

# Area C is Everything



Planning for the future  
of Palestine

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## Planning for the future of Palestine

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## Executive Summary

### Background

Under the Oslo Accords the occupied West Bank was divided into three administrative areas: A, B, and C. Area C, comprising approximately 60 per cent of all West Bank lands, is distinguishable as it remains under full Israeli control, including with respect to land registration, planning and zoning.

It is widely understood that determinations regarding Area C are integral to a two-state solution, to which much of the international community remains publicly committed. This report suggests that such a solution is not viable without a new approach to planning and development in Area C, one that ensures Palestinians can remain there and determine their own social and economic development.

There are currently two planning systems in place in Area C – one for Palestinians and another for Israeli settlers – with flagrantly unlawful and discriminatory outcomes. UN officials and leading international human rights organisations such as Human Rights Watch and Amnesty International identify the planning regime in Area C as evidence that Israel perpetrates apartheid, contrary to international human rights law.

Israel uses its planning regime to effectively ensure Area C is completely hostile territory for Palestinians – a place where they should neither live nor thrive – with the aim and effect of pushing Palestinians off the land and into the overcrowded and the less resource-rich areas of the West Bank, and so that Israel can annex Area C and thus have access to its abundant resources. Israel denies Palestinians access to 99 per cent of the land in Area C, including their own agricultural lands and private property. Palestinians are also prevented from constructing, renovating or upgrading homes, and even from receiving humanitarian aid and development assistance for social infrastructure. Meanwhile, the experience of Israelis is entirely different, with settlements growing at a rapid rate, and building permits being regularly issued, and on a large scale.

The impact of the discriminatory planning regime on Palestinians in Area C is devastating. They are subject to repeated demolitions, forced evictions, and forcible transfer, and are deprived of basic human rights including the necessities of life such as rights to housing, food, water/sanitation, health care, education and to a livelihood. Beyond this, Palestinians in Area C continuously face harassment and violence from Israeli settlers, who perpetrate such acts largely with impunity. Area C has also become quite isolated from Areas A and B. It is estimated that Israeli restrictions in the West Bank have cost the Palestinian economy close to 60 billion USD between 2000 and 2019. Simply put, the discriminatory Israeli planning regime in Area C has resulted in “de-development” for Palestinians.

### Planning Initiatives in Area C - the Status Quo

It is well-recognised by many donor states that the current planning regime established and administered by Israel in Area C is inherently unlawful, discriminatory against Palestinians, designed to render obsolete the two-state solution and, more particularly, Palestinian statehood, through the forcible transfer of Palestinians from their land.



Several initiatives have been implemented in an effort to assist Palestinians and their communities in their struggles to remain in Area C and to bypass the discriminatory planning regime that restricts Palestinian development. The tacit approval approach, initiated as a political strategy by the European Union (EU), and implemented with the support of the Palestinian Authority (PA) and others, enables outline plans to be developed by Palestinian local councils and implemented if, after a few months, the Israeli Civil Administration (ICA) issues no major objections.

The PA also undertakes various efforts to provide greater planning coherence at the local, regional and national levels and across administrative areas A, B and C in the West Bank, for example, through the use of sub-regional cluster plans, a participatory land settlement programme, a spatial development strategic framework, and the *National Urban Policy* for Palestine. The West Bank Protection Consortium (WBPC)–the central vehicle delivering humanitarian responses in Area C–also works closely with Palestinians in their communities to map out and deliver their infrastructure needs. As the WBPC is led by humanitarian actors, they do not seek the approval of the ICA or any other organ of the Israeli Military Government for the aid they provide Palestinian communities.

While all of these initiatives have merit, they are not sufficient – taken alone or together – to offer a viable future for Palestinians, Palestinian statehood in Area C, or to keep alive the two-state solution alive. A different approach to spatial planning in Area C is urgently required.

## **The Humanitarian-Human Rights Planning and Accountability Framework**

The new vision for an effective planning process and regime for Palestinians in Area C uses international humanitarian law (IHL) as the entry point, and an international human rights law (IHRL) framework to guarantee human rights outcomes. It creates a stronger nexus between humanitarian, development and political initiatives and lays a better foundation for a permanently sovereign and politically independent Palestinian state.

The aim of the Humanitarian-Human Rights Planning and Accountability Framework (HHRPAF) is to create a robust rights-based planning and accountability regime rooted in IHL and the right of Palestinians in Area C to live in dignity in accordance with IHRL. This new planning regime will recognise that the needs of Palestinians have necessarily changed in nature and scope after 55 years of occupation, and the political context has equally changed, requiring a different response.

The HHRPAF will be based on the following principles of international law, among others:

- Area C is the contiguous and permanently sovereign territory of Palestine and is under belligerent occupation by the State of Israel.
- Israel as the occupying power, the Palestinian Authority and the Palestine Liberation Organisation, and donor states are human rights duty bearers accountable to Palestinians who, as rights holders, are entitled to the immediate and progressive realisation of their economic, social and cultural rights including rights to housing, education, health, and employment.
- Israel's planning regime in Area C is unlawful and discriminatory, imposed in violation of peremptory norms of international law including the basic rules of IHL (which preclude unwarranted changes to pre-occupation laws and institutions), the prohibition on aggression pertaining to the acquisition of territory by force, the prohibition on apartheid, and the right to self-determination and permanent sovereignty of the Palestinian people.

- Israel must be held accountable for its violations of IHL and IHRL in Area C.
- Alternative mechanisms that better support Palestinian-led planning and decision-making must be developed.
- The Palestinian Authority will have to play a stronger role in Area C and will need the support and backing of the international community and donor states to do so.

## Operationalising the HHRPAF

To operationalise the HHRPAF requires:

- I. Engaging with the Palestinian authority – with the technical support of UN-Habitat and other relevant actors – to encourage the adoption of this approach, including with respect to their national plans for Areas A, B and C.
- II. Further enhancing the capacity of Palestinians in Area C and beyond to engage in human rights-based planning processes.
- III. Building political solidarity and a unified strategy amongst international actors, including donor states, to hold themselves and Israel accountable to the human rights of Palestinians.

The following are the key components of the HHRPAF:

### **i. Develop a parallel Palestinian-led planning system for Area C**

The Palestinian Authority should be encouraged to build on and extend its planning activities in Area C with a view to creating a planning process parallel to the Israeli system that is currently in place. In other words, the Palestinian Authority should commence activities in Area C commensurate with a formal transfer of planning authority as was anticipated by the Oslo Accords. This parallel process would be based in and would modernise the Jordanian Planning Law that was in place at the time of the commencement of the Israeli occupation and would result in rights-based local outline plans.

### **ii. Build capacity for a human rights-based approach to planning in Area C**

The Palestinian Authority, through its Ministry of Land and Governance, with the technical support of UN-Habitat and other UN agencies, and with the support of donor countries and others, should lead a capacity building process to develop deeper knowledge and understanding of the meaning and application of international human rights law in the context of planning. This could include modules on rights-based planning, non-discrimination, and human rights accountability.

### **iii. Develop a unified international diplomatic action and accountability plan**

For most donor states there are political impediments to defending the rights of Palestinians in Area C, and a preference, based on historical, economic, and geopolitical considerations not to confront Israel to the full and appropriate extent.

However, if this status quo is maintained, any discussion regarding a two-state solution, in keeping with the Oslo Accords, will be moot. The only way in which Area C will avoid annexation by Israel and the death of a two-state solution is with concerted diplomatic action.



Initial steps should include:

- The creation of a humanitarian/development/diplomatic action plan for asserting the planning rights of the Palestinian Authority in Area C, and that outlines basic planning principles and processes that shall be implemented in Area C to achieve human rights outcomes.
- Greater assertion by the international community of the IHL and IHRL protections of Palestinians and ensuring that Israel is held accountable for violating or undermining those rights. To this end, a variety of means should be deployed consistent with international law related to conflicts, including: enhanced use of public statements and demarches, and utilising strategic measures like sanctions in trade relations or attaching conditions to trade agreements.
- Escalation by the international community in its communications with Israel—through private diplomacy and/or public declarations—to hold Israel accountable to Palestinian as rights-holders.
- Re-evaluation of donor states' diplomatic relations with Israel in light of the new Israeli government and its decisions regarding governance of the occupied territory.

#### **IV. Maximise humanitarian aid and development assistance to Area C**

Breathing life into the Oslo Accord's two-state solution will require the mobilisation of significantly more financial resources for humanitarian assistance and development in Area C.

#### **V. Develop a rights-based communications strategy**

The Palestinian Authority and the international community, including donor states, need a much stronger and more strategic narrative that asserts the human rights of Palestinians outside of the context of IHL violations, and focuses on socio-economic rights and related political commitments such as the Sustainable Development Goals and the New Urban Agenda.

The international community—with the support and engagement of local representatives including the EU Interest Group on Area C—should also develop a coordinated communications strategy with respect to Area C that is aimed at Israelis, as well as their own constituents in Europe and North America. This strategy might focus less on the conflict and more on the legitimacy of Palestinians in Area C to enjoy the human rights to housing, water and sanitation, health, education, life and dignity.

