Egyptian model. Valuation for tax collection in West Bank is conducted by regional committees who have tended to neglect their responsibility to revalue at minimum 5 year intervals. Large inequities exist in property valuations and the possible tax collection on properties. Generally collected taxes are significantly low. There are numerous parameters that influence the taxable property value and these are often arbitrary and unclear to the payee.

Fees and Finance Legal Issues: West Bank and Gaza transaction based fees are similarly applied. Fees to register property were reduced from 5% to 1% and condominiums and unit are not charged. A key reason for originally minimizing fees was to encourage registration which then gave more security to finance and mortgaging companies when providing banking and financing services. To register for 'title', the fees are set at 0.1% of the property value, where the value is determined by the PLA. Other minor fees are applied for retrieving information and conducting dealings.

The main tax issue affecting registration and formal land market participation is the practice which forbids any transaction to take place unless all property associated taxes have been paid. Poor performance among tax collectors and valuation officials has allowed the property tax situation to fall far behind. Property tax collection as a percentage of government revenue is well below developed or emerging economies. Taxes collected appear to be under-utilized and even undervalued in comparison to other developed and developing countries household expenditures. The tax base is significantly limited because of the incompleteness of property registrations. In areas of unregistered parcels, there are approximately 36 municipalities where property tax is not levied.

Land Valuation. The Palestinian population retracted from dealing with finance institutions following Israeli occupation. When the PNA was established Arab and European banks were invited back to Palestine and the demand for valuers was reignited. But the property valuation in Palestine is very underdeveloped with limited professional capacity, training and regular activity within this field. Market information in Palestine is strongly guarded and unreliable, leading to values being under declared. This often occurs when collecting transaction fees, as they are set on an ad valorem basis according to property market value. Valuations are also conducted without set procedures or formulae for calculating the value.

There are concerns over the valuation methods employed and authority assigned during public land alienation and disposal, particularly in cases to adequately house people or

support economic development. Generally there is limited accountability and independence in the valuation processes, causing conflicts of interest. Further to this there are limited means for people to appeal decisions.

Land Valuation Legal Issues. Currently the valuation system does not provide secure and regulated support for the commercial sector to expand market capacities. Among the general population there is general consensus to keep the status quo so they can avoid increases in rent, taxation or transaction fees. General public awareness of valuation or awareness at the professional level and its importance to economic activity is extremely limited and legislation supporting valuation is inactive or inappropriate.

Valuations are based on market information, however market information in Palestine is strongly guarded and unreliable leading to values being under-declared. This often occurs when collecting transaction fees, as they are set on an ad valorem basis according to property market value.

Private property valuations for registration fee purposes are performed by land registration staff in West Bank and by a valuation committee in the Gaza with 6 adjudicators considering 3 opinions of value. The valuations are conducted without set procedures or formulae to calculate the value. There are no training facilities or professional institutions to build valuation capacity or provide regulatory oversight.

There are concerns over the valuation methods employed and authority assigned during public land alienation and disposal particularly in cases to adequately house people or support economic development. Generally there is limited accountability and independency in the valuation causing conflicts of interest. Further to this there are limited means for people to appeal decisions.

4 Review of the PLC Draft Land Law

In 2004, the PLA and the MoJ submitted to the PLC a piece of draft legislation for review (the "PLC Draft Land Law"). This PLC Draft Land Law attempted to consolidate into one law various laws that are now in force in Gaza and the West Bank, with a few substantive changes. One important change was the reduction of the number of land categories from five to three: private (*mulk*), public and waqf.

When the PLA was created by Presidential Decree in 2002, its powers and authorities were to be specified by a future law. The PLC Draft Land Law attempted to deal with this matter and set aside a chapter enumerating the powers and functions. But in the main, it reflected the current practice where the Chairman and the Director General are solely empowered and made all policy decisions and implement their own decisions.

The PLC Draft Land Law underwent two reviews, one conducted for the benefit of USAID and the other undertaken under this Project. Both looked at the issues from different angles but both reached the same conclusion: this draft required significant reconsideration from policy perspectives and content as well as style. The review conducted under this project was carried out, as mentioned elsewhere in this report, by BZU. Please refer to Annex 5 for more detail.

The primary concern underlying the PLC Draft Land Law was that there was no clear policy basis supporting its structure.⁵ Thus MoP, PLA and the PLC agreed to suspend the review of this PLC Draft Land Law from the legislative review process until land policy studies could be carried out and policy guidelines provided to the drafters of the law. The national land policy produced as a result of this project will supply the needed policy guidelines.

It was contemplated that one product of the Legal and Institutional Study will be a revised Draft Land Administration (PLA Law) that is informed by such policy guidelines and by the gaps, weaknesses and inconsistencies identified in the existing legal and institutional framework.

The distinction between legislation and policy is an important one, and not always recognized in the review and reform of legislation. Sometimes drafters are assigned the task of writing laws without being given appropriate policy direction. Often examples are taken from other countries. The resulting draft legislation implement policies from elsewhere or those that a consultant would like to see reflected. Some of the policies are not problematic. They are the kinds of things that the policy-makers would be happy to leave to the experts. However, some aspects are important. They need informed consideration by policymakers. In the Palestinian context, it was important to safeguard against such missteps.

While the legislative framework for land in Palestine is recognized as in need of consolidation and clarification, it does not follow that current problems with respect to land administration and markets result from deficiencies in the legislative framework. For the most part difficulties in land registration, for example, are due to other factors. It follows that the situation cannot be improved by changes in the legislation without addressing the underlying issues. Tackling underlying causes may need only to be accompanied by a few changes to legislative provisions.

⁵ See *Commentary Review and Analysis of the Draft Land Law*, USAID/FMI, 20 December 2005.

For example, the Ottoman Land Code has been described as a “poorly conceived” piece of legislation.⁶ This may be so, but it is not the task of this Study to open it up for reappraisal of its fundamental rules, except to the extent these are shown to be in need of reform in order to implement the new policy framework.

Therefore, the approach of the legal Study was to determine the appropriate legislative response to specific findings and recommendations coming out of the other studies. Legislation that is unaffected by such findings and recommendations will not be rewritten, except as necessary for purposes of consolidation, updating and correction of references, clarification, etc., as well as to meet the criteria discussed below. The value of this exercise should not be underestimated: the harmonization of the law covering Gaza and the West Bank will be very valuable.

It was necessary to prepare a complete inventory of land-related laws and regulations in force in Gaza and the West Bank, including Israeli Military Governor’s Orders that affect them. A snapshot is obtained of the legislation in force in each territory. In a few instances in the West Bank this is complicated by Jordanian laws that cover a subject matter that is dealt with in a British Mandate ordinance, but leaves some provisions unaffected. This exercise provides the foundation for the recommended consolidated laws.

The technical review included identification of outdated or incorrect references, inconsistencies with other legislation (including the Basic Law), as well as proposals about the content of legislation that would leave administrative matters to regulations.

Although we have characterized this as a technical review, in order to distinguish it from the policy-based review in the other studies, it is bound to raise some very important issues. A striking example is the inconsistency between the Ottoman Land Code and Palestinian laws on water and subsurface rights.

⁶ Raja Shehadeh, “The Land Law of Palestine: An Analysis of the Definition of State Lands”, in *Journal of Palestinian Studies*, Vol. 11, No. 2, p. 82-89.

5 The Four New Laws

Basis for choosing four laws. The existing legal framework in both the West Bank and Gaza consists of some 38 different laws related to land issues. There was obviously a need to harmonize laws. Harmonization started in Palestine in 1994 with respect to all areas of law and land is among the latter sets to be addressed. The existing fragmentation in land laws has had an impact on land administration. The PLA made a serious attempt at harmonization and prepared one draft that was all encompassing (the PLC Draft Land Law). There was consensus between MOP and LEI that one law tackling all issues from institutional to registration to eminent domain to rights would not be wise. It was thought that legislation must be coherent and for that to be achieved the harmonization must pursue a logical structure. Therefore, the first step is to harmonize Gaza and West Bank, but the draft land law did not successfully achieve this. It left issues out, e.g., insufficiently addressed the institutional framework or included some issue that ought to be part of other legislation, e.g., civil code. Second, it addresses some of the existing gaps, but, again, the draft failed to be comprehensive in that respect.

Based on the foregoing, the legal team initially considered a set of new laws consisting of 9-11 laws divided by related subject matter. With more analysis and further discussions, it was determined that the 9-11 topics could still be further reduced. The team settled on 4 laws as follows: (1) Land Rights (2) Institutional Arrangements; (3) Registration inclusive of the settlement issues; and (4) Eminent Domain. These 4 laws capture all the core issues related to land and will be a manageable set of laws.

To ensure that the legal framework for land works, other laws may need to be examined like the draft civil law, the civil procedure law, land use planning and land development laws, water use laws, laws to protect historical sites and the environment, family and inheritance laws and laws related to civil matters, evidence, among others. These laws can be addressed after the core issues have been addressed in the 4 new laws.

Further, the terms of reference call for sound advice to lay the legal foundation in land policy, management and administration consistent with the principles of good governance, efficiency and equity. The Basic Law states in Article 6 that the principle of the rule of law shall be the basis of government in Palestine. In identifying weaknesses in the legislative framework, therefore, the Study will apply the principles of good governance⁷ and the rule of law. These principles call for accountability and transparency, and would require the following:

- clear delineation of responsibilities
- clear criteria for exercise of discretion
- opportunity for independent review of discretionary decisions
- open procedures for permits, approvals, certificates, etc.
- access to state information (subject to privacy rights, state security, etc.)
- state interference with property rights only under due process and with fair compensation (see Basic Law Art. 21.3)

⁷ See *Good Governance: Guiding Principles for Implementation*, AusAid 2000. *Principles for Good Governance in the 21st Century*, Graham, Amos and Plumptre, Institute on Governance 2003. *Governance and Sustainable Human Development*, UNDP 1997.

Consideration has been given to what kinds of matters should be covered in a Land Law and what matters should be treated in separate pieces of legislation. Past practice and international examples has been brought to bear. Practical considerations apply: covering disparate subject matter in one law may make it harder to adopt and harder to change when required.

To achieve harmonization, land-related legislation has been inventoried and comparisons made between those in force in Gaza and the West Bank. Analysis of the legislation indicates that the British Mandate and Jordanian legislation is for the most part well drafted and clear, and provides a sound basis for the consolidated laws.

We are recommending that the Jordanian law be preferred over the equivalent British Mandate law where the choice must be made. In most instances there are not a great many substantive differences between them in their effect. The Jordanian laws were originally adopted in Arabic, the national language. Furthermore, it covers a wider range of issues related to settlement, registration, division of common ownership, conveyances, absentee rights, sporadic registration, among other relevant issues.

6 The Proposed New Legislative Framework

6.1 Summary of the 4 Maps

Land Law Map

The map for the Land Law contains the following:

- Identification of the legislation concerning land ownership and possession, any restrictions on rights, and rules concerning transactions. This will start with the Ottoman laws, showing how they have been amended and affected by British Mandate, Jordanian laws, Israeli and Military Orders.
- A brief description of the essential features of the law as stated under this legislation.
- An analysis of the existing laws with a view to identifying weaknesses, gaps, and inconsistencies, including inconsistencies with other laws and the Basic Law. The analysis contained in BZU's *Report on the Study of the Draft Land Law* may be incorporated in the map where the Draft Land Law has copied provisions from the existing law.
- Comment on the findings and recommendations emerging from the Public Land, Registration, and Land Disputes studies that are related to the legislation.
- Identification of outstanding issues and policy choices that need to be addressed.
- A detailed description of the recommended Land Law, presented in relation to the provisions of the Draft Land Law."

The current laws governing land goes back to the Ottoman period, Ottoman Land law of 1858 and the Ottoman Civil Code (*Mejelle*) of 1869. Although the Ottoman laws form the legal foundation with respect to land, laws from the British Mandate, along with Jordanian laws and sometimes Egyptian laws and the influence of Israeli Military Governor Orders all act together in creating the region's land law that is prevalent in the West Bank and Gaza Strip. The consolidation of existing laws in both the West Bank and Gaza is a vital step in establishing a new land law.

PLA Law Map

When the PLA was created by Presidential Decree in 2002, its powers and authorities were to be specified by a future law. This draft law is that future law.

The map for the PLA Law contains the following:

- Referencing of the legislation concerning the establishment of and justifications for the Palestinian Land Authority. In particular, reference of Basic Law and the Presidential Decree No. 10 of 2002.
- Clarification of what the PLA is responsible for in regards to its powers and authorities.
- A brief description of the Board of the PLA including; selection of Board members, and structure and functions. The need for an independent Board in regards to decision making is outlined.

- A detailed description of the duties and functions of the Chairman of the Board as well as the make-up of Board-elected committees.
- Outlining of the structure of Board meetings in detail in regards to their frequency, conditions, reporting and determination of Board decisions.
- Identification of Executive Management of the PLA and the consequent powers and authorities bestowed upon this Executive Management.
- Identification of the Departments of the PLA as well as who will head each of these Departments. The duties and functions of each of the Departments are outlined.
- A brief outline of the financial operations of the PLA.

Eminent Domain Map

In Gaza the law of expropriation is governed by the *Land (Acquisition for Public Purposes) Ordinance, No. 24 of 1943*, in the West Bank by the *Eminent Domain Law No. 2 of 1953*. There are not many substantive differences between the two laws. The British Mandate law was amended twice, in 1943 and 1946, as was the West Bank Law in 1959 and 1960. Both pieces of legislation were affected by Israeli Military Governor's Orders. The PLC *Draft Land Law* provisions on eminent domain are based on the West Bank legislation, and include amendments made in Jordan since 1967.

It is recommended that the provisions on eminent domain in the *Draft Land Law* form the basis of the draft *Eminent Domain Law*, for the following reasons:

- They are based on the Jordanian legislation drafted in Arabic in language familiar to users.
- Subsequent experience in Jordan in amending, applying and administering the legislation will be useful.
- The *Draft Land Law* replaces outdated references in the West Bank legislation.

It is recommended that certain provisions be adjusted to comply with the *Basic Law*, the principles of good governance and international best practices. In this regard reference is made to the report of Birzeit University Law Institute entitled "Study on the Draft Land Law Final Report, 2007" (attached as Annex 5).

Registration Map

Legislation governing land registration covers (1) the establishment and maintenance of a land register, (2) first registration – both systematic and sporadic, and (3) registration of transactions.

Although the *Ottoman Land Law* provided for a land registry and required owners to register their properties, many owners never did. Thus the Ottoman registry was not definitive on private land rights, and furthermore the records are vague and often do not clearly identify specific parcels of land. The Ottoman registration system was effectively superseded during the British Mandate, although Ottoman registration is evidence of ownership.

Legislative authority for the establishment of a land registry resides in Art. 15 of the British Mandate *Land Transfer Ordinance Cap. 81⁸*, still in force in both Gaza and the West Bank. In Gaza first registration is governed by the *Land (Settlement of Title) Ordinance Cap. 80*, and in the West Bank by the *Land and Water Settlement Law No. 40 of 1952*. Both pieces of legislation were amended on several occasions. In the West Bank

⁸ This is a consolidation of the laws in force in Palestine, carried out in 1934.

sporadic registration is covered under the *Law on Registration of Unregistered Immovable Property No. 6 of 1964*. In Gaza there is no specific legislative provision for sporadic registration. In Gaza and the West Bank registration of transactions is governed primarily by the *Land Transfer Ordinance*, referred to above, which has been amended on numerous occasions. The registration legislation has been affected by Israeli Military Governor's orders.

Another piece of British Mandate legislation, in force in Gaza and the West Bank, is the *Land Registers Ordinance No. 30 of 1944*, which provides for the reconstruction of entries in a land register that were destroyed or rendered illegible.

The Palestinian *Condominium Law No.1 of 1996* and its *Executive Regulation* make special provisions for the registration of title to separate apartments and shops in buildings.

The *Draft Land Law* provides for administration of the land registration system by the Palestine Land Authority. It adapts the West Bank legislation on first and sporadic registration and certain provisions on registration of transactions. It substantially reproduces the British Mandate legislation on reconstruction of damaged entries in the register. It does not deal with condominiums, leaving the existing law and regulation in force.

It is recommended that the *Registration Law* base its provisions on the same origins as those in the *Draft Land Law*, for the following reasons:

- The sections on registration are based on the Jordanian legislation drafted in Arabic in language familiar to users.
- The Jordanian legislation is already operative in the pilot registration projects, while the Mandate legislation has been inoperative because first registration is substantially complete.
- Subsequent experience in Jordan in amending, applying and administering the legislation will be useful.

The *Condominium Law* is special legislation that appropriately should be separate. However, registration of condominium title should be referred to in the *Registration Law*, for completeness and consistency.

It is recommended that certain provisions be adjusted to comply with the *Basic Law*, the principles of good governance and international best practices. In this regard reference is made to the reports of Birzeit University Law Institute on the *Draft Land Law* and USAID report on the *Legal Framework for Property Registration* (2005), and the recommendations of the various studies.

6.2 Scope of Draft Laws and Outlines of Regulations

This section covers the scope of the four draft laws detailed below. However with respect to the Land Administration and Institutional Framework, a policy PLA Memo has been developed pending further consultations at the decision-makers level, it is attached along with the draft 3 laws as part of Annex 3. Further, three sets of outlines of the regulations have been developed (attached as Annex 4). The three outlines are (1) Draft Rights Land Law Regulations; (2) Registration Law Regulations; and (3) Eminent Domain Regulations. The Land Administration and Institutional Framework Law Regulations have not been developed because this draft law is still pending further consultations on policy issues.

Draft Land Rights Law and Land Management. One of the major issues for the Land Rights Law was to consider, for example the future use of the Irrevocable Powers of Attorney (IPA) whose use is adversely affecting the overall functionality of the Land Registry system and undermines the entire process; determining how long the IPA should be in effect for and whether the duration should be changed for registered land and unregistered land and under what circumstances should the IPA be renewed. The Draft Land Law is to be closely harmonized with the Draft Registration Law.

The national land policies are to include all land in the West Bank and Gaza Strip, including East Jerusalem, which have been occupied since June 1967.

Classification of Types of Land Titles. The Draft Land Rights Law covered the following land classifications: public (reserves and estates), private (*mulk*), and *waqf* (Moslem and Christian) and all rights associated with land tenure. In that regard, the Land Law proposes to change the existing land classifications from 5 to 3. Instead of the current five classifications, three categories will be adopted for the types of land titles, as follows:

- (a) *Mulk* land: Private land owned by individual or legal persons that enjoy full ownership rights
- (b) Public land: Land which is not considered as *Mulk* or *Waqf* land. Public land is to be registered in the name of the State or municipalities/local authorities.
- (c) *Waqf* land: The public, *Mulk* or *Miri* land which is endowed as *Waqf Saheeh*.

A system will be adopted to review each case separately and pursuant to a mechanism that will safeguard existing and acquired rights in land when transforming to the new land classification system (i.e. from five to three categories).

The Draft Land Rights Law further focused on rights associated with ownership (disposal, conveyances, leasing, among others) per classification. Distinctions will be drawn for rights associated with public land, *mulk* and *waqf* as well as those associated with beneficial use. It will address restrictions on use, easements, and the rights of others. It will set rules for foreign ownership. Division and partition of common ownership and inheritance are issues dealt with in the Land Law. Mortgages, liens, encumbrances are related areas which will be detailed.

Miri land classification will be eliminated and becomes either *mulk* or revert to public. *Miri*, under Ottoman rules is cultivated land subject to taxation. Users had a registered right of a beneficial use and paid tax. For these types of uses, the register for tax purposes is with the Ministry of Finance and is called *Ikhrāj Qeid* (Certificate of Possession); i.e., evidence for property tax payment (applicable in the West Bank only). Title for *miri* is with the Sultan (state) but can be possessed and converted to *mulk* after ten years of use or when the land enters the urban municipal boundaries. Even though there many such cases, title deed was no properly issues thus these altered rights must be grandfathered.

Waqf Land. *Waqf* land and related taxes/charges, such as *hikr*, shall be researched and analyzed. Relevant recommendations will be adopted as soon as possible.

Classification of Public Land. Public land will be classified into one of the following categories:

- (a) "Public Reserve": The land necessary for public use. Relevant governmental departments or municipalities (custodians) will be responsible for the administration of this land in order to meet a public need. This land may never be disposed of but in special cases, however, this category of land can be leased as long as this does not adversely affect its designated public use.

- (b) "Public Estate": The land which is invested as a reserve for future generations. It shall be administered in a transparent manner by a body comprised of relevant governmental agencies. This category of land may be disposed in accordance investment programs and legal procedures, to ensure maximization of revenue collection.

Public Reserve Land will be determined and supported by specialized laws and through the land use planning process at the national, regional and local levels.

Reclassification of Public Land. Clear and transparent criteria, rules and procedures shall be adopted for the reclassification of public land from Public Reserve to Public Estate, and vice versa. The entire process will be administered pursuant to a clear legal framework.

Administration of Public Land. A committee, comprised of the relevant governmental agencies, will examine and prepare all proposals pertaining to the disposition of State Public Estate. Requests for reclassification of public land will be submitted to the committee. A board of directors, responsible for the oversight, disposition and administration of public land will approve requests. Local authorities or municipalities will manage their own public properties.

Registration of Public Land. All public land shall be registered at the offices of the PLA. Certificates of registration will be kept at the Ministry of Finance. Registration of public land will be as follows:

- (a) Public land owned by local authorities or municipalities will be registered in the name of the concerned local authority or municipality.
- (b) Public land owned by the State will be registered in the name of the State.

Restitution of Public Land. The registry of public land at the PLA shall be examined and reviewed periodically. Legal documents on the disposition of public land must be reviewed. If the review reveals that some public or Waqf land was converted into Mulk land in an inappropriate manner, measures will be taken to recover public ownership in land and the rights will be restituted.

Inventory of Public Land. The Ministry of Finance shall keep the title deeds of public land. The Ministry of Finance shall develop a unified classification system for Public Reserves and develop and maintain an inventory of public land.

Development of Land Use Plans. Concerned public agencies must develop and maintain physical and land use plans that implement clear specified policy objectives, including the management of public land, the regulation of land uses and support for the development process.

Spatial Database. An up-to-date spatial database must be developed to support land administration and management. The database should contain land-related information and be connected to the e-government development plan.

Protection of Cultural Heritage. Procedures for land management must be created so as to protect cultural heritage sites and natural landscape on both private and public land. Appropriate laws that ensure protection of these cultural heritage sites and natural landscape should be drafted and enacted.

Land Tenure and Access to Rights

Preservation of Rights. Rights to the disposition, possession or usufruct of land shall be defined individually at the time settlement is commenced and the new land classification enforced. Along with rights arising from usufruct contracts and right of

“adverse possession”, all the rights above shall be preserved. All other considerations, including those that safeguard equity and justice, shall be upheld.

Rights of Palestinians Residing Abroad (Absentees). Rights of absentees shall be addressed in accordance with the following mechanisms:

- (a) Land subject to the settlement process shall be treated pursuant to the applicable law, including the right to challenge, to produce incontestable titles.
- (b) Land outside the scope of the settlement:
 - (i) The right of absentees, who have titles of ownership, shall have these rights safeguarded. These absentees shall enjoy the right to challenge at any time any transaction affecting their properties if made without their knowledge or consent.
 - (ii) The PLA shall adopt mechanisms to ensure the validity of documentation and preserve the rights of rightful original owners who are absent prior to the registration of any transactions that involve adverse possession claims.
- (c) An investigation shall be undertaken into whether a committee or entity should be established to represent absentees during settlement and to facilitate transactions and the development process.

Common Ownership Rights. The law and rules for the consensual or judicial division of common property shall be implemented in accordance with the rules and provisions for the removal of common ownership.

Rights and Obligations Related to Mulk Land. Owners of Mulk land enjoy full title rights, including the right to partition, division of common ownership, parcelization, registration, sale, transfer, conveyance, succession rights, mortgage, usufruct, lease, bequest and wills. All these transactions are permitted provided that the following obligations are observed:

1. Registration of rights to land at the PLA Land Registration Department.
2. Compliance with rules that govern land use and planning and related laws and regulations.
3. Payment of property tax as it becomes due.

Rights of Foreigners to Mulk land. Foreigners may purchase Mulk land. Foreigners who wish to purchase Mulk land must obtain the prior approval from the Council of Ministers. Foreigners must also undertake to abide by all laws in force in Palestine.

Succession Rights. Mechanisms should be developed to encourage land owners to register at PLA offices title rights which devolve to them by inheritance. Registration fees will be waived if title rights are registered within 12 months from the date of succession. Competent courts shall adjudicate issues and disputes related to succession.

Rights of Tenants

The *Law Concerning the Protection of Tenants* should be immediately reviewed and amended so as to avert harm caused to the real estate market through the implementation of some of its provisions.

Rights Arising from Title Deeds (Incontestable)

Except within the scope prescribed by law, title deeds issued by the Land Registration Department are incontestable and not subject to challenge before the courts. The PLA shall adopt a mechanism to secure title deeds through a fund established by an appropriation from transaction-related revenues (additional fee levied on registration).

Use of Irrecoverable Powers of Attorney (IPAs)

- (a) The public shall be encouraged and directed to cease using IPAs.
- (b) Each IPA shall be deemed to be effective from the date of notarization by the notary public.
- (c) No successive IPAs shall be issued by power of an existing IPA and such shall be deemed null and void with no rights to the successor.
- (d) IPAs shall be registered at the PLA, provided that a relevant electronic system of registration is made available.

The issue of Irrevocable powers ("IPA") of attorney is a contentious issue that the Land Law and Registration law will cover respectively. The IPA is a three party contract where both seller and buyer appoint a third person to act on their behalf in a land transaction. This power of attorney is irrevocable. Its term is 15 years. These characteristics have opened the door to fraud and loss of rights. The IPA must be eliminated. During a transition, the term of existing IPAs will be reduced to 24 months and others maybe turned into long-term leases. Further, the terminology of IPA will change to power of attorney where such powers may be registered directly at the PLA. The function of notarization before the notary public will be substituted registering the power of attorney with the PLA.

The Draft Land Rights Law will propose the concept of conclusive titles and set a mechanism that aims to guarantee system to support conclusiveness is to be established. This includes guarantee of completeness and accuracy. Public land management and alienation/disposal will be part of the Land Law and special provisions will be drafted. The Land Law will have provisions that secure cultural heritage protection on private and public land. In summary, the Draft Land Rights Law covers the following areas:

- Land tenure classifications
- Scope of ownership
- Restrictions on ownership
- Conveyances
- Beneficial use
- Division of Common ownership
- Rights of natural persons
- Rights of legal persons
- Sale and lease to foreigners
- Mortgages
- Powers of Attorney
- Disputes

Registration Law. The Registration Law will be an overarching piece legislation covering all types of registration and harmonizing them in one law including systematic registration—even though the later applies only in the West Bank. The registry should be centralized and inclusive of all types of registration, public, *mulk* and *waqf*. The aim is to provide a secure titling system while providing efficient services.

The Ottoman Land Law provided for a land registry and required owners to register their properties, many owners never did. As a result, the Ottoman registry was not definitive



on private land rights, and furthermore the records are vague and often do not clearly identify specific parcels of land. The Ottoman registration system was effectively superseded during the British Mandate, although Ottoman registration remains an evidence of ownership. The land registry was rendered even more inaccurate during the Israeli occupation. Israel also introduced different interpretation for *mulk* ownership and restricted to title ownership and cultivated *miri* land. All other uses were not recognized to confer ownership and thus deemed the land was recognized as public land. When the Palestinian Authority took power, the PLA faced a seriously manipulated register that does not reflect accurate records. The same is true of public records. *Miri* land outside municipal boundaries can be turned into *Waqf Sahih* if the beneficial use meets the legal requirements. *Miri* land inside municipal boundaries can be turned into *mulk* or *waqf*.

Another factor that further complicates registration is the so-called Ministry of Finance records. These are records that register the beneficial use over the land. Systematic registration which was interrupted in 1966 kept over 70% of the *miri* and even some public land unregistered, thus many parcels that may have been registered as *mulk* because the use met the legal requirements was not possible.

Other rights that have been acquired through adverse possession, inheritance, legal purchase but not duly recorded pose serious challenges when amending the law as special provisions would have to be drafted to grandfather legitimate claims.

All public land will be registered with PLA. Registration of local authority land will be in the name of the local authority while that of State land will be in the name of the State. *Waqf* land will be registered in the name of the *waqf*.

The registration of the rights of foreigners will be in the same manner as locals subject to the criteria that define foreigners and policies set in this regard.

The registration process and zoning and planning issues will be made consistent recognizing that zoning and planning laws need to be updated but fall outside the scope of the exercise.

Registration shall be implemented and effective regardless of the personal income status of the person seeking registration. The registration shall be based on a fixed cost schedule rather than an ad valorem assessment.

Encumbrances and mortgages will be registered and constitute part of the registration law.

Information technology would have to be part of amending the registration law to allow the ability to register and retrieve information speedily while making parts of the register information accessible to the public.

The Law will have to cover cadastral surveying to record ownership and/or transfer the beneficial use to ownership whereby the spatial records are linked with the land registry.

Proper registration should aim to reduce disputes and strive to eliminate them.

The above constitute the general guiding principles in considering the policies to amend existing registration laws. The review of related existing legislation determined that the Jordanian laws applicable basis provide the best basis to spearhead the amendments.

Registration Policy Issues

Registration of All Land: All land located within the State of Palestine shall be registered at the PLA offices. Land settlement should also be commenced. A comprehensive programme should be developed to conduct surveys for purposes of land settlement in order to permanently upgrade land registers.

Effective Registration Processes. The PLA shall implement efficient procedures for land registration in order to encourage owners to register all land transactions at Land Registration Departments.

Registration and Tax Payment

1. The registered owner (the seller) shall be responsible for the payment of all due taxes to the competent authorities. Property tax shall not be assigned to a third party unless the assignment is consensual.
2. The Ministry of Finance, PLA and local authorities shall enter into an understanding to create a register for property tax at the PLA to facilitate the payment of this tax when registering land-related transactions.
3. The only tax discharge that shall be required for all land transactions, including registration, conveyance, mortgage, etc., will be the tax discharge for the property being transacted.

All taxes shall be paid annually.

Due Land Tax Revenues. Effective regulations, which ensure a fair property valuation for the collection of property taxes, shall be adopted. Property tax is recognized as a major source of revenues for municipalities and local authorities.

Fees for Obtaining Information from Land Registers. Information shall be provided upon request by the land registry for a fee charged on a cost recovery basis.

Exchange of Land-Related Information amongst Various Governmental Authorities. All relevant governmental agencies, municipalities and local authorities will exchange information related to land.

The main areas covered in the draft Registration law are:

a. Registration of Transactions.

Existing Jordanian law, applicable in the West Bank is more recent than that applicable in Gaza. The Jordanian law applies to dispositions of all kinds of transactions, including sale, mortgage and dedication of *waqf*, with the exception of leases for 3 years or less. No guarantee of the title or transaction is implied by the consent of PLA or the registration of deed. The PLA is not to consent where parcelization contravenes a town planning scheme.

b. Systematic registration/adjudication (linked to cadastral maps).

The basis will be the existing Jordanian law especially since it is being used for the current pilots. The following should provide the basis for amending the law. The settlement process shall be streamlined and a mass program of settlement surveys should be implemented to complete the register with the intention of encouraging the registration in all land dealings. The titles registered at the PLA shall be non-disputable and the government should analyze available options to incorporate a guarantee system to support reliability and conclusiveness.

- Ensure a clear classification system for land and tenure types.
- Security of title should be enhanced – guaranteed.
- Relax surveying standards and permit orthophoto maps to be used as the basis for systematic registration.
- Consider free first registration in order to remove disincentive.
- Consider removal or simplification of valuation requirement.

- Water underlying the land shall be subject to the applicable Water Law.

c. Sporadic Registration (linked to Ministry of Finance records—*Ikhraj Qeid*)

Sporadic registration is an issue related to the West Bank only and governs the registration of property that has not been settled by the systematic adjudication process. The procedures and requirements for sporadic registration should be as identical as possible to those for systematic registration.

d. Land Disputes: registered and systematic registration

For the Land Disputes and related registration of rights, the Registration Law will require minor amendments to account for the rights of Palestinians who are either present in Palestine or abroad (internally displaced and absent either because they were denied the right of return or can return but did not attempt to return, that did not exercise their rights in land they have some sort of a right to, usually through inheritance of *mulk* or *miri* land (*miri* land can be inherited subject to rules).

- Establish a specialized Land Court that has jurisdiction over all land matters, either by expanding the jurisdiction of the Land and Water Settlement Court or by creating a new court. If the jurisdiction of the proposed Land Court addresses issues beyond matters of land registration, the details of the new court should not be contained in the *Registration Law*, but rather a proper subject for the proposed *Land Law*, for a separate law, or perhaps amendment of the *Judicial Authority Law*.
- Activate alternate dispute resolution (ADR) mechanisms contained in the current laws and establish a link between them and the informal ADR system.
- Create regulations to address ambiguities and gaps in the procedures. The pilot systematic registration projects provide the opportunity to draft and test procedures that can become regulations.

e. Fees

There are various types fees assessed which this Law will cover:

- Adjudication fees
- Sporadic registration fees (registration fees (1% of the value of the property); sale fee (1% of the value of the property); stamp fee; valuation of property fees (0.027%))
- Surveying fees

f. Collection of taxes

The PLA will collect the taxes when registration is undertaken, but will not require a tax clearance as a pre-requisite.

Revised Eminent Domain Law. The State and local authorities/municipalities have the right to take land for the public interest. Any land acquisition for purposes other than for public interest shall be deemed null and void and in contravention of the Basic Law. Clear rules should be adopted to provide fair and just compensation. The law further covers the power of the government and local or other bodies to acquire land or usufruct or easement rights for public benefit. It sets out the notice procedures and the rules for assessing compensation. The government has the right to exercise eminent domain to compulsory acquire *mulk* land. This power shall be used only to acquire land for public purposes. This is not an absolute power. In this Law, it will be exercised with the proper checks, follow strict and transparent procedures and will be subject to fair compensation.

Disputes as to title or compensation are to be settled by the Land Court. Compensation provisions do not clearly cover: Expenses of moving and relocation; Business losses; Actual loss suffered by a tenant and the percentage figures in the law are arbitrary. Clear procedures shall be developed to ensure appropriate safeguards and fair compensation.

The Eminent Domain law should be clear as to when the expropriating authority may take possession of the property. The law should also require owners to be served with the notice of expropriation, by leaving it at their last known residence or by posting it by registered mail to the last known address. The expropriating authority should be responsible for the owner's costs incurred in court proceedings concerning the amount of compensation, unless the owner has rejected an offer that turns out to be as good as or better than the compensation awarded by the court. There should be provisions concerning voluntary sale to the authority. Companies and trustees should be able to do so despite any restriction in a document.

PLA Institutional Framework Law.

Review of the Institutional Framework

The structure of the PLA has long been an issue for consideration by policy and decision-makers. Thus the Study on the institutional framework was designed to provide the Palestinian Authority and the Palestinian Legislative Council with advice on institutional arrangements that might flow from recommended policy and management and administrative arrangements that are consistent with good governance principles. In all analysis it is assumed that the Palestinian National Authority supports good governance, particularly the principles of transparency, accountability and equity. The advice will be developed from information provided by consultant and client colleagues, and relevant stakeholders.

During this Study, the institutions in Palestine which possess authority to act on land matters were identified. The stakeholders with interests and possible authority in land matters include:

- Cabinet
- Higher Judicial Council;
- Ministry for Local Government (MLG);
- Ministry of Finance (MOF);
- Ministry of Justice (MOJ);
- Ministry of Planning (MOP);
- Ministry of Public Works and Housing (MPWH);
- Ministry of Tourism and Antiquities;
- Ministry of Waqf and Islamic Affairs;
- Municipalities;
- Office of the President;
- Palestinian Economic Council for Development and Construction (PECDAR); and,
- Palestinian Land Authority (PLA).

Through direct consultation, access to existing reports and other documents, the following information on each institution was gathered and analyzed:

- Stated institutional purpose;

- Major institutional functions; and,
- Current authority in land matters.

The legal basis for authority in land matters was investigated and whether the present locations of the land-related functions were appropriate. These characteristics were considered within the overall government and public service framework to determine whether the arrangements between institutions are relevant to the needs in Palestine.

Based on the foregoing, the legal issues were examined. The starting point was the establishment of the PLA pursuant to Presidential Decree No. (10) of 2002 *Concerning the Establishment of the Palestinian Land Authority*. The Decree grants the PLA an independent, legal personality and authority to assume functions, perform duties, and achieve the objective for its establishment. According to the Decree, the PLA enjoys administrative and financial independence and is reports to the Council of Ministers. The Decree further requires that a law be developed for the PLA. The draft land law attempted to structure the PLA, but was not comprehensive. Therefore, the proposed structure, in the separate law, focuses on four areas (1) organizational structure, (2) Financial resources, (3) human resources, and (4) management.

The Proposed PLA organization structure for the PLA consists of:

- Board of Directors.
- Chief Executive Director (PLA Chairman).
- Specialized/technical general directorates (registration, survey, public land registration)
- Directorate General for administrative and financial affairs.
- Directorate General for legal affairs.
- Directorate General for information technology and electronic archives.
- Units assisting the Chief Executive Director.

Specifically, the Board of Directors would consist of 7 members. The Chief Executive Director shall attend the Board meetings as a secretary, but does not have a right to vote. The Board members are:

- Ministry of Finance (chairman of the Board by default);
- Ministry of Justice;
- Ministry of Planning;
- Ministry of Public Works and Housing;
- Minister of Local Government;
- Minister of Waqf; and
- Representative of the Private Sector

The PLA Memo enumerates the powers of the Board of Directors.

It is proposed in the PLA Memo that the PLA will be a self-financing institution because it is a revenue generating entity. As such, its financial resources include:

- Fees assessed on all transactions and services provided.
- Appropriations set by the treasury to cover deficits.
- Subsidies, donations, grants and gifts received, subject to the approval of the Council of Ministers.

- Other resources approved by the PLA Board of Directors.

It is proposed that surplus revenues at the PLA will be transferred to the treasury.

The PLA Memo proposes that the staff of the PLA be subject to a non-civil service system. A mechanism will be recommended for the proper treatment of existing civil servants preserving and protecting their rights.

The PLA Memo proposes a Public Land Technical Secretariat ("PLTS"), an intra-government body to be established by the PLA Board of Directors to implement public land policies set by the Board. The PLA law proposes that the PLTS be composed of seven permanent members. The Board of Directors may also invite experts and specialists or other Ministries to serve or participate in certain meetings on need basis. It is proposed that the PLTS will consist of:

- Ministry of Planning; to be the permanent rapporteur of the PLTS;
- Ministry of Local Government;
- Ministry of Finance;
- Ministry of Tourism and Antiquities;
- Environment Quality Authority;
- The Palestinian Land Authority; and
- The Ministry of Justice.

This PLTS will have the following tasks:

- Coordinate with all concerned parties including ministries, local government, and public institutions regarding state land (known collectively as the custodians).
- Supervise the public land inventory action plan and collect and document information related to the location, status and use of public land.
- Assess requests for disposal of public land and provide the PLA Board with clear recommendations for approval.
- Provide recommendations to the Land Board over classification and reclassification of state land.
- Determine and review public land use and public land management plans and cooperate with custodians.
- Participate in land valuation through a specialized committee headed by the Ministry of Finance.
- Provide land information to the public at the cost of reproduction.

Finally, a strong legal Directorate General will be established to address the large number of administrative disputes whereby the burden on the courts will be reduced and at the same time, land-related transactions registration will be more efficiently and effectively recorded.

Institutional Responsibilities

Development of PLA: The PLA shall be developed, restructured and be exemplary in running its operations and in providing land-related services to the public. The PLA shall be a public body that enjoys financial independence. The PLA shall report to a board of directors, whose members shall be comprised of representatives from governmental bodies and a representative from the private sector. The Minister of Finance shall chair the board of directors.

Capacity Building. The promotion of educational programmes and capacity building in the land sector is essential to support comprehensive reform of the land administration system. Therefore, special attention should be given to education and capacity building to enable effective land administration.

Distribution of Institutional Responsibilities. Institutional responsibilities should be distributed as follows:

- (a) Drafting land policies – The Ministry of Planning shall coordinate with relevant stakeholders.
- (b) Land registration – Palestinian Land Authority
- (c) Land valuation for purposes of property tax and acquisition of land for the public interest – the Ministry of Finance shall issue rules and procedures in cooperation with relevant stakeholders.
- (d) Valuation and collection of property tax within municipal borders – Municipalities/local authorities shall issue rules and procedures in cooperation with relevant stakeholders. This requires building the capacity of the municipalities/local authorities to ensure that they are capable of performing this task in a timely manner

Annex 1: Terms of Reference

Scope of Work for Legal and Institutional Framework for Land Administration:

This Study consists of two components: Part I presents a diagnostic of the regulatory framework while Part II presents recommendations for improvement of the regulatory framework.

Part I. The Study would support the review of existing land laws and regulations dealing with land and related issues (including but not limited to land registration, eminent domain, land and property taxation, property rights settlement, land survey, notary public, etc, as well as the civil code). Currently, there is an abundance of laws governing land administration (estimated at 38), which have been introduced over a long period of time following different legal regimes, and which have not been updated or consolidated (some laws date as far back as the 1920s and some laws come in two different sets for the West Bank and Gaza). The result is a fragmented, incomplete and sometimes conflicting/incoherent legal framework, which makes it difficult to operate an efficient and equitable land administration system. As such, the Study would identify gaps, weaknesses and instances of conflict and inconsistency in the regulatory framework for land administration and recommend improvements to the existing framework through identification of laws and regulations in need of development, revision, rationalization and/or consolidation so as to avoid overlap and inconsistency in their effects and implementation.

The Study would also review the existing institutional framework for land administration with a view of identifying the key government stakeholders involved in the process (including PLA, MOP, MOF, MOJ, MOLG, MPWH, Higher Judicial Council and municipalities), examining their de jure mandate in land administration and management relative to their de facto practice, highlighting areas of unclear/ overlapping jurisdiction and the actions/situations that cause confusion in the mind of the community concerning agency jurisdiction, and identifying gaps, weaknesses, strengths and opportunities in the existing institutional framework for land administration. Particular attention will be paid to clarifying the mandate of the PLA, which was partially defined in the Presidential decree that established it.

Objective: Identification of gaps, weaknesses and instances of conflict in the existing regulatory framework for and institutions involved in land administration, the strengths and opportunities in the existing land administration system, and recommendations for the improvement of the existing regulatory framework.

Outputs: Report(s) with diagnostic, analysis and recommendations.

Part II: The Study would support the development, revision, rationalization and/or consolidation of laws and regulations governing land administration, as identified by the review Study.

Objective: The overall objective is to provide the Palestinian Authority and the Palestinian Legislative Council with sound advice to lay the legal foundation in land policy, management and administration consistent with the principles of good governance, efficiency and equity.

Output: Draft revised laws and regulations, with supporting rationale and options as needed, developed with appropriate consultations with relevant members of the Palestinian Legislative Council (in the committees on land, legislation, and the economy).

This Study will be closely coordinated with all abovementioned policy studies, which provide the technical perspective on the strengths and weaknesses of the regulatory and institutional framework for each aspect of land administration and management (registration, valuation, management of public lands, etc). As mentioned earlier, this Study is of paramount importance for it provides the opportunity of addressing the legal framework governing land administration in an integrated manner (as opposed to a piecemeal approach of recommending improvements to each piece of legislation in isolation of other related issues).

- Draft report including a 3 to 4 page summary.
- Organizing Stakeholder consultation workshop(s), presentation of findings and documentation of recommendations.
- Final Report, including recommendations from the workshops and consultations

Annex 2: Legal Maps

1. Land Law Map

LAND LAW MAP

Strategy for Harmonised Palestinian Law

Recommendations and Instructions for Drafting

A map for the Land Law containing the following:

- Identification of the legislation concerning land ownership and possession, any restrictions on rights, and rules concerning transactions. This will start with the Ottoman laws, showing how they have been amended and affected by British Mandate, Jordanian laws, Israeli and Military Orders.
- A brief description of the essential features of the law as stated under this legislation.
- An analysis of the existing laws with a view to identifying weaknesses, gaps, and inconsistencies, including inconsistencies with other laws and the Basic Law. The analysis contained in BZU's *Report on the Study of the Draft Land Law* may be incorporated in the map where the Draft Land Law has copied provisions from the existing law.
- Comment on the findings and recommendations emerging from the Public Land, Registration, and Land Disputes studies that are related to the legislation.
- Identification of outstanding issues and policy choices that need to be addressed.
- A detailed description of the recommended Land Law, presented in relation to the provisions of the Draft Land Law."