## I. Introduction

This report is based on the understanding that Palestinian survival and the dream of statehood depend on Palestinians having control over their lands, communities, and any planning regime implemented in what the Oslo Accords designated as 'Area C'. Indeed, in the course of researching this report,<sup>1</sup> one sentiment was much-repeated among those interviewed: *Area C is everything*. This report therefore also understands that determinations regarding Area C are integral to a resolution of the question of Palestine, the conclusion of belligerent occupation, and to the viability of a two-state solution to which much of the international community remains publicly committed.

The purpose of this report is to offer a practical approach to keeping the dream of Palestinian statehood alive by offering a different approach to spatial planning in Area C. After more than 55 years of Israeli occupation, it is clear that the status quo in Area C offers no viable future for Palestinians and Palestinian statehood. This report will be of particular interest to the Palestinian Authority (PA), donor states, UN-Habitat, INGOs and NGOs and all others working in Area C.

Composing more than 60 per cent of the occupied West Bank,<sup>2</sup> Area C is land upon which Palestinians have lived for generations, from which they have earned a livelihood and maintained their heritage. Since the Interim Agreements (Oslo Accords), Israel has taken systematic and aggressive steps to annex large portions of Area C, while simultaneously denying Palestinians and their communities the right to remain on their lands or use them for economic growth and development. Israel has accomplished this by defying international law, as well as the provisions and spirit of the Oslo Accords, exercising total and ongoing control over spatial planning in Area C. Israel has actively supported the establishment and expansion of settlements, including through provision of the necessary infrastructure and services for settlements to thrive, such as roads, sewage systems, electricity, health and education facilities and employment opportunities. Israel has also tacitly encouraged and permitted the establishment of Israeli outposts in Area C, which are taking over vast swaths of agricultural land required for Palestinian survival and statehood.

Concurrently, Israel strictly controls and denies these same rights to Palestinians in Area C. Even the most rudimentary infrastructure and buildings are prohibited from being built and are routinely demolished. Israel has thus created a discriminatory and what has been described as apartheid planning regime with grossly unequal outcomes for Israelis and Palestinians. It may not be an exaggeration to say that Israel has planned for every square metre of Area C to their benefit and is executing its plans at breakneck speed, while completely stunting any growth of Palestinian villages. As it stands, many Palestinians in Area C are living in pre-1967 conditions, often without even the most rudimentary signs of development.

While donor countries alongside non-governmental organisations have attempted, through humanitarian and development aid, to circumvent Israel's stranglehold on planning, their approaches are not commensurate with the pace and resources being employed by Israel to annex the region and displace Palestinians. To continue with the provision of humanitarian and development aid in its current form, without addressing the systemic barriers to Palestinian well-being, self-determination and statehood, will only result in, at best, blunting of the life-threatening consequences of Israel's grave breaches and serious violations of international law.

Palestinians in Area C cannot be required to live frozen in time, in a constant state of dependency on humanitarian aid, residing in caves and under tarps and tents, lacking access to the necessities of life





while a third generation is born into occupation. They also cannot be expected to rely on Israel's discriminatory planning regime to access development aid to assist in planning their communities and for the infrastructure necessary for their growing needs.

If the status quo is maintained, Israel will effectively—whether formally or informally—annex the majority of Area C in violation of international law, jeopardising the future of Palestinians and viability of a Palestinian state. The PA is committed to defending the right of Palestinians to live in Area C and use the land for agriculture and economic development, but lacks formal jurisdictional powers in Area C.

Breathing life into the idea of Palestinian statehood and the survival of Palestinians as a people will require urgent, innovative and bold approaches to spatial planning for Palestinians in Area C.

This report offers a new strategic approach: a Humanitarian-Human Rights Planning Framework, based on international legal standards and to be implemented by the PA, with the political support and practical backing of the international community and donor states.<sup>3</sup> This approach aims to build on existing local and international humanitarian and development efforts by formally establishing a planning process that lays the foundation for Palestinian self-determination and statehood. It is imperative that Palestinians in the occupied West Bank experience the progressive realisation of economic, social and cultural rights and autonomy in an economically viable and culturally vibrant Palestine.

The report begins by situating Area C as occupied territory governed by international humanitarian law (IHL). It proceeds to outline the nature and impact of Israel's current planning regime on the living conditions of Palestinians in Area C, exposing that while Israeli settlers and settlements thrive, Palestinians experience de-development and abhorrent living conditions. Harnessing the strengths of IHL and international human rights law (IHRL) and their intersections, the report offers a set of ground rules to help move forward in an efficient and effective manner, a planning framework for Area C aimed at ensuring the viability of Palestinian statehood.

The proposed Humanitarian-Human Rights Planning and Accountability Framework (HHRPAF) provides baseline principles based on IHL and IHRL to guide the PA and donor states with respect to their engagement in Area C, alongside actionable steps to be taken in the short term to preserve the viability of a two-state solution. The framework uses international human rights norms to create a stronger nexus between humanitarian, development and political initiatives, laying a solid foundation for a Palestinian state.

In terms of baseline principles, the HHRPAF recognises that:

- Area C is the sovereign territory of Palestine and is under belligerent occupation by the State of Israel.
- Israel as the occupying power, the PA and the Palestine Liberation Organisation (PLO), and donor states are human rights duty-bearers accountable to Palestinians as rights-holders who are entitled to the immediate and progressive realisation of their economic, social and cultural rights including rights to housing, education, health, and employment.
- Israel's planning regime in Area C is unlawful and discriminatory, imposed in violation of peremptory norms of international law including the basic rules of IHL, the prohibition on aggression pertaining to the acquisition of territory by force, the prohibition on apartheid, and the right to self-determination and permanent sovereignty of the Palestinian people.

- Israel must be held accountable for violations of IHL and IHRL in Area C.
- Alternative mechanisms that better support Palestinian-led planning and decision-making must be developed.
- The PA will have to play a stronger role in Area C and will need the political support and practical backing of the international community and donor states to do so.

To operationalise these principles, the report suggests the creation of a robust rights-based planning and accountability regime. The first phase of implementation includes:

- i. Developing a parallel Palestinian-led planning system for Area C based on human rights;
- ii. Capacity building for a human rights-based approach to planning in Area C;
- iii. Developing a unified international diplomatic action and accountability plan for Area C;
- iv. Maximising humanitarian aid and development assistance to Area C; and
- v. Developing of a rights-based communications strategy.

The proposed HHRPAF will neither end Israel's occupation of Area C, nor will it create a Palestinian state. If fully implemented, however, it will keep Israel from destroying the possibility of a future Palestine, and will provide Palestinians with greater control over their own planned growth and development in Area C. It will result in greater harmony between humanitarian and development aid and political agendas, while providing more effective and robust support, all of which should result in greater enjoyment by Palestinians in Area C of basic human rights to housing, water/sanitation, education, health care and livelihood rights. These are the basic elements required as a foundation upon which to build a sovereign Palestinian state.



## II. Occupied Territory and International Humanitarian Law

The West Bank, constituting Palestinian territory to the east of the 1949 Armistice Line (Green Line), is recognised as being under the belligerent occupation of Israel according to international law, to which IHL applies concurrently with IHRL.<sup>4</sup> As such, Israel's obligations under IHL, including the Fourth Geneva Convention, apply throughout the entire West Bank: Areas A, B and C, and East Jerusalem. This was affirmed by the International Court of Justice (ICJ) in its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.<sup>5</sup>

The occupying power must legislate in a manner that respects the laws in force, with the intention of acting in the interests of the local population and restoring public life, order and safety.<sup>6</sup>

Under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, not only is Israel prohibited from settling its own civilian population in the occupied Palestinian territory (oPt), it is obliged to protect the population of the oPt and administer the territory for the sole benefit of the protected population.<sup>7</sup> Only in strictly limited situations of absolute military need can they demolish property<sup>8</sup>—belonging to Palestinians individually or collectively—and not in the circumstances in which Israel does so currently.

Where humanitarian relief in the form of property provided by a third state or states is unlawfully destroyed, it is considered not only an internationally wrongful act to which consequences will apply— as are all unlawful demolitions—but additionally, a direct injury to the donor-state financing the relief scheme. Under customary IHL and Article 49 of the Fourth Geneva Convention, an occupying power is never permitted to forcibly transfer or displace protected populations, regardless of motive.<sup>9</sup> Exceptions to this are very narrow, subject to a heightened test of necessity, and require the return of displaced people once the reason for their displacement has ceased.

Where the occupying power cannot or does not protect the local population and administer the territory to their benefit, the Fourth Geneva Convention provides that it is the duty of the occupying power to allow and facilitate relief actions “if whole or part of the population of an occupied territory is inadequately supplied”, and that such actions “may be undertaken either by states or by impartial humanitarian organisations...”.<sup>10</sup> An occupying power cannot withhold consent for humanitarian aid unlawfully, arbitrarily or capriciously, for instance, if withholding it violates other obligations of the occupying power. As such, it would be considered unlawful if Israel withheld consent to the building of a medical facility in Area C by a humanitarian actor where such facilities are needed, on the basis that the humanitarian actor has not secured a building permit through its planning apparatus.

The ICJ's advisory opinion on the construction of the wall elaborates that states have an obligation not to recognise illegal acts by Israel, not to render aid or assistance in maintaining the conditions created by such illegal acts and, in addition, an obligation to uphold the provisions of the Fourth Geneva Convention, the United Nations Charter and international law.<sup>11</sup> This requires states to react against unlawful impediments to humanitarian relief through any and all of the following: political dialogue, public statements, non-public demarches, unilateral restrictions and lawful countermeasures, conditionality of trade and assistance, invocation of state responsibility, international dispute settlements and international cooperation.<sup>12</sup>



This legal framework provides an understanding of the rightful duties and obligations of Israel. It is clear that the following actions, among others, undertaken by Israel in Area C are in violation of its duties as an occupying power there:

- Overriding the Jordanian Planning Law that was in place in 1967 and, in its place, imposition of extensive planning law, regulations and orders legislated by the Israeli military government without demonstrating an absolute necessity to do so;
- Establishing and expanding Israeli settlements and supporting infrastructure to this end;<sup>13</sup>
- Failing to administer Area C for the sole benefit of Palestinians;
- Demolishing and destroying Palestinian homes, property and basic infrastructure, or dismantling and/or confiscation of property, such as water systems, solar panels, and other property, including that provided through humanitarian assistance;<sup>14</sup>
- Denying access to resources, social infrastructure such as electricity, water and sanitation, and roads necessary for the socio-economic well-being of Palestinians throughout the West Bank;
- Obstructing of the provision of humanitarian aid, resulting in the starvation of Palestinian families/households/communities;
- Forcibly transferring the local population<sup>15</sup> away from their homes and lands, including Bedouin and herding communities.

In situations of occupation like in Area C of the West Bank, IHL remains necessary to evaluate Israel's actions and omissions, and it provides donor states and humanitarian organisations a legal framework for providing ongoing aid. However, in light of the protracted nature of the occupation, lasting more than 55 years, IHL alone is an insufficient framework to ensure that Palestinians and their communities can develop and flourish well into the future. Other international law and political commitments must be harnessed in this regard, including IHRL, the New Urban Agenda and the Sustainable Development Goals (SDGs).



### III. The Impact of Planning on Living Conditions in Area C

The Oslo Accords (Oslo I and Oslo II) promoted a “just, lasting and comprehensive peace settlement and historic reconciliation”<sup>16</sup> between Palestinians and Israelis in the 1990s. The second phase of the Accords—the Interim Agreement of 1995 (Oslo II)—divided the West Bank into three administrative areas: A, B and C.<sup>17</sup> These divisions of territory were carved out to facilitate the incremental implementation of the peace process. Within each of these areas, the Government of Israel and PA were prescribed a role with respect to civil administration and security.<sup>18</sup> Area A, comprising approximately 18 per cent of the West Bank, included Palestinian cities and was to come under full Palestinian administration. Area B, comprising approximately 22 per cent of the West bank including mostly Palestinian built-up villages, was to come under the administrative control of the PA but remain under Israeli military control.

Area C, comprising approximately 60 per cent of all West Bank lands, contains all of the Israeli settlements (with the exception of those located in East Jerusalem), main roads and extensive rural areas including Palestinian agricultural lands and villages.<sup>19</sup> Under the Interim Agreement, within Area C all security and most civic and land-related issues—including land registration, planning and zoning—was to remain under full Israeli control, with the administration of the area to be “gradually transferred to the Palestinian jurisdiction”<sup>20</sup> with the transfer of “civil powers and responsibilities”<sup>21</sup> to Palestinian authorities by 2000.<sup>22</sup>

While the jurisdictional terms of Areas A and B are mostly in place, Israel has failed to meet the terms under Oslo II, having failed to cede administrative control of Area C to the Palestinians. As it stands, Israel maintains exclusive control over security in the area as well as all land-related civil matters including spatial planning, infrastructure, construction of all types and development. The PA is responsible for provision of education and medical services to Palestinians in Area C, though this has proven difficult in light of Israel’s control over provision of the land and physical infrastructure necessary for such services. Water rights were divided under the Oslo Accords—two aquifers straddle the Green Line—with temporary allocations of extraction rights to each party for the temporary period, pending a final negotiated solution.<sup>23</sup>

Area C is mostly rural. It is home to an estimated<sup>24</sup> 180,000 to 300,000 Palestinians across 532 villages, 241 of which are located entirely in Area C.<sup>25</sup> Registered refugees make up 33 per cent of the population.<sup>26</sup> Israel’s unlawful acquisition of the area means that there are now approximately 503,000 Israeli settlers living in 132 settlements and approximately 147 settlement outposts<sup>27</sup> and satellite neighbourhoods,<sup>28</sup> with a growth rate of approximately 17 per cent in the last five years.<sup>29</sup> The majority of Area C’s total land mass (70 per cent) has been effectively declared off-limits for the use by and development of Palestinian communities, who in turn have only been allocated 1 per cent of land in Area C for development.<sup>30</sup>

Israel assumed spatial planning powers over the territory it occupied after the 1967 conflict. Contrary to IHL, in 1971 it made radical changes to the planning regime using a military order to replace the Jordanian Planning Law in the West Bank. Military Order (M.O.) 418 abolished Local and District Committees<sup>31</sup> and concentrated broad powers in a single body – the High Planning Council (HPC) of the military government and its sub-committees. There is no Palestinian representation on the HPC and its sub-committees are staffed exclusively by officers of the Israeli Civil Administration (ICA), a unit of the Israeli Ministry of Defence and apparatus of the Israeli Military Commander of occupied territory (General of Command, Central Command).<sup>32</sup> At the same time, M.O. 418 effectively

allows for the establishment of Special Local Planning Committees (SLPC) exclusively for Israeli settlements, in which settlers have full representation.<sup>33</sup> There are now over 20 such SLPCs.

In effect, there are two planning systems in place in Area C—one for Palestinians and another for Israeli settlers—with flagrantly unlawful and discriminatory outcomes. UN officials and leading international human rights organisations such as Human Rights Watch and Amnesty International cite the planning regime in Area C as evidence that Israel perpetrates apartheid, contrary to IHRL.<sup>34</sup> The planning regime, which is fundamental to Israel’s claim to “sovereign right over the territory”<sup>35</sup> supports the growth of Israeli settlements and the well-being and livelihoods of settlers in Area C. The inverse relationship between an increase in Israeli settlers in the West Bank and the feasibility of establishing any form of Palestinian sovereignty therein is well understood and supported by Israeli government authorities.<sup>36</sup>

Israel uses its planning regime to ensure Area C is completely hostile territory for Palestinians – a place where they should neither live nor thrive – with the aim and effect of pushing Palestinians off the land and into the overcrowded and less resource-rich areas of the West Bank, Areas A and B, and so that Israel can annex Area C without obstacle.<sup>37</sup> This is being accomplished through a variety of methods, one of which is to use land designations to completely restrict Palestinian growth. Israel denies access of Palestinians to their own agricultural lands and private property and prohibits the construction or renovation/upgrade of their homes, as well as delivery of humanitarian aid and development assistance, including for social infrastructure, all through use of the following criteria, among others:

- a. the land is Israeli state land (because it has not been formally registered by Palestinians);
- b. the land is required for a military security function or is a closed military zone;
- c. the land is for a nature reserve;
- d. the land is needed for public need (roads, public gardens);
- e. the land is an archaeological site.

The impact of Israel’s planning regime is stark. Though aspects are described individually below, they are experienced collectively.

#### **a. Unliveable Socio-Economic Conditions**

Israel not only fails to ensure the well-being of Palestinians, contrary to IHL; it actively undermines adequate living conditions for Palestinians as part of its *de facto* annexation efforts.

The living conditions for Palestinians in Area C violate international humanitarian and human rights standards. According to a recent needs assessment<sup>38</sup> as well as other humanitarian studies, the planning regime in Area C deprives Palestinians of a range of human rights. These include the requirements of human security and the necessities of life such as rights to housing, food, water and sanitation, health care, education and to a livelihood.