Overview

The current laws governing land goes back to the Ottoman period, Ottoman Land law of 1858 and the Ottoman Civil Code (*Mejelle*) of 1869. Although the Ottoman laws form the legal foundation with respect to land, laws from the British Mandate, along with Jordanian laws and sometimes Egyptian laws and the influence of Israeli Military Governor Orders all act together in creating the region's land law that is prevalent in the West Bank and Gaza Strip. The consolidation of existing laws in both the West Bank and Gaza is a vital step in establishing a new land law. This new Land law provides a rare opportunity to re-examine existing laws and to introduce needed reforms that were not thoroughly addressed in the Draft Land Law.

West Bank Laws

Land Categories and Types

Summary: This Law divides lands into categories and explains these categories in detail. The Law also explicates all that is related to these land categories, including rights and legal procedures. In addition, this Law provides for the manner by which these categories are disposed of, conveyed, assigned, and distributed.

Note: The collection of Jordanian legislation on lands does not include any reference stating that the Ottoman Lands Law is repealed or not. However, it should be noted the Law Concerning the Estates of Foreigners and Non-Muslims in force in the West Bank defines the Miri lands which are owned in a manner that is different from its definition in the Ottoman Lands Law of 1858.

Law No. (8) of 1941 Concerning the Estates of Foreigners and Non-Muslims provides that Miri lands include Waqf lands as well as all other lands explicitly subject to the provisions of the Provisional Law of

1313 Concerning the Assignment of Immovable Properties. They also include any registered right to these lands.

On the other hand, Matrouk land include all lands that can be inherited to any right thereto, provided that they are not Miri land.

Partition of Common Immovable Properties

Law No. (48) of 1953 Concerning the Partition of Immovable Properties

Summary: This Law addresses the applications for the partition of common immovable properties, removal of the joint ownership, the manner and procedures of division, sales including sales in auctions, annulment of assignment transactions, intestate and inheritance divisions. It establishes general rules for partition of property among common owners. Any common owner has the right to demand partition unless property is indivisible, where co-owner can force an auction. It does not address pre-emptive rights, right of first refusal, encroachment which are currently part of the Mejelleh, the Civil Code.

Placement of Immovable Properties to Secure Debt

Law No. (46) of 1953 Concerning the Placement of Immovable Properties for the Securing of Debt

Amended by Law No. (23) of 1965

Summary: This Law handles several issues, including the placement of immovable property to secure debt, assignment of debts and foreclosure and public auctions.

Ownership of Condominiums and Apartments

Law No. (1) of 1996 Concerning the Ownership of Condominiums, Apartments and Commercial Units.

Summary: This Law addresses several issues resulting from the ownership of condominiums, apartments and commercial units. In this context, the Law tackles ownership, disposition, division, usufruct, modification, preservation and expenses of condominiums. In addition, the Law regulates obligations of the owners of condominiums as well as the management of properties. Furthermore, the Law addresses the precedence right in terms of its revocation and those entitled thereto as well as the seller's responsibility towards them.

Decision No. (2) of 1997 by the Minister of Housing Regarding the Bylaw of the Law Concerning the Ownership of Condominiums, Apartments and Commercial Units

Amended by Decision No. (1) of 1998 by the Minister of Housing

Summary: This Decision addresses the right to own condominiums, apartments and commercial units in great detail. It also states the manner by which properties are registered (registration procedures). In addition, the Decision addresses the numbering of apartments, buildings and condominiums as well as the community association and fees. Decision No. (1) of 1998 amends Articles (42), (16), (7 – Paragraph 6), (5), and (2) as well as repeals Article (47) under Decision No. (2) of 1997.

Titling of Unregistered Immovable Properties

Titling of Unregistered Immovable Properties Law (6) of 1964

Israeli Military Governor Orders:

No. (448) of 1971 Concerning the Amendment of the Titling of Unregistered Immovable Properties Law (6) of 1964; No. (944 A) of 1981; No. (1034) of 1982; No. (1060) of 1983;

No. (1145) of 1985 and No. (1392) of 1993

Summary: This Law addresses transactions on the titling of unregistered immovable properties or those which have not been registered at Land Registration Departments or those which have not been included in settlements. This Law was enacted to state and clarify the procedures regulating the processes of land titling and registration at Land Registration Departments.

Public Land

The Public Land Law No. (6) of 1942

Summary: This Law authorises the Director of Land Settlement to sign lease contracts related to Miri lands. This law also authorizes the Director of Land Registration to sign deeds pertaining to the properties which the Government purchases based upon the powers vested in the [British] High Commissioner (in pursuance of Articles 12 and 13 under the Palestine Order of Council of 1922) in regards to all rights associated with public lands, gifts, leases, or permission to occupy these lands on a temporary basis according to the conditions which he deems fit, taking into account the provisions of any relevant law.

Preservation and management of state land and properties:

Law No. (14) of 1961 Concerning the Preservation of the State Lands and Properties

Israeli Military Governor Orders:

No. (1006) of 1982 Concerning Appointments and Powers under the Law on the Preservation of the State Lands and Properties (the Area of Judea and Samaria).

No. (1096) of 1984 Concerning Appointments and Powers under the Law on the Preservation of the State Lands and Properties (the Area of Judea and Samaria) (Amendment)

Summary: This Law identifies state lands and properties as all the immovable properties registered in the name of the Treasury in its own behalf, or on behalf of usufructuaries, or those registered on the registry as well as any other lands and properties belonging to the state even if they are not registered, including Muwat land. Excluded from the above category are forested lands, the reservation of which is assigned to the Department of Land Tax (*Kharaj*). In order to preserve state lands and properties, this Law provides for the formation of a special court to examine aggressions against the lands and properties of the state as well as delegating broad powers to it (the court). At the same time, the Law authorises the Director of Lands and Survey Department to lodge actions against aggressions. In addition, the Law assigns the duty of monitoring any aggression committed against state lands and properties to functionaries at the Land and Survey Department.

Military Orders have expanded the concept of state lands and properties, thereby including governmental properties, absentee properties and specified real estate. In addition, Military Orders transferred powers, which are – stated in the Law mentioned above – are vested in the officer in charge of governmental properties as well as powers of the special and civil courts to the Military Court. Furthermore, Military Order affirmed that interpretation of the aforementioned Law must be in accordance with Military Order No. (1006).

(2) Temporary Law No. (32) of 1965 Concerning the Management of State Properties

Summary: This Law assigns to the Director of the Land and Survey Department all functions related to the management of state lands and properties. The Law also authorises the Minister of Finance / Lands and Survey to lease, delegate and sell state lands and properties in public auctions. In addition, the Law clarifies the condition and manner of these processes and defines the nature of these lands. Additionally, the Law sets forth constraints on the disposition of these lands and properties. The Law also regulates the issue concerning the death of the lessee and the person authorised.

Israeli Military Governor Orders

No. (59) of 1967 Concerning the Government's Properties

No. (116) of 1967

No. (199) of 1968

No. (214) of 1968

No. (247) of 1968

No. (364) of 1969

No. (1007) of 1982

No. (1091) of 1984

No. (1208) of 1990

Summary: These orders focus on expanding the concept of governmental properties as well as transferring the powers given pursuant to Jordanian law to the officer in charge. The military orders also regulate the process of challenges and appeals submitted against decisions issued under these orders.

Law No. (41) of 1953 Concerning the Conversion of Lands from Miri to Mulk.

Amended by Law No. (32) of 1962.

Summary: This Law clarifies how Miri lands are converted into Mulk land as well as the manner by which Miri land devolves to the landowner's heirs. Since enforcement of the law, all Miri lands located within municipal borders have been converted into Mulk lands.

The Decision of the Council of Ministers No. (77) of 2004 Concerning Governmental Lands

Summary: This Decision calls for the halting and removal of aggressions against governmental lands. The Decision also suspends allocations of governmental lands to individuals and calls for the reviewing of previous allocations. In addition, the Decision also states that owing financial fees be collected from governmental institutions and individuals.

Presidential Decree No. (18) of 2005 Concerning the Allocations of Governmental Lands and Real Estate and the Reforming of their Status

Summary: In respect to allocations, Presidential Decree No. (18) of 2005 Concerning Allocations of Governmental Lands and Real Estate and Reform of their Status was promulgated.

Preemption and Precedence Rights

Pre-emption and Precedence Rights

The Ottoman Land Law of 1858

Articles (41, 44 and 46)

Summary: Under these Articles, the Law addresses preemption in the context of the disposition of land in the form of partnership. The Law also addresses payment in kind as well as preemption in properties

The Mejelle:

Articles 1008 through 1044

Summary: These Articles regulate all issues related to preemption, including its causes, conditions and implementation.

Article (2) under the Law Amending the Immovable Properties No. (51) of 1958.

Amended by Article (2) under Law No. (98) of 1966 (in regards to the abovementioned Article)

Summary: This Article regulates the exercise of the rights to precedence and preemption as well as describes the manner by which the preemption or precedence claimant files his or her action. This Article also defines which court is authorised to hear and adjudicate such actions.

Irrevocable Power of Attorney (1 year; 5 year; 15 years as amended by the Israeli Military Orders)

Power of Attorney

Article (11) under the Law Amending the Provisions Concerning Immovable Properties No. (51) of 1958.

Amended by the following Law: No. (35) of 1960; No. (98) of 1966

Israeli Military Governor Orders

No. (811) of 1979

No. (847) of 1980

No. (1464) of 1999

Summary: Article (11) under the aforementioned Law regulates the irrevocable power of attorney, including the validity date and expiration date (i.e. the period of validity). Laws and Military Orders previously mentioned have amended this Article.

Draft Law No. () of 2003 Concerning the Irrevocable Power of Attorney with which the Right of Third Parties is Associated and All Instruments Used for the Arrangement of Rights to Immovable Properties

Summary: This Draft Law regulates all rights arising from instruments and the power of attorney with which the rights of third parties is associated, as well as any contracts or instruments affecting rights to the title of immovable properties and their premises. This Draft Law also repeals Military Orders No. (811 and 847). In addition, the Draft Law amends the Jordanian laws concerning the power of attorney.

With reference to Article (8) under the Draft Law, Regulation No. () of 2003 Concerning the Deposition of the Instruments with which the Right of Third Parties is Associated and All Instruments Used for the Arrangement of Rights to Immovable Properties was enacted.

The Mejelle:

Articles 1449 through 1530

Summary: Under Articles 1449 through 1530, the Mejelle regulates all issues pertaining to the power of attorney, including its definition, conditions and provisions.

Lease and Sale of Immovable Properties from Foreigners

Law No. (40) of 1953 Concerning the Leasing and Selling of Immovable Properties from Foreigners

Amended by the following Laws:

Law No. (12) of 1960; and

Law No. (2) of 1962.

Summary: This Law addresses the constraints on lease by non-Jordanians of immovable properties as well as ownership and conveyance to non-Jordanians. The Law also places restrictions on the ownership by representatives of foreign countries.

Inheritance

The Law of 1923 Concerning Inheritance

Amended by the following Laws:

Law No. (19) of 1944

Law No. (38) of 1946

Summary: This Law addresses the jurisdiction of regular and religious courts. It also regulates the subject of hereditaments which are administered and distributed by regular courts. In addition, the Law addresses several issues, including: the devolution of Miri land by way of inheritance; minor inheritors; rules of adjudication in the personal status; incapacitation; procedures taken at the registration office; powers of central courts; and issuance of the rules of procedure in this regard.

Amending Law have added Article (15 *bis*) and (1/B) as well as amended Article (14).

10b. Law No. (8) of 1941 Concerning Hereditaments of Foreigners and Non-Muslims

This Law has been enforced in the West Bank in accordance with Law No. (8) of 1958.

Summary: This Law defines the courts authorised to examine and adjudicate hereditaments of foreigners and non-Muslims. The Law also regulates other issues, including: the distribution of the properties of a foreigner; implementation of the Islamic Law; conditions of the validity of the will set forth in a civil manner; usufruct; issues of inheritance; nationality and its relation to legal incapacitation; management of the properties of the dead; and registration of names on the register.

Disposition of Immovable Properties/Disposition of Immovable Properties by Judicial Persons

Law No. (49) of 1953 Concerning the Disposition of Immovable Properties

Summary: This law amends the Ottoman Law of Disposition of Immovable properties issued in 1329. This law states that the issuance of title of immovable property shall be performed by the land registration departments. All other courts and government agencies are prohibited from hearing claims related to immovable properties in accordance with the Land and Water Adjudication Law, Law No. 40 of 1952 which is the final evidence of title.

A title holder may use the land in a beneficial manner and must inform the land registration department of changes and obtain new title reflecting the changes. A land owner in possession of Miri land can't transfer it by Waqf or will unless the State has legally transferred it to him. If a person in possession of Miri or Waqf land who has a registration document and has improved the land and another rightful owner appears, the outcome of the dispute is based on whether the land or the buildings are worth more.

No person has the right to use or possess miri or waqf lands that are possessed by another and if this takes place rent must be paid.

Where actions are filed by the Government or against it concerning the absolute ownership of land, the prescription period shall be 36 years.

Law No. (61) of 1953 Concerning the Disposition of Immovable Properties by Juridical Persons

Amended by the following laws:

Law No. (33) of 1955

Law No. (4) of 1957

Law No. (4) of 1965

Israeli Military Governor Orders

No. (419) of 1971

No. (1025) of 1982

Note: It should be noted that the amending laws have amended Articles (5, 6, 7, 8, and 12). Military orders have transferred a number of powers to the officials appointed by these orders.

Summary: This law defines the parties which are entitled to dispose of immovable properties. It also addresses contracts and fees of disposition transactions.

Execution (Attachment and Sale of Immovable Property)

Execution Law No (23) for 2005 (Articles 110- 141)

Summary: These Articles talk about the attachment and sale of immovable property, including the procedures of attachment, records and notices relevant to them; the list which includes the provisions of sale and opposition thereon and the enclosed documents to this list; the procedures of sale in auction; ceasing these procedures and their symptoms.

Civil and Commercial Procedure Law

Civil and Commercial Procedure Law No.(2) for 2001 (Articles 39,41)

2-Law No.(5)for 2005 for Amendment of the above mentioned Law No.(2) for 2001 (Article 1)

Summary: Article (1)of Law No.(5) for 2005,which amends the Article No.(39) of Law No.(2)for 2001, states that the Magistrate Court is competent to judge the following :

The lawsuits that values of which do not exceed JD 10000 (Ten Thousand Jordanian Dinar) or equivalent of the legally exchanged currency, and its judgment is decisive in the lawsuits related to a cash amount or movable property if the value of the claimed amount or tangible property does not exceed JD 1000(One Thousand Jordanian Dinar) or equivalent of the legally exchanged currency.

The following lawsuits whatsoever value :

- Division of joint movable and immovable property.
- Evacuating the leased
- Easement.
- Disputes relevant to hand- lay
- Disputes relevant to usufruct of real-estate
- Identification and Correction of boundaries.
- Recovery of loan
- Usufruct of Joint parts of the multi- storey buildings and maintaining them.
- Lawsuits and requests which are stated by other laws to be under the competence of the Magistrate Court.
- Lawsuits of correction in the records and registries of civil affairs.
- The Article No.41of Law No 2 for 2001, Stated that:
- The First Instance Court has the general competence to judge all lawsuits and requests which are not in the competence of the Magistrate Court.
- The First Instance Court practices its appellate powers in the cases shown in this Law.

Notary Public

Notary – Public Law No.(11) for 1952

Summary: This law handled several matters focusing on: Who occupies the job of the notary-public ; the books of organizing and registering transactions; the place where the notary-public practices his job, his competences and what he is prohibited to do and the restrictions on his job; the proof of the documents whether organized and ratified by him or not ; sanctions and fraud; the provisions that are required to be available in the deeds and bonds submitted to the notary-public and the provisions of documentation before him, his realization of the identity and competency of contracting parties , and how he reads the contracts; his right to request identifiers on those who apply to ratify their signatures, and to request translators ; the illiterate people and proof of legal competency ; the request of relevant parties to give them a copy of any document kept with the notary-public; prohibiting delivery of the original documents; Organizing the documents in the Arabic language and translating any document that needs translation ; notifications ; deeds of debt and their maturity date; maturity date of the rent and evacuating the leased ; fees (the law was attached with a table(B) showing the due fees on the type of the transaction) and exemption from them ; the signature which is signed on behalf of the person and the numerous signatures ; the fees on the documents and deeds which contain different matters .

Zoning of Cities, Villages and Buildings

Law No. (79) of 1966 Concerning the Zoning of Cities, Villages and Buildings (Provisional Law)

Israeli Military Governor Orders:

No. (418) of 1971; No. (604) of 1975; No. (778) of 1979; No. (814) of 1979; No. (860) of 1980; No. (898) of 1981; No. (1043) of 1983; No. (110) of 1984; No. (1255) of 1991; No. (1403) of 1993; No. (1446) of 1996; Order Concerning the Correction of an Error in the Order Regarding the Zoning of Cities, Villages and Buildings (Amendment No. 11) (Judea and Samaria) (No. 1446) of 1996) of 1997.

Summary: This Law defines the authorities and formations of the zoning of cities. It also states zoning areas, plans and revenues as well as addresses zoning licences, building licences, indemnity for refusal of licensing, and granting of licences on conditions. Taking into account the provisions of Law No. (2) of 1953 Concerning the Acquisition of Lands for Public Projects, the Law also regulates land acquisitions. Moreover, the Law regulates the setting forth of orders and summons regarding the oversight over construction (such orders and summons highlight the conservation of trees, parks, scenes of cities, announcements, advertisements, prohibition of pollution, monitoring of traffic and noise).

Note: It should be noted that the Military Orders have not introduced any amendment to the Law. However, these orders only transferred powers bestowed under this Law to parties appointed for such purpose by these orders.

Gaza Strip Laws

Land Categories and Types

The Ottoman Lands Law of 1858

Amended by the following Laws:

Law No. (10) of 1921

Law No. (25) of 1933

Law No. (30) of 1934

Law No. (31) of 1934

Law No. (34) of 1937

Law No. (39) of 1941

Summary: The Gaza Strip summary is identical to the West Bank Summary provided.

Note: It should be noted, however, that the laws amending the Ottoman Land Law is effective in the Gaza Strip, but is repealed in the West Bank.

Partition of Common Immovable Properties

The Law of 1329 Concerning the Partition of Common Immovable Properties

Summary: There is considerable similarity between this law and the law effective in the West Bank, Law No. 48 of 1953 Concerning the Partition of Immovable Properties.

Placement of Immovable Properties to Secure Debt

The Law of 1331 A.H. Concerning the Placement of Immovable Properties for the Securing of Debt

Amended by Law No. (46) of 1920.

Summary: There is a considerable similarity between this law and the law effective in the West Bank, Law No. 46 of 1953 Concerning the Placement of Immovable Properties.

Ownership of Condominiums and Apartments

Law No. (1) of 1996 Concerning the Ownership of Condominiums, Apartments and Commercial Units

Summary: See West Bank provision 4 above, since same law is applied to both WBG.

Decision No. (2) of 1997 by the Minister of Housing Regarding the Bylaw of the Law Concerning the Ownership of Condominiums, Apartments and Commercial Units

Amended by Decision No. (1) of 1998 by the Minister of Housing

Summary: See West Bank provision 5 above, since same law is applied to both WBG.

Titling of Unregistered Immovable Properties

Note: Under the British Mandate, no laws were enacted in regards to lands that have not been titled. Similarly, Military Orders issued in the Gaza Strip do not regulate untitled lands.

Public Land

The Public Land Law No. (6) of 1942

Summary: This is identical to the West Bank Summary.

Preservation and management of state land and properties:

Law No. (14) of 1961 Concerning the Preservation of the State Lands and Properties

Note: Gaza Strip Law does not address this issue, i.e. preservation and management of the state lands and properties.

Israeli Military Governor Orders:

No. (423) of 1972 Concerning Governmental Properties

No. (793) of 1983

No. (841) of 1984.

Note: In regards to governmental properties/real estate, the content of these orders is essentially similar to those issued in the West Bank.

Law No. (41) of 1953 Concerning the Conversion of Lands from Miri to Mulk

Note: There is no law or order of this kind under GSL

The Decision of the Council of Ministers No. (77) of 2004 Concerning Governmental Lands

Note: This is identical to the West Bank summary.

Presidential Decree No. (18) of 2005 Concerning Allocations of Governmental Lands and Real Estate and Reforms to their Status

Note: This is identical to the West Bank summary.

Preemption and Precedence Rights

The Ottoman Land Law of 1858

Articles (41, 44 and 46)

Amended by the following Laws (in regard of the Articles mentioned above):

Law No. (25) of 1933; and

Law No. (39) of 1941.

Summary: The Gaza Strip Summary is identical to the West Bank summary.

Note: This Law does not provide for precedence rights. It should be noted that the Amendments to the Law are effective in the Gaza Strip only.

The Mejelle: Articles 1008 through 1044

Summary: The Gaza Strip Summary is identical to the West Bank summary.

Note: The Mejelle does not address the right of preemption.

Irrevocable Power of Attorney

Draft Law No. () of 2003 Concerning the Power of Attorney with which the Right of Third Parties is Associated and All Instruments Used for the Arrangement of Rights to Immovable Properties

Summary: The Gaza Strip summary is identical to the West Bank Summary provided

The Mejelle: Articles 1449 through 1530

Summary: The Gaza Strip summary is identical to the West Bank Summary provided.

Lease and Sale of Immovable Properties from Foreigners

Note: There is no law that regulates this topic in the Gaza Strip.

Inheritance

The Law of 1923 Concerning Inheritance

Amended by the following Laws:

Law No. (19) of 1944

Law No. (38) of 1946

Summary: The Gaza Strip summary is identical to the West Bank Summary provided.

Law No. (8) of 1941 Concerning Hereditaments of Foreigners and Non-Muslims

Summary: A Law handling the issue of hereditaments of foreigners and non-Muslims does not exist in the Gaza Strip. However, Article (5) under the Law of Inheritance briefly addresses this issue.

Article (5) transfers the management and distribution of the hereditaments of foreigners to the religious courts under particular conditions.

Disposition of Immovable Properties/Disposition of Immovable Properties by Judicial Persons

The Law of 1331 Concerning the Disposition of Immovable Properties

Summary: This law addresses the *Khaqani* (ruler's) Book (which may be deemed as a register) as well as the registration officer and his powers. The law also addresses *Khaqani* deeds; seizure actions; pseudonym; entitlement; conveyance; parcelation; securing of debts; the issue pertaining to the establishment of a village; the rights of the person disposing of land; plants; buildings; acquisition of lands; and prohibition of the usufruct of Miri lands.

The Temporary Law of 1331 Concerning the Disposition of Immovable Properties by Legal Persons

Summary: This law defines the parties which are entitled to dispose of immovable properties. It also addresses contracts and fees of disposition transactions.

Disputes on Hand Lay Law

Law of Hand-lay Disputes on the Land No(12) for 1932

Amended by the Law No.(1) for 1937

Summary: This law enables the district governors to issue orders regarding hand-lay on any land on which a dispute occurs and disturbs public peace. It speaks about the procedures which are followed when such dispute occurs and about disputed land, and about the disputes on using the grazing land and other uses, and about local investigation and the powers of the district governor.

Execution (Attachment and Sale of Immovable Property)

Execution Law No (23) for 2005 (Articles 110- 141)

Summary: The Gaza Strip summary is identical to the West Bank summary provided.

Civil and Commercial Procedure Law

1-Civil and Commercial Procedure Law No.(2) for 2001 (Articles 39,41)

2-Law No.(5)for 2005forAmendment of the abovementioned Law No.(2) for 2001 (Article 1)

Summary: The Gaza Strip summary is identical to the West Bank summary provided.

Notary Public

Notary-public Law (foreign documents) for 1921, which was amended by the Law No. (5) for 1937

Summary:

Zoning of Cities, Villages and Buildings

Law No. (28) of 1936 Concerning the Zoning of Cities

Israeli Military Governor Orders:

No. (125) of 1967; No. (486) of 1974; No. (506) of 1975; No. (539) of 1976; No. (653) of 1980; No. (777) of 1982; No. (912) of 1986; and No. (946) of 1988.

Summary: See West Bank law No. (79) of 1966 Concerning the Zoning of Cities, Villages and Buildings.

Note: Several Israeli Military Orders address this Law. These orders either amend, add or repeal provisions under Articles (35, 36, 3, 5, 7, 9, and 34). In addition, these orders transfer powers bestowed under this Law to the parties appointed for such purpose by these orders.

Policy Recommendations

A. Preamble

New law must state whether all laws stated for reference are still applicable and whether all are effective or applicable and related to the legal regulation of land-related issues in force in PNA-controlled territories listed (and consequently reviewed). Several amendments have been made to most laws listed under the preamble and the new law must state the applicable current amendments.

B. Definitions and General Provisions

The new land law must contain the following definitions and since this is a work in progress, more definitions may be added.

Land: The word "Land" shall mean *Miri* land, the *Waqf* (Trust) land and privately owned lands. Lands in their various types, inclusive of buildings, trees and any others things permanently fixed to land.

Abandoned Land (*Matrouk*): Land that is allocated for the public such as roads, public squares and parks and the land allocated for the benefit of the residents of a city or village. Eliminated in Draft Land Law, maybe the term should not be used anymore.

Wasteland (*Mewat*): Land not possessed or disposed of by any person or allocated for any city or village such as mountains and wilderness. Eliminated in Draft Land Law, maybe the term should not be used anymore.

Trespasser: A person who uses and disposes of the land when he is not the owner of the land.

Owner: Owns the land and the land is registered in his name at the Registration Department or he who has a power of attorney to act as a legal representative on the owner's behalf.

Deed: A registered instrument that states who the owner of the property is and it is located at the Registration Department.

Land Conveyance: When the owner transfers the ownership of the property pursuant to an agreement by the parties or by a court decision.

Properties: Immovable and Moveable properties

Organizations and Charitable Institutions: These include those that are established within Palestine and follow the laws of Palestine.

Easement Rights:

Rights in rem:

Immovable Property:

Registration:

Mortgage:

Foreigner:

Fixtures:

1. Land Categories and Types

The current land law consists of five distinct categories of land: *Mulk*, *Miri*, *Mewat*, *Matrouk* and *Waqf*. These five divisions originate from the Ottoman Land Law of 1858. Each land category must be defined in the definition section of the new land law stating the rights associated with each type of division. The Draft Land Law attempts to consolidate these five divisions into three categories-private land state land and *Waqf* land since the Ottoman categories no longer reflect modern land usage. New land law must state whether this reclassification is warranted, since land rights to *mewat* and *miri* land may be negatively affected, i.e inadvertently taking away rights of land owners.

Private Land (*Mulk*): Private land owned by individual or legal persons that includes the right to assess and dispose of the land and land previously regarded as state-owned or endowed state-owned hether it was previously categorized as *Mulk* or *Miri*. The owner of such land is entitled to obtain a title eed. This category is the closest to private ownership.

State Land (*Amiri*): State land is land that is not private or waqf land. State land includes land that is owned by the State or any other judicial body that is registered in the name of the Government of Palestine, the High Commissioner, the Treasury, the General Governor, the Palestinian National Authority, or any institution or public organization or government company. In addition, State land shall include land Abandoned Land and Wasteland. Need discussion of how State land can be converted to private ownership.

Waqf Land: Land that is registered in the name of the *Awqaf* or that was dedicated to Islamic Trusts for the benefit of the entire community and governed by the rules and provisions of the Sharia. Islamic Shari'a must be applicable to Waqf Land. Mention Waqf property of other religions.

2. Rights to State Land

The new law must describe detailed procedures of how State-owned land can be transferred to private parties either by sale or lease since the Draft Land Law fails to state such procedures. The new law should establish the methods by which the State can allocate rights to State-owned properties, i.e. auctions or request for proposals, but such a process must be transparent and not exclusive to certain groups or individuals. New law should also state all the purposes for which State-owned land can be leased to private properties.

3. Inheritance

New draft law must address rules of inheritance or shall inheritance simply rely on Shari'a and other religious laws? New law must be clear in stating how inheritance rules apply to non-Muslims and how it is applied when there is a situation of inheritance involving both Muslims and non-Muslims. If the new law remains consistent with Shari'a, inheritance rules relating to immovable property should be drafted in a way as to prevent the over-fragmentation of land lots, even if co-owners demand to have it divided. Thus, the rights of heirs should be minimized to prevent harmful land fragmentation.

4. Partition of Common Immovable Properties

The Draft land Law gives broad authority to the Land Authority to make required land division among the common owners which should be maintained, but the new law must make it necessary to stop convenient fragmentation of the land among common owners because some smaller parcels become dead weight and lose whatever value if they are less than 500sqm because no beneficial use could be achieved. The new law should prohibit any division among co-owners, even if consensual unless division meets all legal requirements to ensure that intestate rights are fully accounted to or the maintains some beneficial use. It is recommended that such rights become part of the Land Law.

5. Ownership of Condominiums and Apartments: Articles must clarify the rights of adjoining owners with respect to the shared floor and ceiling. A good amount of this law must be revised since there are dangerous exceptions listed in the rule, i.e. an owner of a separate unit must be considered to be an owner of a share in the common areas. Changes in the common areas should be subject to the approval as stated in the bylaws, approval of all owners should not be required. New law must address what type of changes owners are allowed to make. Regulations need to be amended concerning the submission of documentation; stages of when review by surveyor or architect should occur in individual units; need review of applicable laws concerning notarization to avoid duplication process and election of head of the process and duration of term.

6. Preemptive Rights

Harmonize the references to these rights in the Land Law with the Majelleh. The new law should evaluate preemptive rights and how these rights complicate land transactions and may be eliminated since they are no longer useful or suited in the context of modern land markets.

7. Irrevocable Power of Attorney

Irrevocable powers of attorney should not be accepted as legal substitutes for sales contracts and should be revoked all together if possible. It is highly recommended that the powers of attorney are eliminated and land transaction are recorded directly with the Land Authority without any need to have this complex procedure, and IPA's bear little resemblance to the reality on the ground. IPA's are the main reason why land records are out of date, inaccurate, unreliable, hence fraud occurs and the same piece of land can be conveyed numerous times. The new law should explicitly prohibit the use of IPA's and any use of an IPA for the transfer of property should be null and void.

8.Placement of Immovable Properties to Secure Debt

This law provides a solid foundation for enabling lending and borrowing against real property collateral. However, the steps involved are cumbersome, so the new law should ease these steps to encourage lending and borrowing. These law should also take be consistent with the newly promulgated Execution Law No. – of 2006.

9.Titling of Unregistered Immovable Properties

Current law is very minimal and new law must address issues like the content of application and meaningful ways to notify absentees. The new law must emphasize the notice and investigation provisions so at the end of the process, a holder would have a "secure" interest in property which in turn would enhance land markets. New law must provide the holder of a registration document with rights and security that will provide a tool to successfully challenge absentee rights, i.e. title should be secured once a certificate is issued. New law must also address claim of damages.

10.Disposition of Immovable Properties/Disposition of Immovable Properties by Judicial Persons: The fact that other courts and other government agencies may not hear claims relating to title issued is a necessary provision which provides finality of title to properties that have already gone through the adjudication process. This provision must be included in new land law. Provisions related to establishing the rights of an owner must be kept. Building laws should not be changed in the registration department unless subdivisions or mergers are taking place. Miri land and transfers maybe problematic since transfers may create a missing link in the chain of title. If a holder has a registration document, then the holder has secure rights since he/she has gone through the registration process. Prescription period is problematic, may need to be reduced to 10 years.

11.Lease and Sale of Immovable Properties from Foreigners

New law should address whether rights of foreigners for obtaining land whether by lease or sale should be eased in order to enhance foreign investment and strengthen land markets. New law must also address whether an agency other than the Council of Ministers can be appointed to approve foreign acquisition of land rights in order to achieve productivity and efficiency.

12.Zoning and Planning

This law not being drafted under the new land law must address the importance of licensed valuers.

Analysis of the Draft Land Law (Articles 1-82)

- Wants to do away with 5 categories of land and maintain 3 categories of land but a very complicated process since do not want to take away legal rights away from possessors of certain land, such as Miri and Mewat. Categories must create consistency in regards to land rights. This must be established in the new law.
- It addresses acquisition of private rights in regards to State land, but accomplishing this must be further clarified, i.e. explicit written approval by the competent authority authorizing a private person to use State land.
- Rules of inheritance are not clearly established since the Draft Land Law relies on Shari'a and other religious laws.
- Common Ownership/Division section allows common owners too much power to divide their land without proper guidance from laws or court regulations. Common owners must divide property pursuant to applicable zoning, planning and land use laws.
- Preemptive rights may no longer be economically viable.
- Foreigners have limited rights to land, maybe the rules can be reasonably loosened.
- Limitations in how State land can be leased to private parties.

Provisions from British Mandate Law

Provisions from the Current Jordanian Law

Good Governance

Review by Birzeit University Institute of Law

Birzeit University Institute of Law's *Study of the Draft Land Law* identified the following matters that should be addressed:

- Draft Law and other effective Palestinian laws should be examined and analysed.
- What is the future of relevant laws in force in PNA-controlled territories play a role in analysing a new draft Land Law?
- The stance of the Draft Land Law in comparison with the Basic Law and the Draft Civil Law

Recommendations and Instructions for Drafting

Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
Preamble of Draft Land Law				
		Ensure all laws are relevant to legal regulation		All laws must be pertinent to land regulation and must be reviewed for relevance. Pertinent amendments to existing legislation must be stated
	1	All definitions should be stated under this article. More definitions need to be added creating consistency throughout the document.		Must add various defined terms, such as "immovable property", "foreigner", "easements" "fixtures", "easements" "condominium" to provide clarity. Different expressions should not be used to explain one concept, all terminology must be consistent. Concepts must be stated in the definition section.
	1	Definitions need to include all types of land in this section as opposed to under the "land" section only.		All 5 types of land can be stated here or under the "Types of Land" section. Instead of "Wasteland" replace with "Mewat"
	2	"In rem" rights can be stated in definition section. Civil Law definition must be revised.		If Civil Law is maintained then it must be "rules of the Civil Law" as opposed to provisions of the Civil Law.
	3	Same		
	4	Same		
	5	Same		
	6	Legal persons, corporations etc must be in definition section.		Must address clearly the Waqf role and definition of legal persons.
	7	Clear defined rules regarding inheritance for Muslims and non-Muslims must be established.		New law must be in conformity with Sharia' law. Sharia shall apply to all lands of Palestine except those lands owned by members of non-Muslim sects.
	8	Same		



Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
1	9	Option- All types of land can be stated in definition section. Definition of Waqf property must be extended to include waqf of other religions, its definition as is, is too narrow.		All five types of land as stated in Ottoman Law must be defined. It must be decided whether new law will consolidate 5 into 3 types of land without destroying the rights of land owners. Rights must be thoroughly addressed.
1	10	Must address state control over private properties		Must address rights relating to Miri land, such rights cannot be ignored.
2	11	Same		
2	12	Same		
2	13	A landowner may benefit from using his or her land but only within what is applicable to zoning, planning and other laws.		
2	14	Same		
3	15	Same		
3	16	Same	However "contiguity harms" should be defined in definition section	
3	17	Should be deleted		This is regulated by the Water Law and should thus be removed from the Draft Law
3	18	Same		
3	19	Same		
4	20	Common ownership must be redefined.		Current definition is inaccurate; A partner cannot somehow dispose of commonly owned land that has been divided before the partner has an interest in the divided part. An owner of common property can dispose of his/her share of ownership. Once property is divided, no longer commonly owned.
4	21	Same		
4	22	Same		
4	23	Same		



Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
4	24	Taxes and duties incurred must be in proportion with the share owned by the landowner		
4	25	Same		
4	26	Common ownership cannot be maintained indefinitely and how is the purpose of maintaining common ownership going to be ascertained?		If there are restrictions against divisions then it must be registered in the appropriate registry.
4	27	This law must be redrafted	All division must be in compliance with applicable zoning laws and received approval of all necessary government bodies.	The division must be registered in appropriate land office and the new law must impose restrictions on private parties ability to divide their land. All co-owners must consent to division of property.
4	28	Same-possible amendment		Easement rights pertaining to land and third parties must be defined.
4	29	Same		
4	30	Same-possible amendment		Any division ordered by the court must comply with applicable zoning, planning and land use laws and must be registered in the land registry.
4	31	Same		
4	32	Amendment necessary	Maximum price will be in interest of all the partners involved.	Maybe best procedure by the court is to put the whole property up for sale and partners may bid just like any other buyers. Clause where "auction may be exclusive to co-owners only if they unanimously request" should be removed.
4	33	Same		
4	34	Same		
4	35	Same		



Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
4	36	Same		
4	37	Same		
5	38	Definition of "adjustment division" can be stated in first chapter.		Types of adjustment division may be explored further in terms of time and place. Partners should be able to agree to allow each other to have exclusive use of part of land for a designated period of time. An agreement on exclusive use should not necessarily mean
5	39	Same		
5	40	Same		
6	41	Definition of "immovable property" should be placed in the introduction chapter.		
6	42	Same		
6	43	Same		
6	44	Same		
6	45	Same		
7	46	Same		
7	47	Same		
7	48	Same		
7	49	Same		
7	50	Requires amendment		Co-owners should pay the relevant co-owners his expenses, each in proportion with his or her share in land.
7	51	Same		
8	52	Same		



Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
8	53	Amendment		New law must address whether the Palestinian corporations, charitable societies and religious institutions can purchase property beyond Palestinian cities and villages where it is required by conduct of their work. What are the limits of work related matters, this must be defined
8	54	Amendment	Need other mechanisms so economy can function with the least possible interference.	New law must define "as much as needed for the conduct of work" and whether such organizations can purchase property outside the stated areas. Must address whether it is practical in the commercial context whether to require foreign companies to obtain a decision from the Council of Ministers in order to own real property
8	55	Same		
8	56	Definition of foreign corporation is required in definition section		
8	57	Same		
8	58	Details on ad hoc committee and how "accuracy" of land registry must be established and must address how are the realties belonging to these societies going to be evaluated, i.e. what are the allowed amounts and how will this be determined and upheld.	Good governance and uniform procedures.	Must address whether Palestinian institutions will be limited in this manner and if not, this must be stated in the new law.
9	59	New law might loosen this clause concerning the 3 year duration.		
9	60	Must address past ownership by foreign Arabs in the new law.		
9	61	Same		



Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
9	62	Same		
9	63	New law must address whether other types of investments are allowed, if so they must be stated.		
9	64	Condition of reciprocity must be defined in the Definition Section		
10	65	Mortgage must be defined in definition section		
10	66	Same		
10	67	Same		
10	68	Same		
10	69	Same		
10	70	Same		
10	71	"Easement rights", "estate in particular" must be defined		
10	72	Time period must be provided in new law from when mortgage debt becomes mature to when mortgagee has to pay off his debts and when a mortgage sale can take place if mortgage debt is not repaid.		
10	73	Same		
10	74	Same		
10	75	Same		
10	76	Same		
10	77	Same-Possible Amendment		Is the list for abolishing mortgage rights exhaustive or not. If not, new law must provide other reasons on the list.
10	78	Same		
10	79	Same		
10	80	Same		



Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
10	81	Revise statement 1		

2. PLA Law Map

PLA MAP

Land Authority Institutional Framework

Law No. () of 200_

Preamble

List all relevant laws

Article (1)

Reference the Basic Law on issuing of legislation and the adoption by the PLC

Chapter One

Article (2)

Reference the Presidential Decree No. 10 of 2002 on establishing the PLA as an independent institution from the Ministry of Justice and incorporate it by reference into this new law.

Refer to Article 5 of the Decree on adoption of this law as Article 5 of the Decree states that the powers and authorities of the PLA shall be determined by law.

Article (3)

Definitions

This Article will address all related definitions including these main ones:

Article (4)

Establishment of the PLA by reference to the decree, but flesh out the details as to:

- Name
- Powers
- Authorities
- Legal person status

Article (5)

Board of the PLA

This board will consist of 9 members from the following institutions:

- Ministry of Finance
- Ministry of Justice
- Ministry of Planning
- Ministry of Public Works and Housing
- Ministry of Local Government
- Ministry of Tourism and Antiquities
- Environmental Authority
- Public agency such as the Palestinian Investment Fund
- Representative from the financial/banking sector/civil society

The Board structure

The proposed structure is designed to eliminate the concentration of power in one or two people with respect to decision making especially the allocation of public land. Having a board that represents various public interests is a safeguard against discretionary and non-transparent decision-making.

Number of Board Members

The 9 member board is sufficiently numerous to enable effective and transparent decision making.

Duties and Functions of the Board (these duties are still subject to discussion)

- Set policies for the national land administration (registration and surveying)
- Set policies for public land management including allocation, leasing and disposal
- Approve the budget
- Approve contracts that exceed certain financial limits
- Sign cooperation agreements
- Submit report to the Council of Ministers
- Oversee the Executive Management
- Approve HR policies
- Establish specialized committees

Article (6)

Chairman of the Board of the PLA nominated by the Council of Ministers and confirmed by the PLC

Duties and functions including chairing meetings, breaking the tie in voting, liaising with the Council of Ministers, PLC/President's Office, external relations etc.

Article (7)

Committees established by the Board

The board is given the power and authority to establish specialized technical committees the most prominent of which shall be the Public Land Committee. Each committee will have members from inside/outside the PLA. Membership could consist of 7 members:

- Ministry of Finance
- Ministry of Justice
- Ministry of Planning
- Ministry of Public Works and Housing
- Palestine Investment Fund
- Representative of the financial and banking sector
- Representative of the civil society

Article (8)

Degree of independence in decision-making

Subject to discussion, but the direction is to give the board a wide range of powers and set it up with a high degree of independence. Such independence will carry with it a system of checks and balances to ensure transparency and accountability.

Article (9)

Reporting

The PLA will report to the Council of Ministers in line with Article 69 of the Basic Law akin to all other similar public agencies.

Article (10)

- Meetings of the board, quorum issues, voting, bylaws of board, etc.
- Board decision to be taken by supermajority (75%)
- Meetings to be convened at least 4 times annually and may convene as necessary
- Closed meetings
- All meetings to be minuted

Article (11)

Executive Management of the PLA

The PLA will have a strong executive management consisting of an Executive Officer and Deputy Executive Officer (one in Gaza and the other in the West Bank).

Article (12)

Powers and Authorities of the Executive Management.

- The executive management will be in charge with over seeing the day to day operations of the PLA in both Gaza and the West Bank.
- It will oversee the various departments of the PLA, namely, Public Land Dep, Registration Dep, Survey Dep, HR Dept, Legal Dept.
- Prepare the budget
- Prepare the rules and regulations

Etc

Article (13)

The Departments of the PLA are:

- Public Land
- Registration
- Survey
- Legal
- HR

Article (14)

Each Department will be headed by a Director General

Duties and Functions of each Department

Article (15)

Financial Resources of the PLA

The PLA will be a financially semi-autonomous self-financing body generating revenues and keeping them.

3. Eminent Domain Law Map

EMINENT DOMAIN LAW MAP
Strategy for Harmonised Palestinian Law
Recommendations and Instructions for Drafting

Overview

In Gaza the law of expropriation is governed by the *Land (Acquisition for Public Purposes) Ordinance, No. 24 of 1943*, in the West Bank by the *Eminent Domain Law No. 2 of 1953*. There are not many substantive differences between the two laws. The British Mandate law was amended twice, in 1943 and 1946, as was the West Bank Law in 1959 and 1960. Both pieces of legislation were affected by Israeli Military Governor's Orders. The *Draft Land Law* provisions on eminent domain are based on the West Bank legislation, and includes amendments made in Jordan since 1967.

It is recommended that the provisions on eminent domain in the *Draft Land Law* form the basis of the draft *Eminent Domain Law*, for the following reasons:

- They are based on the Jordanian legislation drafted in Arabic in language familiar to users.
- Subsequent experience in Jordan in amending, applying and administering the legislation will be useful.
- The *Draft Land Law* replaces outdated references in the West Bank legislation.

It is recommended that certain provisions be adjusted to comply with the *Basic Law*, the principles of good governance and international best practices. In this regard reference is made to the report of Birzeit University Law Institute.

Analysis of the British Mandate Law

Land (Acquisition for Public Purposes) Ordinance, No. 24 of 1943

Amendments

No. 34 of 1943

Sections 2(1), 4, 5, 7, 7A, 8-10, 12-14, 16, 17, 19-22, 26, Schedule

No. 64 of 1946

Section 22

Israeli Military Governor Orders

No. 335 of 1970

No. 346 of 1970

The law covers the power of the High Commissioner to acquire land or any interest in it for a public purpose. It sets out the notice procedures and the rules for assessing compensation.

Notice is posted on or near the land, published in the Gazette, and served on the registered owner or any person shown in the register as having an interest. The notice can be served by leaving it at the person's last known residence or by posting it by registered mail to the last known address.