Most Palestinian homes in Area C are in poor condition. Because Israel denies Palestinians the right to expand their homes without permits, which are rarely granted, many live in overcrowded housing without access to basic necessities. More than 70 per cent of Palestinian communities located entirely or mostly in Area C are not connected to the water network and instead rely on tankered water at





considerable cost.<sup>39</sup> Water usage in some Area C communities is only 20 per cent of the minimum recommended standard of 100 litres per capita set by the World Health Organisation. This contrasts with Israeli settlement consumption which averages 300 litres per capita per day.<sup>40</sup> Water tanks erected without a permit are subject to seizure or destruction by Israeli authorities. Area C has insufficient water, sanitation and hygiene (WASH) infrastructure. Between January and November 2021, 60 WASH-related structures were demolished or confiscated in Area C on the grounds of a lack of building permits.<sup>41</sup>

Of surveyed Palestinian communities, one-third of households did not have access to electricity.<sup>42</sup> Nearly half of the Area C communities report that their access to emergency or basic health services is hampered by the long distances to the nearest clinic or the need to pass through an Israeli checkpoint.<sup>43</sup> Health facilities have also been subject to demolition. Access to food is at crisis levels with 40,000 Palestinians in Area C suffering food insecurity due to Israel's restrictions on Palestinian access to their agricultural lands and water, settler violence when tending crops and impeded access to Areas A and B.<sup>44</sup>

There are few elementary schools in Area C, despite access to elementary school being a human right. This is because Palestinians are refused building permits for schools by the ICA in places where they are needed, and when they are built they are often subject to demolition by Israeli forces.<sup>45</sup> There are currently 48 schools in Area C with full or partial demolition or stop work orders, affecting over 6,500 children.<sup>46</sup> Secondary schools in Area C are also scant. As a result, children must travel to another community which creates many barriers to attendance. In some instances there are no roads connecting communities, or the nearest community school is many kilometres away, or there are checkpoints that take hours for Palestinian students to pass through. Even if there are roads or routes that can be used between Palestinian communities, children are often at serious risk of settler harassment and violence while using them. All of these barriers have a particular impact on girls and children with disabilities. Not surprisingly, children in Area C are often forced to abandon schools, impacting educational attainment levels in Area C, or their families are forced to move to Areas A or B in order for their children to attend school.<sup>47</sup> Access to education is a key element in human development and economic growth.

## **b. Demolitions, Forced Eviction and Forcible Transfer**

Any new structure or renovation of an existing structure—an extra bedroom, an additional classroom for a school, a playground, installation of water pipes, a medical clinic—undertaken without an Israeli-issued permit is deemed unauthorised under the planning regime and, in most cases, is subject to demolition or removal by seizure. Building permits for Palestinians are very rarely granted by the ICA, even where the proposed structures are critical to survival and human security. Palestinians are only ever permitted to build on privately owned land, if recognised as such by the ICA. However, proof of ownership is extremely difficult for many Palestinians as only roughly one-third of land in the West Bank is registered (this is in part because the land registry was not completed prior to the 1967 war, and its operation was suspended after it).<sup>48</sup> Even where ownership is proven, building permits are almost always refused.<sup>49</sup>

Almost 65 per cent of Palestinians residing in Area C have had their homes demolished at least once, 76 per cent have received demolition orders, and 82 per cent have received orders to freeze construction.<sup>50</sup>

Between 2016 and 2020, Palestinians in Area C submitted 2,550 requests for construction permits (often for existing buildings) but only 24 were granted, representing a 0.9 per cent success rate. Of



the 123 Palestinian local outline plans in Area C that have been submitted to the ICA to date, a mere seven have been approved, five are in public objections, and 103 are in technical discussions.<sup>51</sup> The proposed plans awaiting approval are for basic improvements necessary to stabilise the communities, such as the expansion and development of elementary and secondary schools, rehabilitation of internal roads, water networks, playgrounds and parks, and the construction of buildings for public use.

In the meantime, demolition orders are issued on a vast scale. According to data provided by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), over 7,200 structures have been demolished in Area C since 2009, (over 1,500 or 20 per cent of which were donor-funded). These include homes, parts of homes, animal shelters, or parts of infrastructure such as roads and water pipes necessary for agricultural work. These demolitions have affected more than 130,000 Palestinians, displacing over 9,300.<sup>52</sup> In the last 10 years, close to 12,000 demolitions have been ordered in Area C;<sup>53</sup> in 2021 alone, almost 800 demolition orders were issued by the ICA, a five-year high.<sup>54</sup> Where an explanation is provided for demolition, the reasons include unauthorised development, Israeli military use of the area in question, and punitive destruction of properties associated with alleged perpetrators of attacks against Israelis.<sup>55</sup>

The psychological, emotional and practical impact of demolitions and forced transfer cannot be overstated. Once a home is demolished, Palestinians are left homeless, often resorting to live in tents or other structures of sub-standard quality. Forcible transfer is a direct threat to human security and prohibited under international law. Demolitions and their effects, including deep and repeated trauma, lead to the forced displacement of Palestinians, who are compelled to leave Area C as they can no longer tolerate the highly coercive environment.

Meanwhile, the experience of Israeli settlers is entirely different.

Between 2016 and 2020, construction permits were issued for 8,356 Israeli settlement housing units in Area C – 384 times the number of permits granted to Palestinians.<sup>56</sup> Some individual settlements have grown by almost 35 per cent in the last five years, and the projected population in Israeli settlements—excluding those in East Jerusalem—is well over 525,000 by 2025 and over 1 million by 2046.<sup>57</sup> The Israeli government provides a host of incentives to entice Israelis to move into the settlements, including housing benefits and tax breaks. Israel also tacitly encourages the establishment of settler outposts in Area C. When outposts are created without the required permissions under Israeli planning law, they are rarely demolished, even where a demolition order has been issued (though this is rare), and they are often retrospectively legalised.<sup>58</sup> These settler outposts are commonly established as farms where livestock graze over huge areas of land, with Palestinian farmers driven out of the area as a result.

As noted above, as an occupying power, Israel is in violation of the Fourth Geneva Convention when it fails to protect the well-being of Palestinians in Area C, when it displaces the Palestinian population from Area C and when it transfers its own population into the occupied territory.

### **c. Settler Violence**

Beyond the violence of house demolitions and forcible transfer, Palestinians in Area C regularly face harassment and violence from Israeli settlers. Settlers will, for example, physically assault Palestinians in Area C, block roads, throw stones at cars and houses, raid villages and farmland, torch fields and olive groves, and sometimes hurl Molotov cocktails or fire live ammunition.<sup>59</sup> One humanitarian aid agency has calculated that between 2017 and 2022, settler violence against



Palestinians increased by 170 per cent, resulting in many casualties and significant property damage.<sup>60</sup> This violence continues to escalate.<sup>61</sup> In most cases, the Israeli military and security forces do not confront or charge Israeli settlers for violent acts against Palestinians. Between 2005 to 2021, the Israeli police failed to investigate 81 per cent of incidents concerning Israelis who harmed Palestinians and their property, and 92 per cent of all investigative files were closed without an indictment being filed, according to Yesh Din.<sup>62</sup>

Settler violence results in psychological and emotional trauma. It also results in damage to Palestinian income-generating properties, forcing them to abandon or reduce their traditional work of farming the land. This contributes to their economic instability, jeopardises their cultural identity and contributes to their forcible transfer, again clearing the way for Israeli annexation of Area C.<sup>63</sup>

#### **d. Undermining Indigenous Bedouin and Herding Culture and Livelihood**

Many of the conditions in Area C are experienced disproportionately and most acutely by Bedouin and herding communities, whose culture and practice is to live in proximity to grazing areas and water sources and who move according to yearly seasons. In most cases, these communities are not recognised by Israeli planning authorities, despite their role as stewards of the land in much of Area C. They are also often the last barrier to the total removal of Palestinian presence from the area. Their mobility, use of grazing land and water has been restricted through planning decisions since the early 1970s, such as through designations of land as state land, or as closed military zones or nature reserves. As a result, “tens of thousands of Bedouin suffer daily threats to their way of life, thousands of homes have been demolished, dozens of communities are threatened with expulsion, residential areas are neglected, and most have no infrastructure or access to essential services.”<sup>64</sup>

The Bedouin herding community of Ras al-Tin is a case in point. In 2009 Israel issued demolition orders against structures built by thirteen families. After several encounters with settlers and Israeli forces—resulting in two deaths—in 2021, Israeli forces demolished homes, animal shelters and solar power systems; confiscated water tanks, tractors, and animal fodder from the community; and ordered the families to move to Area B. The thirteen families were left homeless. In mid-2022, 19 additional households (100 people) were eventually forced from their community, with most relocating to Area B. Residents reported that they moved because of the insufferable living conditions imposed on them by Israeli authorities and settlers.<sup>65</sup>

Israel’s longstanding policy regarding Bedouin and herding communities in Area C lies in their forcible transfer, whereby Bedouin are to be removed from their lands and permanently relocated to other locations. Detailed plans are used for this purpose and have been executed on a few occasions. For example, the Bedouin Community living in Jabal Al-Baba, between the Palestinian town of Al-Eizariya and the Israeli settlement Ma’ale Adumim, has traditionally relied on cultivating agriculture and grazing livestock along an expansive area.