The government may take over possession on the date specified in the notice, which must be at least two months after Gazette publication, unless the land is required urgently.

Disputes as to title or compensation are to be settled by the Land Court.

Rules are set out for the court in assessing compensation. It is to be based first of all on market value. No compensation is payable for taking up to 25% of an owner's land for roads, playgrounds or recreation grounds. The government may claim betterment of 25% of the increase in value due to making or widening a road, set off against compensation for any land taken.

The government is responsible for the owner's costs incurred in the proceedings (unless the owner has rejected an offer that turns out to be as good or better than the compensation awarded by the court).

Any body, public or private, may apply to the High Commissioner requesting him to acquire land for that body if the acquisition is likely to prove useful to the public. In the case of a municipality or other local authority, or the holder of a concession, the High Commissioner can authorize them to exercise the High Commissioner's powers of expropriation.

Section 6 makes it lawful for owners to sell land to the High Commissioner. Companies and trustees may do so despite any other law or any restriction in a document.

The law is compatible with the *Town Planning Ordinance*, in that where land is destined for expropriation in a detailed planning scheme, the High Commissioner is deemed to have certified the scheme to be an undertaking of a public nature. Also, provisions concerning betterment and 25% taking without compensation are similar.

Analysis of the West Bank Eminent Domain Law

Eminent Domain Law No. 2 of 1953

Amendments

Law No. 37 of 1959

Law No. 4 of 1960

Israeli Military Governor Orders

Order No. 321 of 1969

Order No. 949 of 1981

The law covers the power of the government and local or other bodies to acquire land or usufruct or easement rights for public benefit. It sets out the notice procedures and the rules for assessing compensation.

The expropriating authority must publish a notice in the Gazette of its request to expropriate the land. Then it submits a request to Council of Ministers with a plan of the land and an estimate of compensation. If the Council of Ministers agrees with the request, its resolution is published in the Gazette. The expropriating authority submits the resolution and plan to the land registry and publishes a notice in the newspaper that describes the land and lists the names of owners and occupiers. There is no requirement for notice to be given individually to owners or occupiers.

The registered owner is deemed to be the owner. If the real estate is not registered the possessor of the real estate is deemed to be the owner, without prejudice to the right of another person to claim the right to the compensation. The owner must notify the expropriating authority about persons who have rights of usufruct or lease. Issues of ownership are settled by the court of first instance.

The legislation is not clear as to the time period for taking of the land, although it states that registration in the name of the expropriating authority does not take place until compensation is paid or deposited in the state treasury. The Council of Ministers may authorize immediate seizure for good reasons.

The director general of land and survey department has a role in the procedures. He supervises the survey of the land and inspection for the purposes of estimating value for compensation purposes. He takes the action and exercises the powers of the expropriating authority, except in the case of a local body, but is bound by the authority's limit on the amount of compensation.

If negotiations between the authority and owner fail to agree on compensation, disputes are to be settled by the court of first instance.

Fair compensation must be paid, except that up to 25% of a person's property may be taken without compensation for a road or government housing project. Compensation is to be based on market considerations. Tenants or those with a right of usufruct are entitled to a stipulated maximum proportion of the owner's compensation.

Provisions from the Current Jordanian Law

The *Eminent Domain Law* has been the subject of amendment in Jordan since 1967. Provisions introduced in Jordan that are included in the *Draft Land Law* include:

- Publication of the notice of intended expropriation and of the expropriation decision in the newspaper.
- Time limits on the expropriating authority's request to the Council of Ministers and on the Council of Minister's decision to authorise expropriation.
- Except in expropriation by a local authority, the official responsible for the land registry carries out the expropriation for the expropriating authority, subject to limits on compensation set by the authority.
- A betterment or ameliorisation tax has been introduced. (We do not recommend including this provision.)

Several useful provisions have been introduced in Jordan that are not included in the Draft Land Law, and which we recommend:

- In the compensation rules, reference is made to the three standard approaches to determination of market value. This is sound, and provides guidance not only for valuers but the courts.
- Interest must be paid by the expropriating authority from the date compensation is determined until it is paid.
- Charges, taxes and fees owing by the owner to the municipality must be paid.

Analysis of the Draft Land Law

Section 4, Eminent Domain (Articles 146-174)

The provisions cover the same ground as the *Eminent Domain Law*, including subsequent amendments applicable in Jordan, with few changes. They differ from that law in the following respects:

- The Land Authority takes the place of the director general of land and survey department.
- The provisions refer to the *competent court* without specifying it.
- The provision authorizing up to 25% taking of land without compensation has been omitted.

Provisions from British Mandate Law

There are several provisions contained in the *Land (Acquisition for Public Purposes) Ordinance* (referred to here as "the British Mandate Law") that do not appear in the *Eminent Domain Law* or in the *Draft Land Law*. These provisions are recommended as reflecting international best practice. They are:

- The law should be clear as to when the expropriating authority may take possession of the property. This should be on the date specified in the decision of the Council of Ministers, with a minimum period calculated from publication in the official gazette.
- The law should require owners to be served with the notice of expropriation, by leaving it at their last known residence or by posting it by registered mail to the last known address.

- If an owner refuses to leave or give up possession of the property, the High Commissioner applies to court for an order. This provides a minimum of protection for even the most disadvantaged of owners, because the government has to show the court that due process was followed.
- The expropriating authority should be responsible for the owner's costs incurred in court proceedings concerning the amount of compensation, unless the owner has rejected an offer that turns out to be as good or better than the compensation awarded by the court.
- There should be provisions concerning voluntary sale to the authority. Companies and trustees should be able to do so despite any restriction in a document.

Good Governance

In none of the expropriation legislation is there an opportunity for review of the question of whether the taking of land is for a valid public purpose, or whether the state is taking more land than is needed for the purpose. If the government decides that the project is in the public interest, then that decision is conclusive of the fact. This would appear to contravene the *Basic Law* Art. 21.3.

If the land is required urgently the state may take possession immediately. There are no criteria stated as to the nature of the urgency and the decision is not reviewable. (The Israelis made extensive use of this provision.) In any case there is no need for such power to be covered in expropriation legislation. The state may need to obtain access to land and use it in cases of civil emergency or for security reasons, but these purposes can be met without the need to take ownership rights away. Such matters are properly dealt with in civil defence and emergency laws and regulations.

Taking up to 25% of a person's land without compensation is inequitable, and contrary to *Basic Law* Art. 21.3. We note that the *Draft Land Law* has dropped this provision.

Compensation provisions do not clearly cover:

- Expenses of moving and relocation.
- Business losses.
- Actual loss suffered by a tenant. The percentage figures in the *Eminent Domain Law* are arbitrary.

The betterment tax provision is inappropriate. Firstly, such a tax is not a matter for expropriation / eminent domain law. It is something that is properly covered in planning, local government or taxation legislation. Secondly, betterment tax is a relic of early British planning legislation, which was eventually dropped due to difficulties in implementation – administrative, legal and political. In Palestine the difficulties are compounded by poor information on land values, absence of transparency, and weak oversight by administration and the courts.

Review by Birzeit University Institute of Law

Birzeit University Institute of Law's *Study of the Draft Land Law* identified the following matters that should be addressed:

- Redundant provisions, i.e. those that do not supplement the Palestinian legal system, should be removed.
- There needs to be a definition of *public legal persons*, which have the power to expropriate.
- Newspaper notification of the intention to expropriate is insufficient. Registered mail should be used.
- There is no opportunity for those affected to challenge the decision to expropriate in court. This is contrary to Art. 30.2 of the *Basic Law*.
- There should be an absolute time limit within which the expropriating authority must start to work on the intended project, or else the landowner may recover the land.

Israeli Military Governor's Orders

Gaza

No. 335 of 1970 substitutes a committee of staff officers for the Land Court mentioned in the British Mandate legislation, with a right to appeal its decisions to a Committee of Appeal chaired by the Deputy Commander of the area. The Order also repealed Art. 8 of the Ordinance requiring the High Commissioner to go to court if an owner refused to give up possession of the expropriated property.

West Bank

Order No. 321 of 1969 transferred the authorities of the Ministerial Council and the king to the "empowered authority" on behalf of the commander of the region, which later became the deputy head of the Civil Administration. The legal authority for discussing appeals against expropriations was changed by the order from the local court, as established in the Jordanian law, to the military appeals committee. Notification requirements were abolished. A provision was added empowering the Commander of the Area to order eviction, and imposing imprisonment for 5 years and a heavy fine for "obstructing" the expropriation.

Order No. 949 of 1981 requires the "empowered authority" to publish its decisions in the Compilation of Proclamations and to inform the owner of the land personally or through the mukhtar of the village in which he is resident.

These orders should be specifically declared not to be in force.

Recommendations and Instructions for Drafting

Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
Definitions				
1	146	The definition of <i>expropriator</i> is changed to refer to <i>local authorities</i> rather than <i>local bodies</i> . A definition of <i>local authority</i> is added: <i>a local authority formed under the Local Authorities Law</i> .	To be consistent with the <i>Local Authorities Law</i> .	
1	146	The definition of <i>expropriator</i> is to read: <i>The government and local authorities, as well as public institutions and state-owned corporations that have been granted the right to expropriate land under other laws or regulations</i> .	There should not be blanket authority given to "public" bodies to expropriate. Besides the state and local authorities, other bodies should be given this power if necessary for their functions.	
1	146	Omit definition of <i>betterment tax (amelioration tax)</i> .	The provision on betterment tax is being eliminated.	
1	146	Add definition of <i>land</i> , as in Art. 1 of <i>Draft Land Law</i> .		
1	146	Add definition of <i>court</i> . Court of first instance		
		Replace <i>local bodies</i> with <i>local authorities</i> throughout the law. Use the term <i>court</i> consistently throughout the law.		
Initiation of expropriation procedures				
	147	Omit.	This provision is redundant. It is covered Art.21.1 of the <i>Basic Law</i> .	
2	148	Add requirement for owners to be served, by leaving it at their last known residence or by posting it by registered mail to the last known address.	Good governance: notice provisions enhanced. [Existing provision is from the Jordanian <i>Eminent Domain Law</i> as amended after 1967.]	

Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
3		New article. Affected owners have 30 days from the date of publication to challenge the intended expropriation in court on the grounds that it is not for a public purpose or that the taking is excessive to meet the purpose.	Good governance, rule of law, <i>Basic Law</i> .	Procedures for the court challenge need to be considered, to prevent frivolous challenges and ensure timely resolution. An alternative to a court challenge at this stage would be to have the challenge take place after the Council of Ministers' decision.
4	149	Add a provision that the request must contain a date by which the expropriating authority will take possession, which can be no earlier than 3 months after publication of the Council of Ministers' decision.	Clarity is needed on this point. [Existing provision is from the Jordanian <i>Eminent Domain Law</i> as amended after 1967.]	
5	150	Reference is to Art. 2. Time may be extended for the period of any court challenge.	[Existing provision is from the Jordanian <i>Eminent Domain Law</i> as amended after 1967.]	
6	151	Add: subject to the decision of a court in proceedings under Art. 3.	[Existing provision is from the Jordanian <i>Eminent Domain Law</i> as amended after 1967.]	
7	152	Remove the phrase <i>including the right for compensations for the portion that is taken away for free</i> . Add a provision that in such a case affected owners must be given an opportunity to challenge the decision as in Art. 3.	The power to take a portion of land without paying compensation has been removed, so this phrase is inapplicable. [The existing provision is from the Jordanian <i>Eminent Domain Law</i> as amended after 1967.]	
8	153	Same.		
9	155	The period for the owner to provide this information should be from 30 days of being notified under Art. 10. In sub-article 2, reference should be to Articles 12 and 13.	Owners should not be expected to read the official gazette. [Existing provision is from the Jordanian <i>Eminent Domain Law</i> as amended after 1967.]	

Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
10	156	Add a requirement that the notice be published within 15 days of the decision of the Council of Ministers. New sub-article 2: requiring owners to be served, by leaving it at their last known residence or by posting it by registered mail to the last known address.	Good governance: timely notification. Good governance: notification provisions enhanced. [Existing provision is from the Jordanian <i>Eminent Domain Law</i> as amended after 1967.]	
11	168	The provision is moved to this part of the Law, where negotiation with the owner is discussed. Present provision refers to <i>competent court</i> . This should be clarified: <i>religious court</i> ? Use of 2 different Arabic terms for person who is legally incompetent needs to be corrected.	See BZU report.	Further discussion with stakeholders?

Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
Compensation rules				
12	157	157-1: Add provision that the legal action shall have summary adjudication. 2A: Reference is to Art. 2. <u>Add 2D</u> : Owner, including a tenant, is entitled to reasonable expense of relocating to another residence or business (unless the person had the property or business up for sale on the date under Art. 2) <u>Add 2E</u> : Owner, including a tenant, is entitled to business loss caused by relocation. Determination of business loss may be deferred until 6 months' operating experience is had at the new location. <u>Add 2F</u> : The expropriating authority should be responsible for a person's costs incurred in court proceedings concerning the amount of compensation, unless the person has rejected an offer that turns out to be as good or better than the compensation awarded by the court. <u>Add 2G</u> : Copy current Jordanian Law Art. 10(f).	This is imported from Art. 173, which is out of place. Fairness/equity: disturbance must be compensated, including costs of relocation, loss of business and court proceedings (unless frivolous). Sets out the standard methods of determining market value.	Compensation for tenants is a complex matter. The present 2C provides tenants with a measure of compensation, with an arbitrary maximum. Tenancy law in Palestine appears to give inordinate rights to tenants, thus affecting the value of the owner's interest. Further Study is needed. In the meantime, this provision will remain.
13	158	Reference is to Art. 2.		
14	159	Same.	[This provision is from the Jordanian <i>Eminent Domain Law</i> as amended after 1967.]	
15	160	Rewrite: An owner is entitled to compensation for physical damage caused by the works carried out by the expropriating authority, either before or after the expropriation, or whether or not any of the owner's land is expropriated.	The present wording is unsatisfactory: (1) It does not clearly state the right to compensation, and assumes a court action must be brought. (2) There should be an explicit reference to physical damage, to exclude claims for loss in value.	
16	161	Same.		
17	162	Reference is to Art. 8.		
18	163	Same.		

Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
19	164	Add: exception for proceedings under Art. 3.		
20	165	Same.		
21		New article. Requirement to pay interest on delayed payments. See Jordanian Law Art. 14(a)(b).	Fairness and equity.	Jordanian Law states the rate of interest (9%). It would be preferable to describe the rate in relation to some standard benchmark.
22		New article. A person who owes taxes, fees or other charges to a local authority must pay them or else the amount is retained by the expropriating authority and paid to the local authority. See Jordan Law Art. 16(d).		
Completion of expropriation				
23	166	<u>Add new sub-article</u> at the beginning: The expropriating authority is entitled to possession and ownership of the land by (1) paying the compensation agreed to by the owner or awarded by the court or (2) making an unconditional offer of compensation to the owner and depositing that sum with the court. 166-1: Add reference to deposit in court under sub-article 1.	Lack of agreement on the amount of compensation should not delay taking of the property.	
24		New article: If an owner refuses to leave or give up possession of the property, the expropriating authority applies to court for an order.	Good governance: This provides a minimum of protection for even the most disadvantaged of owners, because the government has to show the court that due process was followed. [See British Mandate Law Art. 8 – abolished by the Israelis.]	
Reversal of expropriation				
25	169	Same.		
26	170	Add at the end a provision that the court in excusing the expropriating authority must set another time period, which cannot exceed 3 years and cannot be extended.	Good governance: there should be no indefinite extension of time for the work to be started.	

Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
27	171	Same		
Purchase by agreement				
28		<p>New article. See Art. 6 of British Mandate law.</p> <p>28-1: The state and local authorities may purchase land or an interest in it by agreement with the owner, and owners have the right to sell it to them.</p> <p>28-2: Where land is owned by a minor, person under a disability, etc. or is waqf, the custodians, trustees or guardians may sell it to the state by agreement, despite the terms of any document respecting their powers of disposal. Subject to Article 11.</p> <p>28-3: Such agreement suspends any expropriation proceedings.</p>		The British Mandate Law says that agreement to sell by the custodians, trustees or guardians also overrides a <u>law</u> . Is this appropriate?
Administration				
29		New article: States what ministry or agency is responsible for administration of this law.		Institutional review will deal with this issue.
30	172	Add at end: subject to Art. 23.3	<p>Technical.</p> <p>This provision gives Head of Land Authority the powers and functions of the expropriating authority, except in the case of local authorities, and subject to the limits on compensation set by the expropriating authority. The present law gives this role to the director general of land and survey department.</p> <p>[Existing provision is from the Jordanian <i>Eminent Domain Law</i> as amended after 1967.]</p>	The question of the appropriateness of this role for the Head of Land Authority should be addressed in the institutional review.

Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
31	228	Regulations may be made by Council of Ministers concerning: <ul style="list-style-type: none"> • forms • procedures • fees, charges and costs • other administrative matters 	<i>Draft Land Law</i> says that Land Authority makes regulations that are approved by Council of Ministers. This is inappropriate and contravenes <i>Basic Law</i> Art. 70.	
Repeal and transitional				
32	229	<i>Land (Acquisition for Public Purposes) Ordinance</i> and its amendments, <i>Eminent Domain Law</i> and its amendments, are repealed. Israeli Military Governor's Orders Nos. 335 of 1970, 346 of 1970, 321 of 1969, and 949 of 1981 are declared never to have been in effect.		Is the declaration about the Military Governor's Orders too broad for any reason?
33	227	The repealed laws apply to expropriation procedures where on the date this law goes into effect: <ul style="list-style-type: none"> • public notice had been given under Art. 5 of <i>Land (Acquisition for Public Purposes) Ordinance</i>, or • promulgation of the Council of Minister's decision had been given under Art. ___ of <i>Eminent Domain Law</i>. 		
Articles of <i>Draft Land Law</i> omitted				
	167	This provision authorized immediate seizure of land for <i>good reason</i> .	This extraordinary power is not necessary in expropriation legislation. The power is subject to abuse, and has been extensively used by the Israelis. The state can enter and use land under civil defence and emergency laws and regulations.	
	173	Right of legal action re compensation under summary adjudication.	Covered in Art. 12-1.	

Article	Draft Land Law	Text (as per <i>Draft Land Law</i> unless changed as below)	Explanation	Outstanding Issues
	174	Betterment or ameliorisation tax.	Should be the subject of planning, local government or taxation legislation. Implementation difficult administratively, legally and politically and likely to be arbitrary.	

4. Land Registration Law Map

REGISTRATION LAW MAP

Strategy for Harmonised Palestinian Law

Recommendations and Instructions for Drafting

Overview

Legislation governing land registration covers (1) the establishment and maintenance of a land register, (2) first registration – both systematic and sporadic, and (3) registration of transactions.

Although the *Ottoman Land Law* provided for a land registry and required owners to register their properties, many owners never did. Thus the Ottoman registry was not definitive on private land rights, and furthermore the records are vague and often do not clearly identify specific parcels of land. The Ottoman registration system was effectively superseded during the British Mandate, although Ottoman registration is evidence of ownership.

Legislative authority for the establishment of a land registry resides in Art. 15 of the British Mandate *Land Transfer Ordinance Cap. 81*⁹, still in force in both Gaza and the West Bank. In Gaza first registration is governed by the *Land (Settlement of Title) Ordinance Cap. 80*, and in the West Bank by the *Land and Water Settlement Law No. 40 of 1952*. Both pieces of legislation were amended on several occasions. In the West Bank sporadic registration is covered under the *Law on Registration of Unregistered Immovable Property No. 6 of 1964*. In Gaza there is no specific legislative provision for sporadic registration. In Gaza and the West Bank registration of transactions is governed primarily by the *Land Transfer Ordinance*, referred to above, which has been amended on numerous occasions. The registration legislation has been affected by Israeli Military Governor's orders.

Another piece of British Mandate legislation, in force in Gaza and the West Bank, is the *Land Registers Ordinance No. 30 of 1944*, which provides for the reconstruction of entries in a land register that were destroyed or rendered illegible.

The Palestinian *Condominium Law No.1 of 1996* and its *Executive Regulation* make special provisions for the registration of title to separate apartments and shops in buildings.

The *Draft Land Law* provides for administration of the land registration system by the Palestine Land Authority. It adapts the West Bank legislation on first and sporadic registration and certain provisions on registration of transactions. It substantially reproduces the British Mandate legislation on reconstruction of damaged entries in the register. It does not deal with condominiums, leaving the existing law and regulation in force.

It is recommended that the *Registration Law* base its provisions on the same origins as those in the *Draft Land Law*, for the following reasons:

- The sections on registration are based on the Jordanian legislation drafted in Arabic in language familiar to users.
- The Jordanian legislation is already operative in the pilot registration projects, while the Mandate legislation has been inoperative because first registration is substantially complete.
- Subsequent experience in Jordan in amending, applying and administering the legislation will be useful.

The *Condominium Law* is special legislation that appropriately should be separate. However, registration of condominium title should be referred to in the *Registration Law*, for completeness and consistency.

It is recommended that certain provisions be adjusted to comply with the *Basic Law*, the principles of good governance and international best practices. In this regard reference is made to the reports of Birzeit University Law Institute on the *Draft Land Law* and USAID report on the *Legal Framework for Property Registration* (2005), and the recommendations of the various studies.

⁹ This is a consolidation of the laws in force in Palestine, carried out in 1934.

Analysis of the Settlement of Title Laws

Land (Settlement of Title) Ordinance Cap. 80

Effective in Gaza only.

Amendments

1935

No 48 of 1939

Public Officers (Change of Title) Ordinance 1942

No 12 of 1942

No 18 of 1944

No 1 of 1946

Subsidiary legislation

Settlement of Title Rules 1928

Settlement of Title (Procedure) Rules 1928

Settlement of Title (Procedure) (Amendment) Rules 1939 (does not appear in the *Gazette of Palestine*)

Settlement of Title (Fees) Order 1945

Settlement of Title (Fees) (Amendment) Order 1945 (possibly repealed by implication: *Fees Order 1946*)

Settlement of Title (Registration and Partition Fees) Order 1946 (contained in *No. 1 of 1946* above)

Israeli Military Governor Orders

None

This ordinance governs the settlement and registration of land rights in designated areas.

The High Commissioner publishes a settlement order in the Gazette and appoints a settlement officer and assistants.

The settlement officer has authority to review and investigate claims, and to decide any dispute concerning ownership or possession. In effect he is exercising judicial powers. He is to have regard to equitable as well as legal rights to land. He is not bound by Ottoman law prohibiting courts from hearing actions based on unregistered documents, or by rules of evidence under the *Ottoman Code of Civil Procedure* or the *Ottoman Civil Code*.

Matters of personal status are referred to the religious courts.

Village blocks and boundaries are settled in the process.

Claimants must present any documents affecting the land. If they do not do so, settlement proceeds in their absence.

A village settlement committee represents the village. This committee is to bring to the attention of the settlement officer the interests of absentees, minors and persons under incapacity, and anyone whose claims have not been presented.

The settlement officer prepares a schedule of claims, and investigates them publicly. Claimants are notified to appear. With the consent of competing parties, the settlement officer can refer a dispute to arbitration.

The rights of government to land in the settlement area are investigated and settled. Land for which no right is established is registered in the name of the government. *Metrukeh* land used for public purposes is registered in the name of the government, or in the name of a town or village in the case of land assigned for its use.

The settlement officer prepares a schedule of rights based on his decisions, which is posted and published. A new register is opened for the village based on the schedule of rights. After posting, no disposition is valid until it is registered in the register for the village. "Disposition" does not include an agreement to transfer or charge land.

The registration of land invalidates any right conflicting with such registration. The owner of a registered right is protected from any action based on an unregistered right.

Registration of prescriptive and possessory title is possible.

Parcels may be partitioned in connection with settlement.

With leave of the settlement officer or the Chief Justice, an appeal of the settlement officer's decision may be taken to the Supreme Court sitting as a Civil Court of Appeal. After the 30-day deadline for appeals, it is possible for an appeal to be brought on the basis of a new fact that was unknown at the time of settlement, or by a person who was unable to bring his claim forward due to sickness, minority or absence from Palestine, subject to the laws on limitation of actions. However, the court may not order a rectification of the register where a person has acquired land in good faith and for value from a registered owner.

Decisions of the settlement officer on any matter under this law may be taken to court.

Settlement procedures are further elaborated in the *Settlement of Title Rules 1928*. Forms are prescribed for notices, claims, schedule of claims, certificate of registration. Procedures for settling contested claims by the settlement officer are set out in the *Settlement of Title (Procedure) Rules 1928*. They include rules for application to the settlement officer for leave to appeal to the court.

Fees for first registration are prescribed in an Order. They may be amended by order of the High Commissioner.

Land and Water Settlement Law No. 40 of 1952

Effective in West Bank

Amendments

Land and Water Settlement Amendment Law (No. 75) 1953

Land and Water Settlement Amendment Law (No. 8) 1955

Land and Water Settlement Amendment Law (No. 23) 1955

Land and Water Settlement Amendment Law (No. 35) 1955

Land and Water Settlement Amendment Law (No. 22) 1964

Land and Water Settlement Amendment Law (No. 59) 1966

Land and Water Settlement Amendment Law (No. 5) 1967

Subordinate Legislation

Regulation on Land and Water Registration in Adjudicated Areas No. 1 of 1952

Regulation on Land and Water Registration No. 2 of 1953

Land and Water Registration (Settlement Areas) Amendment Regulations No. 84 of 1965

Israeli Military Governor's Orders

No. 291 of 1968

This law covers the same ground as the British Mandate law. Significant differences are set out below. In other important respects it does not differ from the Mandate law.

- It provides for the registration of rights to water.

- Settlement takes place under the supervision and control of the Director of Lands and Surveys. The Director may commission an officer to carry out settlement in a settlement area.
- The Director or settlement officer does not make a judicial decision as to rights, unlike the settlement officer in Gaza. The table of claims must be approved by the Land and Water Dispute Settlement Court. The Court consists of a single judge appointed under the law governing the regular courts.
- There is no provision for a village settlement committee.
- Certain decisions of the Director or settlement officer are final – not subject to appeal.
- Appeals may be made within periods of time following posting of the table of rights, as follows:
 - Except as below, within 30 days
 - Within 1 year by residents of countries neighbouring Jordan
 - Within 3 years by residents of other countries
 - Within 1 year of reaching age of majority, by minors
 - Within 1 year of recovering competency, by incompetent persons
 - Up to 5 years after end of war, by persons absent in the armed forces of Jordan or an allied country.
- If the land has been transferred since registration, the purchaser is not protected from a claim by one of the above persons. This is how the legislative provision has been interpreted by the Jordanian courts.

The Regulations require that the final table of rights be signed by village leaders, posted in the village and published in the official gazette. They provide for details about the form of the register and particulars of registration of various transactions. They also deal with transactions occurring during the settlement process.

The Israeli Military Governor's Order suspends the operations of land settlement and transfers the power of the Director to Israeli officials. The suspension did not apply to the registration of so-called state land in the name of the Custodian of Government Property.

Draft Land Law

Art. 10 (types of land)

Section 3, Chapter 1, Land and Water Settlement (Art. 83-118)

Section 3, Chapter 3, The Land and Water Settlement Court (Art. 125-145)

Art. 226-228 (existing registries)

The *Draft Land Law* is based on the West Bank law. The only significant differences from the West Bank law are listed below:

- Categories of land recognized in the registry are reduced to private, public and waqf.
- Embassies and representative offices are notified of the decision to carry out settlement.
- The appeal period against the table of rights is increased from 30 to 60 days.
- For appeal of the decision of the Land and Water Settlement Court, the minimum value is raised from 200 to 1000 JD.
- For absentees the appeal period is 3 years regardless of the country of residence.
- The appeal period related to the end of war is replaced by a 5-year period for persons affected by war or force majeure.

USAID review

USAID supported a review of the legal framework for property registration, with a report produced in December 2005. An important finding of the report was that the *Land and Water Settlement Law No. 40 of 1952 provides a clear general framework and does not present significant obstacles to the resumption of settlement in the West Bank*¹⁰. Since the start of the pilot registration project, there has been an opportunity to test this observation, and it has been found to be valid.

The report questioned the reduction of land categories to three, saying that this would create further confusion and possibly lead to loss of rights. It suggested that the change be reconsidered or else clarification and transitional provisions be added.

Recommendations contained in the report include the following:

- *Law No. 40* does not contain sufficient detail in some areas. They should be supplied by means of regulations, addressing these areas:
 - Demarcation, surveying and mapping.
 - Procedures and forms for submission of claims.
 - Notice mechanisms, which should be expanded, particularly to reach absentees.
 - Forms for notices, consensual agreements among claimants, powers of attorney, and the table of rights.
 - Guidance for the kind of evidence acceptable to prove claims.
 - More specific guidance on how to process transactions during the settlement process.
- A longer deadline for submission of claims.
- Consider giving the settlement officer adjudicative powers in the first instance, and the power to call witnesses and compel appearance.
- Require publication and posting of the table of claims.
- Clarify the identity of the Director.
- Confirm that settling rights to parts of buildings is possible.
- Confirm that rights to *mewat* and *matrouk* can be adjudicated.
- Shorten limitation periods so that rights become secure sooner.

The USAID report also commented on the *Draft Land Law's* provisions concerning systematic registration. The comments on *Law No. 40* remain applicable since its provisions have been copied. Additional points made are as follows:

- The settlement of title provisions are not changed significantly in the *Draft Land Law*. It would be better to keep the existing law until it has been tested through the pilot.
- Settlement of title legislation should be separate – not included in the *Land Law*.
- Water is now governed by the *Water Law*, which does not contemplate private ownership of water sources. Therefore settlement of water rights should be deleted from the *Draft Land Law*.

USAID also facilitated a separate review of the *Draft Land Law*¹¹. With respect to its systematic registration provisions, the report reiterated that they should be contained in a separate law, and that the reduction to three categories of land will create further confusion. Particular comments include the following:

- Consider including alternative dispute resolution mechanisms in the settlement process.

¹⁰ USAID/FMI, *The Legal Framework for Property Registration, West Bank and Gaza*, 26 December 2005.

¹¹ USAID/FMI, *Commentary Review and Analysis of the Draft Land Law*

- Extension of the period for challenging the table of rights from 30 to 60 days is an improvement. Consider also lengthening the period for submitting claims at the beginning of the process and more widespread and innovative methods for notifying absentees.
- Consider a standard period of three or five years as the limitation for appeals by absentees, minors and incompetents. Consider also protection for good faith purchasers.

Review by Birzeit University Law Institute

Birzeit University Institute of Law's *Study of the Draft Land Law* identified the following matters that should be addressed:

- With respect to *miri* and *mewat* land, concern is raised that the state could take advantage of the situation to deprive persons of their rights. [Note: Clarification is needed as to BZU's findings on this point]
- Art. 177 sets out departments and registry offices, the heads of which should have clear powers. Responsibility for settlement procedures should be transferred to the land settlement department.
- Certain decisions of Head of Land Authority are final and may not be challenged in court. This is a contravention of the *Basic Law*.
- Decision-making authority of the Head of Land Authority is inappropriate in certain respects: parcelisation where all co-owners do not agree, modifying village boundaries, correcting errors.
- With respect to evidence of ownership, Art. 133 is not necessary. Furthermore, reference to *rules of justice and equity* is foreign to the Palestinian legal system.
- The limitation period for claims by absentees (3 years) or due to war (5 years) are too short.
- The *Draft Land Law* provides for private ownership of water and settlement of such rights. This is inconsistent with the *Water Law*, which states that all water sources are state-owned public properties, and requires licences for wells that commercially exploit water sources.

The review agrees with the *Draft Land Law's* reduction of land *titles* categories to 3. They say that there are only 3 types of parties who exercise rights of ownership: (1) individuals and private legal persons, (2) the state, its public institutions and local authorities, and (3) the Ministry of Endowments (*waqf*) and its departments. The 5 types of land (private, *miri*, *waqf*, *mewat* and *matrouk*) will still exist. (They recommend that the 5 types be defined in the *Draft Land Law*.) On the other hand, the review agrees with USAID that there is a danger that some private rights could be lost. So some kind of clarification or safeguard needs to be introduced.

There is one area of fundamental disagreement between the USAID and Birzeit reports. The former argues that to avoid future disputes over land title the limitation periods for challenging the table of rights should be shortened. The Birzeit review questions whether under the present circumstances, with a large number of refugees in the Diaspora, it is desirable to expedite land settlement by this means. The authors state that the Palestinian legal system favours in-kind execution, with compensation as the remedy only if in-kind execution is not feasible. Therefore, they recommend not only more effective notification methods, but also extended periods for claims.

Recommendations of the Registration Study

The Registration Study makes certain recommendations that affect the legislative and regulatory regime for systematic registration:

- Ensure a clear classification system for land and tenure types.
- Security of title should be enhanced – guaranteed.
- Standards and manuals for processes need to be established.
- Relax surveying standards and permit orthophoto maps to be used as the basis for systematic registration.
- Consider free first registration in order to remove disincentive.
- Consider removal or simplification of valuation requirement.

Recommendations of the Land Disputes Study¹²

Several of the recommendations of the Land Disputes Study relate to the legislative framework for systematic registration:

- Create regulations to address ambiguities and gaps in the procedures. The pilot systematic registration projects provide the opportunity to draft and test procedures that can become regulations.
- Establish a specialized Land Court that has jurisdiction over all land matters, either by expanding the jurisdiction of the Land and Water Settlement Court or by creating a new court.
- Activate alternate dispute resolution (ADR) mechanisms contained in the current laws and establish a link between them and the informal ADR system.

Legislative strategy and outstanding issues

The legislative strategy is based primarily on the findings and recommendations discussed above. The provisions on systematic registration in the *Draft Land Law* will be adapted and revised to meet the following objectives:

- Necessary clarification will be provided as to classes of land and what can be the subject of adjudication of title.
- Reference to registration of rights to water will be removed.
- The *Basic Law* will be followed as to review of administrative decisions, and responsibilities will be assigned to appropriate levels of administration.
- Responsibility and decision-making will be clarified in relation to the proposed structure of the Palestinian Land Authority and to the authority of other ministries.
- Notification requirements will be enhanced to protect absentees' rights and prevent future disputes.
- For the same purpose village settlement committees will be provided for.
- Regulation-making authority will be specified, in order to provide sufficient clarity and detail in procedures, as well as flexibility. Administrative matters that should be left to the regulations will be removed from the legislation. Descriptions and outlines of the proposed regulations will be prepared.
- Provision will be made for a regulation that incorporates ADR mechanisms into the settlement process.

With respect to water rights, it is noted that the *Draft Land Law* is inconsistent with the *Water Law*. Art. 12 includes in the landowner's rights *all that is over or inside it to its extent of interest in terms of height and depth*. This was the law at the time the *Water Law* was passed. There is a question as to the constitutionality of the *Water Law's* declaration that all water sources are publicly owned, in particular as it applies to sources owned privately at the time the law was passed. Even if there are subsisting private rights in water, it is recommended that they not be the subject of special provisions in the *Registration Law*. In the settlement process it will only be necessary to consider water rights in the event that the owner of the land is not the owner of the water source. This issue can be addressed through the claims process, and if necessary through regulations.

[Note: is Art. 12 inconsistent with the legislation on mineral and oil rights? If so, we can make a similar recommendation.]

Three outstanding issues emerge for discussion among stakeholders.

Adjudicatory role of the settlement officer. In the British Mandate legislation the settlement officer makes the decision as to ownership and land rights. This is consistent with Torrens title legislation in Australia and Canada. Such a decision may be appealed to the court. In the West Bank legislation it is the court that makes the decision as to rights. The court is a special one, consisting of a single judge of the court of first instance.

¹² Draft report, May 2007.

If the settlement officer has adjudicatory authority, the court's role is reduced to considering claims that are disputed. For this to work effectively, settlement officers would have to be persons with legal training, familiar with land rights issues, and there would have to be guidelines as to the submission and consideration of evidence. (They would be contained in the regulations.)

It is of note that the present law on sporadic registration, adopted in the *Draft Land Law*, gives adjudicatory power to a committee consisting of the registrar and two other officials, without the need for a court decision.

Security of tenure. There are conflicting recommendations concerning security of tenure. Birzeit University Institute of Law is critical of suggestions that absentees' rights to bring appeals should be restricted. Their view is that in the current situation with so many absentees finality of title would lead to injustice. They do not agree that enhancing notice requirements by means of more efforts to reach absentees (which they support) is sufficient protection.

Other studies have noted the shortcomings in capacity and experience of the PLA, lack of transparency in it and the other institutions involved, corruption, and the number of court disputes involving land. The rule of law is not strong. The majority of transactions, even in areas where title is settled, are done outside the system, indicating a lack of trust in the land administration institutions. In the circumstances, stakeholders may wish to consider that the other problems must be addressed before title is given more protection, let alone guaranteed.

Dispute resolution. The recommendation of the Land Disputes Study to expand the jurisdiction of the Land and Water Settlement Court or to create a special Land Court needs to be discussed with stakeholders. The Study report sets out the advantages and disadvantages of the proposal and the steps required in order to implement it.

The jurisdiction of the proposed Land Court may take it beyond matters of land registration, in which case it would not be appropriate to provide for the new court in the *Registration Law*. It would then be a proper subject for the proposed *Land Law*, for a separate law, or perhaps amendment of the *Judicial Authority Law*.

An additional consideration for our purposes is that the further Study, consultations and design required will delay the drafting of the *Registration Law*.

Analysis of the laws on sporadic registration

There is no specific provision on sporadic registration in the laws effective in Gaza.

Titling of Unregistered Immovable Properties Law No. 6 of 1964

Effective in the West Bank

No amendments, except:

Israeli Military Governor Orders

No. 291 of 1968

No. 448 of 1971

No. 569 of 1974

No. 944A of 1981

No. 1034 of 1982

No. 1060 of 1983

No. 1145 of 1985

No. 1392 of 1993

[Note: Need to check these orders. Do they make specific amendments to this law, or to the law on registration of transactions, or both?]

This law governs the registration of property that has not been settled by the systematic adjudication process.

An application is made to the commissioned official, who publishes a notice in the local newspaper and posts it up in the village, inviting challenges within 15 days. After the period the official makes a site visit to investigate the claim and hear any objections. Then the official prepares minutes for the neighbours to sign and a report with a plan attached.

The official's report is considered by a 3-person committee consisting of himself, the accountant and the governor or his representative as chair.

The decision of the committee may be appealed to an appeal committee (if the appeal committee agrees to hear it) appointed by the Minister of Justice and assistant attorney general.

The decision of the appeal committee may be taken to court within 15 days.

When a registration is entered it is final and cannot be challenged in court except by an absentee, minor or mentally incompetent person. This law does not specify the time limits for the possible challenges, so the *Mejelle's* 15-year limit will apply.

The Cabinet can establish the systems needed to implement this law.

The Israeli Military Governor's Order No. 291 suspended sporadic as well as systematic registration. The order was not applicable for transactions in so-called state land held by the Custodian of Government Property, for which a special registry was created. This was to enable transfer of the land to the bodies establishing Israeli settlements. The procedures under which Palestinians were given an opportunity to prove they have private rights in this land were set out in various orders.

Draft Land Law

Section 3, Chapter 5, Renewed Registration (Art. 220-225)

These provisions are based on the West Bank law. Some modifications are significant:

- The commissioned official is referred to as the *registrar*.
- The requirement for posting a notice in a prominent place in the village is eliminated.
- After publication in the newspaper, the period for challenges is 30 days rather than 15.
- The committee that considers the registrar's report and makes the decision consists of the registrar, a representative of the Real Property Tax Department, and an official surveyor.
- The committee's decision may be appealed directly to the court of first instance. (There is no appeal committee.)
- The time limit for appeals to court is 30 days, with no exceptions for absentees, minors or mentally incompetent persons.

USAID review

The USAID review considered the existing sporadic registration legislation, and made these points:

- The procedures for sporadic registration are very different from those for systematic registration, and the practical consequence is that the registration departments operate two parallel registries.
- The degree of security of title produced in the two systems differs.
- The owner of property is at risk of challenges by absentees, minors and mental incompetents.
- The notice requirements are inadequate, with no attempt to notify absentees.
- The 15-day period for challenges is too short. (*Draft Land Law* extends this to 30 days.)
- The committee is a good model, but should have more local representation.
- The law is bare bones, but there is an opportunity to supplement it by regulations.

In their report on the *Draft Land Law*, the authors question removal of the requirement to post a notice up in the village.

Birzeit Law Institute review

The Birzeit report does not make substantive comments on the sporadic registration provisions in the *Draft Land Law*. Their observations concerning more effective notice provisions and protection of the rights of absentees in the case of systematic registration are applicable, however.

Recommendations of the Registration Study

The Registration Study recommends that the procedures and requirements for sporadic registration should be as identical as possible to those for systematic registration. The Study's recommendations about relaxing survey requirements and removing fee disincentives are equally applicable.

Findings of the Land Markets Study

The Land Markets Study found that transaction costs are high and the process complicated for sporadic registration, rendering first registration costly and cumbersome. Furthermore, there is a lack of confidence in the public organizations involved in the process.

Legislative strategy and outstanding issues

The existing law on sporadic registration has been criticized as having inadequate notice provisions, with no attempt to reach absentees. The *Draft Land Law* compounds this shortcoming by deleting the requirement for posting notice in the village and more importantly imposing a 30-day deadline for appeals to court, which is applicable to all claimants including absentees. In the current situation this is an invitation to abuse, particularly since the decision to grant title is made by officials. It is imperative that the legislation provide for proper notice and an appropriate balance between security of tenure and protection of absentees.

The legislative strategy will be as follows:

- Except where inappropriate, the provisions for sporadic registration will be uniform with those for systematic registration. Thus recommendations in the legislative strategy for systematic registration will apply equally.
- Detail will be covered in regulations.
- More effective notice must be required.

The outstanding issues concerning security of tenure and dispute resolution, discussed with respect to systematic registration above, apply equally to sporadic registration. There is an additional issue.

Decision-maker. Both the current law and the *Draft Land Law* provide for the decision on land title to be made by a committee of officials. The committee concept is useful as providing a measure of protection from error or abuse, but this would be greatly enhanced if the committee had local representation and not be comprised entirely of officials. This matter, including the options for membership of the committee, needs to be discussed with stakeholders.

Analysis of the laws on registration of transactions**Land Transfer Ordinance, Cap. 81**

Effective in Gaza and the West Bank. Some provisions will have been replaced by implication by laws in effect in the West Bank.

Amendments

Land Transfer (Amendment) Ordinance No 20 of 1937

Land Transfer (Amendment) Ordinance No 16 of 1938

Land Transfer (Amendment) Ordinance No 1 of 1939

Land Transfer (Amendment) Ordinance No 39 of 1939

Land Transfer (Amendment) Ordinance No 13 of 1943

Land Transfer (Amendment) Ordinance No 69 of 1947

Subsidiary legislation

Land Transfer Regulations 1940

Land Transfers (Amendment of Schedule) General Order 1945 [note: unable to find this in Palestinian Gazette]

Land Transfers (Fees) Rules 1939**Israeli Military Governor Orders**

No. 25 of 1967

No. 448 of 1971

No. 569 of 1974

No. 944A of 1981

No. 1034 of 1982

No. 1060 of 1983

No. 1145 of 1985

No. 1392 of 1993

[Note: Need to check these orders. Do they make specific amendments to this law, or to the law on sporadic registration, or both?]

This law applies to dispositions of all kinds, including sale, mortgage and dedication of *waqf*, with the exception of leases for 3 years or less. Dispositions are not valid without the consent of the Director of Lands. Furthermore, entering into possession or permitting someone to enter into possession without the consent is an offence punishable by a fine.

A petition must be presented to the Director of Lands through the land registry office, accompanied by proof of the title of the transferor or applicant. The petition contains an application for registration of a deed to be executed for the purpose of effecting the disposition.

No guarantee of the title or transaction is implied by the consent of Director or the registration of deed.

The Director is not to consent where parcelisation contravenes a town planning scheme.

Mortgages must comply with *Ottoman Law for Mortgage 1331*.

The sale of property for a judgment or mortgage enforcement takes place by order of the President of the District Court.

Israeli Military Governor's *Order No. 25 of 1967* imposed a requirement that the consent of the officer of the Israeli army in charge of the judiciary be obtained for the transfer of land.

Land Transfer Regulations 1940

These regulations restrict the transfer of non-urban land except to a Palestinian Arab. Two zones were created. In Zone A such transfer is prohibited, with narrow exceptions. In Zone B transfer to non-Palestinian Arabs is possible with the approval of the High Commissioner. The restrictions do not apply within the boundaries of municipal corporations.

These regulations purported to be authorized by Art. 16(d) of the Ordinance, which authorises rules about *the forms to be used for deeds and documents*. They appear to be ultra vires, and should have been the subject of an ordinance.

Disposition of Immovable Properties Law No. 49 of 1953

Effective in West Bank

Subordinate legislation:

Regulation on Land and Water Registration No. 2 of 1953

The initial articles of this law give the registration departments the exclusive role in registering transactions and issuing land titles. They provide that titles issued under the *Land and Water Settlement*

Law are conclusive and must be recognized by all authorities and the courts. The courts may not hear actions disputing the title.

It is the *Land and Water Settlement Law* that contains the obligation to register after title has been settled (Art. 16-3).

The regulation requires sale transactions to be conducted at the registration department, and contains detailed requirements concerning the registration of various kinds of transactions.

Law on Ownership of Apartments, Shops and Floors No. 1 of 1996

known as the *Condominium Law*

effective in Gaza and West Bank

Subordinate legislation:

Executive Regulation on Condominium Law, Minister of Housing, No. 1 of 1997

Amended by No. ___ of 1998.

The law establishes the framework for ownership of parts of buildings and common areas, and provides for registration. The regulation has very detailed rules on the format of the register and the processing of transactions.

Draft Land Law

Section 2, Chapter 1: Disposition of Real Property, General Provisions (Art 41-45)

Art. 46

Art 177: registration offices

Section 5, Chapter 4: Registration Transactions (Art 212-219)

The General Provisions give the registration offices the exclusive role of registering land transactions and issuing registration deeds. The holder of a registration deed has the right to dispose of the land. The document is incontestable unless shown to have been forged. All courts must accept the registration deeds without supportive evidence and are restricted in hearing actions to invalidate or correct them. These provisions take the place of the initial articles of the *Disposition of Immovable Properties Law No. 49 of 1953*.

Under the *Draft Land Law* it will no longer be a penal offence to dispose of land without registration.

Art. 177 gives the PLA authority over land registration offices, with a registrar in each office. There will be a separate settlement department.

Art. 212-219 require an application to be made to the registrar by the concerned parties supported by necessary documents. The parties must attend before the registrar with two witnesses to confirm the transaction.

USAID review

The report on registration approved of the provisions in the *Disposition of Immovable Properties Law No. 49 of 1953* preventing all courts from hearing claims related to settled titles, and recommended that such a provision be included in the new land law. (The *Draft Land Law* has incorporated such provisions.)

The report on the *Draft Land Law* questions the need for the parties to attend before the registrar, as required by Art. 214. Mechanisms for simplification of procedures should be explored.

With respect to the *Condominium Law*, the USAID review pointed out that it seems to have been based on Egyptian precedent without regard for Palestine's different terminology. It criticised the provisions on the

obligations of owners for building maintenance. It found the regulation to be overly detailed and questioned why transactions in condominiums should be processed any differently from others.

Birzeit Law Institute review

The report states: *The normal registration transaction must provide that the transaction details, including the names of purchaser, seller and attorneys as well as the sold shares, be published in a local newspaper. Thereby, an opportunity is given to persons wishing to challenge such sale or those who may have a right to pre-emption in the sold property.*

Recommendations of the Registration Study

The Registration Study questions the necessity for parties to attend before the registrar in order to confirm their identities and the transaction. It calls for the removal of other disincentives to registration, including reconsideration of:

- Valuation-based fees.
- The need to pay fees on all previous unregistered transactions.
- The need for confirmation from the municipality as to payment of property taxes. (Removing this requirement would require amendment of the property tax laws.)

Recommendations of the Land Disputes Study

The Land Disputes Study pointed out the importance of creating incentives for subsequent registration of land. This would support the removal of disincentives as called for by the other studies.

Recommendations of the Land Markets Study

A major finding of the Land Markets Study is that even in areas where title is settled, the land market is for the most part informal. The following reasons are given:

- The benefits of registering subsequent transactions are not obvious to users, and the process is costly and cumbersome.
- There is lack of confidence in the public organizations involved in the process.

Legislative strategy and outstanding issues

The *Registration Law*, although it need not provide for penal sanction for unregistered dispositions, must state what are the consequences of registration and non-registration of transactions.

It will not require personal attendance of the parties at the registration office. Rather the provision of the *Land Transfer Ordinance* is preferred, according to which an application is made for registration of a deed, accompanied by proof of the title of the transferor or applicant and, if the registrar requires, a plan of the land (Art. 4-4). Regulations will prescribe the forms and the requirements for attestation and verification, as in the Mandate legislation. (Note that the requirement in the West Bank for attendance of the parties is contained in a regulation, not in the legislation.)

Despite our recommendation as to the form of the law, the procedure to be followed at the registration office remains an outstanding issue for discussion with stakeholders. This is because the present practice is an established one, familiar to officials and users of the system. More importantly, the prevalence of improper practices and the lack of trust in the institutions mean that caution must be exercised in making changes. Opportunity is needed for further discussion with stakeholders and for considering the practical implications for registration offices and real estate practitioners.

Another outstanding issue is that of fees. They are a subject of regulation rather than the *Registration Law* itself. Not only the level of fees but also whether they should be based on valuation are matters for policy choice.

Using the registration system to ensure collection of property taxes and compliance with building regulations is a function unrelated to titling and complicates the procedure. There are competing

interests here that need to be discussed by stakeholders. In advanced systems the authorities that administer property tax and building standards have their own effective enforcement mechanisms. In any case, amendment of other legislation is needed to change these requirements.

The recommendation of the Birzeit Law Institute Study that all transactions should be notified in the newspaper is on its face inconsistent with the recommendations of the studies looking at disincentives to registration. On the other hand it may be justified on several grounds, including transparency and more secure rights. The proposal deserves a full airing among stakeholders.

The legislative framework for condominiums is confused, although it at least has the advantage of being uniform in Gaza and the West Bank. Because of its complexity, there will be no attempt made to reform it in the legislative drafts produced within the framework of this project. Rather the rationalisation of the legal framework will be a longer-term goal of the recommended legislative strategy.

Analysis of Legislation on the Register

Land Transfer Ordinance, Cap. 81

Effective in Gaza and the West Bank.

Subordinate legislation:

Land Transfers (Amendment of Schedule) General Order 1945 [note: unable to find this in Palestinian Gazette]

Land Transfers (Fees) Rules 1939

Art. 15, 16

The High Commissioner may establish land registry offices, appoint registrars and assistant registrars and make rules concerning organisation, procedures, functions and duties of officials, the mode in which the register is kept, forms, fees, etc.

Land (Settlement of Title) Ordinance, Cap. 80

Effective in Gaza

Art. 36, 38, 46, 47

A new register is created for each village in which settlement has taken place. Persons with registered interests have a right to extract from the register. The custody of the register and original documents is provided for, as is authentication of documents for production in court.

Art. 48, 49

Court judgements, cautions and notes of tax arrears may be recorded against parcels of land.

Art. 68

Procedures for correction of errors are set out.

Art. 69, 72

The High Commissioner may prescribe fees by order and make rules to carry the ordinance into effect.

Land and Water Settlement Law No. 40 of 1952

Effective in West Bank

Art. 16-6

The Director may correct errors that he believes resulted from inadvertence in writing or survey.

Art. 27

Council of Ministers may make regulations concerning fees and procedures at registration departments.

Regulation on Land and Water Registration No. 2 of 1953

Effective in West Bank

This regulation contains detailed provisions about the state of the register and how various kinds of transactions are recorded.

Land Registers Ordinance No. 30 of 1944

Effective in Gaza and West Bank

This law provides for cases in which entries in land registers have been destroyed or become illegible. The Director of Land Registration, or Assistant Director or Chief Inspector, publishes a notice in the Gazette and holds an enquiry, following which the officer makes a decision to prepare new entries in the register. The decision may be appealed to the Land Court. Procedures are also set out in the case of lost or illegible documents submitted in connection with dispositions.

The Director is given the power to make a copy of all or any part of a land register that may become unserviceable due to age or damage. The copy replaces the original for all purposes.

Draft Land Law

Art. 117: fees

Art. 118: correction of errors

Section 5, Departments, Registries and Transactions of Land Registration

Chapter 2, Land Registration Departments (Art. 191-195)

Chapter 3, Land Registries (Art. 196-211)

Art. 226, 227: transitional

Art. 228: regulations

Land registration offices are given the responsibility of maintaining registration records, registering transactions and issuing registration and title deeds.

Access to land records is restricted to the registered owner or the heirs.

The provisions of the British Mandate *Land Registers Ordinance* are adapted and updated.

USAID review

The USAID report on the *Draft Land Law* criticizes the restriction of access to registry information, as unnecessary and undermining the credibility and functionality of the registry. It questions the vesting of certain powers in the Head of PLA and the absence of opportunity to challenge them in court.

Birzeit Law Institute review

The BZU report makes the following points, among others:

- Powers granted to Head of PLA should be reduced. Some should be exercised by the appropriate department head or official, and all administrative decisions must be appealable to the court.
- The Law should not provide for administrative details such as the kind of paper used for the register.
- Purchasers through powers of attorney should have access to the register.
- Investigation procedures under Art. 201-210 should be referred to the *Penal Law* and the *Criminal Procedure Law*.

Recommendations of the Registration Study

Recommendations concerning the register include:

- It should be possible for the register to be held in digital form, and digital printouts to be recognized and accepted as evidence in court.
- There should be public access to the registry.

Legislative strategy and outstanding issues

The provisions concerning the establishment, maintenance and administration of land registers need to be better organized. Useful provisions from the British Mandate law should be adopted. The *Basic Law* must be followed concerning appointments and challenge to administrative decisions. Decision-making authority should reside in the appropriate official. All administrative and procedural details should be left to regulations.

An outstanding issue is whether there should be public access to the registry. This is the norm in international experience and is considered to be an essential feature of the land registration system. It would however be a significant and controversial change to the legal framework and needs to be discussed further with stakeholders.

Recommendations and Instructions for Drafting

DLL: *Draft Land Law*.BZU: *Final Report of Birzeit University Institute of Law on the Draft Land Law*. Page numbers refer to English translation.

Provisions affected by outstanding issues are in blue type.

Provision	Recommendation	Outstanding Issues	DLL
Definitions Terms as defined in the <i>Land Law</i> , plus: "Land registry", "registration transaction", "parcel", "systematic registration", "sporadic registration", etc. In the definition of <i>land</i> (DLL 41), which will be contained in the <i>Land Law</i> , ensure it is redrafted so as to include only movable properties that are stably fixed on the land.	There should be uniformity in use of terms between the <i>Land Law</i> and the <i>Registration Law</i> . Definitions of land, types of land and other basic terms should be in the <i>Land Law</i> . See useful definitions in <i>Gaza Land (Settlement of Title) Ordinance</i> , which can be adapted for this law. See BZU 14.		1 41 196 212
The Land Registry	The establishment of PLA, registration offices and settlement departments will be covered in the <i>Land Administration Law</i> . See DLL 177, 195.		DLL 117, 118 191-194 196-211 228
DLL 191. Remove reference to water, <u>and in subsequent articles</u> . Omit 191-2.	For consistency with <i>Water Law</i> . Not applicable.		
DLL 192. Redraft: Land registration offices are responsible for creating and maintaining registries in the form required by the regulations.	Administrative details and forms should be left to regulation.		
Necessary clarification will be provided as to classification of land for registration purposes.		See discussion above in analysis of sporadic registration laws.	
New article: The register may be held in digital form, in accordance with a regulation, and digital printouts certified by the registrar may be accepted as evidence in court.			
DLL 193. At least expand access to registry for purchaser who holds power of attorney.	See BZU 24.	Issue of public access to the register and documents needs to be discussed.	
DLL 194.			
DLL 196.			
DLL 197.			
DLL 198.			
DLL 199.			

Provision	Recommendation	Outstanding Issues	DLL
DLL 200. The registrar rather than Head of PLA. There is need to provide authority to any other "commissioned officer".	The registrar is the appropriate official and the only one who should have this authority.		
DLL 201. Head of registration department instead of Head of PLA.			
DLL 202. Add requirement for posting notice up in the village and further requirements under a regulation.	More effective notice.		
DLL 203. Replace with: The procedures to be followed in the investigation shall be either those for systematic or sporadic registration, whichever in the opinion of the registrar is appropriate in the circumstances.	There is no reason for a different set of procedures in the case of destroyed registers. The procedures set out for destroyed registers in DLL are not appropriate in light of penal law and criminal procedure: BZU 25.		
DLL 118. Redraft. The registrar will have this authority to correct errors. In the case of minor clerical errors no prior notice is needed.			
DLL 117. Redraft to provide for fees for all matters under this law to be prescribed by regulation.			
DLL 228: Replace: Council of Ministers may make regulations needed in order to implement this law, including: [from Land Transfer Ordinance]: <ul style="list-style-type: none"> • Organisation, procedure and business of registry offices. • Functions and duties of registrars and other officials. • Mode in which register is to be kept. • Forms to be used for deeds and documents • Requirements for attestation and verification of execution of deeds and documents. • Appointment of attorneys [also]: <ul style="list-style-type: none"> • Procedures for systematic and sporadic registration. • Methods of giving notice. • Alternate dispute resolution. • Survey and demarcation of boundaries. • Village settlement committees. • Guidance as to types of evidence acceptable for proving claims. 			
Systematic Registration			DLL 83-118
In all provisions remove reference to water.	For consistency with <i>Water Law</i> . Private rights in water (if they will be recognized) can be handled within the procedures and documents for land settlement.		

Provision	Recommendation	Outstanding Issues	DLL
DLL 83, as per BZU 17. Add reference to covering rights to parts of buildings under the <i>Condominium Law</i> .			
DLL 84, as per BZU 17, 18. <u>In all subsequent provisions, replace Head of PLA with Head of Settlement Department.</u>	Appropriate heads of department should have control.		
DLL 85. Add reference to notification as required in the regulations.	Opportunity for more effective notice provisions, and flexibility by means of provision in regulations.		
DLL 86, as per BZU 18 and reference to form in regulations. Head of Settlement Department must appoint a settlement officer, who is named in the announcement. <u>In subsequent articles referring to the conduct of settlement in the village, decisions must be made by the settlement officer and not the Head of PLA.</u> Add a statement to the effect that the notice must be posted at least 30 days before the commencement of settlement.	See BZU 18.		
New article: A village settlement committee will be constituted in accordance with the regulations. Describe duties of the committee as in Art. 15 of the <i>Gaza Land (Settlement of Title) Ordinance</i> .	Village settlement committee brings to attention of the settlement officer the possible rights of absentees or others who have not made claims.		
DLL 87. To remove conflict with <i>Law on Local Administration</i> , this provision must be redrafted to cover only cases where village boundaries are unclear, and the determination of the Head of Settlement Department must be approved by Minister of Local Government.	See BZU 44, 45.		
DLL 88. In 1 refer to procedures and forms as per regulation. Omit 2. In 3 refer to conciliation or alternate dispute resolution in accordance with regulation.			
DLL 89. Changes as above.			
New article: Claims to parts of buildings shall be reviewed and recognized in accordance with the <i>Condominium Law</i> .			
DLL 90. Omit 2 and 3.			
DLL 91. Decisions may not be final.	See BZU 28.		
DLL 92.			
DLL 93. Add restriction to the effect that division must comply with town planning laws and regulations, including those as to minimum parcel size.			
DLL 94. In these cases settlement officer must leave the parcel in undivided form. Only a court can impose division.	See BZU 18.		
DLL 95.			

Provision	Recommendation	Outstanding Issues	DLL
DLL 97. This procedure should be implemented after consulting with affected owners and village leaders. Decision is appealable. <i>Neglected</i> should be clarified: <i>not needed</i> .			
DLL 98. Settlement officer is responsible, as delegated officer. Refer to regulations.			
DLL 99. Settlement officer.			
DLL 100. Settlement officer. Notice in accordance with regulations. Correct error in second line: table of <u>rights</u> is laid down at this point.			
DLL 101. Appeal should be submitted to Head of Settlement Department.		Land Settlement Court or new specialized Land Court?	
DLL 105.			
DLL 106. Change to apply only where all co-owners agree or a court has made a decision. Add restriction to the effect that division must comply with town planning laws and regulations, including those as to minimum parcel size.	See BZU 19.		
DLL 109. Head of Settlement Department.			
DLL 110. Decision should be appealable to court.			
DLL 111. Head of Settlement Department, decision appealable.			
DLL 112. Head of Settlement Department, decision appealable.			
DLL 113. Head of Settlement Department. Refer to compensation under <i>Eminent Domain Law</i> .			
DLL 116.			
DLL 141. If no appeals to court are taken within the 60-day period, then the table of rights is final. The court endorses the table except for those parcels that are unresolved.	Existing drafting is unclear.	Should settlement officer make a judicial decision as to rights, which stands unless a court overturns it?	
DLL 142.			
DLL 143.			
DLL 144.			
DLL 145. Substitute settlement officer for Head of Land Authority.			
(separate chapter): Land Settlement Court	There is a recommendation for a specialised Land Court that would have wider jurisdiction than the Land Settlement Court, or in the alternative to expand the jurisdiction of the Land Settlement Court. It is not likely practical to provide for this reform within the life of this Study. Therefore, the following provisions are drafted on the assumption that the Land Settlement Court will be retained in its present form. Note removal of reference to Water.		DLL 125-140

Provision	Recommendation	Outstanding Issues	DLL
New articles, providing more detail on the court's formation, affiliation, powers and jurisdictions	See BZU 36.		
DLL 125.			
DLL 127.			
DLL 128.			
DLL 129. Make exception for cases in which pleadings have concluded.	See BZU 20.		
DLL 130. Provide that this is possible only in cases of necessity or urgency.	See BZU 20.		
DLL 131.			
DLL 132.			
DLL 134.			
DLL 135.			
DLL 136: Add a provision stating that title rights do not terminate by prescription.	"The civil action at law can be raised to the competent court based on the value[?] of the real estate at any time." See BZU 20. [I don't understand this point. Possible translation issue.]		
DLL 137.	3-year period for absentee claims.	The issue of length of time for claims, and affect on bona fide purchasers, needs to be discussed further. BZU questions whether Land Settlement Court remains constituted indefinitely during the appeal period. Consider appeals after 3 years being made to court of first instance.	
DLL 138.	Claim by minor on reaching majority.		
DLL 139	Claim by person affected by war.		
DLL 140.	Remedy that Court can impose.		
Sporadic Registration			DLL 220-225
DLL 220.			
DLL 221. Add requirement to post notice in the village and reference to notification as required in the regulations.	More effective notice provisions, and flexibility by means of provision in regulations.		

Provision	Recommendation	Outstanding Issues	DLL
DLL 223. The committee will consist of the registrar, a surveyor and someone who is not an official.	Local non-official representation is needed to protect absentees and others.	Who is on this committee and how it is appointed need to be discussed.	
DLL 222. Clarify that the committee participates in the registrar’s visit.			
DLL 224. Change to allow committee to approve registration if it considers the objection unfounded. Provide that committee’s decision must be unanimous.	Not all objections should automatically end up in court. Clarification.		
DLL 225. May require major revision. Requirement for quick hearing of the claim is useful.		Issue of limitation period for claims and effect on bona fide purchasers needs to be discussed. Is prohibition of appeal of court’s decision proper?	
New article: Will state list of articles under Systematic Registration that apply equally to sporadic registration.			
Registration of Transactions			DLL 41-46, 212- 219
DLL 42. In 42-2, compare with 212 and use the better article.	42-2 and 212 both describe dispositions that can and should be registered.		
DLL 43.			
DLL 44.			
DLL 45.			
DLL 46.			
DLL 213. Replace with the provision of the British Mandate <i>Land Transfer Ordinance</i> , according to which an application is made for registration of a deed, accompanied by proof of the title of the transferor or applicant and, if the registrar requires, a plan of the land (Art. 4-4)			

Provision	Recommendation	Outstanding Issues	DLL
<p>DLL 214, 215. Replace with reference to requirements set out in regulations.</p>	<p>Requirement to attend in person is removed. Regulations will allow refinement of procedures and be more flexible.</p>	<p>Procedure to be followed at the registration office remains an outstanding issue for discussion with stakeholders. BZU recommends notifying all transactions in the newspaper (BZU 25). Issue of using the registration system to collect property taxes and enforce building standards needs to be discussed.</p>	
<p>New article: Transactions affecting parts of buildings to be registered in accordance with the <i>Condominium Law</i>.</p>			
<p>New article: No disposition of land (as per 42-2) is valid until registered, provided that a person who has paid money in respect of an invalid disposition may recover the money by action in the court. See <i>Land Transfer Ordinance Art. 11</i>.</p>	<p>Effect of registration needs to be stated.</p>		
<p>Repeal and transitional</p>			<p>DLL 227, 229, 230</p>

Provision	Recommendation	Outstanding Issues	DLL
<p>DLL 229: Replace with following list: Land (Settlement of Title) Ordinance Cap. 80</p> <p>Land Settlement (Amendment) Ordinance 1935</p> <p>.1. Land (Settlement of Title)(Amendment) Ordinance No 48 of 1939 .2. Land (Settlement of Title)(Amendment) Ordinance No 12 of 1942 .3. Land (Settlement of Title)(Amendment) Ordinance No 18 of 1944 .4. Land (Settlement of Title)(Amendment) Ordinance No 1 of 1946</p> <p>Land and Water Settlement Law No. 40 of 1952 <i>Land and Water Settlement Amendment Law (No. 75) 1953</i> <i>Land and Water Settlement Amendment Law (No. 8) 1955</i> <i>Land and Water Settlement Amendment Law (No. 23) 1955</i> <i>Land and Water Settlement Amendment Law (No. 35) 1955</i> <i>Land and Water Settlement Amendment Law (No. 22) 1964</i> <i>Land and Water Settlement Amendment Law (No. 59) 1966</i> <i>Land and Water Settlement Amendment Law (No. 5) 1967</i> <i>Titling of Unregistered Immovable Properties Law No. 6 of 1964</i></p> <p>Land Transfer Ordinance, Cap. 81</p> <p>.5. Land Transfer (Amendment) Ordinance No 20 of 1937 .6. Land Transfer (Amendment) Ordinance No 16 of 1938 .7. Land Transfer (Amendment) Ordinance No 1 of 1939 .8. Land Transfer (Amendment) Ordinance No 39 of 1939 .9. Land Transfer (Amendment) Ordinance No 13 of 1943 .10. Land Transfer (Amendment) Ordinance No 69 of 1947 .11. Land Registers Ordinance No. 30 of 1944 <i>Art. 2-5 of Disposition of Immovable Properties Law No. 49 of 1953</i></p>	<p><i>Land Law</i> may repeal this law in its entirety</p>		
<p>DLL 227: Replace with: Despite the repeal of these laws, regulations made under them remain in effect until replaced by regulations made under this law.</p>		<p>Consider whether <i>Land Transfer Regulations 1940</i> should be annulled immediately.</p>	
<p>New article: Annuling all Israeli Military Governor's Orders that affect or purport to amend the above laws.</p>		<p>Should the particular Orders be specified?</p>	
<p>DLL 230.</p>	<p>Transitional period of 3 months.</p>	<p>Consider extending period. See BZU 26.</p>	

Annex 3: Draft Land Laws

1. Draft Land Law

The Land Law No. () of 200 –

**The Chairman of the Palestine Liberation Organisation;
The President of the Palestinian National Authority,**

Having reviewed the Amended Basic Law;

Having reviewed:

1. The Ottoman Land Law, promulgated in 1858 A. H. and its Amendments;
2. The Law Concerning the Estate of Foreigners and Non-Muslims No. (8) of 1941 (which is enforced in accordance with the Law No. 8 of 1958 in the West Bank);
3. The Law Concerning the Partition of Common Immovable Properties No. (48) of 1953 and its Amendments;
4. The Law Concerning the Placement of Immovable Properties as a Security for Debt No. (46) of 1953 and its Amendments;
5. The Law Concerning the Placement of Immovable Properties as a Security for Debt of 1331 A. H. and its Amendments;
6. The Law Concerning the Partition of Common Immovable Properties of 1329 A. H.;
7. The Law No. (1) of 1996 Concerning the Ownership of Condominiums, Apartments and Commercial Units and its Amendments;
8. The Law No. (14) of 1961 Concerning the Preservation of the State Land and Properties and its Amendments;
9. The Provisional Law Concerning the Administration of the State Properties No. (32) of 1965;
10. The Law Concerning the Conversion of the Miri Land into Mulk Land No. (41) of 1953 and its Amendments;
11. The Law Amending the Provisions Relating to the Immovable Properties No. (51) of 1958 and its Amendments;
12. The Concerning the Lease and Sale of Immovable Properties from Foreigners No. (40) of 1953 and its Amendments;
13. The Law on Inheritance of 1923 and its Amendments;
14. The Law Concerning the Disposition of Immovable Properties No. (49) of 1953;
15. The Law Concerning the Disposition of Immovable Properties of 1331 A. H.
16. The Law Concerning the Disposition of Immovable Properties by Judicial Persons no. (61) of 1953 and its Amendments;
17. The Law Concerning the Disputes (Expropriation) of Land (Title 76) of 1932 and its Amendments;
18. The Law Concerning Public Land No. (6) of 1942;
19. The Mejjelle, promulgated in 1876;

20. The relevant Israeli Military Orders and their Amendments;
21. The Law No. (12) of 1932 Concerning the Disputes Arising over Expropriation of Land;
22. The Law Concerning the Transference of Land (Title 81) of 1920 and its Amendments;
23. The Law No. (5) of 1960 Concerning the Ownership of Private Properties Owned by the Government or Public Judicial Persons and the Properties of Charitable Waqf Trustees and the Gaining of a Right *in rem* therein and Encroachment thereon, and its Amendments;
24. The Law Concerning the Obligatory Bequeath No. (13) of 1962;
25. The Law No. (1) of 1965 Concerning the Enforcement of the Provisions of Hereditaments in the Islamic [Shari'a] Law to the Miri Land;
26. The Law Concerning the Muwat Land (Title 79) of 1921; and

The Draft Law Submitted by the Council of Ministers; and

Based upon what the Legislative Council approved during its Session which convened on / / 200 -,

I hereby promulgated the following Law:

**Chapter I
General Provisions**

**Article (1)
Definitions**

The following terms and expressions, wherever they are mentioned in this Law, shall have the meanings assigned thereto hereunder unless the context determines otherwise:

Land: The land of all types, as well as the buildings and trees and anything else that is stably fixed on the land.

Deserted [Mattrouk] The land which is allocated for the public, such as roads, yards, gardens, threshing floors, and the land designated for the usufruct of the inhabitants of a particular city or villages such as pastures.

Muwat Land: The land which is not a property of any person, nor was not in the disposition of any person and which has not been designated for the inhabitants of a city or village, such as mountains and wasteland.

Land Owned by the State: The land which is owned by the State or by public judicial persons, and which is allocated for a public usufruct *de facto* or in accordance with a law, decree or decision from the Council of Ministers.

- Familiar contiguity harms:** The damages which are unavoidable. A neighbour may not claim remedy against his neighbour in respect of the familiar harms of contiguity. However, he may demand that the harms be removed in the event they surpass the common limit, provided that the custom, nature of the properties, the location of each one in relation to the other and the purpose for which they is designated. The licence issued forth by the competent authorities shall not prevent the use of such right.
- The right *in rem*:** This shall be an immediate authority over a particular property, which the Law gives to a specified person. The right *in rem* may either be original or consequential.
- Original rights *in rem*:** These shall be the ownership, disposition, usufruct, use, residence, *Musataha*¹³ (location), abstract rights, establishment of *Waqf* [endowment], *hikr* [ground rent], the two leases¹⁴, and vacancy of usufruct.
- Consequential rights *in rem*:** These shall be the documentations proving the security or possessory mortgage or by the provisions of the Law.
- The easement right:** A servitude that is posed over a property for the benefit of another that is owned by a person other than the owner of the first property.
- The property in particular:** A movable property, the owner of which places on an immovable property that he owns for the service and exploitation of such immovable property.
- The judicial person:** Each person or a group of persons and the properties which have an independent entity that aims to achieve a particular purpose and enjoys the judicial character within the limits of such purpose.
- The public judicial person:** This shall include:
1. The State, governorates and municipalities under the conditions which the Law sets forth, as well as the ministries and businesses and other public establishments, which the law grants the judicial character; and
 2. The entities, the judicial character of which is recognised by the State.

¹³ *Musataha* is essentially based on the concept of 'sale and lease-back' of the use of land. It is the right to build a building or to plant on the land of another. (Translator)

¹⁴ These are the leasing of property for a period of time exceeding three years as well as the lease entailing the option of renewal for a period of three years or more. See Article 40 below. (Translator)

The private judicial person: This shall include:

1. *Waqf* trustees;
2. Commercial and civil companies;
3. The societies and institutions which are incorporated in accordance with the Law; and
4. Each group of persons or properties, the judicial character of which is established in accordance with the Law.

The foreign person: For the purposes of the enforcement of this Law, the foreign person shall be defined a decision from the Council of Ministers.

The Authority: The Palestinian Land Authority.

The Head of the Authority: The Head of the Palestinian Land Authority.

Article (2)

The articles on proof provided under this Law shall be applicable to the disputes of land, taking into consideration the rules of proof provided under the Law of Evidence.

Article (3)

1. The provisions pertaining to the statute of limitations under this Law shall enter into force as of the date on which they become effective with respect to each limitation that has not matured. The old provisions shall be applicable to the issues relating to the commencement, termination and interruption of the limitations in respect of the period preceding the enforcement of the provisions of this Law.
2. The Gregorian calendar shall be applicable in the calculation of the periods of time.

Article (4)

In the event this Law provides for a period of limitations that is shorter than the old provision, the new period shall be in force from the date on which it becomes effective even if the old period had commenced beforehand. In case the remainder of the old period is shorter than the new one, the limitations shall be applicable to such remainder.

Article (5)

The provisions on inheritance, which are prescribed by the Laws of the Personal Status in force in Palestine, shall be applicable to all its land.

Article (6)

The land, which is owned by the State and allocated for public usufruct, may not be disposed of, seized or owned under the provisions of limitations unless the allocation terminates in accordance with a law or *de facto* or with the expiration of the purpose for which it was allocated.

Chapter II

Types of the Ownership of Land

Article (7)

The ownership of land in Palestine shall be divided into:

1. **Public ownership** shall include the land owned by the State or any governmental or local body, authority or institution, regardless of whether such land is registered or unregistered. It shall also include the *Mattrouk* land and *Muwat* land, in which a right is not established for any person.
2. **Private ownership** shall include the land owned by individuals or private judicial persons, as well as the land which was formerly deemed to be *Mulk*, *Miri*, or endowed [*Waqf*] *Miri* that is currently in the disposition of individuals or private judicial persons, regardless of whether they are of the types of *Miri* or *Mulk*, registered or unregistered.
3. **Waqf land** shall include the land endowed as *Waqf Saheeh* (real), where the land is endowed and the usufructs of which are wholly or partly allocated to the *Waqf* Trustees, and which are registered [in the name of] or owned by the Public *Waqf* Trustees. It shall also include the land endowed as *Waqf Tharri* [restricted to descendants]. The provisions under the *Waqf* Laws in force in Palestine shall be applicable to both types of land.

Article (8)

1. The cadastres and registers of land shall be amended. As such, the land, to which the provisions of private ownership are applicable, shall be registered as private property; those to which the provisions of public ownership are applicable as public property; and those to which the provisions of *Waqf* ownership are applicable as *Waqf Saheeh* (real).
2. Not a provision under this Chapter shall prejudice the possessed rights and the procedures which took place prior to the promulgation of this Law.

Chapter Three

The Scope of the Land Title

Article (9)

The land owner shall be entitled to the right of usufruct and disposition thereof within the limits of the Law and on condition of not causing damage to others, taking into consideration the provisions under the respective laws.

Article (10)

1. The title to the land shall include all that is above or inside it to the extent useful for the usufruct of it in terms of height and depth, taking into consideration the provisions under the relevant laws.
2. The title to the land may not be separate from the ownership of what is above or inside it, unless a provision under the Law or an agreement prescribes otherwise, taking into consideration the provisions prescribed in this regard under the Civil Law and the Law Concerning the Ownership of Condominiums, Apartments and Commercial Units.

Article (11)

1. Not a person may be deprived of his land or of the usufruct therefrom. The title may not be expropriated except for the public interest and under the circumstances which are prescribed by the Law and in consideration of a fair compensation.
2. The provisions on the acquisition of land for the public interest shall be regulated by a Law.

Article (12)

The owner of the land shall have the right to its product and fruits as well as to benefit from it subject to the Laws or any agreement providing otherwise.

Chapter IV

The Restraints on the Land Title

Article (13)

In the event a person has a right appertaining to the land, the owner shall not be entitled to dispose of his land in a manner that causes damage to the person entitled of such right except upon permission from him.

Article (14)

1. The land owner may not exceed the proper bounds in using the [land] titles to the extent that prejudices the owners of adjacent pieces of land.
2. A neighbour may not claim compensation from the owner of the adjacent land in respect of the familiar contiguity harms.

Article (15)

The owner of the land which is far from the source of water shall have the right of flow from the adjacent land and in an adequate quantity for irrigation in consideration of a fair compensation.

Article (16)

The owner of the land which is blocked from the road shall have the right of way from the adjacent land to the extent expedient as to enable him to benefit from his land in consideration of a fair compensation.

Article (17)

The land owner shall have the right to oblige his neighbour to demarcate their contiguous properties. The expenses of the demarcation shall be equally borne by both of them.

Chapter V

Ownership of the Land in Common

Article (18)

In case two or more persons jointly own a piece of land, but the share of each one of them therein is not parcelled, all of them shall be joint owners of such land. The shares shall also be equal unless evidence establishes otherwise.

Article (19)

The joint owner of a piece of land in common shall own his share in an absolute manner. He shall also be entitled to dispose of it in the manner he wishes without permission from the rest of the joint owners, provided that he does not prejudice their titles.

Article (20)

1. In the event a joint owner disposes of the a portion of the land which he own in common, but upon partition such a portion does not fall within his share, the right of the disposer shall be transferred to the land which devolved to him by way of the partition.
2. In case the disposer has built a structure or [planted] trees on such portion, it shall be transferred to the joint owner who has become to be entitled of such portion, provided that he pays for their standing value.

Article (21)

The joint owner shall be entitled to take any necessary measures as to preserve the land even without consent of the rest of the joint owners.

Article (22)

All joint owners, each in proportion with his own share, shall be responsible for the taxes and fees imposed on the land owned in common, as well as the expenses resulting from the joint ownership and its preservation, unless stipulated otherwise by any provision or agreement.

Article (23)

The joint owner shall be entitled to demand that the land in common be partitioned unless otherwise prescribed by an existent provision or agreement.

First**Expiration of the Joint Ownership with the Partition****Article (24)**

Partition shall be the parcellation and allocation of the shares in common. It may be conducted consensually or by the ruling of the judiciary.

Article (25)

The joint owners of a piece of land in common may not request that it be partitioned in the event it appears from the purpose for which such land was designated that it must perpetually be in common.

Article (26)

1. The joint owners of a piece of land in common shall be entitled to partition such land in any manner which they deem fit.
2. The land which is jointly owned may not be partitioned in a consensual manner without the consent of all joint owners or their legal attorneys or representatives.
3. In the consensual partition, it shall not be stipulated that the land be subject to partition in relation to the smallest share.
4. In the event the objects required to be partitioned are multiple, the joint owners may agree to partition them in a collective manner.

Article (27)

1. After the joint owners conduct the partition in the manner they have deemed fit and agreed thereto, they shall appear before the Department of Registration as well as bring a map that shows the share of each one of them, which is parcelled from others. They shall also declare before the relevant functionary at the Department of Registration the validity of the transaction and their consent to the partition in accordance with the map which is presented. Thereupon, each one of them shall be given an independent deed on his disposition.
2. The joint owners of the land in common shall be entitled to submit an application to the Department of Registration in which they request it to conduct the process of partition.

Article (28)

1. In the event the joint owners disagree on the partition of the land in common, any one of them who wishes to secede from the joint ownership may resort to the Magistrate Court as to litigate the rest of the joint owners as well as to request the conducting of the partition.

2. The Court shall delegate one or more expert(s) to partition the land in common in the event the land is capable of being partitioned in relation to the smallest share therein without causing a large depreciation in its value or the usufruct therefrom.
3. Upon designation of the share, the expert shall take into consideration the location of the land, its vegetation productivity and the extent to which easement rights appertain thereto.

Article (29)

1. The expert shall designate the shares on the basis of the smallest share therein [in the land].
2. In the event one of the joint owners cannot be allotted a piece of land, he shall receive a compensation that is commensurate to his share.

Article (30)

1. In case the shares are partitioned in a consensual manner, the Court shall issue forth a judgement by which it gives each joint owner his own parcelled share; otherwise, the partition shall be conducted by means of drawing lots before the Court.
2. The Court shall establish the above on its records as well as enter a judgement as to give each joint owner his share, which resulted from the lots.
3. The Court shall dispatch a certified copy of the decision to the Department of Registration.

Article (31)

In the event a dispute, which does not fall under the jurisdiction of the Magistrate Court, arises amongst the joint owners, it must assign the litigants to resort to the competent court. It shall also suspend the action on the partition until such dispute is finally adjudicated.

Article (32)

1. In the event it is not possible to partition the land in common, or in case such partition may effect a tremendous depreciation in the value of the land or the usufruct therefrom, the Court may sell it by means of an auction, provided that it is firstly conducted among the joint owners.
2. In case one of the joint owners requests that he purchases the land mentioned in Paragraph (1) above or a portion thereof at the value which was estimated by the experts, it shall be assigned to him. However, if one or more joint owner(s) objects to such assignment, the auction shall be conducted amongst them.
3. In case not one of the joint owners bids in the auction, or in case one of them does not purchase the share to be sold at the value which was estimated by the experts, the share shall be sold in a public auction, provided that the price is not less than the value estimated by the experts. The price shall then be distributed to the joint owners, each in proportion with his share.
4. The Court shall dispatch a certified copy of the decision to the Department of Registration.

Article (33)

The joint owner of the land in common shall be deemed to be an owner of the land which devolved to him by means of the partition since he has possessed the land in joint ownership.

Article (34)

1. The partitioners shall reciprocally guarantee to one another any entitlement to or encroachment on the land which has devolved to any one of them for any cause preceding the partition, unless an explicit agreement provides otherwise.
2. The guarantee shall cease in the event the entitlement is attributable to the action of the partitioner himself.

Article (35)

1. In the event the land in common ownership as a whole becomes mature, the partition shall be revoked.

2. In case the maturity applies to a portion of the land in common, the remainder thereof shall be partitioned once again.

Article (36)

The consensual partition may be revoked in the event one of the joint owners establishes that was prejudiced by the partition, with the cost of such prejudice exceeding one fifth of the due value, whereupon assessment of time of the partition shall be the determinant factor to be taken into consideration.

Article (37)

1. The action on the revocation of the partition may not be admitted in case it is not lodged within one year from the date of the partition.
2. The joint owners may avert the judgement on such action by indemnifying any decrement in the claimant joint owner's share, either in kind or in cash.

Second

The Partition of Usufruct

Article (38)

1. Partition of usufruct shall mean the division of benefits. It may be limited by time or limited as to place.
2. The partition of usufruct which is limited by time shall take place by the exchange of the joint owners of the land in common as to benefit from it for a period of time that is proportionate with the share of each one of them.
3. The partition of usufruct that is limited by place shall take effect with the benefit by each one of the joint owners of the land in common of a particular portion thereof.

Article (39)

1. The duration of the partition of usufruct limited by time shall be defined, whereas this shall not be a requisite in the partition of usufruct limited by place.
2. The duration of the partition of usufruct shall be in line with the agreement of joint owners. In the event they do not agree, the Court shall be entitled to allot the duration which it deems fit in pursuance of the nature of the dispute and the land owned in common.
3. The duration of the partition of usufruct may not exceed five years. It may, however, be extended by agreement between the joint owners. It shall also convert into a final partition of usufruct in case it perpetuates for a period of more than fifteen years.
4. The allotting of the commencement of the partition of usufruct limited by time as well as the designating of the location in the partition of usufruct limited as to place shall be based upon an agreement between the joint owners or by means of a lot.

Chapter VI

The Disposition of Immovable Properties

Article (40)

1. The Departments of Land Registration shall exclusively be competent of the registration of all transactions on the disposition of immovable properties as well as the giving of registration deeds thereon.
2. The transaction of disposition shall include each transaction of sale, exchange, mortgage, gift, establishment of *Waqf* trustees, or leasing of property for a period exceeding three years and the lease entailing the option of renewal for a period of three years or more, as well as any legal disposition of land, including the transfer of mortgage.

Article (41)

The owner of immovable properties under a deed of registration shall be entitled to dispose of them in all real and legal manners of disposition in accordance with the provisions of the Law.

Article (42)

The registration deeds which are issued forth by the Departments of Land Registration shall constitute determinative evidence in respect of all persons. With the exception of being proved to be forged by legally prescribed procedures, these may not be subject to objection.

Article (43)

Religious and regular courts as well as all governmental departments shall enforce the registration deeds, which are issued forth by the Departments of Land Registration, without evidence. Not any of these deeds may be annulled or revoked or an error thereon rectified except in accordance with the provisions of the Law.

First**The Disposition by Natural Persons****Article (44)**

Not a person may expropriate land that is owned or disposed of by another person or use or exploit it in any form whatsoever in an illegitimate manner. Any such action which he performs shall bind him to present a security. Though, this shall not prevent his being prosecuted in accordance with the provisions of the Penal Law in force.

Article (45)

Each person who seizes land, which is in the disposition of another person, and cultivates it without permission from that person shall be bound to pay requitals¹⁵ to the disposer for the period of time during which he seized such land.

Article (46)

Each person who cultivates land that is owned by another person without permission from that person, the owner of the land shall have the option either to uproot them [the plants] at the expense of the person who cultivated them or to possess them at their due value after they are uprooted.

Article (47)

Each person who constructs a structure or plants or other installations on land, which he knows to be owned by another person without consent of its owner, the latter shall be entitled to request that the structures or plants or structures be removed at the expense of the person who effected them. In the event the removal causes damage to the land, he shall be entitled to possess the structures at their due value after they are removed.

Article (48)

Each person who constructs a structure or plants or other installations with materials of his own on land, of which he disposes in accordance with a registration deed and in good faith, then it appears

¹⁵ He shall be obliged to pay the estimated rent as well as a fine (Translator).

that it is owned by another person, whereas the standing value of the structures is higher than the value of the land, the originator shall be entitled to possess the land at the price of a similar one. In case the value of land is not less than the value of the structures, the owner of the land shall be entitled to possess them at their standing value.

Article (49)

1. Not a joint owner of those disposing of a forestland shall have the right to uproot or cut down the trees of such a forestland or a section thereof in order to convert the land into a grove or otherwise without permission from his partners.
2. In the event the joint owner cuts down or uproots such trees without permission, such land which is converted in the manner described shall be owned in common between him and his partners without any consideration thereof.
3. In case the joint owner performs the action described in the previous Paragraph with the consent of all joint owners, each one of them shall be obliged to pay the expenses associated with his own share.

Article (50)

1. It may not be permissible to possess any immovable properties owned by the government or by any public judicial persons, as well as the properties of the charitable *Waqf* or the gaining of any right *in rem* thereon by means of expropriation.
2. Each encroachment on the properties mentioned in Paragraph (1) above shall endow the Authority with the right to administratively remove it as necessitated by the public interest.
3. The claim on limitations shall not be admitted nor shall an action with the selfsame reason be heard on the gaining of any right *in rem* for any preceding period in regard of the properties mentioned in the Paragraphs above.

Second

The Disposition by Judicial Persons

Article (51)

In reference of the relevant Laws and Regulations, the Palestinian companies and associations which are registered at the official competent authorities, and the members on which are Palestinians, may possess and dispose of land.

Article (52)

In reference of the relevant Laws and Regulations, the Palestinian companies, association, charitable institutions and religious bodies, which are registered at the official competent authorities, may within cities and villages possess and dispose of land, which they need to the extent necessary for their functions.

Article (53)

Upon permission by the Council of Ministers, any foreign company, charitable association or religious body, which is registered in Palestine, may within cities and villages possess and dispose of immovable properties, which they need to the extent necessary for their functions.

Article (54)

Not a local or foreign charitable association, religious body, company or institution may possess or dispose, by means of sale, purchase, bequeath, gift, *hikr* [ground rent], establishment of *Waqf* trustees, or long-term lease or in any other manner whether direct or indirect, of any immovable properties that are located within the walls of the Old City of Jerusalem or its zoning area except by a decision from the Council of Ministers. Any action to the contrary shall be null and void.