This land has now been allocated for the expansion of nearby settlements, with families at risk of being forcibly transferred to a permanent location within Al-Eizariya, where they will live beside a highway, amid scrapyards and garbage, without access to grazing lands, undermining their dignity and way of life. This was already experienced in the mid-to-late nineties by Palestinian Bedouin who were forcibly transferred by Israel to Arab Al-Jahalin, where residents were effectively cut off from their traditional livelihood and source of income. This resulted in social and economic upheaval, damaging the structure of and social roles within families. Forcible transfer has particular impacts on women, who, unable to use their expertise in managing the pastoral-agricultural production system, are divested of their primary economic role within their family.<sup>66</sup>



These Israeli-planned relocation sites for Bedouins and herder communities are similar in intent and effect to the reserves that many colonial powers created for Indigenous peoples.<sup>67</sup> The overwhelmingly detrimental legacy of such practices is well documented, with a number of colonial powers now spending vast resources in reconciliation processes. Such forced transfers contravene both IHL and the United Nations Declaration on the Rights of Indigenous Peoples, Article 10 of which prohibits the forced removal of Indigenous peoples from their lands and territories without their free, prior and informed consent.<sup>68</sup>

#### **e. Segregation and Lack of Mobility across Area C**

Israel's planning regime purposefully separates Palestinian towns and villages within Area C from each other, as well as from Areas A and B. This is accomplished through the establishment of checkpoints that Palestinians must pass through, military surveillance, construction and expansion of strategically placed Israeli settlements, and the use of roads exclusively for settlement residents, or in other cases the creation of roads on which Palestinians are prohibited from travelling. Israel also regularly destroys the roads connecting Palestinian communities in Area C, with the PA unable to develop alternate modes of public transport through Area C.

These conditions often mean that Palestinians must take detours which significantly increase their travel time. In other instances, Palestinians may not be able to travel at all. Masafer Yatta in the southern West Bank is a case in point, where a road connecting two villages—one with the only school in the region—is consistently destroyed by the Israeli military and made unfit not only for local traffic, but also for the school bus, requiring children to walk long distances to attend school. It has been reported that pregnant women have been forced into taking donkey-carts to give birth at local medical clinics, but in light of terrible road conditions, have been unable to reach their destination and instead have had to give birth on the roadside, putting at risk their lives and those of their newborn babies.

A field visit conducted for this report to Humsa Al-Bqai'a, in the Jordan Valley, revealed a community spread across Areas B and C. In Area B, under Palestinian administration, the housing was of better quality and less transitory in nature, with access to electricity and water. The homes in Area C, under complete Israeli control, lacked access to water, electricity, and had experienced several demolitions in 2021 and 2022. The community had jerry-rigged a water source to supply the inhabitants in Area C. Unfortunately, they would often wake up to find that someone had severed the hose connecting the water source.

Jalazone refugee camp,<sup>69</sup> established in 1948 for Palestinian refugees, is another example. The majority of the camp is located in Area B, however for lack of space, the local school for boys is located just outside the camp in Area C. It is directly across from an Israeli settlement, Beit El. The school's location is a significant protection concern for the students and teachers due to its location near a settlement and the presence of Israeli military often stationed there.<sup>70</sup>

#### **f. Denial of Opportunities for Economic Growth and Development**

The role of planning and planning authorities is to advance sustainable socio-economic growth and development. The goal should be to integrate economic, environmental and social concerns spatially in a strategic manner.<sup>71</sup> The ICA planning regime in Area C is designed and implemented to have the opposite effect for Palestinians. Former UN Special Rapporteur on the oPt, Michael Lynk, has referred to Israel's planning strategy for Palestinians in Area C as “de-development” and an instrument of apartheid.<sup>72</sup>



Palestinians in Area C are prevented from using their land for agricultural or economic development. Using its power as an occupier, Israel has declared most of the land in Area C as “state land” (including land to which Palestinians have historic and substantiated claims to private ownership). According to the ICA, Israel allocates over 99 per cent of ‘state land’ in the occupied West Bank for Israeli use only, rather than public land that the occupying power should preserve and develop for the benefit of the occupied population, in accordance with international law.<sup>73</sup>

The loss of agricultural lands has had a severe impact on the livelihood and well-being of Palestinians in Area C. It has led to high levels of unemployment and entrenched poverty and prevents economic development. It is estimated by the United Nations Conference on Trade and Development that Israeli restrictions in the West Bank cost the Palestinian economy \$57.7 billion USD between 2000 and 2019.<sup>74</sup> The Jordan Valley, for example, is the most fertile land in the West Bank, but more than 85 per cent is inaccessible to Palestinians. As a result of its unique climate, minerals and the Dead Sea, beyond agricultural use, it is well positioned to offer opportunities for tourism, for example.<sup>75</sup>

Israel’s purposeful prevention of Palestinian development in Area C also has a significant socio-economic impact on Areas A and B. The fact that Areas A and B are subject to a different planning regime from the very restrictive one in place in Area C renders almost impossible any attempts at regional planning and disrupts the “complex network of mutual relations”<sup>76</sup> that commonly develop between agricultural areas, towns and villages where resources and services from each are relied upon and exchanged.

The division of land in the occupied West Bank into three “areas” was an artificial construct to facilitate a peace settlement, and “[t]he spatial distribution of Areas A, B, and C does not reflect any geographic or planning logic.”<sup>77</sup> Area C is properly the hinterland of the towns in Areas A and B and East Jerusalem.<sup>78</sup> All 11 governorates in the West Bank have a portion of their lands in Area C, and two-thirds of West Bank towns and villages in Areas A and B have lands in Area C.<sup>79</sup> As the World Bank has noted, Palestinians have been unable to develop roads, airports, railways in or through Area C, or the utility lines to connect Areas A and B across Area C. Many Palestinian communities must use detours that are up to five times longer than the direct route to the closest city, often requiring special vehicles which most communities cannot afford, and affecting labour mobility and access to services.<sup>80</sup>



## IV. Planning Initiatives for Palestinians in Area C

According to the Oslo Accords the powers and responsibilities for planning and zoning in the West Bank were to be transferred from Israeli to Palestinian administration.<sup>81</sup> This has not yet occurred. Under the terms of the Oslo Accords, in so far as Israel has planning and zoning authority, an Israeli-issued permit is required for Palestinian development projects in Area C.<sup>82</sup> It is well recognised that the current planning regime established and administered by Israel in Area C is inherently unlawful, discriminatory against Palestinians, designed to render obsolete the two-state solution and, more particularly, Palestinian statehood, through the forcible transfer of Palestinians from their land.

The European Parliament considers Israel's planning related activities in Area C to be in direct violation of international law, based on deliberate and discriminatory practices that lead to de-development and reliance on international aid.<sup>83</sup> In addition, the UN has stated that Israeli policies undermine the livelihood of the Palestinian population by prohibiting land development and limiting Palestinian access to crucial natural resources, such as water, and basic services.<sup>84</sup>

The European Union has also developed a clear position in this regard. In the context of its continued commitment to a two-state solution, the EU has identified Israel's planning regime in Area C to be a direct threat, noting in particular the "worsening living conditions of the Palestinian population in Area C and serious limitations for the PA to promote the economic development of Palestinian communities in Area C...".<sup>85</sup> In its 2011 report, *Area C and the Palestinian State Building*, the EU described the restrictive planning and zoning system imposed by Israeli authorities in Area C as having "wide-ranging impacts" and serving as an "impediment for Palestinian development". The EU has suggested a number of measures related to the planning regime to improve the situation in Area C such as, encouraging Israel to "change its policy and planning system and engage the Palestinian communities in access and development".<sup>86</sup>

The approaches developed by the PA, the UN and donor states to navigate the Israeli planning regime in Area C—despite being carefully considered and having produced important outcomes—are currently not scaled to counter the fast-paced growth of Israeli settlements, do not prevent the expansion of those settlements, and do not result in sufficient development to put Palestinians in Area C on the path to integration into a future Palestinian state. It is also concerning that some of the current approaches supported through development aid, while producing necessary social infrastructure, may serve to purportedly legitimise or inadvertently recognise as lawful Israel's planning regime, which has been identified as being rooted in violations of peremptory norms of international law, including the prohibition on apartheid. On the other hand, while humanitarian relief schemes have been able to mobilise resources and efforts relatively quickly without legitimising the Israeli planning regime, the scale of these efforts remains relatively small-scale, and are not aimed at curtailing settlement expansion.

Palestinians in Area C cannot be required to live frozen in time, in a constant state of dependency on humanitarian aid, residing in caves, under tarps or in tents, still lacking access to the necessities of life while a third generation is born into occupation. They also cannot be expected to rely on Israel's discriminatory and unlawful planning regime to access development aid to assist in planning their communities and for the infrastructure needed for their growing needs. This situation is stunting Palestinian human development, the growth of their communities, their identity as a people and any hope of statehood.



This is not to say that the existing humanitarian and development assistance strategies and support are unimportant. They are, in fact, the lifeline that Palestinians rely on for survival. As it stands, however, many of these efforts are maintaining the status quo rather than moving things forward. These efforts are also hampered by the siloed nature in which humanitarian and development aid are sometimes delivered, both because of the funding and organisational structures of donor states, but also because of Israeli efforts to bar development in Area C. Integrating aid programmes so that they can achieve transformational results and ensure that Palestinians maintain a foothold in Area C is often perceived as too difficult, even with current donor support and the aid of the UN and humanitarian organisations. It is time to question and consider whether a new approach should be developed and supported, drawing on and scaling the strengths of existing initiatives.

What follows is an overview of the approaches to planning currently being used in Area C to ensure that the basic human rights of Palestinians are met and that they are able to remain in their homes and villages, and on their lands, consistent with international law.

### **a. Tacit Approval – Local Outline Plans for Development in Area C**

Since 2011, an approach to the development of Palestinian communities in Area C has been the use of local outline plans that are formally submitted to the ICA, and which are considered to have been tacitly approved by the ICA if, after 18 months after submission, they have a) received an Israel case number, b) been discussed at least once with the ICA, and c) have not received an outright “major objection” (eg, on the grounds of security, proximity to Israeli assets, etc.). This approach was initiated as a political strategy by the European Union in-line with its 2012 political support for a negotiated peace and a two-state solution whereby it was recognised that Area C is of critical importance for the viability of a future Palestinian state.<sup>87</sup> The ‘tacit-approval approach’ is led by the PA and supported by several donor states through development aid.

Operationally, village or municipal councils initiate the planning process, with financial and technical support from the PA’s Ministry of Local Government (MoLG) and UN-Habitat, the EU, as well as Enabel,<sup>88</sup> the German Agency for International Cooperation (GIZ) and the United Kingdom’s Foreign, Commonwealth & Development Office (FCDO). Once the process is initiated, a core planning team is formed and the community is actively involved in developing their own local outline plan, as a means of building essential infrastructure and new homes in the framework of a formal community development plan. On the whole, the process involves significant consultation with the residents of each community, including women and community-based organisations, many of whom are also represented on the planning team.

The technical plans themselves are usually drafted by a professional firm and finalised in a back-and-forth process with the community planning team. Once finalised, the plans are approved by the local council and informally validated by the MoLG. The local council then decides whether to formally submit the plans to the ICA for approval. If so, typically it is the Team Leader of the planning team that completes the technical submission on behalf of the local council, in coordination with the MoLG. If the plan is submitted, the MoLG and the General Authority of Civilian Affairs within the PA call for a meeting with the ICA to discuss the plan. The discussion includes representation from the local council and a representative of the planning team.

Since 2011, 123 local outline plans have been produced, and 115 have been submitted to the ICA for approval. Despite the high technical standards of these plans, only seven have been explicitly approved by the ICA, with some revisions, five are in the public objections phase, and most of the



remaining 103 are under “technical discussions” for periods ranging from eight months to 11 years. A further eight local outline plans are under preparation and have not yet been submitted to the ICA.<sup>89</sup>

In light of the slow pace of the regular approval process for local outline plans and the fact that even a technically proficient plan could easily be objected to by the ICA, a ‘tacit approval’ approach has been adopted by local councils, the MoLG and states providing development aid. The tacit approval approach was developed in 2015 by the EU mission in Jerusalem, backed by the UK, France, Denmark and Belgium. According to this approach once a plan is submitted, if the ICA does not respond to the plan or makes no major objections within 18 months of submission,<sup>90</sup> it can be recognised by the village council and the MoLG as having been tacitly approved by the ICA, and participating EU member states may provide development aid without further permitting. This approach is in-line with the letter of the Oslo Accords, which recognise Israel’s planning power over Area C before transition, while maintaining their commitment to a two-state solution and the necessity of Palestinian development. It also allows these actors to use Israel’s silence with respect to most local outline plans to move forward development without directly engaging Israel’s discriminatory planning regime.

Formally, any structures built in Area C without a permit, whether through the tacit approval process or not, will not be considered ‘legal’ by the Government of Israel.

The PA, unlike the donor community, does not wait for 18 months to pass before commencing the implementation of social infrastructure projects inside the local outline plans prepared and submitted to the ICA. Since 2015, the implementation arm of MoLG—the Municipal Development and Lending Fund (MDLF)—has implemented six packages of social infrastructure interventions within the local outline plans prepared with and for the local communities in Area C. These packages are supported by the EU and like-minded EU member states, with a total budget of EUR 14.19 million, in addition to three packages supported by the Swiss Agency for Development and Cooperation with a total budget of EUR 3.52 million.<sup>91</sup> At the same time, the MoLG has invested approximately EUR 22.64 million in infrastructure projects at planned communities in Area C, with financial support from the Palestinian Government, the Islamic Development Bank, GIZ, the World Bank, Abu Dhabi Development Fund, the African Development Bank, and KfW Development Bank. Development aid infrastructure projects are intended for the long term and, thus, are of a more substantial scale than the projects carried out under humanitarian aid.

When the process for developing local outline plans was first initiated, the plans were created individually and in a fragmented fashion without, for example, strategic reflections on the region in which they were to be implemented, or with regards to Areas A and B, including with respect to access to services and infrastructure needs.<sup>92</sup> The PA, with the technical assistance of UN-Habitat and others, are now trying to address these deficiencies. For example, the MoLG’s *Human Rights Impact Assessment Mechanism* provides planners with preliminary guidelines for a rights-based approach to planning.<sup>93</sup> As a planning tool it pushes for planning coherence at the local, regional and national levels and across administrative areas A, B and C in the West Bank; and it encourages the mapping of land rights regardless of Israeli imposed infrastructure such as settlements and the wall. It also serves as a monitoring tool for spatial planning, introducing a methodology which maximises the advantages of spatial planning for ensuring human and humanitarian rights.

The PA is also trying to ensure that the local outline plans collectively contribute to an overall vision of Area C for Palestinians, regional cooperation with Areas A and B, and to the larger goal of a Palestinian state. To support this, the MoLG has moved toward the development of sub-regional





cluster plans, which will address the inter-connectedness of Areas A, B and C. The MoLG has also prepared a spatial development strategic framework at the governorate levels in the West Bank to ensure better linkages between urban centres (Areas A and B) and rural areas (Area C). These plans are representative of the creative spatial planning solutions being developed in Palestine, combining the strategic development dimension with the spatial considerations at the governorate level. Importantly, the plans are a critical component in the realisation of the *National Spatial Plan (2050)* under preparation and are considered the founding basis for the *National Urban Policy for Palestine* that was launched in May 2022.

There are important social and political merits to local outline plans and the tacit approval approach. They have resulted in Palestinian capacity building, engagement in the planning process, technically proficient plans to envision the development of Palestinian villages, and some infrastructure that will serve the long-term needs of Palestinians in Area C. Yet, despite its advances, the tacit approval approach is not without concerns.

While the intention of the tacit approval approach to local outline plans is to support Palestinian development in Area C, the effect might be to legitimise the Israeli planning regime and solidify Israel's power over Area C indefinitely, thereby undermining the viability of a two-state solution articulated in the Oslo Accords. As already stated, in its current form and function, the planning regime in Area C is discriminatory against Palestinians and violates both IHRL and IHL. Thus, donor states would run afoul of their own obligations under international law should they directly engage the current planning process.

The tacit approval approach also does not appear to have increased the speed by which a development projects are undertaken, and certainly fails to match the expansion of Israeli settlements and infrastructure in Area C. Moreover, if the ICA has a substantial objection to a plan or project, as it did with respect to recognising the Karem Village in Hebron (which has existed for more than 60 years),<sup>94</sup> the approval process is stopped and the future plans for the community are put on hold. In turn, the tacit approval approach does not prevent the incremental disappearance of Palestinian communities and has yet to produce sufficient on-the-ground results necessary to keep the two-state solution viable.

The local outline plans themselves have been critiqued for failing to reflect the needs and the land rights of the Palestinian community. This is because the plans must conform to boundary restrictions imposed by the ICA, including designations such as closed military zones, nature reserves, or archaeological sites. Moreover, the plans must exclude lands to be used for agriculture and other development purposes and must only be designed for built-up areas. There is some concern that the local outline plans are insufficient to ensure the natural growth of Palestinian villages without overcrowding and that these communities may not be able to access the natural resources necessary for their development.

The effectiveness of the tacit approval approach may also be constrained by risk aversion of some donor states who fear they cannot defend the funding of infrastructure projects in those areas should they be immediately subjected to demolition by Israeli forces. For this reason, much of the donor-funded construction on the back of local outline plans has tended to be in communities in Area C where demolitions are not likely to occur. Oftentimes those Palestinians with the worst living conditions and at heightened risk of displacement are not engaged in local outline plans (or face severe limitations to what could be constructed in the absence of Israeli explicit consent), though some progress in this regard has been achieved. For example, Massafer Yatta has recently developed

and submitted local outline plans, while other areas such as Al-'Aqaba (Tubas), Al-Walaja (Bethlehem), An-Nabi Samwil (Jerusalem), and Susiya (Hebron) have also been targeted for outline plans.

The tacit approval approach prompts the question: once the waiting period has been reached, is the scale and speed of development sufficient? It is clear that it is not and that more robust development aid and action is desperately needed in Area C.