Article (55)

1. In reference of the provisions under the Article above, any company, that is registered in Palestine and amongst the goals of the incorporation of which is to purchase land for the construction of individual or commercial residential buildings, may possess and dispose, by permission from the Council of Ministers, of the land which it needs within the zoning boundaries of cities and villages to the extent necessary for the construction of such buildings.
2. It [the aforesaid company] shall also have the right to sell and lease the land in accordance with the conditions put forward by the Council of Ministers.

Article (56)

1. Each local or foreign company, charitable association or religious body that possesses, under the provisions of this Chapter, immovable properties shall be deemed to be subject to the Laws and Regulations in force in Palestine.
2. The Palestinian courts shall have the jurisdiction as to adjudicate the actions and disputes which arise between such entities and the Palestinian government or any natural or judicial persons in respect of the immovable properties which have devolved to them.

Article (57)

1. The Authority shall keep an adequate register that states the descriptions and goals of the charitable associations, religious bodies, companies and institutions, whether they are Palestinian or foreign, as well as the amount of the immovable properties which they own or dispose of.
2. The Council of Ministers shall establish an ad hoc committee comprising the concerned Ministers and Head of the Authority so as to take decisions in relation to the provisions under this Chapter as well as to scrutinise the register mentioned in the Paragraph above with the intention to confirm that the immovable properties owned or disposed of by such associations, bodies, companies and institutions does not exceed the extent necessary for their activities.
3. In the event the aforesaid committee finds that any association, body, company or institution has possessed or disposed of immovable properties to an extent that exceeds it needs for its activities, it shall have the right – after it warns it in writing of the necessity to rectify its positions within one month from the date of notice – to decide to sell the surplus of such properties in the public auction and redeem their price following the deduction of the expenses of the sale and other expenses to the entitled persons in such relevant association, company or institution as the occasion may require.
4. Not an association, body, company or institution mentioned above may take part in the public auction for the purchasing of such properties.

Chapter VII**The Leasing and Selling of Immovable Properties to Foreigners****Article (58)**

1. Not a foreign person may rent an immovable property in Palestine for a period of more than three consecutive years unless he obtains permission thereof from the Council of Ministers and upon recommendation from the Head of the Authority.
2. It shall be stipulated that issuance of the permission after the lease enters into force and prior to its expiration shall be deemed to be a modification thereof unless a judgement has been entered by a competent court as to annul or revoke the contract.

Article (59)

Not a foreign person may own immovable properties in Palestine except upon the approval of the Council of Ministers and upon a recommendation from the Head of the Authority in line with the following circumstances:

1. In the land which is located within the areas of municipalities or the zoning areas belonging to the local bodies and to the extent sufficient to his residence and management of his functions.
2. In the agricultural land which he used to dispose of or the title and disposition of which were transferred to him prior to the date of the enforcement of this Law.

Article (60)

Each foreign person, to whom immovable properties devolved by way of inheritance, shall be entitled to register them in his name without being obliged to obtain permission from the Council of Ministers. He shall also be entitled to dispose of them through all types of real and legal disposition in conformity with the provisions of the Law.

Article (61)

Each person who is of a foreign nationality and descends from Arab Palestinian ancestry shall be entitled to possess immovable properties in Palestine following the obtaining of approval from the Council of Ministers upon a recommendation from the Authority.

Article (62)

Subject to the Law Concerning the Promotion of Investment and the principle on reciprocal treatment, any person who holds the nationality of an Arab State shall be entitled to possess immovable properties in Palestine outside the borders of municipalities and local bodies to the extent necessary as to establish thereon any economic or investment enterprise after the obtaining of approval from the Council of Ministers and upon a recommendation from the Authority.

Article (63)

Subject to the principle of reciprocal treatment, the Council of Ministers shall be entitled to allow the representatives of foreign States and international organisations to possess under their functional capacities immovable properties in Palestine for the purpose of constructing offices and houses of residence for them.

Chapter VIII

The Placement of Immovable Properties as Securities

Article (64)

Security mortgage shall be a contract, in accordance with which the creditor shall have a right *in rem* in an immovable property that is allocated for the satisfaction of his debt and in pursuance of which he shall have priority over the ordinary creditors and the subsequent creditors as to redeem his right from the price of such property, regardless of who the possessor of it is.

Article (65)

1. The security mortgage shall not take effect unless it is registered at the Department of Land Registration.
2. The expenses of the registration of the mortgage contract shall be borne by the mortgagor unless agreed otherwise.

Article (66)

The mortgagee debtor shall be a natural person. In the event it is a judicial person, it must be authorized to exercise such an activity in Palestine in conformity with the Law.

Article (67)

1. The mortgagor may be the debtor himself. In addition, he may be another person who presents a mortgage on his behalf.
2. In all cases, the mortgagor shall be the owner of the immovable property as well as be eligible to dispose of it.

Article (68)

The mortgaged property must be valid as to be traded and sold in the public auction. It must also be specified. In addition, such specification must be provided under the contract of mortgage.

Article (69)

The mortgage of the immovable property shall entail the land, easement rights, the properties in particular, and the structures which incur benefit to the owner, as well as the fruits and revenue yielded by the immovable property for the period ensuing the notice regarding the selling of the mortgaged property in the public auction.

Article (70)

1. The mortgagee, in whose interest a mortgage is placed as security for debt, shall be entitled to satisfy his debt upon the maturity of the date of the debt.
2. In the event the debtor does not repay [the debt] in accordance with the legally prescribed periods that are provided under the Law of Execution as well as under the relevant laws, the mortgagee creditor shall be entitled to initiate the procedures of the selling of the mortgaged property.
3. The Department of Execution shall be responsible for the procedures mentioned in the Paragraphs above in pursuance of the legally prescribed provisions.

Article (71)

The security mortgage contract shall be deemed to be a writ of execution. The Judge of Execution shall issue forth a decision on the selling of the mortgaged property in reliance on the contract and in conformity with the Law without need to obtain a judgement from the court thereon.

Article (72)

The person possessing the mortgaged immovable property may remove the mortgage therefrom by satisfaction of the debt or by abandonment of the mortgaged property.

Article (73)

The contract of mortgage shall not take effect with respect to a third party unless the contract or the provision establishing that the immovable properties are placed as a security for debt is registered.

Article (74)

The assignment of the security mortgage, replacement of the creditor or abandonment of his capacity as such shall not take effect with respect to a third party unless such transactions are registered on the Land Register.

Article (75)

1. The security mortgage shall expire:
 - A) By expiration of the secured debt.
 - B) By removing of the mortgage from the mortgaged property by the possessor.
 - C) By expiration of debt associated with the mortgage by the prescription of time.
 - D) By relinquishment of the mortgage by the mortgagee creditor.

- E) By selling of the mortgaged property in the public auction in accordance with the provisions of the Law of Execution and relevant laws.
 - F) By transference of the title of the mortgaged property to the mortgagee.
 - G) By damage of the property under mortgage. In this case, reference shall be made to provisions under the respective laws.
2. In all cases, expiration of the security mortgage shall take place under an official paper to be drawn up at the Department of Registration or under a final judgement from the competent court.
 3. The mortgage shall not expire by the death of either the mortgagor or the mortgagee and shall remain existent for the heirs.

Article (76)

1. The parties to the mortgage contract may agree to the transfer of the possession of the mortgaged immovable property to the mortgagee creditor.
2. Such an agreement shall not take effect in respect of a third party unless it is registered at the Department of Registration.

Article (77)

The creditor who mortgages the immovable property under a possessory mortgage may lease or commodate it to the mortgagor debtor. However, this shall not preclude that such a contract takes effect in respect of a third party, provided that it is registered at the Department of Registration.

Article (78)

The maintenance of the immovable property which is placed under a possessory mortgage, expenses associated with its preservation, and the annual taxes or costs accruing thereon shall be met by the mortgagee creditor, unless an agreement provides otherwise.

Article (79)

1. The lessee of the immovable properties, in the event he has registered the contract of lease at the Department of Registration, may mortgage his right under the contract of lease if it entails a condition that allows him to do so.
2. The mortgage shall not be applicable to others unless it is registered at the Department of Registration.

Chapter IX

Conclusive Provisions

Article (80)

1. An authority to be named the Palestine Land Authority shall be established. It shall enjoy an independent judicial character, have its own special budget, and be affiliated with the Council of Ministers.
2. The Head of the Authority shall be appointed by a decision from the Council of Ministers.
3. The tasks and powers of the Authority as well as its formation shall be defined in accordance with a Law.

Article (81)

A Law for the regulation of the settlement and registration of land shall be promulgated. It shall state the procedures to be followed as well as the competent bodies and commissions and their powers.

Article (82)

The rules under the Civil Law and provisions under the Law of Civil and Commercial Procedure, the Law of Evidence and Law of Execution shall be applicable to all that is not governed by a special provision under this Law.

Article (83)

The Council of Ministers shall issue forth the bylaws and decisions necessary for the enforcement of the provisions of this Law.

Article (84)

Each provision that contradicts the provisions of this Law shall be repealed.

Article (85)

All competent authorities, each one within its sphere of jurisdiction, shall implement the provisions of this Law, which shall enter into force as of the date of its publication in the Official Gazette.

**Promulgated in the city of Ramallah on / / , *Anno Domini*
Corresponding to / / , *Anno Hegira***

**Mahmoud Abbas
Chairman of the Executive Committee of the Palestine Liberation Organisation
President of the Palestinian National Authority**

2. Draft PLA Order (Arabic)

Explanatory Note on the Administrative Development of the Palestinian Land Authority

In cooperation with the Palestinian Land Authority (PLA), the Ministry of Planning (MoP) is implementing the Land Administration Project (LAP), with the aim to developing land administration related policies in Palestine, as well as a National Land Policy Framework for a legal and institutional system and to complete the process of land settlement to facilitate the issuance of title records and support creating a formal real estate market through the proper recording of transactions. The aim is also to manage and adopt and implement transparent procedures for the allocation of public land in a to achieve social, economic and political sustainability. **For these reasons, this Explanatory Note has been developed following the meeting of the Ministerial Committee on Land Policy on 4 October 2007 where it was decided to task MoP with the responsibility to provide support to the LAP team of consultants to develop this Explanatory Note** in line with the Palestinian Administrative Reform Plan, which was set as priority on the agenda of successive Palestinian governments.

1. General Overview on PLA

The Presidential Decree No. (10) of 2002 was issued on 5 June 2002 for the establishment of the Palestinian Land Authority as an autonomous independent body. This Decree gives PLA an independent legal personality and capacity to implement functions and duties as well as achieve its aims for which it is established. According to the Decree, PLA enjoys administrative and financial independence and is affiliated with the Council of Ministers.

This Presidential Decree presented a new approach designed to consolidate land-related functions which were previously assigned to various official bodies. As a result, the Decree unified land registration (which was carried out by the Ministry of Justice) and land survey (which was implemented by the Ministry of Housing) under one authority the PLA.

The Presidential Decree aimed to establish an independent land authority responsible before the Council of Ministers and as opposed to being associated with various ministries to preserve and protect land titles by formal registration of land. Additionally, the assignment of land survey to the PLA has exerted a positive effect by fulfilling and facilitating public interests. Pursuant to this Decree, the PLA was vested with the power to manage state-owned land in cooperation with the Ministries of Public Works and Housing and Local Government. However, the PLA will be the official body responsible for the registration and surveying of public land. Although these were steps in the right direction, the PLA, nonetheless, it will need the support of several other public bodies in order to carry out its functions. In fact, PLA is at the initial first steps of institution operational development. Below is a list of issues/areas that shape its activities, which continue to require additional improvement to best complement PLA future duties:

- A. **Legal framework:** Several laws in force in the West Bank and Gaza Strip are available. However, these laws need to be consolidated and developed. In cooperation with other official authorities, PLA developed a comprehensive draft land law, whose review was suspended by the Palestinian Legislative Council until the completion of the National Land Policy which will embody an improved set of land-related laws.
- B. **Organisational structure:** The Presidential Decree did not address details of PLA organisational structure nor define its tasks, powers and functions. Hence, these issues need to be addressed in a more precise and comprehensive manner. This Explanatory Note elaborates the issues related to institutional development of the PLA.
- C. **Financial resources:** The Presidential Decree did not address the issue of the PLA financial resources in details. Instead, it referred to the financial independence of the PLA. This issue must be examined in detail in order to propose effective proposals that ensure PLA continued efficient operation. Therefore, this explanatory note addresses PLA financial resources in detail.

- D. **Human resources:** Relevant provisions under the Decree are vague, thereby necessitating more detail. In effect, the PLA lacks sufficient human resources and skills due to short financial resources or lack of modern equipment. It also lacks well developed system of organizational structure.
- E. **Registration/Survey/Public Land Registration Departments:** The Presidential Decree is vague on these functions. Thus, detailed functions were necessary to enable PLA to efficiently carry out its tasks, including management, allocation and leasing of public land, in addition to other related issues. Furthermore, land registration, survey and settlement processes (especially in the West Bank) are affected by the current political situation. Therefore, effective mechanisms for developing national policies should be in place, thereby ensuring smooth management of private and public land.

Against this background, PLA needs more support to bridge gaps in the areas mentioned above and further develop its functions and policies. On the other end, interrelated powers amongst official authorities responsible for public land management should be examined. Of these are the President's Office; Council of Ministers; and the following Ministries: Planning, Public Works and Housing, Local Government, Finance, Justice and Environment Quality Authority.

2. Proposal on the Administrative Development of the PLA

In light of the foregoing background, and due to the special nature of the land sector and to achieve the objectives of the PLA within the scope of an effective and efficient administration, a prospective view that aims at the administrative development of the PLA should be considered. In seeking to achieve public interest; avoid and prevent overlapping duties and powers, and to face internal and external challenges, it become an utmost priority to adopt the appropriate policies to develop the PLA's organisational structure based on clear and transparent systems that achieve effectiveness and allow the PLA to carry out its functions efficiently and allow it to maintain financial independence as proposed below.

A. Proposed PLA organisation structure for the PLA

The proposed organizational structure consists of the following:

1. Board of Directors.
2. Chief Executive Director (PLA Chairman).
3. Specialised/technical general departments (registration, survey, public land registration).
4. General department of administrative and financial affairs.
5. General department of legal affairs.
6. General department of information technology and electronic archive.
7. Units assisting the Chief Executive Director.

B. Membership on the Board of Directors

PLA shall be delegated to form a board of at least 7 members as outlined below. The Chief Executive Director shall attend the Board meetings as a secretary, but does not have a right to vote.

1. Minister of Finance / as a chairman of the Board by default;
2. Minister of Justice;
3. Minister of Planning;
4. Minister of Public Works and Housing;
5. Minister of Local Government;
6. Minister of Islamic Waqf; and,
7. A representative of the Private Sector.

C. Powers of the Board of Directors

It is proposed that the Board of Directors be vested with the following powers and tasks:

1. Develop and approve land management policies in general and private land in specific.
2. Develop and approve mechanisms to implement PLA policies.
3. Develop and approve PLA regulations in general and bylaw of the Land Board in particular.
4. Approve recommendations of the Public Land Technical Secretariat (PLTS) in regard of disposition of public Land, the decision will final following the fulfilment of the legal requirements for publication of the legal notice.
5. Develop and approve PLA work methods.
6. Develop and approve rules of monitoring, evaluation, inspection and internal audit at the PLA.
7. Appoint and dismiss the Chief Executive Director as well as nominate one, through the Chairman of the Council of Ministers, to the President for approval.
8. Approve the annual budget.
9. Approve the payroll prepared by the Chief Executive Director.
10. Establish specialised technical committees, including but not limited to the Public Land Technical Secretariat.
11. Approve PLA development plan and organisational structure.
12. Approve PLA table of fees.
13. Conclude contracts and agreements as well as accept subsidies and donations given to the PLA.
14. In addition to those powers provided under the law, assign further tasks to the Chief Executive Director according to Paragraph (D) below.
15. Submit reports and recommendations to the Chairman of the Council of Ministers for approval.
16. Examine and approve annual executive administrative reports on PLA functions.
17. Regulate and supervise PLA activities.
18. Follow up on developing PLA functions with the executive authorities to ensure smooth operation.

In addition to the above-mentioned, the Board shall have the right to invite various other persons to discuss different related land issues. The invitees shall enjoy not right to vote.

D. Board Meetings

The Board of Directors shall convene in a first constituent meeting to be followed by other meetings as outlined below. The first constituent meeting shall approve regulatory rules for the Board meetings, provided that the quorum in this first meeting constitutes two thirds (⅔) of the Board members.

Meetings, including the first one, shall convene in the following manner:

1. The Board shall convene for at least six (6) meetings a year.
2. The six meetings shall be held regularly once every two months.
3. The Board may hold irregular meetings in cases decided by the Board Chairman or upon request of at least one third (⅓) of the Board members.

4. Regular and irregular meetings shall be held upon a call from the Board Chairman or his representative, provided that invitations are sent by two weeks prior to the date of the assigned meeting. Meeting agenda shall be sent, along with the invitations, to all Board members.
5. Each member on the Board shall be entitled to one vote, with the exception of the Chief Executive Director who does not have the right to vote.
6. The quorum of the Board meeting shall take place with the attendance of an absolute majority of two thirds ($\frac{2}{3}$) of the Board members. When the quorum is not met in a meeting, the meeting shall be adjourned for a period of 15 days. The next meeting shall convene with the quorum of a simple majority of (51%).
7. In the event the quorum is not complete in 2 consecutive meetings, the Board Chairman shall report to the Council of Ministers so as to call for an obligatory, official meeting.
8. In all meetings, voting shall be based on the simple majority (51%) of present members except for decisions pertinent to public land, whereby an absolute majority of two thirds ($\frac{2}{3}$) of the Board members shall be required.
9. Proxy voting shall not be permitted in the Board meetings.
10. Board meetings shall be closed, unless the Board decides otherwise.
11. Official minutes shall be recorded for every regular and irregular meeting as well as signed by the Board Chairman and the Secretary.

E. Chief Executive Director's Powers

Main tasks of the Chief Executive Director include, but are not limited to, the following:

1. Follow up on day to day running of the PLA.
2. Prepare the annual work plan and submit it along with the annual budget to the Board of Directors for approval.
3. Appoint staff members with work contracts in conformity with the operative Labour Law.
4. Recommend that the Board Secretary attend the Board meetings without having a right to vote.
5. Fully prepare for the Board meetings as well as ensure taking minutes of meetings.
6. Nominate functionaries of the higher category working at the PLA to the Board of Directors for approval, provided that the term of service is 4 renewable years.
7. Develop the payroll and submit it to the Board of Directors for approval.
8. Submit a by-monthly income financial report to the Board of Directors.

3. PLA Financial Resources

It is proposed that PLA is to enjoy financial independence by adopting the self-finance structure.. PLA financial resources shall consist of the following:

1. Collected fees.
2. Amounts appropriated by the Government to the PLA to cover any shortage or deficit in revenues.
3. Revenues for extra services rendered for the public.
4. Subsidies, donations, grants and gifts obtained upon approval of the Council of Ministers.
5. Any other resources approved by the PLA Board of Directors.

6. Any surplus revenues at the PLA shall be transferred to the Public Treasury, however revenues collected from leasing or investing in state land shall be transferred to the State Treasury.

4. PLA Staff Members

Labor regulations and payroll systems will be established for PLA staff members thereby preserving and protecting existing acquired rights.

5. Public Land Technical Secretariat

PLTS shall be one of the major committees to be established by the PLA Board of Directors to be capable of exercising its tasks in the most effective manner. PLTS shall implement public land policies set forth by the Board of Directors. It is proposed that PLTS be composed of seven (7) permanent members. The PLTS Rapporteur may invite experts, technicians and specialists to attend PLTS meetings whenever needed.

A. PLTS Formation

PLTS membership will consist of the following:

1. Ministry of Planning (PLTS Rapporteur);
2. Land Authority (PLTS Secretariat);
3. Ministry of Local Government;
4. Ministry of Finance;
5. Ministry of Tourism and Antiquities;
6. Ministry of Justice; and,
7. Environment Quality Authority.

B. PLTS Tasks

PLTS shall be vested with the following functions and duties:

1. Coordinate with various ministries, institutions, public land custodians and local authorities on the mandate for the trustee in this regard.
2. Supervise the public land inventory action plan and collect and document information related to the location, status and current use of public land.
3. Assess requests for disposal of public land and provide the Land Board with clear recommendations for approval.
4. Provide recommendations to the PLA Board over classification of state land as well as on state land reclassification.
5. Decide and review public land use and public land management plan and cooperate with custodian departments.

تقوم وزارة التخطيط بالتعاون مع سلطة الأراضي الفلسطينية بتنفيذ مشروع إدارة الأراضي الذي يهدف إلى إجراء الإصلاحات على قطاع إدارة الأراضي وبلورة سياسات وطنية للأراضي وإدخال التغييرات القانونية والمؤسسية اللازمة لإتمام الاجراءات الفعالة لإصدار سندات قيد تثبت حقوق الملكية وتسجيل الصفقات العقارية بالإضافة إلى إدارة وتنفيذ العمليات الخاصة بتخصيص الأراضي العامة على نحو يتميز بالشفافية وذلك من أجل تحقيق التنمية المستدامة في جميع المجالات الاجتماعية والاقتصادية والسياسية. ومن هنا جاء إعداد هذه المذكرة على خلفية اجتماع اللجنة الوزارية لسياسة الأراضي في اجتماعها المنعقد بتاريخ 2007/10/4 والتي أقرت تكليف وزارة التخطيط بمساعدة الفريق الاستشاري لمشروع إدارة الأراضي لإعداد هذه المذكرة تماشياً مع خطة الإصلاح الإداري الفلسطينية والتي وضعت ضمن أولويات الحكومات الفلسطينية المتعاقبة.

1. خلفية عامة عن سلطة الأراضي الفلسطينية

صدر المرسوم الرئاسي رقم (10) لسنة 2002 بتاريخ 2002/6/5، والخاص بإنشاء سلطة الأراضي الفلسطينية والذي منحها الشخصية الاعتبارية المستقلة والأهلية القانونية لمباشرة الأعمال والتصرفات الكفيلة بتحقيق الأغراض التي قامت من أجلها، وبموجب هذا المرسوم تمتعت سلطة الأراضي بالاستقلالية الإدارية والمالية وتم إتباعها بمجلس الوزراء.

إن ما جاء به المرسوم كان نهجاً جديداً من حيث توحيد المهام المتعلقة بالأراضي والتي كانت منطقتين بجهات رسمية متعددة وعليه كان من نتاج التوحيد أن ضم تحت سقف واحد تمثل بسلطة الأراضي كل من دائرة تسجيل الأراضي والتي كانت تابعة لوزارة العدل ودائرة المساحة والتي بدورها كانت تابعة لوزارة الإسكان.

تمثل الهدف الرئيسي لإصدار المرسوم إنشاء سلطة أراضي تابعة لمجلس الوزراء وليس لوزارات محددة وذلك للمحافظة على حقوق الملكية في الأراضي وصونها من حيث التسجيل، أضف إلى ذلك أن أتباع مهام المساحة لسلطة الأراضي كان له أثر إيجابي على حسن تحقيق مصالح الجمهور وتسهيلها. كما كلفت بمهمة تنسيق التصرف بأراضي الدولة بالتعاون مع وزارتي الأشغال العامة والإسكان والحكم المحلي، وبالتالي أوجدت جهة رسمية هي سلطة الأراضي تعنى بالتسجيل والمساحة وتسجيل الأراضي العامة. ورغم هذه الخطوط الأساسية الصائبة، إلا أن سلطة الأراضي ما زالت بحاجة إلى دعم من جوانب عدة لتتمكن من إنجاز المهام الموكلة إليها إذ أنها ما زالت في بداية عملها المؤسسي. وعليه أدناه بعض الجوانب التي ما زالت قيد الانجاز والتي تحتاج إلى تطوير لاستكمال مهام سلطة الأراضي بالشكل المطلوب.

أ. **الإطار القانوني:** يوجد العديد من القوانين السارية في كل من الضفة الغربية وقطاع غزة، إلا أنها بحاجة إلى دمج وتطوير، وقد قامت سلطة الأراضي بالتعاون مع جهات رسمية بإعداد مسودة لمشروع قانون أراضي شامل والذي جمد في المجلس التشريعي لحين الانتهاء من إعداد السياسات الوطنية للأراضي وعكسها في مسودة جديدة للقانون.

ب. **الهيكلية الإدارية:** لم يتناول المرسوم الرئاسي تفاصيل هيكلية سلطة الأراضي من الناحية الإدارية ولم يحدد مهامها وصلاحياتها وإدارتها وبالتالي ما زالت الحاجة قائمة لتناول هذا الجانب بدقة وشمولية، ومن هذا المنطلق سنتعرض هذه المذكرة لموضوع التطوير الإداري بشيء من التفصيل.

ت. **الموارد المالية:** لم يتناول المرسوم هذا الموضوع بالتفصيل واكتفى بالإشارة إلى الاستقلال المالي لسلطة الأراضي، وبالتالي هناك ضرورة لتناول هذا الجانب ببعض التفصيل للخروج بمقترحات فعالة تفي بضمان استمرارية عمل سلطة الأراضي على أنجع السبل، وعليه سنتناول هذه المذكرة هذا الموضوع بشيء من التفصيل.

ث. **الموارد البشرية:** جاء نص المرسوم مبهم في هذا السياق، وعليه فأنه من الضروري الخوض فيه خصوصاً أن سلطة الأراضي تعاني من شح في الموارد البشرية وعدم كفاية المهارات نظراً لعدم توفر الموارد المالية والأجهزة الحديثة وغياب الهيكلية التنظيمية الواضحة لإدارتها.

ج. **دوائر التسجيل/المساحة/تسجيل الأراضي العامة:** جاء نطاق المرسوم مبهماً بخصوص مهام هذه الدوائر، إلا أن التفصيل كان ضرورياً لتمكين سلطة الأراضي من إنجاز مهامها بشكل فعال وبالأخص حول مسائل إدارة الأراضي العامة وتخصيصها وتأجيرها وغير ذلك من المسائل ذات العلاقة أضف إلى ذلك أن تسجيل موضوع مسح وتسجيل وتسوية الأراضي (بالضفة الغربية على وجه الخصوص) مرتبطاً بالوضع السياسي الراهن، وعليه لا بد من إيجاد آليات فعالة تعنى برسم السياسات الوطنية التي تكفل حسن إدارة الأراضي بشقيها المملوكة ملكية خاصة أو الأراضي العامة.

في ضوء ما تقدم، تحتاج سلطة الأراضي مزيداً من الدعم لملئ الفراغ في الجوانب المذكورة، كما وأنها تحتاج إلى زيادة في بلورة وتطوير السياسات الخاصة بها، أضف إلى ذلك أنه كان لا بد من دراسة موضوع تداخل الصلاحيات بين الجهات الرسمية لإدارة الأراضي العامة ومنها مؤسسة الرئاسة ومجلس الوزراء والوزارات التالية: التخطيط، الأشغال العامة والإسكان، الحكم المحلي، المالية، العدل وسلطة البيئة.

2. المقترح لتطوير سلطة الأراضي الإداري

في ضوء الخلفية الموضحة أعلاه ونظراً لخصوصية قطاع الأراضي ولتحقيق غايات ومهام سلطة الأراضي في ظل إدارة ناجعة وفعالة، كان لا بد من الوقوف على إعداد نظرة مستقبلية تهدف للتطوير الإداري لسلطة الأراضي. وتحقيقاً للمصلحة العامة وتفادي الوقوع في تضارب المهام والصلاحيات ودرئها لمواجهة التحديات الداخلية والخارجية، فكان من أولى المسائل هي بلورة سياسات خاصة بتطوير الهيكل التنظيمي لسلطة الأراضي مبني على الشفافية والنجاعة والفعالية في الأداء بالإضافة إلى الاستقلالية المالية كما هو مقترح أدناه.

أ. الهيكل التنظيمي المقترح لسلطة الأراضي

يتكون الهيكل التنظيمي المقترح مما يلي:

1. مجلس الإدارة.
2. الرئيس التنفيذي (رئيس سلطة الأراضي).
3. الإدارات العامة المتخصصة/الفنية (التسجيل، المساحة، تسجيل الأراضي العامة).
4. الإدارة العامة للشؤون الإدارية والمالية.
5. الإدارة العامة للشؤون القانونية.
6. الإدارة العامة لتكنولوجيا المعلومات والأرشيف الإلكتروني.
7. الوحدات المساندة للرئيس التنفيذي.

ب. عضوية مجلس الإدارة

يتألف مجلس إدارة سلطة الأراضي من (7) أعضاء على الأقل على النحو المبين أدناه، بالإضافة إلى الرئيس التنفيذي لسلطة الأراضي الذي يحضر اجتماعات مجلس الإدارة بصفة أمين السر ولا يتمتع بحق التصويت.

1. وزير المالية /رئيساً للمجلس(حكماً).
2. وزير العدل.
3. وزير التخطيط.
4. وزير الأشغال العامة والإسكان.
5. وزير الحكم المحلي.
6. وزير الأوقاف.
7. ممثلاً عن القطاع الخاص.

ج. صلاحيات مجلس الإدارة

من المقترح أن يمارس مجلس الإدارة الصلاحيات والمهام التالية:

1. رسم واعتماد سياسات إدارة الأراضي بشكل عام والأراضي الخاصة بشكل خاص.
2. اعتماد وإقرار آليات تنفيذ سياسات سلطة الأراضي.
3. اعتماد وإقرار أنظمة سلطة الأراضي بشكل عام والنظام الداخلي لمجلس الأراضي بشكل خاص.

4. المصادقة على توصيات اللجنة الفنية العليا لتنسيق شؤون الأراضي العامة بخصوص التصرف بالأراضي العامة، ويكون قرار المجلس نهائياً بهذا الخصوص بعد استيفاء اجراءات النشر بموجب أحكام القانون.
 5. اعتماد وإقرار أنظمة العمل لسلطة الأراضي.
 6. اعتماد وإقرار قواعد الرقابة والتفتيش والتدقيق الداخلي لدى سلطة الأراضي.
 7. تعيين وإقالة الرئيس التنفيذي ورفع التوصية بذلك من خلال رئاسة الوزراء الى رئيس السلطة الوطنية للمصادقة عليه.
 8. المصادقة على الميزانية السنوية.
 9. اعتماد سلم الرواتب المعد من قبل الرئيس التنفيذي.
 10. تشكيل اللجان الفنية المختصة ومنها، على سبيل المثال لا الحصر، اللجنة الفنية العليا لتنسيق شؤون الأراضي العامة.
 11. اعتماد الخطة التطويرية والهيكل التنظيمي لسلطة الأراضي.
 12. اعتماد جدول الرسوم لسلطة الأراضي.
 13. إبرام العقود والاتفاقيات وقبول الإعانات والهبات التي تقدم لسلطة الأراضي.
 14. تكليف الرئيس التنفيذي مهاماً جديدة إضافة إلى الصلاحيات المنصوص عليها في القانون وفق ما تم وصفه أدناه (الفقرة د).
 15. رفع التقارير والتوصيات لرئاسة الوزراء للمصادقة عليها.
 16. تدقيق واعتماد التقارير الإدارية التنفيذية السنوية بخصوص أعمال سلطة الأراضي.
 17. تنظيم نشاطات سلطة الأراضي والإشراف عليها.
 18. متابعة تطوير عمل سلطة الأراضي مع الجهات التنفيذية لضمان حسن سير العمل.
- أضف إلى ذلك أن لمجلس الإدارة الحق في دعوة شخصيات أخرى خارجية لمناقشة موضوعات محددة ولكن دون منحهم حق التصويت.

هـ . اجتماعات مجلس الإدارة

يكون لمجلس الإدارة اجتماع أول تأسيسي وتليه الاجتماعات الأخرى كما هو مبين أدناه. يعنى الاجتماع التأسيسي الأول باعتماد القواعد التنظيمية لاجتماعات المجلس على ان يكون النصاب في هذا الاجتماع الأول مكون من ثلثي (2/3) الأعضاء.

تكون الاجتماعات بما فيها الأول مقيدة بما يلي:

1. يعقد المجلس سنة (6) اجتماعات سنوية على الأقل.
2. تعقد الاجتماعات الست بشكل دوري مره كل شهرين.
3. يجوز للمجلس ان يعقد اجتماعات غير عادية في الأحوال التي يقرها رئيس المجلس أو بطلب ثلث (1/3) أعضاء المجلس على الأقل.
4. تعقد الاجتماعات العادية الدورية وغير العادية بدعوة من رئيس مجلس الإدارة أو من ينوبه، على ان ترسل الدعوات قبل أسبوعين من تاريخ انعقاد الاجتماع وترسل أجندة الاجتماع مع الدعوة لجميع الأعضاء.
5. يتمتع كل عضو من أعضاء المجلس بصوت واحد باستثناء الرئيس التنفيذي الذي لا يتمتع بحق التصويت.

6. ينعقد النصاب القانوني لاجتماعات مجلس الإدارة بحضور الأغلبية العظمى لثلثي (2/3) أعضاء المجلس، وعند عدم اكتمال النصاب في الاجتماع يؤجل الاجتماع لمدة 15 يوماً وينعقد الاجتماع التالي بنصاب الأغلبية البسيطة (51%).
7. إذا لم يكتمل النصاب لاجتماعيين متتاليين، يرفع رئيس الإدارة الأمر لمجلس الوزراء للدعوة إلى اجتماع رسمي إجباري.
8. يكون التصويت في جميع الاجتماعات بالأغلبية البسيطة (51%) للأعضاء الحضور باستثناء القرارات المتعلقة بالأراضي العامة، والتي يجب أن تأخذ بالأغلبية العظمى لثلثي (2/3) أعضاء مجلس الإدارة الحضور.
9. لا يجوز التصويت بالوكالة في اجتماعات المجلس.
10. تكون اجتماعات مجلس الإدارة مغلقة، ما لم يقرر المجلس خلاف ذلك.
11. تدون محاضر رسمية لكل اجتماع عادي أو غير عادي ويوقع عليه رئيس مجلس الإدارة وأمين السر.

د. صلاحيات الرئيس التنفيذي

تتمثل المهام الرئيسية للإدارة التنفيذية بما يلي وذلك على سبيل المثال لا الحصر:

1. متابعة الإدارة اليومية لسلطة الأراضي.
2. إعداد خطة العمل السنوية، وتقديمها مع الميزانية السنوية لمجلس الإدارة لإقرارها والمصادقة عليها.
3. تعيين الموظفين بعقود عمل وفق أحكام قانون العمل الساري.
4. توصي مهام أمانة السر للمجلس حضور اجتماعات مجلس الإدارة دون التمتع بحق التصويت.
5. الإعداد الكامل لاجتماعات مجلس الإدارة والتأكد من تدوين محاضر الاجتماعات.
6. ترشيح موظفي الفئة العليا العاملين في سلطة الأراضي لمجلس الإدارة لإقرارها، على أن تكون مدة الخدمة أربعة سنوات قابلة للتجديد.
7. إعداد سلم الرواتب ورفعها إلى مجلس الإدارة لاعتماده.
8. تقديم تقرير مالي بالإيرادات كل شهرين إلى مجلس الإدارة.

3. الموارد المالية لسلطة الأراضي

من المقترح أن تكون سلطة الأراضي مستقلة مالياً وتعتمد أساس التمويل الذاتي، وتتكون موارد سلطة الأراضي المالية مما يلي:

1. الرسوم التي تتقاضاها سلطة الأراضي.
2. المبالغ التي تخصصها الحكومة لسلطة الأراضي لتغطية أي نقص أو عجز في حساب الإيرادات.
3. العوائد التي تتقاضاها سلطة الأراضي لقاء خدمات إضافية تقدمها للجمهور.
4. المساعدات والتبرعات والمنح والهبات التي تحصل عليها بموافقة مجلس الوزراء.
5. أية موارد أخرى يتم اعتمادها من قبل مجلس إدارة سلطة الأراضي.
6. تؤول إلى الخزينة العامة أية فوائض لدى سلطة الأراضي تزيد عن حاجتها فيما تؤول إلى خزينة الدولة كافة العوائد المترتبة عن استئجار أو الاستثمار في أملاك الدولة.

4. موظفي سلطة الأراضي

سيتم العمل على إيجاد نظام وكادر خاص بموظفي سلطة الأراضي مع ضمان الحقوق المكتسبة لكافة الموظفين.

5. اللجنة الفنية العليا لتنسيق شؤون الأراضي العامة

تكون هذه اللجنة أحد اللجان الرئيسية التي يشكلها مجلس الإدارة ليتمكن من ممارسة مهامه على أنجع وجه، وتقوم هذه اللجنة بتنفيذ السياسات المقررة من مجلس الإدارة المتعلقة بإدارة الأراضي العامة، ومن المقترح ان تكون هذه اللجنة مشكلة من سبع أعضاء دائمين ويجوز لمقرر اللجنة ان يدعوا خبراء وفنيين ومختصين لحضور اجتماعات اللجنة حيثما يتطلب ذلك.

أ. تشكيل اللجنة

تكون عضوية اللجنة على النحو التالي:

1. وزارة التخطيط (مقرر اللجنة).
2. سلطة الأراضي (سكرتاريا اللجنة).
3. وزارة الحكم المحلي.
4. وزارة المالية.
5. وزارة السياحة والآثار.
6. وزارة العدل.
7. سلطة البيئة.

ب. مهام اللجنة

تتولى اللجنة الفنية العليا لتنسيق شؤون الأراضي العامة تنفيذ الوظائف والمهام التالية:

1. التنسيق مع مختلف الوزارات والمؤسسات والإدارات التي تقوم على حفظ وصون ورعاية الأراضي العامة والتعاون مع السلطات المحلية بهذا الجانب.
2. الإشراف على خطة العمل الخاصة بإنشاء كشف الأراضي العامة وجمع وتوثيق المعلومات المتعلقة بموقع هذه الأراضي ووضعها واستخداماتها الحالية.
3. دراسة الطلبات الخاصة بالتصرف في الأراضي العامة وتزويد مجلس الإدارة بتوصيات واضحة للمصادقة عليها.
4. تقديم التوصيات لمجلس الإدارة حول تصنيف أراضي الدولة وإعادة تصنيفها.
5. متابعة وتحديث الأسس الفنية المتعلقة باستخدام الأراضي العامة.

3. Draft Eminent Domain Law

Draft Eminent Domain Law of 200---

*Chairman of the Palestine Liberation Organization
Chairman of the Palestinian National Authority*

Having reviewed:

**Amended Basic Law of 2003
Eminent Domain for Public Projects Law No. (2) of 1953
And Land Law for Eminent Domain No. (24) of 1943
And Land Law for Eminent Domain No. (34) of 1946
And following promulgation by the Legislative Council**

We issued the following Law:

Part I

Section I

General Definitions

Article (1)

This Law shall be known as the Eminent Domain No. (___) of 200—

Article (2)

In this Law, the following terms and phrases have the meaning stated below unless provided otherwise:

Land: Immovable real property of private *mulk* land, including buildings, trees, or other things fixed on the land or beneficial use or any other tangible rights on or over the land.

Public Purpose: Includes any purpose of a public nature and services for the benefit of the general public and directed for their benefit.

Public Project: Any project that the Public Land Committee/Administration designates as a project for public purpose in compliance with the general government plan and relates to functions enumerated in Article (5) below.

Board of Directors: Board of Directors of the Land Authority established pursuant to the applicable Land Law.

Public Land Committee/Administration: The Committee/Administration established at the Land Authority pursuant to the applicable Land Law and responsible for public land management, planning and acquisition of *mulk* land for a Public purpose.

Local Government: The local government unit established pursuant to the applicable Local Government Law.

Eminent Domain: The expropriation of ownership, beneficial use, easement rights or any other tangible right which will include everything on and underneath the land and the airspace above the land unless otherwise agreed to between the owner and the state.

The Expropriator: The state or any of its public agencies or any corporation where the state owns shares and controls such a corporation or local government.

The Owner: The person who owns the land or enjoys beneficial use or has any other tangible right in the land.

Pathway: Any road, street, lane, passageway, alley, path including ditches, waterways, bridge, staircase, trenches, sewage pipes, pavements, road circles, islands (medians), lateral support walls, radius of the passage as stated in applicable regulations and open space attached to the passage.

Registration Department: The Registration Department corresponding to the location of the land which is subject to expropriation and falls within its jurisdiction.

The Land Court: The Land Court where the land subject to expropriation is located and is subject to its area of jurisdiction. The Court shall be constituted as a Court of First Instance established pursuant to the applicable law regarding the Law of Formation of Civil Courts.

Compensation Committee: The Committee is established at the Land Authority for the purpose of valuating the land subject to expropriation and to set the initial compensation. The committee consists of the Director of Land Registration Department, a representative of the expropriator, an expert in land valuation and the owner of the land or his representative.

Article (3)

Without derogating from the provisions of the Basic Law, no land shall be expropriated except for a Public Purpose Project serving public interest in accordance with the general government plan and where fair compensation will be provided pursuant to this Law.

Section II

General Public Purpose Areas

Article (4)

For the purposes of this Law, the following areas shall be identified as constituting a Public Purpose:

- a. Open new paths, widening of existing roads, related construction, sewage, parks and playground constructions, markets, public gardens and ponds.
- b. Establish places of worship, hospitals, medical centers, education facilities such as schools and universities, slaughter houses, orphanages, nursing homes, clubs and cultural centers and sports facilities. In general, facilities that are used for public purposes and for public benefit.
- c. Establish public and agricultural facilities, irrigation systems and drinking water projects, such as dams.
- d. Establish projects related to infrastructure like natural gas, power generation, electricity production, natural resources and industrial zones and related requirements.
- e. Establish public shelters, military trenches and passages, barracks and related public projects that may be required by national security and defense forces.
- f. Establish tourism and development sites and construction and projects related to development and investment plans.
- g. Establish public housing projects, which are authorized by the state or local government or housing associations established by the state.
- h. Establish public transportation networks, seaports, airports and railways.

- i. Establish police centers and public housing for the military or the employees of the security service and the families of martyrs.
- j. Establish all projects that fall within the scope of public projects that the state is responsible for under all applicable laws.

Part II

Section I

Article (5)

The state or any of its agencies or local government may agree with the owner to purchase the land or from any beneficial user without exercising Eminent Domain.

Expropriation Application

Article (6)

a. The expropriator must submit an expropriation application to the Public Land Committee/Administration stating that the main reasons for the expropriation is within the general government plan to expropriate a particular piece of land.

The application must be attached with the plans for the land to be expropriated, the intended date to expropriate and execute the project, the nature and type of the project and a preliminary estimate for the amount of compensation and financial resources designated for the expropriation.

Section II

Expropriation Decision

Article (7)

a. Once the Public Land Committee/Administration determines that the project services a Public Purpose and assesses the financial resources as stipulated in this Law, it shall make the following decisions, as may be required:

1. Absolute expropriation of the land;
2. Expropriate a beneficial use for a Public Purpose for a permanent duration or a specific period of time;
3. Impose any easement rights or beneficial use for a specific period of time;
4. Expropriate any tangible use related to the land.

b. The Public Land Committee/Administration must issue its decision within six months from the date of order issued by the expropriator otherwise the order shall be deemed null and void.

c. The decision of the Public Land Committee/Administration shall specify the particular expropriator, land specified for expropriation, nature of expropriation and its term; and the nature of the Public Purpose for which this specific land shall be used.

Article (8)

a. The decision of the Public Land Committee/Administration shall be published in two local newspapers and in the *Official Gazette*. It shall also be conspicuously affixed in a public place close to the land, such as the local government unit or the mosque. The decision shall also be notified to the owner of the land or the person who enjoys a beneficial use and notify such persons about the public notice mentioned in the previous paragraph by delivering the notice either by hand or by delivery to his known residential address or by sending it through registered mail or any other known address.

b. The publication of this notice shall be deemed conclusive evidence that the purpose for which the eminent domain is being exercised is for a Public Purpose in accordance with the general government plan.

c. The Registration Department at the Land Authority and the Ministry of Finance shall be duly notified of the decision of the Public Land Committee.

Article (9)

The Director of the designated Department shall place a note on the Register next to the land subject to expropriation as stated in the abovementioned decision, whereby the land is subject to expropriation and there should be no transactions or conveyance of the land, except with the approval of the expropriator. This precludes inheritance transactions.

a. The owner or the person enjoying a beneficial use may object to the Public Land Committee's decision within 60 days of its publication in the local newspaper or *Official Gazette*. The objection will be lodged with the Land Court. The objection must state that the order to expropriate does not further a Public Purpose or that the damages to be sustained shall exceed the benefits.

b. The Land court decisions must be issued within a maximum of six months from the date of the filing of the complaint. The decisions of the Land Court are final and not subject to further appeal.

Article (10)

The expropriated land should not be sold except under specific circumstances and special procedures.