## **b. Humanitarian Aid in Area C – the West Bank Protection Consortium**

The West Bank Protection Consortium (WBPC) is the central vehicle delivering humanitarian responses in Area C. In-line with their mission, humanitarian organisations operating in Area C focus on communities most in need, including Bedouin and herding communities targeted for relocation, people under threat of demolition and forcible transfer across the West Bank, those denied essential services and communities exposed to settler violence. The WBPC strives to utilise a nexus approach, linking humanitarian aid, development assistance and peacebuilding, operationalised within a humanitarian framework.<sup>95</sup> As such, the WBPC can overcome barriers—like tacit approval—which are associated with development aid, and move quickly to meet the most urgent short term needs of Palestinian communities in Area C. Funded by EU Humanitarian Aid and 11 donor states, the WBPC brings together five international non-governmental organisations (INGOs), with the Norwegian Refugee Council (NRC) as the lead agency and administrative host of the WBPC. The WBPC is currently working with 160 communities in Area C.<sup>96</sup>

The WBPC undertakes a variety of actions to enable emergency preparedness and response by Palestinians in Area C. This includes emergency cash and in-kind assistance, protection measures, and service referrals. According to one programme review, 95 per cent of beneficiaries of emergency assistance remained in their communities after six months.<sup>97</sup>

The WBPC's resilience-building support takes a bottom-up, people-centred, multi-sector approach, working closely with Palestinians in their communities to map out their infrastructure needs, such as, water/sanitation, housing, educational and health care facilities. Through this process, *Protection Response Plans* are developed, and a number of activities may ensue, including the erection of necessary structures such as homes and schools, legal and litigation support to challenge demolitions and seizures of property, and capacity building at the local level. These measures help ensure that communities have a more direct relationship with the PA for the resolving of emerging issues.<sup>98</sup>

As the WBPC is led by humanitarian actors, it does not seek the approval of the ICA or any other organ of the Israeli Military Government for the aid they provide Palestinian communities. It informs Israeli authorities of the bona fide humanitarian needs and the overall response plan it has undertaken. This approach is consistent with IHL. While it has not prevented Israel from continuing to demolish Palestinian homes, sanitation and livelihood structures, it has enabled a coordinated and timely response from WBPC members when demolitions occur. For example, in Humsa Al-Bqai'a after the demolition of 30 homes and other structures by Israeli forces that left 42 Palestinians, including 24 children, homeless (the seventh demolition of the community in a 13-month period), representatives from 12 states visited the area, and a number of them issued public statements condemning the demolition.<sup>99</sup>

The scale of the work of the WBPC has not yet reached its full potential and is nowhere near matching the pace of the development of Israeli settlements. There are two major barriers facing the WBPC. First, and most difficult to overcome, are the actions of the occupying power. Because of



Israel's heavy surveillance of the area and the risk that Israeli authorities will seize building materials, the WBPC has had to reduce the standards and sustainability of deliverables for many of its projects. Secondly, donor state risk aversion has resulted in a preference to not provide funding to projects that extend beyond strictly humanitarian or protection efforts because they may be quickly seized or demolished. This is made more complicated by the siloed nature of international funding, which divides development and humanitarian budget lines, making it difficult for actors like WBPC to access a wider funding base. By limiting the funding available, it is impossible for the WBPC to move beyond strictly humanitarian aid toward more fulsome development and planning initiatives.

By its very nature, humanitarian aid—even if enhanced—will be insufficient to ensure Palestinian development of the scale and nature required to keep the two-state solution as envisioned in the Oslo Accords viable. Humanitarian aid is intended to address the needs arising from emergencies and their immediate aftermath. If adequately resourced and executed with long-term outcomes in mind, it can lay an important foundation, but on its own, it cannot meet the state-building development needs of Palestinians in Area C.

### **c. Palestinian Authority Approach to Planning in Area C**

The PA states unequivocally that in accordance with international law, all of the pre-June 1967 territory is under illegal occupation. It is also clear in its view that divisions into Areas A, B, and C have no legitimacy in terms of the future State of Palestine, that these territorial classifications have become “an elaborate system of control and oppression that must be rejected and confronted”, and that those living in “the future State of Palestine ... will enjoy equal rights and opportunities regardless of which area they choose to live in”.<sup>100</sup>

The PA also states unequivocally that Area C is Palestinian land and belongs to the State of Palestine. They are acutely aware that Area C provides Palestinians with “essential resources to live freely in peace and prosperity”<sup>101</sup> and is “crucial to the geographic, socio-economic, and spatial integrity of Palestine.”<sup>102</sup>

In its *2014-2016 National Strategic Framework*, the PA identified several strategic development issues in Area C, a number of which are related to planning. For example, with respect to governance, they are concerned with Israeli policies and procedures that restrict structural planning and urban expansion, and the underdevelopment of Palestinian built-up areas that have become isolated cantons cut off from each other and natural resources. In the social sector, they identify all of the planning practices that undermine an adequate standard of living, such as home demolitions, evictions and changes imposed on the Bedouin lifestyle. With respect to infrastructure, they note the lack of sovereignty over water resources, weak urban planning and construction, housing risks, and the isolation of Area C from regional and national infrastructure plans.<sup>103</sup>

To address these many concerns, the PA suggests that a strictly humanitarian approach without more intense efforts to develop Area C will prove ineffective. Based on an interview conducted with the President's Office for the purposes of this report, the PA appears ready and willing to play an active role in trying to move forward with development plans for Palestinians in Area C, but they recognise that there are political realities that create significant challenges.

The PA also recognises that though the MoLG has led the process of the development of local outline plans, these plans will divide the West Bank into a series of enclaves if they are developed outside the context of regional or national plans for the State of Palestine. For this reason, the MoLG with the support of UN-Habitat and the European Union, has engaged in a project to prepare “cluster plans”





for Palestinian communities in Area C. The main objective of these plans is for Palestinian communities to “prepare detailed land use plans and a development agenda” to “enhance their tenure security and foster their resilience in light of the difficult geopolitical conditions on the ground”. These plans will provide “guidance for development of the population, health, education and infrastructure sectors, including roads, water and sewage systems and to preserve cultural and natural heritage and the provision of public spaces and facilities” and will be submitted to the ICA for approval.<sup>104</sup>

The spatial plans prepared at the local and sub-regional levels distinguish between public and private. Within the private land in Area C, the plans do not consider specific ownership and registration issues. This is an impediment to development given that much of the public facilities and infrastructure will inevitably utilise private land, such as sewage and storm water systems and secondary roads, while in many localities the lack of availability of public land may require collaboration between owners for larger scale investments. A pressing issue in this regard is the lack of registered land in Area C and the complex registration process itself.

To address this, the PA, with the technical support of UN-Habitat and the Land and Water Settlement Commission, and with the financial support of the European Union, is implementing a participatory land settlement programme with 12 Local Government Units in the West Bank, including Area C. Relying on the Jordanian law of 1952, in place at the time of the 1967 war and subsequent occupation by Israel, this project, which is Palestinian-led, is aimed at finalising the registration of land that Jordan had commenced but had not completed by 1967, as well as settling disputes related to any disposition, ownership or usufruct rights to land and water.

The Framework document suggests the PA is relying on the international donor community to intensify their development efforts in Area C, to provide more robust resources and much needed political cover so that the PA might more meaningfully enter the planning space in Area C.

## V. Deepening the Connection between International Humanitarian Law and International Human Rights law

Both IHL and IHRL apply during times of conflict and in the context of occupied territory.<sup>105</sup> IHL provides the basis for donor states and humanitarian organisations to provide aid, and IHRL provides a complementary legal framework setting out particular substantive goals to be achieved.

The central purpose of IHL is to limit and prevent human suffering in times of armed conflict, including occupation.<sup>106</sup> Under the law of belligerent occupation, occupation is meant to be transitional and temporary.<sup>107</sup> Humanitarian aid is therefore conceived to address emergencies on a short-term basis, yet the realities of protracted conflicts—such as the occupation of Palestinian territory—often necessitate a lengthy humanitarian presence.

IHRL is universally applicable – to all people, in all contexts. It is never suspended. Thus, it applies to those living in times of peace and those enduring conflict, no matter how long. It applies regardless of one's land title status, including when land title or land rights are in dispute. International law pertaining to social and economic human rights provides for, but also goes further than, alleviating human suffering. It is forward looking by its nature. Socio-economic human rights provide minimum standards that are required to secure human dignity and security but also require states to progressively realise these rights, step-by-step, into the future. Thus, these rights oblige states to immediately address the abhorrent and discriminatory conditions in which Palestinians in Area C are currently living so that they do not become fixed. In addition, states must take continual steps and measures to incrementally realise the rights, with a view to creating more just and equitable societies over a reasonable period of time.<sup>108</sup>

In a human rights framework, the PA and the PLO; the state of Israel, as an occupying power,<sup>109</sup> and donor states are duty bearers each in their own manner. Palestinians are rights holders. Duty bearers are accountable to rights holders to immediately prevent and address *prima facie* violations of economic, social and cultural rights and for the progressive realisation of these rights.