Article (11)

a. If the land is expropriated for a Public Purpose and the use is so specified, it shall be registered as public land at the designated department and title shall be issued and a copy should be maintained by the Ministry of Finance.

b. If the land subject to expropriation is agricultural land prior to having been expropriated, and if the Public Purpose is no longer deemed a necessity and the land is still useful for agricultural use, the original owner or the person enjoying a beneficial use shall have a right of first refusal if he accepts the price set by the Expropriator.

Part III

Section I

Article (12)

a. Following the decision of the Public Land Committee/Administration, the Expropriator shall submit to the designated department at the Land Authority, the following:

1. Provide the designated department at the Land Authority with a copy of the Public Land Committee's/Administration decision and maps for the land mentioned in the decision.
2. A list of the names of the owners or beneficial users of the land to be expropriated and their known addresses.
3. If the land to be expropriated is not registered, the Expropriator must provide the Land Registry Department with the names of the persons occupying the land or those enjoying a beneficial use and their known addresses.

b. The Director of the designated Department shall place a note on the Register next to the land subject to expropriation stating that the land is subject to expropriation and may be precluded from any transaction or conveyance except with the approval of the expropriator. This precludes inheritance transactions.

c. The Public Land Authority delegates the responsibility for follow up to the Compensation Committee to examine the status of the land subject to expropriation.

This committee shall provide a valuation for the land to be expropriated in accordance with the provisions stipulated in this Law on valuation of the compensation. The compensation estimate shall be deemed a preliminary evaluation for assessment of the fair market value and final compensation.

Article (13)

a. In the event a claim arises regarding the ownership of the land to be expropriated, the owner of the land in whose name the land is registered at the Land Register shall be deemed to be the owner. In the event that that land was not registered, the person who is occupying the land on the date of publication of the decision of the Public Land Committee/Administration to confiscate shall be deemed owner for the purposes of confiscation. This shall not prejudice the right of another to challenge this ownership in a court of law in the future and in accordance with this law.

b. The Land Court shall adjudicate land ownership related claims subject to expedited procedures.

Article (14)

The Land owner and the Land Committee can agree that the compensation can be tangible.

a. The Compensation Committee shall inform the owner or the person enjoying a beneficial use the amount of compensation to be offered for the expropriated land.

b. The Compensation Committee and the owner shall negotiate the final compensation price. The agreed upon price between the parties shall be final once certified by the Public Land Committee/Administration.

c. If the parties do not agree on the final compensation price, the matter will be passed to the Land Court in order for an amount to be set in accordance with the stated provisions for compensation assessments mentioned in this law.

d. The Land Court decision could be appealed to the Supreme Court of Justice within 15 days of the issuance of the decision.

Article (15)

a. In the event that the holders of easement rights or tangible rights are not registered, the owner must provide a list of these names to the Expropriator within 30 days from the date of which the Expropriator has published the decision to expropriate.

b. The Expropriator undertakes to compensate the persons mentioned in the previous paragraph if these rights were acquired prior to the date of publication of the decision to expropriate as stipulated in Article (6) above.

Article (16)

a. The owner of the land shall be responsible to compensate the persons enjoying easement or tangible rights on the property being expropriated if he fails to inform the Expropriator of their identities in the time period specified in the previous Article.

b. The compensation that such persons receive is subject to the provisions of this Law.

Section II

Compensation Assessment

Article (17)

The following principles shall be considered by the Compensation Committee to determine the compensation of the land or beneficial use to be expropriated pursuant to this Law:

- a. The compensation for the land or easements or beneficial use including the buildings and other construction on the land shall be based on fair market value and compared to the value of surrounding properties of the same nature.
- b. The compensation shall be estimated on the value of the land at the time when the Public Land Committee/Administration publishes the decision in the two local newspapers.
- c. Compensation will not be provided for any improvement or additions made to the land after the publication notice as stated in Article () of this law.
- d. The estimation of the compensation shall not be affected by the increase or decrease of the land value that is caused by the expropriation of the land.
- e. The compensation for any reduction in value created by any easement right or imposed restrictions on the use of any right related to the ownership of the land.
- f. If the value of the remaining part of the expropriated land is decreased, then it should be taken into consideration when providing compensation to the land owner and the additional amount should not exceed under any circumstances half of the compensation value that the land owner is entitled to receive pursuant to this article.
- g. To compensate the owner or any person who uses the land for any material damage caused by the actions taken by the local government before or after the expropriation and for the purposes of expropriation.
- h. To compensate the owner or any person who has a right in the land for his transfer of expenditures and the expenditures incurred for transferring his assets from the expropriated land to his dwelling or work, unless if the owner or the person who has a right in the land offers to sell his assets or rights before the designated date stated in Article 11.
- i. Deduct amount of money for the benefit of any person who has a right on the land such as easement, lease, or any other tangible rights from the compensation provided to the owner of the land. This deducted amount will be evaluated if the right was entirely eliminated according to the nature and the duration of the right and the purpose that it was used for in accordance with the market price. If the right was partially eliminated, then the amount to be deducted will be valued according to the market price.
- j. To take into consideration any damages that may be caused by the action of the Expropriator before or after the expropriation for the purposes of expropriation or that will occur to any land or anything which exists or is settled upon it, outside the expropriated area or the area designated to be expropriated.
- k. It should not be taken into consideration if the land is suitable or adequate to be used for any private purpose when the person has not utilized the land for that private purpose.

Article (18)

- a. If the expropriated land is planted then the estimation will be based on the value of the land and the plants. The value of the plants will be estimated according to type, age and productivity by the Compensation Committee. A new member for this committee being an expert in agriculture should be elected.
- b. If the expropriated land is agricultural land whereby another farmer also has rights jointly or for reimbursement then the contract between the parties will be considered terminated in whole or in part according to the designated expropriation that is whether it is in part or whole. In this case, the Expropriator will pay 70% of the compensation for the owner of the land and 30% for the farmer who has the rights jointly for the reimbursement unless it was mentioned otherwise in the contract between the land owner and the farmer, or where the parties to the contract agreed otherwise.

Article (19)

- a. In accordance to the principles of estimating the compensation stated in Article (20), one or more of the following methods should be followed when estimating the compensation:

1. **The Cost:** Compare the cost of building new structures similar to the structures existing on the expropriated land with the description and the use according to the current structure costs at time of expropriation which were approved and published by the Registration Department and the difference will be settled by taking into consideration the age of the structure, its condition and its suitability for use.
 2. **Comparison:** To value the expropriated land by comparing it with the value of surrounding and similar land to the current market value after settling the differences between the estimated value of the surrounding land and the expropriated land.
 3. **Revenues:** To capitalize the expected revenues or the net amount of the land with the interest percentage for the time period of productivity remaining in regards to the land.
- b. The compensation report should be prepared according to the form certified with all necessary attached documents and data by the Board of Directors which shall include the following:
1. Detailed report which demonstrates the mechanism and the method of estimating the compensation.
 2. The data which supports the report such as a deed, land maps, land cadastre maps, photos of the land and statistics related to valuation and the amount of the final accounts.
 3. The Committee report stated in Article (14) of this law.
- c. To obtain fair compensation, the Land Court shall have the authority to supervise the Committee's report and to ensure undertakings pursuant to this Article when providing valuation for compensation.

Article (20)

- a. The grieving party or the Expropriator, in all circumstances can submit an application to the Land Court to value fair compensation.
- b. The Land Court shall have the authority to hear and decide all cases and claims by any person who asserts rights or beneficial use in the land deemed to be expropriated in accordance with this law.
- c. The Land Court will hear the abovementioned cases in an expedited manner.

Article (21)

- a. If the expropriation of part of the land prevents the use of the remaining land or the exploitation of the land or blocks light and air this area will be included in the expropriation decision and the Expropriator will possess all the land if the owner agrees and the valuation of the compensation will be in accordance to this principle.
- b. In this case, there is no need to have a new expropriation decision for this part of the land and the expropriator's decision will be approved in all cases.
- c. Attachment is conditional concerning the part mentioned in paragraph (a) that the owner doesn't have any other land attached or adjacent to the expropriated land where such attachment of the remaining part to the adjacent land will result in voiding the reason behind the expropriation mentioned in Article (b).

Section III

Refusal of paying the compensation

Article (22)

- a. An interest amount of __% will be added to the compensation that will be collected from the date mentioned in paragraph (b) of this article to the date of the payment or the deposit of the compensation. This period of time shall not exceed one year.

- b. The interest mentioned in paragraph (a) will be applied on the amount of the compensation due to the owner or to the person who has beneficial use, if the compensation was not paid within a month from the Land Court's final decision or from the agreed date or from the certification date of the agreement whereby these agreements require certification.
- c. If the period of one year mentioned in paragraph (a) expires, the owner of the land or a person who enjoys beneficial use has the right to submit an application to the Land Court to force the Expropriator to pay the compensation or to return the expropriated land. The application may include compensating the owner or the person who has a right on the land for damages caused by not paying the original compensation owed to him within the required time frame.
- d. Depositing the compensation within the period of time mentioned in paragraph (b) with the Treasury through the Land Authority in the name of the person who is entitled to receive the compensation (because no one requested the compensation or any other reason related to the owner) will be considered a full discharge for the Expropriator under the condition that the Expropriator should publish the amount of the deposit in two local daily newspapers if the person who is owed the compensation could not be notified, concerning the related deposit in conformity with the notification procedures mentioned in this law.
- e. The owner or the person who has beneficial use shall not have the right to receive the interest on the delay period if the delay in paying the compensation or depositing it with the Treasury is caused by the owner or the person who has beneficial use.

Article (23)

- a. If the head of the Land Authority finds a mistake in the calculations concerning the land plans or cadastral maps designated to be expropriated, he will provide a decision to correct the mistake and request that the expropriator pay compensation on the additional land in accordance to valuation for the compensation. Or the head of the Land Authority will request the compensated owner to return the additional payment he was compensated with and if the owner doesn't pay, then the additional payment will be collected according to the Public Funds Law.
- b. The compensation will not be paid to the owner if he does not provide the Expropriator with a certification of discharge which demonstrates that he paid all taxes, fees and expenses due for the expropriated land to the local government and the Ministry of Finance. If the owner does not provide this certification, then the taxes and fees will be deducted from the compensation owed to him after taking the approval from the appropriate entities for the amount due.

Part IV

Section 1

Evacuation of the Expropriated Land

Article (24)

- a. The owner or the person who has the beneficial use of the land should evacuate the expropriated land within 30 days from receiving the compensation or the date of the actual expropriation, whichever date is last in time. The Expropriator can confiscate a quarter amount of the compensation due to the owner until the owner evacuates the expropriated land.
- b. If the owner or the person who has the beneficial use does not evacuate the expropriated land, the Expropriator can obtain a decision from the Land Court to evacuate the owner or the person who has a beneficial use and the evacuation expenses shall be deducted from the total compensation amount.
- c. If the owner chooses to take away all or part of the movable and immovable property located on the expropriated land, such as remnants of the building or the uprooted trees, then these expenses will be deducted from the compensation amount and he shall remove such items from the land within the timeframe designated by the Expropriator. Otherwise, such items will be consequently removed from his expenses to any other land owned by the owner or to any other place that the

Expropriator finds to be appropriate and the removal expenses will be deducted from the compensation amount due accordingly.

Article (25)

- a. If the expropriated land is owned by a minor or incapacitated person or absentee or is comprised of Waqf land then there shall be no negotiation on the compensation amount between the Compensation Committee and the responsible or the acting party of the land. The Land Court will determine the compensation in accordance with the provisions stipulated in this law.
- b. The guardian or the custodian is not allowed to receive the compensation stated in Article (a) without the permission from the court.
- c. If the land is Waqf land the compensation should be paid to the Islamic Waqf Treasury. If the land is non-Islamic Waqf then the compensation shall be paid to the appropriate Waqf Authority.

Article (26)

- a. In accordance with paragraph (c) of this Article, the expropriator is allowed to abandon part or all of the land that was expropriated in accordance with this law and upon the decision of the Board of Directors. The previous owner or person who has a right in the expropriated land will have priority to have the land if he accepts the price evaluated in accordance with the market price and the price of the surrounding land of the same type.
- b. The expropriated land is considered abandoned if the cadastral map is amended and the expropriated land in part or in its entirety becomes futile or non-beneficial for the public purpose that the land was originally expropriated for.
- c. The expropriator is not allowed to abandon part or all the expropriated land if he occupied it and began exploiting it and used the land in such a way that had an affect on the condition of the land or on the abandoned part which caused substantial changes, unless the owner agreed on returning the land to him with its new condition upon an agreement with the expropriator.

Article (27)

If the expropriated land was an agricultural land prior to having been expropriated, and if the Public Purpose is no longer deemed a necessity and the land is still useful for agricultural use at the time of abandonment decision. The previous owner or person who has a right in the expropriated land will have priority to have the land if he accepts the price evaluated in accordance with the market price and the price of the surrounding land of the same type.

Part V

Section I

Open/Expanding Pathways

Article (28)

- a. It will be deemed expropriation when creating or widening any road in accordance to the original cadastral map or amended cadastral map that may have been approved according to the *Towns, Villages and Buildings (Planning) Provisional Law*.
- b. A copy of the cadastral map shall be sent to the designated Department to mark the land records that have been expropriated in accordance with Article (14).
- c. The procedures, valuation and payment of compensation for this type of expropriation will be in conformity with this law.
- d. The date of the final approval of the cadastral maps for this purpose will be the date of publication of the expropriation notice and the Cabinet of Ministers decision for expropriation.

Section II

General Provisions

Article (29)

In exception to procedures mentioned in Articles (11), (12), (15), (23), cases related to the expropriated land such as claims of revocation and retrieval, including all tangible rights claims should not stop the expropriation process or procedures and will not affect the expropriation decision. Prevailing parties in these cases are entitled to receive compensation.

Article (30)

a. In compliance with the Civil Law and the articles related to confiscation of immovable property as a guarantee for debt of this law or any other law, compensation should not be attached, if the land in question could not be legally seized.

b. In compliance with Article (27) of this law, if the compensation is for confiscated land or seized land as a guarantee for debt then the amount equal to the value of the confiscated and guaranteed sum must be deducted from the total compensation owed and deposited with the court. This amount should not be disbursed to any person or entity except with a court order.

Article (31)

a. After paying the compensation to the owner or the person who has beneficial use or it is deposited with the Treasury, the land should be registered under the state's name and the maps will be amended by a decision of the head of the Land Authority.

b. Without derogating from the provisions of this law, after registration of the expropriated land in the name of the state in the official records, the land will be a freehold from any rights or obligations owned by a 3rd party prior to the expropriation.

Article (32)

a. All cases stated in this law should be brought before the appropriate court in an expedited manner.

b. All Land Court decision can be appealed before the Supreme Court of Justice.

Article (33)

Board of Directors should issue regulations and instructions to implement this law.

Article (34)

a. The following laws, decrees, decisions shall be revoked:

1. Land Law (Eminent Domain) No. 24 of 1943
2. Land Law (Eminent Domain) (Amended) No. 64 of 1946
3. Land Law (Eminent Domain) (Amended) No. 34 of 1946
4. Land Law (Eminent Domain) (Amended) No. 47 of 1947
5. Eminent Domain Law No 2. of 1953
6. A Decree from the Legal Interpretation Bureau regarding the interpretation of (Eminent Domain Law No. 2 of 1953) No. 4 of 1963
7. Decree Order No. 346 regarding amending the Land Law (Eminent Domain) of 1943 (Amendment No.1)
8. Decree Order No. 335 regarding amending the Land Law (Eminent Domain) of 1943

- 9. Instructions for Publication in accordance with the Eminent Domain Law No.2 of 1953
 - 10. Decree Order regarding the Eminent Domain Law no. 321 of 1969
 - 11. Decree Order regarding the Eminent Domain Law no. 949 of 1981
- b. Any decrees, provisions, regulations or decisions and laws which conflict with this law shall be deemed null and void.

Article (35)

All relevant authorities should implement this law after three months from the publication date in the *Official Gazette*.

Issued in the city of

Date:200

Mahmoud Abbas, Abu Mazen
President of the Executive Committee of the PLO
President of the Palestinian National Authority



4. Draft Land Registration Law

Draft Land Registration Law

No () of 200—

The Chairman of the Palestine Liberation Organization

The President of the National Palestinian Authority

Having reviewed the following:

1. The Ottoman Land Law issued in the year 1274 Hijri
2. Law on Conveyances of Immovable Assets issued in the year 1331 Hijri
3. Law on the Settlement of Land Ownership Rights No. 9 of 1928
4. Law on the Division of Common Ownership of Immovable Assets issued in the year 1329 Hijri
5. Land Law as amended No 25 of 1933
6. Law on Land Conveyance No. 39 of 1920
7. Law on Land Records No. 30 Of 1944
8. Law on Conveyance of Immovable Assets No. 49 of 1953
9. Law on the Division of Common Ownership No. 48 of 1953
10. Law on the Settlement of Land and Water No. 40 of 1952
11. Law on Land Records No. 30 of 1952
12. Condominium Law No. of 1966
13. Military Order No. 57/575 Concerning the Administration of Land Registration, applicable in Gaza.

After promulgation from the PLC

We issued this Law:

Part One

Chapter One

Definitions

Article ()

This Law shall be known as the "Land Registration Law" No () of 200-.

Article ()

Land: Immovable real property of private *mulk* land, including buildings, trees, or other things fixed on the land or easement on or over the land.

Rights Related to the Land: Any right related to the land, buildings and permanent fixtures, every right related to an easement and right of way and share in the land that must be or ought to be registered under this Law.

Land Settlement: Settlement of all land disputes associated with any transaction, conveyance, ownership or beneficial use and any related right eligible for registration.

Board of Directors: The Board of Directors of the Land Authority.

Director General: The Director General of the Land Authority.

Registration Transaction: Every transaction related to the right to partition, division of common ownership, parcelization, registration, sale, transfer, conveyance, succession rights, mortgage, usufruct, lease, bequest and wills, or any transaction that must be registered by operation of the law or by court order.

Settlement Court: The Settlement Court constituted pursuant to this Law to adjudicate matters related to settlement claims or rights.

Land Court: The Land Court constituted pursuant to this Law to adjudicate all land ownership related issues.

Register: The physical record where information related to the land is formally registered. This includes a description of the land, boundaries, type of ownership, title deed, maps, survey plans, and related documents. All land transactions including sale, conveyance, lease, succession, the right to partition, division of common ownership, parcelization, registration, sale, transfer, conveyance, succession rights, mortgage, usufruct, lease, bequest and wills.

Mulk Register: The Register where *mulk* land is registered.

Public Land Register: The Register where public land is registered.

Waqf Register: The Register where *waqf* land is registered.

Waqf Saheeh

Mitwali of the Waqf: The authority responsible for handling Waqf Land.

Right of Way:

Right of Easement: The right to use part of the land owned by another for a special purpose. Its use must be consistent with the general use of the property by the owner.

Egress Right: A right to exit, a means to get out of the land.

Ingress Right: A right to enter upon the land.

Settlement Committee: The Committee established at the Land Authority to follow up and adjudicated all claims related to land settlement.

Estate Unit: The part of the building that is partitioned like a floor, apartment or store.

Apartment: The full independent unit on a floor whether for habitation or any other purpose.

Floor: One or more apartments located on a horizontal level.

Building: An estate Unit or more erected on the Land and attachments to the Building whether the Land was divided or not.

Common Parts: This includes the land, the building or parts thereof, attachments to the building or anything that needs to be common, in particular, it includes:

- a. Foundation and main walls.
- b. The partitioning walls that are in common and in position for fireplaces.
- c. Post and pillars of the ceilings, the entrances and staircases, the corridors and hallways and elevators located outside the apartments.
- d. The central heating and air conditioning systems, the pipes, the sewage, electrical wiring, water systems, and related installations except what has been laid in floors or inside apartments.

Article ()

- a. Existing land records shall be amended to reflect only three categories of land, *Mulk*, Public land and the *Waqf*. The existing land registers and existing data shall be amended to reflect these three categories accordingly.

b. Acquired rights shall be safeguarded and adjudicated without derogating from existing rights.

Chapter Two

Land Categories

Article ()

Without contravening the Land Law, the categories of land shall be:

- a. Mulk land: Private land owned by an individual or legal persons that enjoy full ownership rights.
- b. Public land: Land which is not considered as Mulk or Waqf land. Public land is to be registered in the name of the State or municipalities/local authorities.
- c. Waqf land: The public, Mulk or Miri land which is endowed as *Waqf Saheeh*.

Article ()

Public land will be classified into one of the following categories:

- a. "Public Reserve": The land necessary for public use. Relevant governmental departments or municipalities (custodians) will be responsible for the administration of this land in order to meet a public need. This land may never be disposed of but in special cases, however, this category of land can be leased as long as this does not adversely affect its designated public use. Public Reserve Land will be determined and supported by specialized laws and through the land use planning process at the national, regional and local levels.
- b. "Public Estate": The land which is invested as a reserve for future generations. It shall be administered in a transparent manner by a body comprised of relevant governmental agencies. This category of land may be disposed in accordance investment programs and legal procedures, to ensure maximization of revenue collection.

Part Two

Land Settlement

Chapter One

Article ()

The provisions of this Chapter related to Settlement of Land shall apply to natural persons and legal persons who have the right to own or convey or benefit or deal with the Land or related rights whether this right was registered or disputed.

Declaring Systematic Settlement

Article ()

- a. The Director General of the Land Authority recommends to the Board of Director, following consultations with the registration and settlement committees to commence systematic settlement of designated areas.
- b. The recommendation must be accompanied with details about the area or areas where systematic settlement is to occur, the date for the commencement of settlement and related costs.
- c. The Board of Directors reviews the recommendation and makes a decision to either commence systematic settlement or propose changes to the plan.
- d. The settlement procedures shall be conducted under the supervision of the Director General of the Land Authority. The Director General shall submit regular reports to the Board of Directors.

e. The Director General and after consultation with the directors of the Registration and Settlement Committee, shall commence with the systematic settlement of the specific areas; this area shall be known as the "Settlement Area".

Article ()

a. The Director General shall publish the commencement of the Systematic Settlement in two local newspapers and in the *Official Gazette* announcing the Settlement Area.

b. The Director General shall communicate the commencement of settlement to all Palestinian embassies and diplomatic missions abroad.

c. The embassies and diplomatic missions shall require all Palestinians residing abroad to register their respective rights in land.

d. The Land Authority along with the embassies and diplomatic mission shall prepare rules, regulations and instructions.

Article ()

The Director General shall take all required steps to publish the public announcement ("Public Announcement") for the commencement of Systematic Settlement in a conspicuous place in the Settlement Area at least two weeks before the commencement of settlement containing the following information:

1. The location or the site where settlement is to commence.
2. The date and place where commencement will begin.
3. Notification that the settlement shall include all persons who have ownership rights, beneficial use, or any other claims or disputes.
4. Description of the detailed mechanism for the Table of Claims ("Table of Claims") and plans of the area, and the deadline to submit claims.
5. Any other instructions that the Director General of the Land Authority deems necessary to conduct Systematic Settlement.

Article ()

a. If the settlement was announced in an area where final boundaries have been demarked, the Director General of the Land Authority shall have the power to demark the boundaries of the land and neighboring lands and may consult local government and the elders in neighboring areas.

b. A written declaration shall be made illustrating the boundaries of the land and its plans and all parties who have rights in the land shall sign the declaration.

c. If a dispute arises concerning the demarcation of the shared boundaries of a Settlement Area, the Director General of the Land Authority shall carry out the necessary investigation and consult with the Settlement Committee to set the conclusive demarcation for the boundaries.

d. The decision of the Settlement Committee shall be conspicuously posted in a public place in the Settlement Area and in surrounding common areas. The decision shall include the description of the boundaries as determined. An objection period to the decision shall be set.

e. Any party who believes it has a legitimate claim may object to the boundary determination and may bring a complaint to the Settlement Court within 15 days from the date the decision is communicated to the parties. The decision of the Settlement Court Judge shall be final.

Article ()

a. All claims related to Islamic *Waqf* shall be brought by the *Mitwali* of the *Waqf* or any other person authorized by the Ministry of *Awqaf* and Religious Affairs.

b. Any claims regarding any rights belonging to non-Moslems *Waqf*, shall be brought by their *Mitwali* or any other authorized person.

Article ()

Any claims related to public land shall be brought by the Office of the Attorney General.

Article ()

- a. Matruk land or land used for public purpose shall be registered in the name of the state.
- b. If, during settlement, land is not claimed, then it shall be registered in the name of the state.

Article ()

- a. In the event a dispute arises concerning the boundaries of land within the Settlement Area, the Settlement Committee shall intervene to resolve the dispute in particular with respect to the boundaries.
- b. Settlement of disputes regarding boundaries shall be made in writing and signed by all parties and certified by the Settlement Court and the Director General of the Land Authority.
- c. Any dispute regarding the rights of the owner shall be referred to the Land Court.

Article ()

The Board of Directors may at the recommendation of the Director General and during Systematic Settlement declare a piece of land public property if it serves the needs of the public. If a dispute arises regarding such a declaration, the Settlement Committee shall refer the dispute to the Land Court.

Article ()

- a. The Director General of the Land Authority during Systematic Settlement may undertake the following:
 1. Adjust the boundaries of parcels as he deems necessary to set proper boundaries including exchange for equal size and value and compensate harmed owners.
 2. Open the Right of Way following coordination with concerned parties for the purpose of giving public access while providing proper compensation.
- b. The decisions of the Director General as stipulated in this Article may be challenged before the Land Court within 30 days.

Article()

- a. If a Right of Way is to be opened during Systematic Settlement or is scheduled to be opened at a later date following Systematic Settlement and where this Right of Way concerns a parcel of land, the Settlement Committee shall recommend to the Director General to grant a Right of Egress instead.
- b. If the Right of Egress is not used for any reason or has ceased, this right may be revoked and the plans will be altered by a decision of the Director General of the Land Authority. An aggrieved party may challenge the decision within 30 days. All challenges shall be made before the Land Court. If the right is revoked during Systematic Settlement, the complaint will be lodged with the Settlement Court.

Article ()

All public and private ways that are planned during Systematic Settlement will be deemed conclusive and the only reference in the event of dispute.

Sub Chapter One

Table of Claims

Article ()

- a. The Settlement Committee shall establish the Table of Claims which shall be comprised of all claims whether disputed or undisputed. All disputed claims shall be referred to the Settlement Court.
- b. The Settlement Committee shall sign the undisputed Table of Claims and place it in a conspicuous public place in the Settlement Area and at the Land Authority for a period of fifteen days.
- c. The Director General of the Land Authority shall authorize the Land Authority to verify and settle the claims within the period set in paragraph b above.

Article()

- a. Without derogating from the provisions of this Part, the Director General of the Land Authority, and at any time before conclusive settlement, may add any piece of land to the Table of Claims.
- b. The addition shall be publicly announced in accordance with the provisions of this Law.

Article()

- a. The Director General of the Land Authority may enter any property for official purpose including triangulation, for public works or for installation of infrastructure like electricity poles or telephone cables among other purposes.
- b. The Director General of the Land Authority shall notify the land owners of its intent to enter the land at least 10 days prior to entry.

Sub-Chapter Two

Table of Rights

Article()

- a. After verifying the Table of Claims, the Director of the Land Authority shall establish the Table of Rights and post it at the Land Authority and in a conspicuous place within the Settlement Area.
- b. The public notice shall be published in two newspapers for two consecutive days and the *Official Gazette*.

Article()

The Director General of the Land Authority may initiate the entry of required corrections, changes, and amendments to the Table of Rights or at the request of the persons name in Article (---) below.

Article()

- a. Any person who either enjoys an ownership right or beneficial use in the Settlement Area and who meets the following:
 1. If his name was inadvertently omitted in the Table of Rights;
 2. If a right was erroneously attributed to him or incorrectly stated;
 3. If a share is incorrectly recorded; and
 4. If a right is implicated in any erroneous manner.

Can challenge the Table of Rights within sixty days from the publication of the notice as stipulated above by submitting a written application to the Director General of the Land Authority stating the basis for his challenge; all challenges shall be referred to the Settlement Court.

Article()

- a. If an heir submits a challenge within sixty days from the date of publication of the Public Notice concerning a right related to the Table of Rights, that one heir shall be deemed a representative of all heirs unless an objection is submitted by any other heir.
- b. If the complaint is filled by a minor or a person who does not have legal capacity, the period for objection shall remain open until the minor reaches the age of majority, the legal guardian shall be deemed the legal representative.
- c. If the complaint is filled by a person who does not have legal capacity, the legal guardian shall be deemed the legal representative.

Article()

If a person acquires any right pursuant to the Table of Rights by way of fraud or misrepresentation, the injured party may, for a period of three years from actual knowledge, submit a complaint to the Settlement Court to correct the Table of Rights and compensate the injured person; the Settlement Court shall refer any criminal matter to the criminal court.

Article()

If there is an error in the final Table of Rights, the Director General of the Land Authority shall correct any error including settlement plans based on a decision by the Settlement Court.

Article()

If the Director General of the Land Authority makes any determination regarding any claims following the approval of the final Table of Rights and prior to entry of the records into the Register, this correction shall be made and the adjustment duly recorded in the Register. If the Register and the new data are different, the Register will be corrected pursuant to the new information.

Article()

If the Settlement Court makes a final decision based on information subsequently determined to have been fraudulent, the final decision shall be deemed null and void. The Settlement Court will require payment of damages to the injured party either on its own initiative or at the request of the injured party.

Article()

- a. Any person who claims a right to ownership, beneficial use or a right associated with a land situated in a Settlement Area and that person was residing outside Palestine during Systematic Settlement, such a person may object or challenge the Table of Rights for a period of ten years from the date of posting the Table of Rights at the Registration Department.
- b. If a claim to ownership or beneficial use concerns a land situated outside the Settlement Area, the person who has in his possession title deeds may bring an objection at any time concerning any transaction related to this without his knowledge.
- c. For the purposes of this Article, the Land Authority must verify the authenticity of any documentation presented during the preparation of the Table of Rights and safeguard the rights of the original owner before registering any right acquired through adverse possession.

Article ()

- a. Minors may object to the Table of Rights through their legal guardians, within two years from when the child reaches the age of majority.

b. Legally incapacitated persons may object to the Table of Rights through their legal guardians at any time up to years following the posting of the Table of Rights.

Article()

Without derogating from the provisions of Article () above, any person who did not have the opportunity to submit an objection during the provided time period concerning the Table of Rights as a result of *force majeure* may submit an objection to the Settlement Court during a three year period from the date of certifying the final Table of Rights. The Settlement Court has the discretion whether to hear or deny the claim.

Article()

a. In all events stipulated in Articles (), the Settlement Court, may as it deems appropriate, correct the final Table of Rights if the land has not been conveyed by sale. If the land has been conveyed by any other transaction, the Settlement Court, may determine a fair compensation to be paid to the injured person in whose name the land was registered pursuant to the final Table of Rights.

b. In addition to what was stipulated in paragraph (a) above, the Settlement Court may issue a preliminary injunction to prevent any conveyance in relation to any land mentioned in paragraph (a) above.

Article()

a. If no objections are presented against the final Table of Rights, the Settlement Court judge shall certify the final Table of Rights.

b. If objections are made to the Settlement Court which have yet to be adjudicated, the Settlement Court may correct and certify the Table of Rights and will exclude any land subject to any objection where a final ruling was not made. The Settlement Court shall send the corrected Table of Rights with the plans to the Director of the Land which shall be known as the Official Table of Rights.

c. The Settlement Court shall send its decisions regarding any land excluded from the Official Table of Rights to the Land Authority along with its rulings to be added to the Official Table of Rights.

Temporary Suspension for Voluntary Land Conveyances

Article()

It shall not be permissible to make a voluntary conveyance concerning any land situated within the Settlement Area during the period of Systematic Settlement beginning when the records are closed to when the Official Table of Rights is certified, unless the General Director of the Land Authority makes an exception for expedient purposes.

1. If a conveyance has to take place in relation to succession, the application shall be submitted to the Director of the Land Authority.
2. The Director of the Land Authority shall safe-keep all the Official Table of Rights until the records are duly recorded in the Register.

Sub-Chapter Three

Division

Article ()

If the conveyance concerns a common ownership of land, the land shall be divided among the persons whose names are listed in the Official Table of Rights and shall be registered accordingly.

Article()

It shall not be permissible to divide a settlement area that two or more persons own except in accordance with the provisions of Articles () and ().

Article()

- a. The Director of the Land Authority may not conduct the division concerning any land unless the limitations period set in this Law for objecting about the Table of Rights has run out and the Land Court issues a final decision.
- b. Without contravening the provisions of Article (a) above, the Director General of the Land Authority, and before the Land Court issues its ruling, may divide the land if the request for division does not undermine the other share owned in common or does not affect the right associated with the land.

Article()

- a. Without derogating from the provisions of the previous Article, the Director of the Land Authority may divide any share registered in the name of the owner of a share in an undivided land unless the division will harm the rights of others.
- b. The application for division mentioned in the previous paragraph shall be submitted when the claim for ownership of the share(s) is presented.
- c. The Director General of the Land Authority shall record the divided share in the Table of Rights and objections may be brought against the Table of Rights.

Division by Agreement**During Systematic Settlement****Article()**

- a. If a parcel of land or more are owned in common and undivided and where the boundaries have been set during Systematic Settlement and the owners are in agreement on division and the plans are prepared, the Director General may divide the land into shares among the owners listed in the Table of Claims.
- b. In the event of a dispute among the common owners, the owners whose names appear in the Table of Claims shall constitute the conclusive list for dispute resolution purposes.

Article()

In the event that the common owners listed in the Table of Rights cannot agree among themselves on Division by Agreement stipulated in the previous Article or if a common owner was a minor or legally incapacitated, the Director General may divide the land at the request of 2/3 or these owners. Any party not in agreement on the division may complain within 30 days to the Settlement Court.

Article()

- a. A plan of the divided property shall be drawn and a Table of Division shall be issued. The Director General of the Land Authority shall certify the Table of Division and attach a certified copy of the plan both of which shall become part of the Table of Claims and Table of Rights as divided properties.
- b. The Table of Division shall be published in the same manner as the Table of Rights and additionally, each common owner shall be notified separately.
- c. Any person harmed by the division stipulated in this Article may object regarding the division to the Settlement Court within 30 days of the publication.

Article()

If the Settlement Court issues a ruling after the publication of the Table of Rights or Table of Division confirming a share in a piece of land as stipulated in Article () above, and a correction is required, the Settlement Court may order the correction of the Table of either the Table of Rights or the Register or may order the payment of damages to the parties.

Sub-Chapter Four

Table of Registration

Article()

- a. The Director General of the Land Authority upon receipt of the Official Table of Rights or the Table of Division, shall prepare a table known as the Table of Registration. The Table of Registration shall be deposited at the Department of Registry at each regional Land Authority office.
- b. Land shall be registered in the Register on the basis of the Official Table of Rights and the certified Table of Register, the Department of Registration shall issue conclusive title deeds for a fee.
- c. Upon issuance of conclusive title pursuant to this Law, no court shall have any jurisdiction to hear any matter related to rights associated with land.
- d. No land-related transaction shall be made by the Land Authority after the publication of the Table of Rights unless duly registered pursuant to the Table of Register.
- e. The Land Authority shall adopt a reduced fee schedule for all land related Systematic Registration transactions.

Article()

All contracts existing prior to Systematic Settlement and once the Official Table of Rights and Table of Registration are issued and finalized shall be deemed null and void. This includes all sales, leases, divisions, agricultural production, among others.

Article()

- a. Every person who has a registered right in a land according to the Official Table of Rights is entitled to receive a certified title deed for a reduced fee.
- b. The Director General of the Land Authority may permit the payment of fees mentioned in the previous paragraph in installments; the title deed will be issued and maybe obtained after the payment of the first installment.

Article()

If a person who has a right registered in the Table of Rights dies after publication of the Table of Rights but before the issuance of the certified Table of Registration, the Director General will have the succession rights duly registered without fees.

Article()

- a. The Director General of the Land Authority will correct any error in the Table of Register and enter necessary changes. In this case, all changes must be signed by him in person and a copy of the record prior to correction shall be kept for a period of seven years.
- b. If it is determined by material evidence that the Official Table of Rights is erroneous, the Director General may enter the proper correction prior to registration. The owner of the property must be duly notified about the correction.
- c. In the event there is a dispute following the registration of records pursuant to the Table of Registration concerning the following:
 1. Between the boundaries of land or their areas as they appear in the survey plans; or
 2. Between the boundaries of land after it was newly surveyed.

The details of the survey plans made during Systematic Settlement shall be the official plans and all existing plans shall be corrected accordingly. In the event that the area recorded in the Register was set by the Settlement Court, the plans may not be changed unless the Settlement Court issues a corrective ruling.

Adverse Possession

Sub Chapter Four

Registration of Adverse Possession

Article()

The Director General of the Land Authority may register land in the Table of Rights in the name of a person requesting registration pursuant to adverse possession if the Director General certifies that the person asserting adverse possession proves that he has had possession for 15 years and his possession was not challenged by the original owner or if the owner is not known provided that no objection was lodged against the Table of Claims.

Article()

a. Without contravening the previous paragraph, the original owner of the land in whose name the land is registered or his heir may challenge the registration of land in the name of a person claiming adverse possession and file a complaint with the Settlement Court within 1 year from actual knowledge of the registration of adverse possession to repossess the land.

b. In the event the Settlement Court issues a ruling in the favor of the original owner or his heirs, any previous registration for adverse possession shall be duly recorded. Any transactions made prior to the issuance of the ruling shall be nullified.

c. In the event that the original owner or his heirs did not assert a repossession claim pursuant to paragraph (a) or in the event that the original owner or his heirs waived their rights, the Director General may cross the name of the original owner and register the land in the name of the person with adverse possession as the true owner of the land; accordingly, the original owner and his heirs are precluded from asserting any present or future rights to the land.

Chapter Two

Settlement Court

Article()

The Settlement Court shall have exclusive jurisdiction to hear challenges concerning the Table of Rights and shall be known as the Settlement Court.

Article()

a. The Settlement Court shall be constituted in the Settlement Area and established pursuant to applicable Law on the Judiciary.

b. In the event that the Settlement Court judge is unable to perform his duties for any reason including illness, the Chairman of the Higher Judicial Council shall replace the Settlement Judge with another suitable replacement.

c. The Settlement Court shall convene its sessions in the Settlement Area and the Settlement Judge shall set an alternative location if necessary provided that the Chairman of the Higher Judicial Council is duly informed.

Article()

Without contravening the provisions of this Law, the applicable Civil and Commercial Procedures Law shall be applied by the Settlement Court.

Article()

The rulings of the Settlement Court shall be final and not subject to appeal.

Article()

In the event that the Systematic Settlement in a Settlement Area is completed and new material evidence is available and substantially affects the rights of the parties, the claim may be brought before the Land Court within one year from the decision of the Settlement Court otherwise the claim may not be brought before the Land Court.

Article()

- a. All cases pending before the civil courts concerning land shall be referred to the Settlement Court if they concern land in the Settlement Area or to the Land Court outside the Settlement Area.
- b. The civil courts shall not hear cases related to land.

Article()

- a. The Settlement Court may after publishing the Notification for Systematic Settlement and before permitting adverse possession regarding any land within the Settlement Area shall review each adverse possession claim.
- b. The Settlement Court shall issue its decision if it finds material evidence to authorize the registration pursuant to adverse possession.
- c. The Settlement Court may hear claims to annul an adverse possession ruling; any claim for annulment shall be supported by a bond to compensate potential damages.

Article()

The Settlement Court may issue a decision to suspend any registration transaction related to land within the Settlement Area while it hears claims related to that land and issues a ruling.

Article()

The Settlement Court may hear claims related to rights of first refusal in the Settlement Area.

Article()

- a. The Settlement Court shall apply the prevailing Evidence Law but without derogating from the provisions of this Law.
- b. The Settlement Court may request any oral or written evidence to review claims presented.

Article()

- a. The Settlement Court may request that the Director General present documentation to enable a proper review of the file:
 - 1. Any record registered in the Register.
 - 2. Any document related to a record in the Register.
 - 3. Any plan or a survey record related to the land or its area.
- b. Certified copies are admissible.

Article()

A certified copy of the Settlement Court ruling shall be communicated to the Director General of the Land Authority. A copy of the ruling shall be filed in the records of the Land Authority.

Article()

The Settlement Court may, at the request of a party to the complaint, issue a temporary restraining order to suspend any transaction or prevent any dealing until a final decision has been issued.

Part Three

Registration

Chapter One

Registration Transactions

Article ()

a. The application for registration shall be submitted to the Department of Registration in accordance with this Law. The application shall be supported by the proper documentation. The Land Authority shall issue the required rules and instructions for the type of documentation to be supplied.

b. The registration transaction shall be recorded in the transaction register on the date of application and shall be issued a serial application number.

c. If a party to the transaction is not available for signing the application for a transaction, a power of attorney may be sufficient.

Article()

After paying the required fees, the Director General of the Land Authority shall convene a session where all parties to the transaction shall be present to sign the registration application. A power of attorney may suffice.

Article()

Succession transactions must be submitted within one year from registration of death; succession transactions submitted within one year shall be free of any fees.

Article()

a. Succession transactions following the one year term requires the payment of fees.

b. Succession shares shall be registered by the Land Authority for present heir; shares related to absent heirs shall be set aside for future registration. Future registration shall be made for a fee.

Article()

When a division of land is attached to a succession transaction, the Land Authority will specify the requirements in its rules and regulations.

Article()

Once the transactions are completed and fees have been paid, the Land Authority will issue a new title deed.

Registration and Payment of Fees

Article()

a. The taxpayer shall be responsible for the payment of dues and owing taxes.

b. Due and owing taxes shall not be assigned to another person or another like a purchaser of property except by mutual agreement.

c. The Ministry of Finance and PLA shall enter into an understanding to create a register for property tax at the PLA to facilitate the payment of this tax when registering land-related transactions.

d. All land transactions, including registration, conveyance, mortgage, etc., will be conducted without the presentation of a tax discharge.

e. Taxes shall be paid annually.

Chapter Two

Records

Article ()

The Land Authority shall establish three registers to record ownership in land as follows:

1. Public Land Register
2. Private land *Mulk* register
3. *Waqf* land register

Article()

- a. Land records shall be amended to reflect three types of land categories as stipulated in the Land Law.
- b. The Land Authority shall issue rules and regulations for the registration of these new categories.
- c. Except within the scope prescribed by law, Land records are incontestable and not subject to be challenged before the courts.

Article()

- a. All public land shall be registered at the offices of the Palestinian Land Authority (PLA). Certificates of registration shall be kept at the Ministry of Finance.
- b. The registry of public land at the PLA shall be examined and reviewed periodically. Legal documents on the disposition of public land must be reviewed. If the review reveals that some public or *Waqf* land was converted into *Mulk* land in an inappropriate manner, measures will be taken to recover public ownership in land and the rights will be restituted.

Article()

Rights registered in any of the three Registers shall not be subject to any period of limitations except as stipulated in this Law.

Article()

The records of the Registers shall be verified by the Director of the Land Authority and certified by the Board of Directors.

Article()

If records in the Register are amended, the pages are crossed and signed by the Director General of the Land Authority. The changes are placed in a new page.

Article()

In the event that a record is destroyed or lost, a written statement shall be prepared and signed by the Director General of the Land Authority. A copy of the destroyed or lost record shall be attached to the statement.

Article()

- a. The Director General of the Land Authority shall record the details of destroyed or lost records in the Register.
- b. The Director General of the Land Authority may ask any person whose name appears in the record to present any supporting document or evidence to support a claim for replacement of a lost or stolen record.

Article()

- a. Any related party who pays the required fees, may view the Register and obtain a copy for a fee. An application shall be made to the Director General of the Land Authority specifying the reasons for obtaining a copy.
- b. Any person who pays the required fees may view the record. An application shall be made to the Director of the Land Authority providing the reasons.
- c. The Land Authority shall issue the fee schedule and set the official hours for viewing the record.

Chapter Three**Residuals****Article()**

- a. The Director General of the Land Authority, during Systematic Settlement may register any piece of land or share in the relevant tables in the name of the relevant person if it were smaller than the minimum size provided that it is not larger than 300 sq. m.
- b. These pieces shall be known as Residuals and may be attached to any neighboring piece for a fair price.

Article()

- a. Two or more residual pieces of land may be joined and may be auctioned for sale among the various owners of the adjacent lands. One owner may offer to purchase these residual pieces prior to auction for a fair price.
- b. If the joined residual pieces are suitable for use by one person from among the neighbors offers to purchase all these residual pieces, a committee of three experts shall be formed to determine the fair market value. This committee shall be comprised of three experts appointed by the Director General and shall issue its decision by 2/3 majority.
- c. If there is no one person to offer a purchase, the auction process shall proceed and the residual piece shall be sold to the highest bidder.
- d. The Land Authority shall issue rules and regulations for the auction process and qualification of experts.

Article()

Any person may submit a request to the Land Authority to open a road as designed on the survey plans within the completed settlement area.

Article()

- a. The Land Authority shall review the survey plans and request the payment of proper fees to issue the authorization to open the road in accordance with the procedure stipulated in paragraph (b) below.
- b. In the event that during Systematic Settlement, it is determined that a road is not feasible, then the Land Authority may determine alternative roads from other pieces of land. The Land Authority shall establish a committee comprised of three experts to determine the value of the land to be alternatively used. The parties whose property may be affected will appoint two experts and the Land Authority will appoint another. The decision of the experts will be by a 2/3 majority. The parties may appeal the decision of the committee to the Settlement Court within 30 days.
- c. Compensation will be duly paid to the person whose land has been designed as a road and the land will be registered in the Register as such.

Article()

- a. Persons through whose land a public road or a Right of Egress is established, may submit a request to the Land Authority to alter this access if the existing access has harmed the proper utilization of the property. The request shall be supported by the proper fee and supporting document.
- b. The Land Authority will verify the request mentioned in paragraph (a) and inspect the property and potential or existing harm and alter the path of the road on the property. Any alternative route must cause less harm than the existing route.
- c. The Land Authority's decision to change the path of a route may be appealed to the Settlement Court.
- d. The Land Authority shall issue the fee schedule for such requests and rules and regulations for the application and verification of requests for changing paths.

Article()

- a. Once Systematic Settlement is complete, the Land Authority may examine all adjacent rights of way and alter them where necessary.
- b. Any harmed person shall appeal the decision of the Land Authority to the Settlement Court within 30 days.

Chapter Four**Sporadic Registration****Article ()**

This Chapter applies to all Sporadic Registration transactions that were never registered and not part of Systematic Registration.

Article()

- a. The Land Authority shall establish a committee consisting of a representative of the Land Authority, a representative of the Directorate of Property Tax and a licensed public surveyor to review Sporadic Registration application and issue the proper decision.
- b. The Land Authority may inspect the property and hear evidence in this regard.

Article()

- a. The Registration Department, when it receives an application for sporadic registration, shall publish a public notice containing the details of the land in two local newspapers at the expense of the applicant and must conspicuously post a copy in a public place where the land is located. The public notice must provide information on how objections can be filed with the Land Authority within 30 days from posting of the notice.
- a. The Land Authority shall issue rules and regulations in this regard.

Article()

- a. Following the 30 day period, the Land Authority shall hear all objections and challenges and must investigate all complaints before issuing a title deed.
- b. Title deeds shall be issued for a fee; the Land Authority shall issue the fee schedule.
- c. The Director General shall prepare a report containing the details of the land including plans, submitted by the applicant and verified by the Land Authority, at the expense of the applicant. The report shall be shared by persons owning neighboring land for objections.

Article()

In the event that no objection is filed regarding an application for sporadic registration during the 30 day period specified in Article () above, the Sporadic Registration Department issues its decision to issue a title deed which shall be certified by the Director of the Land Authority.

Article()

The decision of the Sporadic Registration Department may be appealed to the Land Court, within 30 days from issuance of the decision. The Land Court may hear or deny the application or certify the decision of the Sporadic Registration Department.

Article()

The Land Authority shall issue instructions for the commencement of Sporadic Registration and specify the rules associated with replacement of existing records.

Part One**Registration of Condominiums****Chapter One****General Provisions****Article()**

- a. The Land Authority shall establish a register for Condominium owners where the land and Condominium ownership details shall be registered.
- b. The Condominium Register shall consist of serial numbers and a description of the land and Condominium.
- c. Condominium registration shall be fee based; the Land Authority shall issue the relevant fee schedule.

Article()

The Condominium owner shall be responsible to inform the Land Authority of any changes to owner or sale, or any other conveyances related to the Condominium.

Article()

Any person who owns one or more Condominium(s) in one or more divided property, must register each divided share separately and may undertake transactions in such a manner. The land underlying the divided condominiums shall be owned in common among the individual condominium owners.

Article()

- a. The land owned in common among Condominium owners shall be owned by each Condominium owner in proportion to the size of the area of the Condominium in the event the entire construction area has been used.
- b. If the entire construction area has not been used in its entirety, the Condominium may be registered in one of the following means:
 1. The Condominium unit may be registered with a Right of Access;
 2. The Condominium unit may be registered with common area as agreed to in the sales contract;
 3. If the sales contract does not have any stipulation regarding common shares, the registration shall be registered in accordance with the zoning and planning plans.

Article()

The Condominium Register shall include the following details:

1. The number of the parcel and block and exact location on the survey plans.
2. The construction plans and actual area and number of condominiums and stores and survey plans.
3. The number of each Condominium unit and its area and description and the names of owners in common.
4. The size of the areas owned in common and the details of the common service areas and the share of each owner in common.
5. The value of the land and the construction and the common areas.
6. A list of all tangible assets present and future on the land.
7. Type of deed to be registered, the date and type of registration.
8. The title deed or sales contract or any other document to prove owner.
9. Any other supporting documents that the Director General deems necessary to register.

Chapter Two**Registration Application****Article ()**

The registration procedures and transfer of ownership of condominiums shall be made pursuant to a written request submitted to the Land Authority supported by the following:

1. The construction permit or a certified copy.
2. The survey plan prepared by a licensed surveyor for the land where the construction is located and the area.
3. The survey plan for each condominium prepared by a licensed surveyor.
4. A list of the owners of the condominiums.
5. The details of the common areas and the share of each person in the common areas.
6. The sale and purchase rules and the management mechanism for the condominiums among the owners.
7. The sale and purchase contract to be registered and the title deed.
8. The registration certificate where the construction is to be built.

Chapter Three**Verification of Document****Article ()**

- a. The Land Authority shall verify the documents and deeds presented with the application for registration.
- b. If the papers presented are not complete or do not meet the requirements of the law, the Land Authority may request additional information.

Article()

The survey plans shall be verified by the Land Authority.

Article()

- a. After the verification of the papers and documents and plans and meet the required conditions, the Land Authority shall issue a number for the application and the date for the registration.
- b. The documents and plans for each application shall be safeguarded in a proper file for each piece of property.

Chapter Four**Registration of the Land Sales and Purchase Contracts in the Register****Article()**

- a. Conveyances may be made directly at the Land Authority through sales and purchase contracts.
- b. The Land Authority shall have the applicant file out the proper forms and submit signed applications. Each application shall include a copy of the sales and purchase contract.
- c. The sales and purchase contract shall include the names of all concerned owners.
- d. The sales and purchase contract shall be signed by all owners; the Land Authority shall verify the identities of the parties.
- e. The Land Authority shall issue rules and regulations for the registration of sales and purchase contracts.

Article()

The Land Authority shall authenticate the signature in person.

Article()

The Land Authority shall establish a register for the registration of tangible rights attached to the land including long-term leases.

Powers of Attorney**Article ()**

The Land Authority shall accept land related transactions made through grant of power of attorney to third parties.

- a. Power of attorney may be limited or general. The general power of attorney for purposes of this Law shall be known as the Irrevocable Power of Attorney ("IPA") and granted for a term not exceeding five years.
- b. Each IPA shall be deemed to be effective from the date of notarization.
- c. No successive IPAs shall be issued by power of an existing IPA and such shall be deemed null and void.
- d. IPAs shall be registered at the PLA, provided that a relevant electronic system of registration is made available.
- e. The term of existing IPAs shall expire in five years from the date of notarization or at the end of their term whichever comes first.

Register of Public Land

Article ()

The Land Authority shall establish a register for public land known as the Public Land Register where all public land shall be registered.

Article ()

Registration of public land will be as follows:

- a. Public land owned by local authorities or municipalities will be registered in the name of the concerned local authority or municipality.
- b. Public land owned by the State will be registered in the name of the State.

General Provisions

Article ()

The registration of Condominiums shall not be made in the name of the common owners if the common shares are not divided.

Article()

The owner of the Condominium receives two certificates, one for the condominium and the other for the ownership of common areas.

Article()

In the division of common shares and common areas, the fractions shall be calculated, the fractions shall be....number

Article()

The common share in the land whether in voluntary or judicial division may not be divided into fractions. A share in a condominium may not be separated from the share in the common area.

Article()

No records may be registered after the publication of the Table of Claims. The Director of the Land Authority shall set the timetable and dates of registration.

Article()

- a. No conveyance may be deemed valid unless registered in the Register of Sporadic Registration except leases for a term lesser than three years.
- b. No succession in land shall be deemed valid unless registered in accordance with the law.

Article()

All concerned public organization including local government shall cooperate and exchange relevant information.

Article()

Any person who is acting on behalf of another in any land related transaction or conveyance, must submit a duly executed power of attorney as stipulated in this Law.

Chapter Two

Fees and Expenses

Article ()

- a. The Land Authority may charge fees for Systematic Settlement.
- b. The Land Authority may charge fees or any type of transaction or conveyance.
- c. The Land Authority shall issue the relevant fee schedules.

Article()

- a. If a record is registered in the Table of Rights in a registered land in the name of the owner without entering any changes, no fees shall be applied.
- b. If a record is made in the Table of Rights in the name of the owner to reflect changes, the transactions shall be fee based, the Director General of the Land Authority may waive the fees including the survey fees.

Chapter Three

Violations and Fines

Article()

- a. The Land Authority may impose fines for violations of this Law.
- b. The Land Authority shall adopt a schedule of fines for violations.

Final Provisions

Article()

The Cabinet of Ministers may issue regulations to implement this law.

Article ()

Any decrees, provisions, regulations or decisions and laws which conflict with this law shall be deemed null and void.

Article ()

All relevant authorities should implement this law after three months from the publication date in the *Official Gazette*.

Issued in the city of

Date:200

Mahmoud Abbas, Abu Mazen
 President of the Executive Committee of the PLO
 President of the Palestinian National Authority



Annex 4: Regulation Outlines (in Arabic)

1. Land Law Regulations

ملاحظات	التشريع الثانوي المقترح	نص مادة الإحالة من مشروع قانون الأراضي	الرقم
سند الإحالة هو نص المادة (1) المرفق	قرار صادر عن مجلس الوزراء يحدد من خلاله من هو الشخص الأجنبي لغايات تطبيق قانون الأراضي	المادة (1) الشخص الأجنبي: لغايات تطبيق هذا القانون، يحدد بقرار من مجلس الوزراء من هو الشخص الأجنبي.	1
سند الإحالة نص المادة (83) يصدر مجلس الوزراء اللوائح والقرارات اللازمة لتنفيذ أحكام هذا القانون.	يصدر تشريع ثانوي يحدد مواصفات سجلات الأراضي، ويحدد البيانات الواجب تضمينها في هذه السجلات.	مادة (8) 1- تعدل قيود وسجلات الأراضي بحيث تسجل الأراضي التي تسري عليها أحكام الملكية الخاصة بأنها ملك خاص، والتي تسري عليها أحكام الملكية العامة بأنها ملك عام، والتي تسري عليها أحكام الملكية الموقوفة بأنها وقف صحيح.	2
سند الإحالة نص المادة (83) يصدر مجلس الوزراء اللوائح والقرارات اللازمة لتنفيذ أحكام هذا القانون.	تشريع ثانوي يحدد المعايير التي يتم بموجبها تقدير التعويض العادل	مادة (15) لمالك الأرض البعيدة عن مصدر المياه حق المسيل من الأرض المجاورة وبالقدر الكافي للري، مقابل تعويض عادل. مادة (16) لمالك الأرض المحبوسة عن الطريق حق المرور من الأرض المجاورة بالقدر اللازم للانتفاع بأرضه ومقابل تعويض عادل.	3

<p>سند الإحالة نص المادة (83) يصدر مجلس الوزراء اللوائح والقرارات اللازمة لتنفيذ أحكام هذا القانون.</p>	<p>تشريع ثانوي يحدد شروط وإجراءات تملك وتصرف الجمعيات والمؤسسات الخيرية والهيئات الدينية الفلسطينية والأجنبية بالأراضي وبالقدر الضروري</p>	<p>مادة (52) مع مراعاة القوانين والأنظمة ذات العلاقة، يجوز للشركات والجمعيات والمؤسسات الخيرية والهيئات الدينية الفلسطينية المسجلة لدى الجهات الرسمية المختصة أن تملك وتتصرف داخل المدن والقرى فيما تحتاج إليه من أراضٍ بالقدر الضروري اللازم لأعمالها.</p> <p>مادة (53) بإذن من مجلس الوزراء يجوز لأية شركة أو جمعية خيرية أو هيئة دينية أجنبية مسجلة في فلسطين أن تملك وتتصرف داخل المدن والقرى فيما تحتاج إليه من الأموال غير المنقولة بالقدر الضروري اللازم لأعمالها.</p>	4
<p>سند الإحالة نص المادة (83) يصدر مجلس الوزراء اللوائح والقرارات اللازمة لتنفيذ أحكام هذا القانون.</p>	<p>تشريع ثانوي يحدد شكل السجل ومواصفاته والبيانات اللازمة توافرها في هذا السجل</p>	<p>مادة (57) 1- تحتفظ السلطة بسجل واف يبين أوصاف وغايات الجمعيات الخيرية والهيئات الدينية والشركات والمؤسسات سواء كانت فلسطينية أو أجنبية ومقدار ما تملكه أو تتصرف به من أموال غير منقولة.</p>	5
<p>سند الإحالة نص المادة (83) يصدر مجلس الوزراء اللوائح والقرارات اللازمة لتنفيذ أحكام هذا القانون.</p>	<p>تشريع ثانوي يحدد تشكيل اللجنة واختصاصاتها وآلية عملها واتخاذ القرارات فيها.</p>	<p>مادة (57) 2- يشكل مجلس الوزراء لجنة خاصة من الوزراء المعنيين ورئيس السلطة لاتخاذ القرارات فيما يتعلق بالأحكام الواردة في هذا الفصل وتدقيق السجل المنصوص عليه في الفقرة السابقة</p>	6
<p>سند الإحالة نص</p>	<p>تشريع ثانوي يحدد</p>	<p>مادة (40)</p>	7

<p>المادة (83) يصدر مجلس الوزراء اللوائح والقرارات اللازمة لتنفيذ أحكام هذا القانون.</p>	<p>النماذج الخاصة بطلب تسجيل التصرفات المختلفة الواردة على الأرض، والوثائق اللازمة لكل تصرف حتى تتم عملية التسجيل.</p>	<p>1- تختص دوائر تسجيل الأراضي دون غيرها بإجراء التسجيل لجميع معاملات التصرف في الأموال غير المنقولة وإعطاء سندات تسجيل بها.</p> <p>2- تشمل معاملة التصرف كل معاملة بيع أو مبادلة أو رهن أو هبة أو إنشاء وقف أو الإيجار لمدة تزيد على ثلاث سنوات والإجارة المتضمنة خيار التجديد لمدة ثلاث سنوات فأكثر، وكل تصرف قانوني في الأرض بما فيها انتقال الرهن.</p>	
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2. Eminent Domain Law Regulations

الاستملاك

- 1- نظام مفاوضات شراء الأراضي.
- 2- نظام طلب الاستملاك.
- 3- نظام الاعتراض على الاستملاك.
- 4- نظام بيع الأراضي المستملكة.
- 5- نظام تعويضات الاستملاك النقدية والعينية.
- 6- نظام مراقبة لجنة تقدير التعويض.
- 7- نظام استملاك أراضي القاصر أو المحجور عليه أو فاقد الأهلية القانونية أو الغائب أو الأراضي الموقوفة.
- 8- نظام التخلي عن أراضي الاستملاك.
- 9- نظام استملاك فتح أو توسيع الطرق.
- 10- تعليمات تعيين الخبراء لإجراء الكشف الحسي على الأرض.
- 11- نظام ايداع الأموال لدى الخزينة العامة.
- 12- نظام احتساب الفوائد.

* يصدر مجلس الإدارة الأنظمة والتعليمات الخاصة بتنفيذ هذا القانون. بموجب المادة 36.

3. Land Registration Law Regulations

الأراضي

- 1- نظام تعليمات الإعلان عن التسوية. بموجب المادة 9\ث.
- 2- تعليمات إعداد استبيان الإعلان عن التسوية. بموجب المادة 11\ب.
- 3- تعليمات طرق تخطيط الأرض. بموجب المادة 15.
- 4- نظام تسوية الأراضي. بموجب المادة 17.
- 5- نظام التنظيم الإداري لسلطة الأراضي.
- 6- نظام المزايدة في تسوية الأراضي. بموجب المادة 59\ث.
- 7- نظام سجل ملكية الأراضي العامة. بموجب المادة 77\ب.
- 8- نظام سجل ملكية الأراضي الملك. بموجب المادة 77\ب.
- 9- نظام سجل ملكية الأراضي الموقوفة. بموجب المادة 77\ب.
- 10- نظام معاملات التسجيل بموجب المادة 84\أ (فتح معاملة التسجيل والوثائق المطلوبة).
- 11- نظام إفراز وتقسيم المال غير المنقول بموجب المادة 88 (ما هي المتطلبات الواجب توافرها لإتمام المعاملة).
- 12- تعليمات تنظيم لجنة معاملات التسجيل المجدد وأعمالها. بموجب المادة 92\أ.
- 13- نظام الاعتراض على التسوية بموجب المادة 93\أ.
- 14- تعليمات تنفيذ التسجيل المجدد بموجب المادة 97 (نظام استبدال السجل).
- 15- تعليمات تسجيل عقود البيع والشراء. بموجب المادة 120\ج.
- 16- نظام غرامات سلطة الأجور بموجب المادة 124\ب (جدول الغرامات).
- 17- نظام رسوم محكمة تسوية الأراضي بموجب المادة 57.
- 18- نظام رسوم فتح أو تغيير مسار الطرق. بموجب المادة 52\ث.
- 19- نظام سند التسجيل. بموجب المادة 94\ب.

* يصدر مجلس الوزراء الأنظمة الخاصة بتنفيذ هذا القانون. بموجب المادة 128.

Annex 5: Birzeit Report (on the PLC Draft Land Law)

**Study on the Draft Land Law
Final Report**

**The Institute of Law
Birzeit University**

May 2007



Introduction

Based on the agreement concluded with the Institute of Law (IoL) at Birzeit University, IoL Legislative Support Programme was assigned to conduct an analytical study on the Draft Land Law. This study will include comments on articles under the Draft Law as well as a comparison of provisions thereunder to other provisions under relevant Palestinian effective laws.

Since elected, the Palestinian Legislative Council (PLC) could not ignore the importance of regulating land-related issues in Palestine. However, the significance this issue as well as difficulty of implementing relevant provisions have posed a tremendous obstacle to the PLC. Recognising the importance of this subject, PLC established the Committee on Land as one of the permanent committees.

So far, legal regulation of land in Palestine has relied on Ottoman, British Mandate and Jordanian laws as well as a number of Israeli military orders. (Over the period of occupying Palestinian territories, military orders have been used to serve ends of the Israeli occupation authorities). In addition, institutions of the Palestinian National Authority (PNA) have also passed a number of items of legislation on land-related issues. However, legislation on land lacks legal consolidation between the Gaza Strip and West Bank. Furthermore, land legislation lacks a clearly demarcated legislative policy that impedes the Israeli authorities' policy of confiscating more Palestinian land.

The Draft Land Law establishes a core policy for the Palestinian government towards consolidating the legal regulation of the land sector in the West Bank and Gaza Strip. Furthermore, the Project aims to rearrange this regulation in order to examine relevant legislation as well as enforce its provisions. However, a clear legislative policy, which spells out limits and features of the Palestinian legislator's function and trends to regulate land-related issues, is lacking. Clear and detailed studies which make clear the regulatory effect of the Draft Land Law are also unavailable. Such studies would have helped the Palestinian legislator to make decisions on maintaining the de facto legal status (and not approve the Draft Land Law) or adopting the Draft Law or amending it.

In conclusion, we believe that the significance of regulating land-related issues obliges relevant authorities not expedite to develop the Draft Land Law. At first, all legal and policy studies pertaining thereto should be completed. As such, we would come up with an integrated legal system that regulates land-related issues as well as respects the principle of individual land title approved by the Palestinian Basic Law. Additionally, such legal system will prevent further Israeli goals of seizing control of Palestinian land.

Description of Draft Land Law

The Draft Land Law is composed of 230 articles distributed to five sections, as follows:

- Introductory Chapter – General Provisions: Articles (1 – 8);
- Section One – Land: Articles (9 – 40);
- Section Two – Disposition of Immovable Properties: Articles (41 – 82);

- Section Three – Settlement of Land and Water: Articles (83 – 145);
- Section Four – Acquisition for the Public Interest: Articles (146 – 174); and
- Section Five – Land Registration Departments, Registers and Transactions: Articles (175 – 230).

Difficulties and Challenges

IoL research team working on this study tackled a number of difficulties and challenges so that the study accomplishes its aim:

1. Several versions of the Draft Land Law are available. As a result, the research team was confused in regard of the extent of accuracy of the version of the Draft Law on which it works. The research team obtained this version from the Administration of the Project. In addition, the team contacted PLC and inquired about the version of the Draft Law which it adopts. PLC version was the same one on which the research team works.
2. The scope of study on the Draft Land Law was limited, thereby posing a challenge to the research team. In regard of the timeframe, the research team was required to develop this report within a relatively short period of time, which was not sufficient to complete the volume of assigned task. Nevertheless, the research team was able to overcome this challenge: the team members worked hard and diligently over the allotted period of time to produce the report.

With respect to the subject-matter, the research team was assigned to conduct an analytical study on the provisions of the Draft Land Law, without addressing the relation between these provisions and land-related laws in force in PNA-controlled territories. However, another party in the Project was working on this same assignment. As a result, some provisions under the Draft Law could not be identified in a clear and accurate manner.

3. Provisions under the Draft Land Law were not accurate. All provisions containing reference articles to other provisions are erroneous and inaccurate. Hence, an integrated concept of some provisions regulated under the Draft Law could not be set forth. In effect, the research team had to double its efforts so as to draw a link between these provisions as well as to identify the relevant provisions in a holistic and clear fashion.

Work Methodology

In order to produce the required effects of this report, the research team have agreed to divide phases of the study into sections in line with the following methodology:

1. Examine the Formal Aspects of the Draft Land Law

In this section, all formal aspects of the Draft Land Law are reviewed in conformity with legislative drafting sound approaches and rules. Drafting rules included on IoL Legislative Drafting Manual as well as approved drafting style in promulgated Palestinian laws are adopted.

In particular, the following issues are highlighted:

- Drafting style;
- Structure of the Draft Law;
- Preamble;
- Consolidation of terms; and
- Reference materials.

2. Analyse provisions under the Draft Land Law and test internal consistency of its provisions

An analytical, objective study of all provisions under the Draft Land Law is conducted in order to examine the extent of consistency among its provisions. In addition, the extent of conformity of the Draft Law provisions with general legal rules within the Palestinian legal system is scrutinised. The research team's approach is to track provisions under the Draft Law according to the sequence adopted by the drafters. As such, each legal provision is examined in the order, in which it is stated in the Draft Law. Then, provisions of these articles are compared with those of other articles.

3. Compare provisions under the Draft Land Law to provisions under relevant Palestinian laws

To produce an analytical study on the Draft Land Law, the research team examines and analyses the relation of the Draft Law with other operative laws in PNA-controlled territories. As such, this report sheds lights on the effect of the provisions of the Draft Land Law on approved legal rules under other Palestinian laws.

Provisions of the Draft Land Law are the guide to identifying other laws related to the Draft Law. By scrutinising the Draft Law provisions, all relevant laws are located, whether stated explicitly or implicitly in these provisions.

Division of the Study

In line with the methodology above, the study is divided into 3 sections, as follows:

- I. Formal aspects of the Draft Land Law;
- II. Internal consistency of the Draft Land Law provisions; and
- III. A comparative study of the Draft Land Law provisions.

I. Formal Aspects of the Draft Land Law

The following observations may be made on the formal aspects of the Draft Land Law:

1. Preamble to the Draft Land Law

The preamble to the Draft Law features (Cognisant of: ...). Then, several laws are listed. In this context, the following remarks are raised:

- Are all effective or applicable laws related to the legal regulation of land-related issues in force in PNA-controlled territories listed (and consequently reviewed)?
- Several amendments have been made to most laws listed under the preamble. Why are such amendments not stated thereunder?
- Under the preamble to the Draft Law, reference to the same laws is repeated, including laws stated in Clauses (8 and 16) as well as Clauses (10 and 21).

2. Drafting Style

In most instances, the drafting style of articles under the Draft Law is compositional. Although articles under the Draft Law entail many provisions, long sentences are used without punctuation marks. This means that implementation of the Draft Law as well as reference to its provisions will be unfeasible.

3. Definitions and Consolidation of Terms

The following observations can be emphasised:

- It is not preferred to use more than one article on definitions under the selfsame law. On the contrary, one article should encompass all terms mentioned and used in the law. The Draft Law, however, does not abide by this preference; it includes more than one article on definitions, thereby creating confusion in implementing its provisions.
- Consolidation of terms used in the Draft Law is obviously defective. Drafters incorporate different expressions and terms to signify a single concept. Despite the fact that drafters intend to give the same meaning to a single concept – even though varying expressions and terms are used – drafters have not succeeded in many instances. At times, drafters use terms with various implications to indicate the same concept. This means that articles under the Draft Law are impaired.

Several examples can be cited. At the beginning of the Draft Law, the term 'land' is used. Later, the term 'immovable properties' is used in the middle and last sections of the Draft Law. In fact, the meaning of both terms is clearly different.

The last paragraph under article (1) does not consolidate terms used in the West Bank and Gaza Strip, which should be done by the Draft Law. The paragraph provides: "Wherever the terms 'block' or 'parcel' as defined in the land registers of the West Bank governorates appears, it shall be synonymous with the terms 'piece' or 'parcel' as defined in Gaza Strip

governorates; and vice versa". Accordingly, different terms will persist between the West Bank and Gaza Strip.

- The Draft Law incorporates several terms that need be defined. Drafters do not define such terms in the body of the Draft Law, including immovable properties through allocation; right to monopoly; familiar contiguity harms; easement right; etc.

4. Structure of the Draft Land Law

Structure of Draft Law is clearly defective. For example, the Introductory Chapter is entitled with "General Provisions" and includes 8 articles only. In addition, this Chapter is not divided into subchapters as is the case under other sections of the Draft Law. Therefore, we recommend that this Chapter be replaced with an introductory section so as to achieve a methodological balance in the Draft Law. Otherwise, an introductory chapter or section may not be incorporated at all. As such, the title "General Provisions" would be sufficient insomuch as such provisions are an introduction to the Draft Law.

5. Reference Articles

All reference articles under the Draft Law are erroneous and need be revised. Under Section I above, reference is made to such articles.

II. Internal Consistency of the Draft Land Law Provisions

Having analysed the legal provisions under the Draft Law, this section sheds light on problems regarding its internal consistency. The section is divided into items, each of which comments on articles under the Draft Law according to their sequential order, as follows:

1. Introductory Chapter – Articles (1 – 8)

Article (1) should have elaborated on the definition of all current types of land in Palestine, which are used in the Draft Law. These are Mulk, Waqf, Miri, Mattrouk and Muwat land types. The beginning of the Chapter One under Section One lists types of land titles regarding these types of land.

Article (2) defines the nature of original and consequential rights *in rem*. We recommend that this article be added to definitions under article (1). We also suggest that Paragraph (3), which refers to the jurisdiction of the Civil Law over such rights, be deleted. This provision is not needed since such jurisdiction is met in general rules (redundant paragraph). In the event this paragraph is maintained, it must be amended so that it becomes 'rules of the Civil Law' and not 'provisions of the Civil Law' because the Ottoman Civil Code (Mejelle), not the Civil Law, is applicable in Palestine. The word 'rules' is more general and inclusive than 'provisions' and entails all relevant civil laws. In addition, this Paragraph should be moved to the end of the Draft Law before the article on enforcement. As such, it is possible to say 'The rules of the Civil Law shall be enforced ...'. On the other hand, there is a spelling mistake in the word 'provisions'¹⁶.

Articles under the Draft Law do not specify some original and consequential rights *in rem* despite applications thereon in the body of the Draft Law. Moreover, a number of Palestinian laws, including the Palestinian Draft Civil Law, adopt and make reference to such applications.

Article (3 – 5): Provisions under these articles are all general rules that are taken for granted in the regulation of civil cases. Therefore, we suggest that these articles be removed.

Article (6) provides that Waqf [endowments] is considered as a legal person. However, Waqf does not indicate the authority or entity that owns and manages Waqf properties. Therefore, this phrase should be changed into 'Waqf Administration' or 'Waqf Directorates'. In addition, Subparagraph (5) is redundant since it is already included under Subparagraph (6), taking into account that registered corporations and societies have independent legal personalities in accordance with the Law. Corporations and societies can be moved under the article on definitions, which addresses legal persons. It should be noted that articles under the Draft Law feature clear confusion in determining the legal person as well as identifying the concept of such term. Furthermore, articles do not distinguish between public legal persons and private legal persons.

¹⁶ Originally, the report analyses the Arabic version of the Draft Land Law. Some statements are specific to the Arabic language. As such, the spelling mistake addressed here refers to the Arabic version. (Translator's note).

Article (7) further addresses the regulation by the Personal Status Law of inheritance-related issues, including movable and immovable properties. In case maintained, inheritance provisions prescribed by the Islamic Law (Shari'a) should be replaced by inheritance rules provided under personal status laws. These laws are the legal authority, not the provisions under the Islamic Law where many jurisprudential discrepancies prevail.

Article (8) prohibits disposition and seizure of state-owned properties which are allocated for the public interest. Thus, the article provides for constraints on rights related to a particular type of land. We recommend that this article be moved to the end of Chapter One / Section One, which addresses types of land titles.

In sum, we advise that this Chapter be restricted to definitions only. All definitions should be listed under a single article. In addition, all provisions which we deem to be redundant (i.e. which do not supplement the Palestinian legal system) should be removed. (Upon drafting of the law, we recommend that any word or expression, which can be dispensed with, be removed without affecting the law).

2. Section One: Articles (9 – 40)

Chapter One under this Section is entitled 'Types of Land'. However, the Chapter addresses types of land titles. We suggest that the title of this Chapter be changed into 'Type of Land Titles'.

Article (9) addresses land title and its types. The title should be changed into 'Types of Land Titles', not 'Types of Land'.

Under Paragraphs 1, 2 and 3, types of land titles are divided into private property, public property and Waqf property. In contrast, the Ottoman Law refers to five types of land: Mulk, Miri, Muwat, Mattrouk and Waqf.

Paragraph (3) provides that provisions of Islamic Shari'a be applicable to Waqf land. In this context, other effective laws regulate this issue, including the Law on Personal Status derived from the Islamic Law and Law No. (26) of 1966 Concerning Islamic Endowments (Waqf) and Affairs. The latter law is in force in the West Bank and regulates Waqf properties. On the other hand, several parcels of Muwat land have been reclaimed and acquired by many persons, who could not adjudicate their rights therein despite the fact that adverse possession has expired. Do these persons lose their rights?

Article (10): Since 70% of Palestinian land was not settled under the Israeli occupation, will many persons be deprived of their land titles inasmuch as their land is Miri land? In fact, this poses a real concern. This article may be exploited in an ill-intended manner so as to justify the state's control over private properties (the origin of which is Miri).

Article (11) addresses rights to use and dispose of land. However, previous articles later address the usufruct right. Hence, drafting rules require that such terms be consolidated.

Article (12): Article (12/1) states that a land title encompasses all that is above or under surface of the land. In contrast, article (12/2) deviates from the aforementioned provision and allows that it can be contravened based on contracting parties' consent. However, we think that land title can be separated from what is above the land (e.g. trees) because the ownership of what is above the

land will obstruct the use of the land title. It is possible that ownership of what is above the land is provided as usufruct, not title.

Against this background, the Draft Law must expel the legislator's will and policies in this subject in regard of the possibility of separating the land title from the ownership of what exists above the land.

Article (13): The provision of this article is stated under article (147). Repetition of legal provisions under the selfsame law is unnecessary.

Article (16)

The meaning of the expression 'familiar contiguity harms' should be defined. It is preferred that it be included under the article on definitions.

Article (20) includes an inaccurate definition of common ownership. The article supposes that common property is applicable if co-owners' shares are not demarcated with equal shares owned by each. This definition, however, is inaccurate. Essentially, common ownership arises if the amount of co-owners' shares are defined, without equal shares being required. Geographical demarcation of shares (i.e. parcelation) is not defined. For example, if a person dies and leaves a parcel of land to several children, inheritors shall own that land parcel in common, with each one of them having his or her own legal share without its being parcelled. Common ownership is usually removed by the parcelation of each co-owner's share, either upon consensual agreement or by a court's judgement.

Article (24) does not mention a co-owner's right to the land in common to incur taxes and duties on all other co-owners, each in proportion with his or her share, in case the co-owner performs necessary functions to preserve the land in common.

In addition, articles on common ownership do not state that co-owners' silence regarding the disposition by any of them of a common share without objection by others, while knowing of such disposition, within a specified period of time, is deemed to be an implicit approval of such disposition, and consequently of parcelation. Such a statement should help preserve stability of land transactions.

Article (26) indicates the impossibility of requesting the division of land in common if the purpose of ownership is to keep the land perpetually in common. We cannot imagine that common ownership remains as such indefinitely. Therefore, we recommend that a minimum time limit be designated for such period, during which co-owners are entitled to request removal of common ownership in line with the family's title provided under the Civil Law rules.

Article (27): Second Paragraph under this article provides that consensual division shall not be correct unless "all co-owners attend the division". We think that what is intended here is the agreement and consent of all co-owners. However, this does not mean that division is not correct except upon the presence of all co-owners. Hence, this paragraph should be redrafted.

Article (28) refers to easement rights pertaining to land only. We suggest that easement rights be replaced by the 'rights of third parties' since these are more comprehensive and general.

Article (32): While Paragraph (A) admits that auction is conducted between co-owners firstly, Paragraph (C) provides that an "auction may be exclusive to co-owners only if they unanimously so request".

Article (34): Paragraphs (1 and 2) can be consolidated so as to become 'The co-owners shall reciprocally guarantee for each other any entitlement to or encroachment on the land passed to each one of them for any reason that affected it before division unless an agreement between co-owners provides otherwise.'

Articles (38 – 40): The meaning of "adjustment division"¹⁷ should be defined. Otherwise, reference should be made to the Civil Law rules. Article (1174) under the Mejelle defines adjustment division as follows "Partition of usufruct consists of the division of benefits" and article (1175) provides: "There can be no partition of usufruct in the case of things the like of which can be found in the market. Partition of usufruct may be had in the case of those things the like of which cannot be found in the market, the usufruct of which may be enjoyed, while the identical things remain intact". However, the Draft Law does not provide as such. In addition, the Draft Law does not state the types of adjustment division in terms of time and place.

3. Section Two: Articles (41 – 82)

Article (41) provides that immovable properties signify "all lands in their various types with any buildings, plants and trees, as well as any movable properties allocated by owner for the use of such land even if it is not stably fixed on such land. This means that movable water tanks, for example, are immovable properties in the event they are placed on the land for watering and irrigation even if they are movable and not fixed. This is, however, a considerable misconception as disposition of such movable properties may be separate from the land.

Article (42) provides that the land registration department is responsible for the registration of such movable properties although they are considered to be movables and can be separated from land. In this context, we suggest that the phrase "even if they are not stably fixed on such land" be replaced by "which are stably fixed on such land".

Article (46): Provisions of both articles (45 and 46) can replace of this article. If this article is to be maintained, it should be moved to the previous Chapter immediately after article (45) prior to Chapter Two under this Section.

Article (48): The meaning of the word 'holds' should be defined.

Article (50): Article (50/3) does not provide that co-owners should pay to the relevant co-owner his expenses, each in proportion with his or her share in the land.

Articles (52 – 58)

- Relevant articles under the Draft Law feature confusion in determining legal persons in clear and specific terms. In addition, these articles do not clearly identify the authority that is competent for executing provisions. At one time, the Draft Law uses 'the Council of

¹⁷ Another translation of this term is 'usufruct division of common properties'. (Translator's note).

Ministers' and at others 'the competent authority' without stating the identity of such an authority.

- **Article (52)** stipulates that members on corporations, housing societies and agricultural societies be Palestinians. What if foreigners own shares or stocks in such categories, which are registered as Palestinian?
- **Articles (52 and 53)** define categories allowed to own properties in Palestine. Here, we may raise the following questions: May these categories – mentioned under article (53) – purchase properties outside the borders of cities and villages? What is the extent necessary for their work? In fact, specific benchmarks should be in place so that the extent necessary for their work can be measured.
- **Article (53)** restricts the general right provided under article (52). In this regard, there is an obvious contradiction; that is 'within Palestinian cities and villages; as needed for the conduct of their work.'
- **Article (54)**: Again, what does the expression 'as much as needed for the conduct of their work' mean? Are corporations prohibited from owning properties outside borders of cities and villages? Does this article taken into account the Law on Investment Promotion?
- **Article (56)**: What is meant by 'any corporation'? Are foreign corporations also permitted to purchase land for construction of buildings thereon within the zone plans of cities and villages? What about land located outside borders of cities and villages?
- **Article (58)**: The basis for reimbursing the price to the legal person or to the Land Authority is not clear. Additionally, the sequence in accordance with which the price is to be reimbursed – i.e. who shall have the priority for reimbursement – is equally not clear.

In regard of verifying the accuracy of the registers pertaining to societies, religious institutions and corporations and ascertaining that properties under their disposition do not exceed the amount necessary for their conduct of affairs under Paragraph (2), what is this necessary amounts and how will the committee define and restrict it?

Paragraph (3), which provides that the committee is to be competent to sell any immovable properties exceeding an institution's needs or the amount necessary for its work, may sound logical with respect to foreign institutions. However, Palestinian institutions should be allowed to work freely so long as they enjoy the legal personality and existence.

Article (60)

- Chapter Four does not define the word 'foreigner'.
- Article (60/1) does not take into account past ownership by many foreign Arabs of land and real estate within cities and villages, which exceed needs for housing and business management.

Article (63) provides for aspects of investment in the fields of industry, housing, tourism and agriculture. What about investment in the commercial field? Are these restrictive or just examples? In addition, the principle of 'reciprocal treatment' should be stated. On the other hand, what is the future of properties which Arab nationals owned prior to the enforcement of the law?

Article (71): 'Properties through allocation'¹⁸ should be defined.

Article (72): The phrase "within a period of ..." should be added to Paragraph (1), as follows: '... if the mortgagor fails to do so within a period of ..., the mortgagee may request to start the procedure of mortgage sale.' A legal period should be in place to give the mortgagee a respite to pay or satisfy his debts.

Article (77) does not mention the damage of the mortgaged property as a reason for the termination of the official mortgage. Furthermore, the article does not state joinder as a case for the termination of mortgage.

Article (81) deems that the basis is the lessee's right to deposit as security his right in the lease contract. Denial of such right requires a provision on its prohibition in the lease contract. We believe that the converse is true.

Article (82) refers to the enforcement of the provisions of the Civil Law. We have the Mejlle, not a codified Civil Law. Therefore, 'Civil Law rules' can be stated in this context.

4. Section Three: Articles (83 – 145)

This Section bestows unlimited powers to the Head of Land Authority. We suggest that these powers be reduced. Clear powers should be granted to directors of departments mentioned under article (177), each according to his specialisation and nature of functions. Such departments are to exercise their functions under supervision and monitoring of the Head of Land Authority.

Article (83) should read as follows: "Land and water settlement as defined herein shall involve all persons who have rights to the disposition or ownership or usufruct in land and water located in Palestine (as well as any rights pertinent thereto), whether such right is recognised or disputed (and shall be liable to registration)" (in accordance with definitions).

Article (84)

- Paragraph (84/2) provides that 'Settlement procedures shall be taken under the control and superintendence of the Head of the Land Authority and the person who he delegates to do so'. We suggest that such exercise be transferred to the Land Settlement Department, as provided under the law. The Head of the Land Authority should assume control and supervision insomuch as these belong to him.
- Paragraph (3/84) does not entail a reference to the consultation by the Head of the Land Authority with particular parties upon taking his decision to commence the settlement. We suggest that the article provides that the exercise of such right be conducted in consultation with the directors of departments mentioned under article (177).

Article (86) does not allot a specific period to which the Land Authority adheres after announcing settlement and prior to settlement. We suggest that the phrase 'for at least a period of ... before commencement of settlement' after the phrase 'shall be posted noticeably in an accessible place in city, village or town'.

¹⁸ The English translation of the Draft Law uses 'estate in particular' – an incorrect word-for-word translation. (Translator's note).

Article (90): Compensation mentioned under Paragraph (2) should be estimated by valuers and experts, not by the Head of Land Authority.

Article (91) empowers the Head of Land Authority to make definitive decisions. This is, in fact, a clear contravention of the Basic Law, which provides that administrative decisions are not to be immunised. In addition, local bodies as well as the Ministry of Public Works are entitled to construct roads in accordance with their master plans.

Article (94) contradicts general legal rules, which authorise the Head of Land Authority to conduct parcelation in the event two thirds of co-owners of shares agree. The judiciary is entitled of such power, not the Head of Land Authority. Moreover, the article does not make clear the outcome in case two thirds of co-owners do not agree.

Article (96): What does the word 'neglected' mean?

Article (97): What is meant by the word 'neglected' in Paragraph (2)? In addition, the Paragraph features a contravention of the Basic Law regarding immunisation of administrative decisions.

Article (98): Paragraph (98/1) makes reference to the 'authorised officer'; authorised by whom? Why is the authorising party not stated under the Draft Law? Furthermore, the expression 'his camp' under Paragraph (98/2) is not clear.

Article (102): The powers bestowed on the Head of Land Authority are exaggerated. Instead, municipal bodies, not the Head of Land Authority, should have full powers to modify village borders. It is not feasible to grant unlimited powers in everything.

Article (106): Paragraph (2) contradicts the principle stating that the owner can resort to the court to parcel and partition land.

Article (108): The term 'shreds' is actually used for 'surplus pieces'. It should also be noted that terms in the body of Draft Law are to be consolidated.

Articles (111 – 112): Decisions made by the Head of Land Authority should not be definitive. The Basic Law provides that administrative decisions may not enjoy immunity.

Article (115)

- Paragraph (1): In case the owner of a cave or well, which is located on a land parcel belonging to another person, is given a right of way or precinct to that cave or well, he would act as an owner of such parcel. In effect, the owner of land on which the cave or well is located will be aggrieved because he will be deprived of using his land in a proper manner. Alternatively, the owner of land may acquire such well or cave as well as pay an indemnity to its owner.
- Paragraph (3): Decisions taken by the Head of Land Authority may not be immunised as long as they are administrative decisions.

Article (118): This power can be given to the director of the land registration district department.

Article (120): The provision under this article is somewhat loose. The person who is entitled to give any piece of information on land shall be the landowner. A land user should not do so. In addition, the phrase 'or who can give information thereon' is loose.

Article (121): It is preferable to define 'state-owned forests' under definitions. In addition, it would be better to publish the announcement in local newspapers. However, we think that articles (121) and (87) feature a problem regarding challenge mechanisms and periods.

Article (122) empowers the Head of Land Authority to examine challenges submitted to the settlement court. Why are such challenges not submitted to the Settlement Court immediately without being examined by the Head of Land Authority?

Article (123): Why should not such challenges be referred directly to the Settlement Court for adjudication after hearing the evidence, provided that this is conducted in an expedite manner?

Article (129) refers all disputes examined before regular courts to the Settlement Court. An exception should be made in this provision in regard of cases in which pleadings were concluded (awaiting final court judgements). Thereby, duplicate pleadings and proceedings before the Settlement Court are avoided.

Article (130) does not provide for the necessity or urgency to issue the temporary decision, on condition there are compelling reasons and urgent necessity for the fulfilment of the seizure condition.

Article (133) is redundant. What does 'rules of justice and equity' mean? Are these available in our current legal system? Are we supposed to refer to principles of the Royal Court in Britain in this regard (i.e. equity)?

Article (136) provides that an objection is to be submitted to the Settlement Court within a period of one year from the date on which the definitive judgement is issued. However, a provision stating that title rights do not terminate by prescription should be entailed. The civil action at law can be raised to the competent court based on the value of the real estate at any time.

Article (137): The period of time should be longer than is prescribed due to risks resulting from his failure to submit the challenge.

Article (139) does not state the party to which challenges against the Table of Rights are to be submitted during such period of time. Is it possible that operation of the Settlement Court lasts for five years, whereby it shall be the party to which challenges are submitted?

On account of war, a longer period of time must be allowed. If such a longer period is not given, should the concerned person lose his right to challenge?

Article (141): What is the future of land and water which are not adjudicated? This issue must be tackled?

5. Section Four: Articles (146 – 174)

The Draft Law does not entitle owners or beneficiaries of land to resort to the judiciary to object the decision on acquisition in the event it violates the law.

Article (146) should be moved to definitions under the Introductory Chapter. On the other hand, the Draft Law does not define public legal persons.

Article (148) does not indicate that the landowner should be notified of the acquirer's intent to appropriate the land by registered mail. We think that the landowner should be informed of the

intent of the government or its local bodies since he owns the land. Local newspapers are not sufficient to ensure his knowledge.

Article (150) refers to the period of announcement provided under article (215). However, the latter article does not entail the period of announcement referred to. In addition, article (155) features an error in referring the estimation of indemnity to articles (226) and (227), which do not state such estimation at all. Also see articles (157, 158/1) and (167).

Furthermore, this article does not state whether a landowner could object the decision of the Council of Ministers before the judiciary.

Article (152): What does the phrase 'for free/free of charge'¹⁹ mean? What is free appropriation of land belonging to a third party?

Article (156): When should the announcement mentioned in Paragraph (1) be published?

Article (168)²⁰:

Article (170): In all cases, however, a (maximum) time limit should be in place so as to allow a landowner to recover the land or request that he regains it.

Article (171): Which equal lease charge - is it the charge prescribed three years beforehand or the charge at the present time (i.e. after three years)?

Article (172): At the end of the article, the phrase '... be limited within the amount specified for compensation' contradicts article (166/3) under the Draft Law.

Article (173): Article (157) can replace this article, provided that a provision on urgency is added thereto.

Article (174): In clause (a), the 'amelioration tax' imposed on the land should be defined. According to Clause (d), is it possible to acquire one fourth of the total area of the land without compensation? In fact, this contradicts former provisions under the Draft Law.

6. Section Five: Articles (175 – 230)

Article (175) does not provide for the permanent and temporary locations of the Land Authority. Additionally, the article contravenes provisions under the Basic Law in reference of the power to appoint the Head of Land Authority. In accordance with article (69) under the Basic Law, the Council of Ministers, not the President of the Palestinian National Authority, is empowered to appoint heads of public institutions and bodies affiliated with the government.

Article (176) entails broad powers. Other parties, such as the Water Authority, can be involved in the processes of survey and registration. For example, construction of roads can be carried out in cooperation with the Ministry of Public Works. In addition, the Land Authority can cooperate with the Ministries of Planning and Justice in regard of removing encroachments.

¹⁹ The phrase 'for free/free of charge' is not included in the English translation. (Translator's note).

²⁰ The comment made on this article is about a difference in the use of two Arabic words, which basically signify the same concept in English – a person who is legally incompetent. See supra note (1). (Translator's note).

Article (177): Instead of providing for each department in four paragraphs, the article can be redrafted, as follows: "The Palestinian Land Authority shall encompass all land registration offices, settlement departments, survey departments and state-owned property departments, provided that each of the registration offices is managed by a land registrar assisted by sufficient staff".

Article (178): Is the provision under this article restrictive in that industrial and tourism sectors cannot rent such property?

Article (181) prohibits the lessee from selling, granting or exchanging [his rights arising from the lease]. What about mortgage, for example?

Article (183) does not distinguish between the presence of the dead lessee's successors with him before his death or their separation from him. In this context, we suggest that reference be made to this issue in analogy with the Civil Law. What if successors are adult and separate from the lessee and do not want that rights under the lease contract be transferred to them?

Article (185) addresses dispositions of governmental land, provided that a decision is issued by the Council of Ministers on such dispositions. Does that cover lease?

Article (186): The definition under this article should be moved to definitions under the Introductory Chapter.

Article (192): The word 'cardboard' should not be mentioned under this article. This can be regulated internally by a decision from the Head of Land Authority.

Article (193) does not state the right of the owner's attorney or successors to request such registration deed. May purchasers through powers of attorney do so since they are owners?

Article (195) entitles the Head of Land Authority to establish new departments. We think, however, that such right should be transferred to the Council of Ministers based on a recommendation from the Head of Land Authority. The provision may read as follows: "The Council of Ministers shall establish land registration departments in accordance with requirements of the public interest and based upon a recommendation from the Land Authority".

Article (196): The definition under this article should be moved to definitions under the Introductory Chapter.

Article (200): The word 'selected' in the phrase "by the persons selected by the Head of the Land Authority" should be replaced by 'delegated'.

We suggest that this article be incorporated within a bylaw of the Land Authority or in a decision issued by the Head of Land Authority. There is no need to address issues like binding or copying any page on the register in this Law. On the other hand, the term 'Head' in Paragraph (2) should be defined since it is not included under definitions.

Article (201)

The Public Prosecution is empowered to conduct an investigation. In case the land registrar carries out the investigation, where is independence in this context? In addition, article (204) under the Penal Law No. (16) of 1960 regulates this issue and provides:

1. The person who takes, removes or damages wholly or partly papers or documents deposited in the dockets of archives or court registers or public depositories or which were

delivered to a public depository in such a capacity shall be punished with confinement from six months to three years.

2. In the event he commits the offence by the disjoining of seals, removal, climbing or by acts of violence against persons, the penalty shall be temporary hard work.

Article (205) provides: "The person who burns or damages even if partially registers or drafts or original deeds belonging to the public authority shall be liable to the penalties prescribed under the previous article with the differences included thereunder".

In regard of investigation procedures, articles (201 – 210) under the Draft Land Law should be transferred to the Penal Law and Criminal Procedural Law. In terms of article (208/3), assistance may be requested from the Public Prosecution in the event a person does not attend the investigation. The Public Prosecution can also be delegated to administer the oath. This is usually the case before courts. The land registrar should not have the power to administer the oath. This is, in fact, the jurisdiction of the Public Prosecution and courts.

Article (204) does not provide that the land registrar should mention in his report that the registration process was conducted in the absence of the concerned person or his attorney.

Article (206) does not state the period for posting the announcement. In this context, we suggest that the provision be amended so as to become: "The registration officer shall publish an announcement in a daily newspaper for a period of ... consecutively".

Article (212): The definition of registration transactions should be under definitions in the Introductory Section.

Article (219): The terms 'parcels' and 'lots' should be unified.

Note: The normal registration transaction must provide that the transaction details, including the names of purchaser, seller and attorneys as well as the sold shares, be published in a local newspaper. Thereby, an opportunity is given to persons wishing to challenge such sale or those who may have a right to pre-emption in the sold property.

Article (220): Sporadic registration should be defined under definitions in the Introductory Section.

Article (222): What is the competent authority to which the report is submitted?

Article (223) should be moved to the beginning of the Chapter.

Article (227): The phrase 'to continue their operation' should be added at the end Paragraph (2).

Article (229): Repealing should be explicit as to cover all laws that were effective. In fact, there are several amendments on land-related laws. On the other hand, does repealing include listed laws only?

Article (230): The respite given to correct the [current] situations is not sufficient, especially in light of complicated land-related issues in the present time; i.e. under the former regulation of the enforcement of provisions under the Draft Law.

III. Extent of Consistency of the Draft Land Law with other Laws:

In order to finalise this analytical study of the Draft Land Law, the relation between this Draft Law and other effective Palestinian laws should be examined and analysed as well. Therefore, this study sheds light on the effect of the Draft Law provisions on legal rules approved under other Palestinian laws.

Our guide to identify the laws related to the Draft Land Law was the provisions under the Draft Law itself. Based on a thorough examination of the Draft Law, all relevant laws are identified, whether stated explicitly or implicitly in the body of the Draft Law.

This section incorporates an examination of several laws related to the Draft Land Law, including the Law on Evidence, Personal Status Law, Waqf Law, Law on the Formation of Courts, Law on Execution and Procedure, Civil and Commercial Procedural Law, Law on Criminal Procedure, Law on Lease, Law on Zoning of Cities, etc. The section also focuses on relevant laws in force in PNA-controlled territories only, which entail clear contradictions to provisions under the Draft Land Law:

The Basic Law

This Law sets forth guidelines which draw up the legislative policy in the state. The Basic Law also provides for a set of legal controls which may not be infringed by any other law. Articles under the Basic Law are explored below in order to identify provisions which constitute constraints (even if indirect ones) on the subject of this study – the Draft Land Law.

An examination of articles under both the Basic Law and the Draft Land Law raises the following issues:

1. Expropriation of Properties

Article (21/3) under the Basic Law provides: "Private property, both real estate and movable assets, shall be protected and may not be expropriated except in the public interest and for fair compensation in accordance with the law or pursuant to a judicial ruling." In effect, the legislator of the Basic Law sets forth a number of controls which must be abided by in the expropriations of private properties. These controls are as follows:

- Public interest: The goal of the expropriation of private properties must be to serve the public interest. The Draft Land Law adheres to this goal in that it prohibits acquisition except for the public interest.
- Under the Law, private property may not be expropriated except in accordance with the Law.
- Compensation: The person whose private property is expropriated shall be compensated. Such compensation must also be fair. In this context, the Draft Land Law deviates from this principle as it allows the expropriation of one fourth of the land without compensation.

2. Prohibition of immunising administrative decisions:

Article (30/2) under the Basic Law provides: "Laws may not contain any provisions that provide immunity to any administrative decision or action or against judicial review". As such, the Basic Law prohibits that any law whatsoever provides immunity to any administrative decision or action against judicial review.

Several provisions under the Draft Land Law contravene the above constitutional provision. The Draft Law makes many decisions made by the Land Authority or its Head definitive or final and does not subject them to judicial review. In addition, the Draft Land Law does not entitle a landowner to object decisions on land acquisition issued by the Council of Ministers before the judiciary, especially if such decisions contravene the law.

3. Appointment of heads of bodies, institutions and authorities

Article (69/9/b) under the Basic Law provides: "To appoint heads of institutions and agencies mentioned above in subparagraph (a), and to supervise them in accordance with the provisions of the law." This provision provides that the Council of Ministers is the competent authority to appoint heads of governmental institutions and authorities. Since the Basic Law explicitly provides for such powers, no other law may infringe it.

However, the Draft Land Law contravenes the provision above; it authorises the President of the Palestinian National Authority to appoint the Head of Land Authority. In line with the Basic Law, the Draft Law should have maintained such power within the jurisdiction of the Council of Ministers.

The Mejelle and Draft Civil Law

- Article (12) under the Draft Land Law provides that "Land ownership may not be separated from ownership of all that is over it unless stipulated otherwise by law" or agreement of the landowner with a third party. This article is consistent with the Mejelle and Draft Civil Law. The latter entail a similar provision which allows for conclusion of Musataha contracts²¹, whereby ownership of land is separated from ownership of all that located thereon. This legal provision differs from legal systems in other countries. Nevertheless, it conforms to a small number of neighbouring countries which adopt such a provision. For example, the Lebanese legislator allowed for separation of ownership at first. However, this provision has caused economic damage as it suspended several legal, economic and real estate operations. In the end, the Lebanese legislator annulled this legal permission by a parliamentary decision, which repealed enforcement of that legal provision. In fact, this approach is legally justified; perpetuity is one of the most important attributes of title rights. As such, an owner's power to dispose of his property is a major effect of the title right. To permit such type of constraints would violate these substantial components, taking into account that the time limit of Musataha contracts does not exceed fifty years.

²¹ Musataha is essentially based on the concept of 'sale and lease-back' of the use of land. It is the right to build a building or to plant on the land of another. (Translator)

- Chapters II and III under Section One under the Draft Land Law are literally identical to Book Three under the Draft Civil Law. These chapters also completely conform to provisions under the Mejelle.
- Definition of common ownership under article (20) under the Draft Land Law contravenes provisions under the Mejelle and Draft Civil Law. Article (20) provides that non-demarcation of shares is a condition for establishing title. In this case, co-owners own equal shares. In contrast, article (1114) under the Mejelle provides that the division of common property is "to distinguish and separate shares from each other by means of some standard, such as a measure of capacity, or of weight, or of length". Therefore, division is restricted to the demarcation of such shares on the basis that the amount of co-owners' ownership is specified beforehand. In addition, article (962) under the Draft Civil Law provides: "In case two or more persons own a property, the share belonging to each of whom is not defined therein, they shall be co-owners in common. The shares of each one of them shall be counted as equal unless evidenced otherwise". Therefore, the Draft Land Law's definition contradicts both the Draft Civil Law and the Mejelle.

If we take into account that the Draft Land Law considers the state of non-defining of the amount of shares is a form of common ownership, on what basis do we prove the existence of such ownership? Furthermore, the Draft Land Law's definition contradicts article (21), which provides that a co-owner in common is entitled to the whole of his legally prescribed share as well as his right to disposition thereof in the manner he wishes without prejudicing others.

Article (21) under the Draft Land Law is literally identical to article (963) under the Draft Civil Law, which provides: "Each co-owner in common shall own his share in a complete manner, and he shall be entitled to dispose of it in the manner he wishes without permission from the rest of owner, on condition that he does not aggrieve their rights". Additionally, the article above is identical to article (214) under the Mejelle, which grants this right to the co-owner in common as well as the rule stating that "Injury may not be met by injury" under the Introduction to the Mejelle. Moreover, article (1071) under the Mejelle provides: "One of the joint owners of property held in absolute ownership may deal with such property alone, with the permission of the other. He may not, however, deal with it in such way as to cause injury to the other joint owner".

- Article (22/1) under the Draft Civil Law conforms to article (963/2) under the Palestinian Draft Civil Law in regard of the conveyance of the alienee's title to the portion which devolves to the disposer following the division, in case he purchases a particular portion of the common property, which the disposer is not entitled after the division. However, the Draft Land Law neglects the case whereby the alienee thinks that he bought a parcelled piece of land that is not from a common property. Thereupon, the alienee shall be entitled to request that the contract be annulled. (This presumption is mentioned at the end of article (963/2) under the Draft Civil Law. In addition, it can be treated as part of the error

which affects the contracting party's will and on the basis of which he has the right to request that the contract be revoked.)

The Draft Land Law does not address co-owners' consent to such disposition prior to the division, which is deemed to be an approval of the parcelation of a portion to the disposer. Regardless of whether such consent is explicit or implicit, the portion shall be conveyed to the alienee by default. This is remarkably significant as to the stability of economic and legal transactions.

- Article (22/2) under the Draft Land Law is literally identical to article (967) under the Draft Civil Law, which provides: "Each co-owner in a common property shall have the right to take the necessary measures to preserve the common property, even if following the consent of the rest of co-owners."
 - Article (23) under the Draft Land Law is also literally identical to article (968) under the Draft Civil Law, which provides: "The expenses associated with the management and preservation of the common property as well as taxes imposed thereon and all other costs arising from the common ownership or prescribed for the property shall be borne by all co-owners, each in proportion with his share, unless stipulated otherwise by a provision or agreement".
 - The aforementioned articles (22/2, 23, and 24) under the Draft Land Law contradict the Mejelle. Articles (1308 – 1320) under Section I / Chapter V, entitled "Repairs to Jointly Owned Property and Expenses Connected Therewith" feature the provide for the following legal regulation:
 - Such expenses shall be borne by the rest of co-owners in the event of their prior consent thereto.
 - In the event co-owners are absent, the co-owner may request such permission from the governor. In case the governor agrees, he shall incur what he spent on the rest of co-owners.
 - In case the co-owner does not obtain co-owners' approval or governor's permission to conduct such expenses and repairs, his work shall be deemed as a gift.
 - Article (25) under the Draft Land Law contravenes article (971) under the Draft Civil Law. The former article recognises each co-owner's right to request division unless an agreement between co-owners stipulates otherwise. In contrast, article (971) under the Draft Civil Law admits such right. Though, paragraph (2) stipulates that such agreement may not exceed five years (a time limitation). In this context, it should be noted that such contradiction may be ignored. As such, the provision on the time limitation under the Draft Civil Law can be enforced along with the general provision stated under the Draft Land Law.
- On the other hand, the Mejelle grants all co-owners the right to request division. Such division may be conducted either consensually or judicially. However, the Mejelle establishes some cases in which division may not take place. These pertain to the status of the property under division (See articles 1135 – 1146).

- Article (26) under the Draft Land Law is literally identical to article (990) under the Draft Civil Law, which provides: "Co-owners of a common property may not request the division of it in case the purpose of ownership is to keep it perpetually in common". Such restriction is not stated except in reference of the nature of the property under division mentioned in the previous paragraph. (The purpose of perpetuity is not provided under the Mejelle).
In this context, we think that the main distinctive feature of the title right is the owner's power of disposition. Such disposition, however, is restricted by the existence of common ownership. Therefore, the exception of common ownership should be narrowed. If made perpetual, it will completely contradict the most distinctive characteristic of the title right.
- Chapter V under Section One addresses adjustment division, which means that each co-owner enjoys usufruct to a portion of the land that is equal to his share (i.e. a temporary usufruct division)²². However, this Chapter does not address the types of such division (i.e. temporal and territorial) as explicitly as the Draft Civil Law and the Mejelle. Articles (38 and 39) implicitly address territorial adjustment division. Still, these articles do not state a time limit for such division as is the case in the Draft Civil Law (a maximum of five years; and if co-owners do not agree, it shall last for a period of one year only). Here, the Draft Land Law clearly contravenes the Draft Civil Law. Furthermore, contradiction is apparent within provisions under the Draft Civil Law. The latter provides under article (38) that the time limit for adjustment division is five years. The next article (39), however, states that such division is converted into a final division if it lasts for fifteen years. The Draft Land Law also features a similar error as it provides that the adjustment division is turned into a final one following the expiration of fifteen years, thereby contradicting article (984) under the Draft Civil Law.
Article (39) under the Draft Land Law refers to the temporal adjustment division as the usufruct by each co-owner of the whole land in common for a period time that is consistent with his share. Unlike article (1180) under the Mejelle, the article under the Draft Land Law does not provide for the method of lot amongst co-owners so as to identify the sequence of such usufruct in case of disagreement.
- Articles (41 and 42) under the Draft Land Law deem that the land as well as movable properties thereon which are allocated for its service, whether they are stably fixed (e.g. trees or fruits) or detached therefrom (e.g. water tanks) to be immovable properties. In addition, the land registration department shall be responsible for the registration of disposition transactions of such immovable properties. Therefore, movable water tanks, which are allocated for irrigation of land, are considered as immovable properties and the disposition transactions thereon are registered at the land registration department! The articles above do not make a distinction between movable and immovable properties.
- Unlike the Draft Civil Law, articles (48, 49, and 78) under the Draft Land Law set rules on compensation for damage or usufruct of the property of a third party. The Draft Land Law

²² See supra note 2 above (Translator).

obliges the disposer to present a security (article 47) or requital (article 48) or demolish buildings and uproot plants (article 49). In contrast, the compensation rule under the Draft Civil Law and Mejelle are based on the assessment of damage which affects the person as well as the assessment of lost gains as a result of the disposition by the third party. Article (19) under the Mejelle provides: "Injury may not be met by injury". In addition, article (1060) under the Draft Civil Law obliges the third party who exploited the land to demolish the structures which he built and pay a proper compensation to the landowner based on the consumption that affected the land and the gains which the landowner lost. In this context, we suggest that compensation be stated along with the removal of damage or the payment of requital, provided that the relevant judge assesses the amount of such compensation on the basis of the general rules under the Civil Law.

Chapter V under Section One, entitled "Real Property Mortgage" addresses the official mortgage of immovable properties. However, official mortgage takes place in immovable properties only. In addition, the Chapter does not define mortgage as the "A pledge [mortgage] consists of setting aside property from which it is possible to obtain payment or satisfaction of some claim" (Article 701 under the Mejelle). The Chapter should have entailed such a definition at the forefront of it.

- Article (66) under the Draft Land Law is identical to articles (1179 and 1180) under the Draft Civil Law.
- Article (68) does not add anything to the Draft Land Law inasmuch as the legal person enjoys an independent legal capacity.
- Article (70) under the Draft Land Law lists several conditions on the mortgaged property. Accordingly, such property may be saleable in a public auction and accurately specified. On the other hand, article (709) under the Mejelle provides that such property "must be in existence at the time of the contract [of mortgage], must have some specific value, and also be capable of delivery".

Like the Mejelle, article (1182/2) under the Draft Civil Law does not allow the mortgage of prospective properties. Therefore, the property must be in existence upon the conclusion of the mortgage contract.

Existence also includes legal existence (i.e. mortgagor's custody of the mortgaged property). Hence, the mortgagor must have the right to dispose of and exploit the mortgaged property.

On the other end, the Chapter under the Draft Land Law does not address the mortgagee's obligation to maintain the mortgaged property as well as safeguarding of such right, provided that expenses of such maintenance is incurred by him as well. In addition, the Chapter does not identify the legal status in the event of expenditure by a non-entitled person to maintain the mortgaged property. According to the Mejelle, if, for example, the mortgagor spends money on the mortgaged property in order to maintain it although it is in the possession of the mortgagee, the mortgagor's action in this aspect shall be deemed

as a gift. According to the Draft Civil Law, the mortgagor incurs security of such expenses from the mortgagee.

- Article (77) under the Draft Land Law lists cases whereby the official mortgage terminates. However, the article neglects making distinction between legal and material causes which lead to such termination. All those listed are legal causes. Moreover, the article ignores joinder – the uniting of the capacity of both mortgagor and mortgagee through the purchase by the mortgagee of the mortgaged property from the mortgagor. With respect to material causes, the article does not provide for the damage of the mortgaged property as a cause for the termination of the mortgage contract, while the debt remains payable by the debtor. (The mortgage right relates to an immovable property. Therefore, all real rights relating to such property terminate with the damage of the mortgaged property).
- Article (82) is redundant; it is stated under the Introductory Chapter to the Draft Law.
- Article (94) authorises the Head of Land Authority to parcel a land in common in the event two thirds of its co-owners thus agree, thereby contravening articles (1121 and 1122) under the Mejelle and articles (971 – 973) under the Draft Civil Law which recognise two types of division:
 1. Consensual division that is conducted upon the consent of all co-owners of the property under division; and
 2. Judicial division, whereby one or more co-owners resort to regular courts and request division (i.e. an obligatory division).

Article (94) under the Draft Land Law grants judicial powers to the Head of Land Authority, thereby violating the Civil Law provisions and rules. Moreover, article (106) under the Draft Land Law entails a provision similar to that of article (94) mentioned above.

- Article (115) under the Draft Land Law authorises the Head of Land Authority to approve easement rights for owners of parcels blocked from the public road, provided that he assesses the compensation which he deems fit according to rules under the Law. Such a power definitely contradicts jurisdiction of regular courts to approve these rights and to assess relevant compensation. This expropriates regular courts' jurisdiction as well as immunises an administrative decision issued by the Head of Land Authority, which violates the Amended Basic Law of 2003.
- The Draft Land Law addresses jurisdictions and capacities of the Settlement Court. This type of court is specialised. Therefore, an explicit provision should have stated its constitution as well as defined its formation, affiliation, powers and jurisdictions in a clear and detailed manner.

The Law on Water

Definition of Water

- **Definition of Water under the Draft Land Law:**

"Any river, stream, pool, spring, fountain, well, waterfall, dam, reservoir, canal, ditch, aqueduct, bridge, riverbank, waterway, or any structure used to administer, pump, conduct, elevate, propel water; or any other medium for the production, elevation or conduction of water for the purposes of basic irrigation and drainage operations".

- **The Law on Water No. (3) of 2002** defines water sources as "All water sources which are located within the borders of the land and marine territory of Palestine, whether these traditional (surface or ground water) such as the water of springs, including hot springs, wells, streams, rivers, lakes, seas and catchment areas or untraditional such as treated waste water, purified water and low-salt water."
- **Article (1) under the Law on Agriculture No. (2) of 2003** defines water as follows: "Water sources: All water sources which are located within the borders of the land and marine territory of Palestine, whether these are surface or ground water (such as the water of springs, including hot springs, wells, streams, rivers, lakes, seas and catchment areas) or untraditional such as treated waste water, purified water and low-salt water which is used for cultivation".

Definition of water sources under the Laws on Water and Agriculture includes all water sources available within the borders of the land and marine territories of Palestine. In addition, water sources are divided into traditional sources (e.g. springs, wells, etc.) and untraditional sources (e.g. treated waste water and purified water). In contrast, the Draft Land Law does not entail such a categorisation; it includes all water sources under one definition. The definition should be consistent with the Water Law.

Ownership of Water

Article (90) under the Draft Land Law provides:

1. A right to a land or to water shall be registered as state-owned unless established as a right of a claimant.
2. When settlement is conducted on water... If a person is found to have water shares in excess of his actual need and if such shares were given to other owners, then these beneficiaries shall pay to the owner of such land a fair compensation to be set by the Head of the Land Authority."

Article (947) under the Draft Civil Law provides: "The person who constructs on his property a private well or canal for irrigation shall be the sole person to be entitled to use it".

Article (3) under the Palestinian Law on Water No. (3) of 2002 provides:

1. All water sources available in Palestine shall be deemed to be public properties.
2. The precinct of the water source and public installations of water shall be designated in accordance with objective criteria in accordance with a regulation to be issued for this purpose.
3. Each person shall have the right to obtain his needs of water with the appropriate quality to use it. Each official or civil society institution must which provides water

services must take the appropriate measures to safeguard such right and put forward the plans to develop such services”.

In this context, provisions under the Draft Land Law, Draft Civil Law and Water Law are inconsistent. On the one hand, the Draft Land Law and Draft Civil Law provide for a private ownership of water. On the other, the Water Law provides that all water sources are state-owned public properties. As such, the Draft Land Law contradicts the Water Law.

Conflict in Articles under the Water Law:

Some articles under the Water Law are ambiguous and can be interpreted in various ways. Article (1) provides: “All water sources which are located within the borders of the land and marine territory of Palestine, whether these are traditional (surface or ground water) such as the water of springs, including hot springs, wells, streams, rivers, lakes, seas and catchment areas or untraditional such as treated waste water, purified water, and low-salt water.” Article (3) under this Law provides: “1. all water sources available in Palestine shall be deemed to be public properties.” Article (4) provides: “Digging, drilling, extraction, catchment, purification or treatment of water for commercial purposes or the construction or operation of an installation for water or waste water shall be prohibited without the obtaining of a licence thereof”. Article (35/2) on penalties provides: “... shall be punished with confinement for a period of not less than six months ... etc. 2. has dug artesian wells without a licence or contravened the conditions of the licence granted to him”.

Article (3) indicates that all water sources in Palestine are public properties. In contrast, article (4) provides that “digging ... for commercial purposes ... without a licence shall be prohibited”. Accordingly, digging of private wells is allowable. As such, is water in these private wells a public property of the state, taking into account that the definition of water sources includes ‘wells’? The article on penalties under the Water Law also imposes a penalty on a person who digs a well without a licence, thereby affirming individuals’ capability of digging wells with a licence. Are these wells public properties? Is it only a matter of exploitation and ownership of the water according to article (104) under the Draft Land Law, which provides: “Water rights shall be subject to eminent domain for fair compensation”? Does the word ‘rights’ signify exploitation?

Article (103/2) under the Draft Land Law provides: “For all purposes, the landowner(s) to whom water shares have been allocated shall by virtue of the water registry be considered as **holder(s) of ownership right to the water** allocated to the irrigation of their lands, whereby it may not be legal to alienate any such right to water ownership or any proportion of its separately from the land to which it is allocated, nor may it be permissible to use that water except for the land to which it was allocated.”

Article (83) under the Draft Land Law states: “The land and water settlement as defined herein shall involve all persons’ **rights to ownership, disposition of, and interest in water and land in Palestine** whether these rights are recognised or disputed”.

Identification of water ownership is in fact confused. Is it a state-owned public property, or individual property? How shall water rights belonging to individuals be settled as provided under the latter article while they are deemed as state-owned public properties?

In regard of infringing provisions on water settlement, the Draft Land Law does not address penalties imposed on persons who encroach on private or public water, change its course, perform any action that may affect the quantity of available water, or improvise any action near [river] banks or streams that may damage and pollute sources of such water. In addition, the Draft Law does not refer to articles (455 – 458) the Penal Law or article (35) under the Water Law, where such irregularities and penalties are regulated.

The Law on Charitable Societies and Local Bodies as well as Company Law

- Articles (52 – 54) under Draft Land Law:

Article (52): Are corporations, most shareholders on which are Palestinians but with some foreigners, are not entitled to purchase land? For example, Palestine Development & Investment Company Ltd. (PADICO) incorporates Arab and Palestinian investors. In addition, the Israeli Peace Coalition Company purchased 3.3% of the shares on the Palestinian Telecommunication Company (PALTEL) at USD 9 million in 1999. As such, some shareholders on PALTEL are foreigners. Can this company purchase land, with some shareholders thereon being foreigners? If this aims to impose restrictions on foreign corporations, it should also be applicable to companies, most shareholders on which are foreigners. These corporations should be allowed to own land without restrictions, provided that Palestinian shareholders represent 51% thereon. In contrast, companies, most shareholders on which are Palestinians, should be permitted to own land without any restrictions. According to the article above, what is the competent authority, from which permission must be obtained? Is it the Land Authority, or another authority? The competent authority must be defined so that a dispute over jurisdiction does not take place. Because they work on investment, corporations should be able to own and dispose of land without obtaining a prior permission. Are those investment corporations provided under the Draft Law the only ones that can dispose of land? Are not there any other corporations or institutions that can own land?

Article (53) under the Draft Land Law provides: "Palestinian corporations, charitable societies and religious institutions shall be entitled to possess and dispose **within Palestinian cities and villages** ... provided that they obtain **permission** from the competent authority".

Article (9) under Law No. (1) of 2000 Concerning Charitable Associations and Civil Society Organisations provides: "Any Association or Organization shall have the right to own movable and immovable properties in order to fulfil its objectives". This article does not stipulate that ownership takes place within borders of cities and villages only. In addition, the article does not address the amount which such companies and associations can own nor does it require the obtaining of a prior permission from competent authorities. On the

other hand, what is meant by the competent authority in article (53) under the Draft Land Law? Is it the Land Authority or another one?

Article (54) under the Draft Land Law provides: "By permission of the Council of Ministers, it shall be permissible for a foreign corporation, charitable society or religious institution to possess and dispose of realties within Palestinian cities and villages as much as needed for the conduct of their work". In contrast, the Law on Charitable Associations and Civil Society Organisations provides: "Any foreign Association or Organization may own immovable properties, provided that it obtains permission to that effect from the Council of Ministers upon recommendation of the competent Minister". In the latter case, the legislator does not restrict ownership within cities and villages nor does it designate the amount necessary for the work of associations or organisations. Accordingly, charitable associations and civil society organisations are entitled to own immovable properties, without a stipulation that they are located within cities and villages or designation of the amount ownership in proportion with their business.

Additionally, provisions of Law No. (1) of 1998 Concerning the Promotion of Investment in Palestine should be taken into account. Originally, this Law is legislated with the aim to promote investment, restrict investing companies to certain areas, etc. Article (3) under the Investment Promotion Law provides: "In accordance with the provisions of this Law, an investor may invest in enterprises in any sector of the Palestinian economy unless such is prohibited by special laws". Also, article (6) states:

- a) No investor shall be excluded on any grounds whatsoever from enjoying the privileges granted in accordance with the provisions of this law.
- b) The National Authority may grant a "most favored status" treatment to investors on the basis of nationality pursuant to bilateral or multilateral trade or investment agreements which the National Authority may conclude with other States without prejudice to the rights of third parties and with due observance to the principle of reciprocity.

On the other hand, article (56) under the Draft Land Law provides: "Pursuant to the article above, any corporation registered in Palestine and founded with one of its purposes the purchase of lands to construct houses, private or commercial, shall be entitled by resolution of the Council of Ministers to possess and dispose of lands within the boundaries of city and village plans and as needed for the construction of such buildings; and shall further be entitled to sell or lease them under the provisions stipulated by the Council of Ministers".

The latter article uses the expression "corporations registered in Palestine". Therefore, any foreign company that is registered in Palestine or any company, all shareholders on which are Palestinians, may own and dispose of land. Later, the article provides that the purchase of lands to construct houses, whether private or commercial, within borders of city and village zones should be amongst the purposes of a company's incorporation. As such, this article sets several restrictions: **(1)** a restriction on the aspects in which a company can

invest and **(2)** investment should be within borders of cities and villages. Take into account that the Law on Investment Promotion enables an investor to invest in any sector unless it is prohibited by law.

**Law No. (1) of 1998 Concerning the Promotion of Investment in Palestine
Equality and Preference amongst Investors:**

Article (6)

- a) No investor shall be excluded on any grounds whatsoever from enjoying the privileges granted in accordance with the provisions of this law.
- b) The National Authority may grant a "most favored status" treatment to investors on the basis of nationality pursuant to bilateral or multilateral trade or investment agreements which the National Authority may conclude with other States without prejudice to the rights of third parties and with due observance to the principle of reciprocity.

Article (63) under the Draft Land Law stipulates that an investor should be an Arab national. In contrast, the provision of article (6) under the Investment Promotion Law is more generalised. Unlike article (6), article (63) does not address the principle of reciprocity. In addition, the Investment Law does not specifically state investment sectors. In contrast, article (63) defines such sectors, including the fields of industry, tourism, housing and land reclamation. On the other hand, what is the future of other economic enterprises? Are Arab nationals entitled to own land within the borders of cities? What is the future of Arab nationals who already own land therein? Take into consideration that article (3) under the Investment Law provides: "In accordance with the provisions of this Law, an investor may invest in enterprises in any sector of the Palestinian economy unless such is prohibited by special laws".

The Penal Law

Article (47) under the Draft Land Law provides: "No person may illegally seize, occupy, use, or exploit in any manner an estate possessed or disposed of by another person; whereby if he takes any such action, he shall be obligated to present a security". Article (48) also states: "Any person who holds a land possessed by another person and plants it without the consent of that person shall have to pay a requital to the disposer for the period during which he seized that land".

On the other end, article (448) under the Penal Law No. (16) of 1960 provides:

1. The person who does not hold an official deed on ownership or disposition and who has expropriated a property or part of a property which is in the possession of another person without his consent shall be punished with confinement up to six months.
2. The penalty shall be from one month up to one year in the event the offence is accompanied by a threat or violence; and from three months to three years in the event a group, of which at least two persons are armed, perpetrate it. The penalty shall cover the commission of the offence mentioned in Paragraph (2)".

Article (449) provides:

1. The person who cuts down or damages a third party's existing plants or trees or shrubs growing naturally or planted or other non-fruit bearing plants that belong to a third party or releases animals on them with the intention to only damage them shall be punished with either or both confinement from one week to three months or with a fine from five Dinars to twenty five Dinars.
2. In the event the action of the cutting down or damaging affects any grafts or fruit bearing trees or their seedlings or any other tree that has its value in agricultural, commercial and industrial terms, the doer shall be punished with confinement from one month up to two years and with a fine of one Dinar for each graft or tree or seedling.

As such, the Draft Land Law does not mention such penalties nor does it make reference to the Penal Law. The Draft Law only refers to 'security'; i.e. a compensation for the period of time during which the person occupies the land.

Law No. (1) of 1997 Concerning Local Authorities

Article (87) under the Draft Land Law provides: "If settlement is announced in the lands of a village whose boundaries with other villages have not been demarcated, the Head of the Land Authority shall have the competence to demarcate such boundaries in conjunction with local bodies, Mukhtars (influential heads of families and tribes) of adjacent related villages..."

Article (102) provides: "Notwithstanding the provisions embodied under this Law or under any other laws, the Head of the Land Authority may in exceptional cases make necessary adjustments on boundaries of villages and land blocks and parcels or quarters whose entries were finalised..."

In contrast, article (4) under the Law on Local Bodies states:

1. In conformity with the provisions of this law, the structure, formation and limits of the Palestinian local authorities shall be specified by regulation emanating from the Ministerial Cabinet upon recommendation from the Ministry.
2. Without prejudice to the provisions of this law or to the public interest, the constitution, abolition, amalgamation or separation of any local authority or residential neighborhoods or any parts thereof, or the formation of any local authority shall be made by a decision from the Ministerial Cabinet upon recommendation from the Minister.
3. Any expansion or alteration of the boundaries of any local authority shall be made upon recommendation from the Council and by a decision from the Minister.

Article (15/2) under this Law also provides for powers of local bodies, including

1. Town and Streets Planning

Town planning, construction, abolition and alteration of roads as well as specification of roads width, linearity and paving, construction, maintenance, cleaning, lighting, appellation or numbering of streets, numbering and improving buildings in addition to planting trees and supervising that they are not trespassed, watching what may fall from open land area into the streets and asking the owners thereof to build walls around them.

Articles under the Draft Land Law contradict those under the Law on Local Bodies in reference of authorising the Head of Land Authority to modify borders of villages. Local bodies are supposed to

be responsible for such function. If the Head of Land Authority is authorised as such, what are the mechanisms by which he would coordinate with local bodies? Is this an easy process, taking into account that local bodies are affiliated with the Ministry of Local Government and may reject to cooperate with the Head of Land Authority?

Conclusions and General Recommendations

The research team looks forward to promulgating a Palestinian Land Law that achieves desired goals as well as preserves Palestinian land inasmuch as it is a symbol of Palestinian sovereignty. Land is the essential component in accomplishment of economic development and creation of a productive investment environment that benefits both the Palestinian economy and Palestinian people. In this context, the research team would like to reemphasise the most important issues in this study:

I. Absent legislative policy:

Based on the foregoing study, a clear and specific legislative policy is absent. Does this Law only consolidate different and various land-related laws within the PNA-controlled territories? Are there other issues that decision-makers wanted to fulfil by proposing this Draft Law?

As researchers at IoL, we emphasise that the Draft Law be enclosed with a number of necessary documents in order to come up with the desired results. Firstly, a document on the legislative policy of the Draft Law should be prepared. In fact, such a document is not only a result of the study on the Draft Land Law, but it is also a recommendation that must be adopted as a methodology in Palestinian legislation. This document is significant as to promote efficiency of the Draft Land Law. Based on several studies conducted by IoL on the legislative process in the PNA-controlled territories, Palestinian legislation is impaired with several defects. Such defects mainly stem from absent or unclear legislative policy of items of legislation approved by PLC. Examples on this problem are abundant.

Therefore, we believe that the legislative policy of the Draft Land Law should be made clear through a document to be attached therewith. The document must also provide answers to the following questions:

- **Why was the Draft Land Law proposed at this time?**
- **What do we expect from this Law?**
- **What will this Law achieve?**
- **What is the effect of the Draft Law on the current situation?**
- **Is constitutionality of the Draft Law confirmed?**

II. Examine the regulatory effect of the Draft Land Law:

Another document on the regulatory effect of the Draft Land Law is necessary. Thereby, we can ensure that the Draft Law is the best option that fulfils desired aims. In addition, we can make sure that provisions of the Draft Law are enforceable when it enters into effect.

To achieve this end, a study on the regulatory effect of the Draft Law should be in place. Such a study should also highlight the following issues:

- **Defining the problem:** The study should state the problem which drives the decision-maker to search for solutions for this problem, for which this Draft Law is proposed.

- **Desired effect:** What is the expected effect of the Draft Law? Will such an effect conform to the problem stated earlier?
- **Possible options:** Having stated the problem, potential options for solving that problem should be in place. However, it is not always necessary that the sole solution is to promulgate a new piece of legislation. Other options may entail maintaining the current situation. Additionally, regulations, instructions or decisions may be issued forth. Existing legislation may also be amended.
- **Effects arising from each option:** Having identified relevant options, effects associated with each option should be examined so that the decision-maker decides on the most appropriate ones. Thereby, the study outlines economic, political and social dimensions of each option.
- **Means to achieve each option:** The study should explain the means that can be adopted to realise each option.
- **Supervision and enforcement:** The study should lastly specify levels of supervision and mechanisms of enforcement. This issue must be clarified, particularly upon addressing the regulation of land-related issues in Palestine. A hierarchy of supervision, oversight and enforcement should also be in place. In addition, such a hierarchy must not be restricted to a single party.

III. Regulate certain issues under special laws:

The Draft Land Law includes a number of unnecessary regulatory issues and details, including regulation of the administration of the Land Authority and the manner by which registers are to be kept. Such issues should be regulated under secondary legislation or separate laws.

In addition, other issues under the Draft Law can be regulated under separate laws. For example, regulation of the public ownership of land as well as relevant provisions can be separated from the Draft Law without affecting the regulation of provisions thereunder.

IV. Introduce necessary amendments to the Draft Law

Based on the results of this report, a number of amendments should be introduced to the Draft Law, as follows:

1. Amend the formal aspects in the drafting of the Draft Law so that they conform to approved legislative drafting rules.
2. Amend articles under the Draft Law so as to fulfil internal consistency among its provisions as well as achieve harmony between the Draft Law's articles and general legal rules and principles. For example, such issues include land titles, common ownership, acquisition, etc.
3. Introduce necessary amendments to the Draft Law in a manner that conforms to legal principles and rules under other laws, which may sometimes prescribe dissenting provisions. Therefore, the Draft Law should be harmonised with other applicable laws,

including the Basic Law, Water Law, Penal Law, etc. As such, provisions under the Draft Law will be accurate and objective.

Annex

Comments on the USAID Report

USAID Report entails criticism and recommendations on the Draft Land Law. The report also addresses a number of observations which may raise legal problems. From IoL's perspective, below are comments on certain issues which the USAID Report addresses.

The USAID Report relies on another version of the Draft Land Law. Thus, our version of the Draft Law is discrepant from theirs.

The report states that the Draft Law lacks clear features of legislative policy, which the draft law-maker intends to achieve. In essence, the Draft Law aims to consolidate laws in force in the West Bank and Gaza Strip into one law. In this context, we agree with the USAID Report. Moreover, land-related issues are very intricate, especially under the particular Palestinian situation. Before approving the Draft Law or drafting any draft law on land-related issues, the legislator must rely on in-depth studies as well as examine regulatory effects thereof. Such studies should diagnose the current situation regarding land, land ownership and all rights pertinent thereto, including settlement, registration, etc. Furthermore, the legislator must define the desired goals of the Draft Law as well as its legislative policy applicable on the ground.

Disagreements with the USAID Report:

- Justifications for dividing land titles into three types are not sufficient. The report states that problems can take place since most Palestinian land is not settled. This might be true. Though, what prevents the conducting of settlement under the new law which divides land titles into three types? We object the Report's criticism to reducing land titles to three types on the grounds of material problems which may arise from such division. We believe that the division under the Draft Law is right, taking into account that land title is a right *in rem* that authorises an owner to exercise his right to use, exploit and dispose of his property. Therefore, the subject of such right should be designated. Then, the party exercising such right is to be defined. Although land is divided into five types under the current legal regulation in Palestine (private, Miri, Waqf, Muwat and Mattrouk), parties exercising such right are only three:
 1. Individuals and private legal persons who exercise their rights in Mulk land.
 2. The state along with its public institutions and local units, which exercise their rights in Miri, Muwat and Mattrouk land.
 3. The Ministry of Endowments (Waqf) and its departments, which exercise their right in Waqf land.
- The report states that the objective of land settlement is avoid unlimited disputes over land in the future. Therefore, the report proposes that the period of challenge against settlement be reduced, especially with regard to absentees, minors and absentees due to

force majeure and wars. Settlement of land within a short period of time will, for sure, protect individual rights and provide tenure for those whose land is settled. However, is it preferable that land settlement be conducted in an expedite manner under the current circumstances in the Palestinian territories, taking in account the large number of refugees in the Diaspora who did not have an opportunity to view settlement tables within the aforementioned period of time even with the presence of a prior notification on land settlement?

- The report proposes that affected persons, especially absentees, be compensated for their land instead of recovering their title rights in settled land. This, however, clearly contravenes the in-kind execution provided under the Palestinian legal system to safeguard recovery of rights. In fact, compensation takes place when such in-kind execution is untenable. Since we talk about inalienable title rights which are not subject to prescription, what would prevent an owner from demanding his right before a competent court even after land settlement is completed? In fact, it is better to allow more time for settlement as well as prolong the period for submitting challenges against the final table of rights.
- The report raises the legal status regulated under article (229), which provides: "provisions in conflict with it shall be repealed". Does that refer to the laws mentioned under the Preamble, thereby repealing those which contradict the Draft Land Law? What is the future of other relevant laws mentioned under the Preamble? In this regard, we disagree with the report. The first clause under article (229) states explicitly that laws mentioned thereunder are to be repealed. On the other hand, what is the future of effective laws concerning land, which are not mentioned under the Preamble as well as the article providing for repealing? Will any provision contradicting the Draft Land Law be repealed?
- Finally, the report assumes that timing of the Draft Land Law is unsuitable. From IoL's point of view, researchers are not entitled to tackle the issue of timing of the Draft Law. Based on the legislator's trends to regulate land-related issues, timing is a policy issue that is related to the legislator's will and legislative policy.