IHRL is being deployed in some planning, humanitarian and development contexts, but its transformational nature has yet to be fully explored and tapped. This report proposes the formal merging of IHL and IHRL politically and operationally, and a renewed and heightened commitment to the implementation of the socio-economic human rights of Palestinians through humanitarian and development projects focused on planning. This commitment would take seriously—through political commitments at the highest levels and robust resources made available on the ground—the idea that a two-state solution and Palestinian statehood rest on a) the immediate and progressive implementation of Palestinian socio-economic human rights to housing, health, education, employment and culture and to non-discrimination in those contexts, and b) Israel, the PA and donor states having obligations and responsibilities in this regard.

Thus, it would kick-start the prioritisation of urgent action to prevent gross violations of socio-economic human rights under international law, such as forced evictions and the demolition of primary schools and health facilities, while necessitating that all humanitarian and development aid be aimed at taking steps to ensure Palestinians enjoy basic human rights.



This report suggests that in its initial phase, the formal merging of IHL with IHRL could focus on projects and measures associated specifically on the implementation of the right to housing. This makes sense in light of the fundamental role housing plays in terms of human well-being and its interdependence with all other socio-economic rights, as well as with the right to life. UN-Habitat has suggested that housing must be at the centre of planning and development.<sup>110</sup> This is reflected in the New Urban Agenda<sup>111</sup>—an internationally agreed upon framework and vision for sustainable urban development—which emphasises throughout the necessity and benefits of implementing the right to housing. The importance of housing in human and societal development is also reflected in the Targets for Goal 11 of the SDGs. As such, the right to housing is used in this report to assist in framing a more robust commitment to IHRL in conjunction with IHL.

What follows is an overview of the legal standards that attach to the right to housing.

### a. The Right to Housing

After the adoption of the Universal Declaration of Human Rights in 1948, the United Nations used its contents to develop and adopt two conventions containing binding legal obligations: The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR came into effect in 1976. The right to housing is one of the most well-articulated socio-economic rights, and one of the most relevant human rights in the context of planning and Palestinian statehood, which engages the profound meaning of and legal entitlement to home.

Housing itself is fundamental because it is the locus from which human well-being springs and is interdependent with the successful growth and development of communities. Housing is considered a fundamental human right because it is “integral to core human rights values such as dignity, equality, inclusion, well-being, security of the person and public participation”<sup>112</sup> and because it is intertwined with so many other human rights, such as the rights to life, water and sanitation, food, health, labour-related rights, education, and culture.

The chief articulation of the right to housing in international law is found in Article 11.1 of the ICESCR,<sup>113</sup> which Israel ratified in 1991 and which was signed by the State of Palestine 2014. In doing so, Israel and the State of Palestine committed to upholding the right to housing which is now understood as a free-standing right, as well as other socio-economic rights, including the rights to food, water and sanitation, livelihood, education, health and cultural rights. All of the donor states active in Area C, save the United States of America, which is a signatory, have also ratified the ICESCR; an acknowledgement of the importance of such rights and a commitment to their realisation.<sup>114</sup>

The right to housing is defined broadly in international law. The UN Committee on Economic, Social and Cultural Rights has determined it is the right to live in peace, security and dignity, and requires more than four walls and a roof. The right to housing applies regardless of the type of tenure held, regardless of whether one can prove title to the land upon which one resides and, like all human rights, it applies equally in times of conflict as in times of peace. Housing must be “adequate” in order to comply with international law. Adequacy is regarded as having seven characteristics,<sup>115</sup> many of which are relevant in light of the living conditions for Palestinians in Area C. These characteristics are as follows:

**Security of tenure:** Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other





threats. For tenure to be secure, legal protections must be in place to protect against forced eviction, harassment or other threats; construction or renovations causing displacement; or a change of ownership resulting in eviction or displacement.

**Habitability:** Housing must provide inhabitants with adequate space, and protect them from the elements, structural hazards and threats to health. The physical safety of occupants must be guaranteed as well.

**Availability of services, materials, facilities and infrastructure:** Housing must contain the facilities that are essential for health, security, comfort and nutrition, including access to safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, site drainage and emergency services.

**Location:** Housing must be located within reach of vital amenities and sources of livelihoods, including places of employment, healthcare facilities, schools, child care centres and other social facilities.

**Cultural adequacy:** Housing, through its construction methods, materials and location, should enable residents to express their cultural identity.

**Accessibility:** Adequate housing must be sustainable and fully accessible for those who need it, in particular people who are most vulnerable and marginalised, such as women, children, persons with disabilities, refugees and others. Increasing access to land by landless or impoverished segments of society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.

**Affordability:** Housing is affordable if it is commensurate with household income.

Beyond adequacy criteria, a number of other principles and standards attach to the right to housing under international law that should inform planning and development assistance goals and outcomes:

**Forced eviction** is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection that are compliant with IHRL.

Forced eviction has long been recognised as a gross violation of human rights and a *prima facie* violation of the right to housing.<sup>116</sup> Evictions which result in homelessness are also a *prima facie* violation of the right to housing.<sup>117</sup> In order for an eviction to comply with IHRL, a number of criteria must be met, including:

- i. Meaningful engagement with those affected;
- ii. Exploration of all viable alternatives;
- iii. Relocation to adequate housing agreed upon by the affected households so that no one is rendered homeless;
- iv. Access to justice to ensure procedural fairness, and;
- v. Compliance with all human rights.

Where these criteria are not met, evictions are deemed to have been forced and constitute a gross violation of human rights and the right to housing.<sup>118</sup> It should be noted that IHL prescribes an absolute prohibition—regardless of motive—on individual or mass forcible transfers within occupied territory, as well as deportations of protected persons outside the occupied territory. Ancillary to the prohibition on forcible transfer is the prohibition on the destruction of real property (owned individually or collectively) except where such destruction is rendered absolutely necessary during hostilities, and not once the territory in question has been subdued.

The right to meaningful and effective engagement and participation is a core element of the right to housing and critical to dignity, the exercise of agency, autonomy and self-determination. Those in need of housing or whose right to housing is precarious must be regarded as rights holders, entitled to participate actively, freely and meaningfully with duty-bearers in the design and implementation of decisions that affect them.<sup>119</sup> Meaningful participation for a rights holder means having influence over decision making, particularly where decisions will affect their lives. In this way, rights holders are distinct from beneficiaries of charity or aid. Meaningful participation goes beyond “consultations” and requires that Palestinians continue to be integrated into all aspects of decision-making and implementation of planning processes.

Rights holders must also have access to justice for all components and dimensions of the right to housing that are guaranteed under IHRL, covering not just the right to a physical shelter, but to a home in which to live in security, peace and dignity; not just protection from eviction or other state action, but also from state neglect and inaction and failure to take reasonable measures to progressively realise the right to housing.

Under IHRL, states that have signed or ratified international treaties such as the ICESCR are accountable to rights holders and are thus duty bearers. In the context of Area C, Israel and the PA are both duty bearers. Duty bearers are required to immediately cease and desist from *prima facie* violations<sup>120</sup> of the right to housing they may perpetrate, such as the enforcement of laws and policies that have discriminatory effects, as well as forced eviction and home demolition.

Under Article 2(1) of the ICESCR, duty bearers are also required to progressively realise the right to housing. This means that effective measures must be taken in the shortest time possible,<sup>121</sup> to realise the right to housing in accordance with the maximum of available resources.<sup>122</sup> These measures must be deliberate, concrete and targeted towards the fulfilment of the right to housing within a time frame that is reasonable, transparent and subject to periodic monitoring. Measures taken must also be reasonable and proportionate in relation to the interests and the circumstances of rights holders.<sup>123</sup>

The corollary to the progressive realisation of the right to housing is that states that have signed and ratified the ICESCR are not permitted to take any deliberately retrogressive measures – that is, measures that reverse previous gains made in advancing the realisation of the right to housing.<sup>124</sup> Retrogressive measures taken trigger a burden of justification on the state concerned according to a set of substantive and procedural criteria. For example, they would have to prove that the measures are necessary and proportional; that they do not result in direct or indirect discrimination, and that they do not deprive disadvantaged groups of essential levels of the right to housing (or other social and economic rights). Procedurally, the State must show that rights holders and relevant stakeholders were able to participate in relevant decision-making processes and that there was an independent review of the retrogressive measures.<sup>125</sup> Where a state cannot meet the burden of justification, retrogression is a *prima facie* violation of the duty to progressively realise the right to housing.



With respect to international cooperation and the right to housing, the Committee on Economic, Social and Cultural Rights has determined that “both recipients and providers, should ensure that a substantial portion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed.”<sup>126</sup>

The right to housing in the ICESCR must be read as interdependent with related rights in other international human rights instruments such as, among others, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of Persons with Disabilities (CRPD) and the ICCPR.<sup>127</sup>

These human rights standards and norms should be formally incorporated into all Palestinian led planning processes and should be used explicitly to inform the anticipated goals of humanitarian and development aid to Area C. They can also be used to unify and connect humanitarian, development and peace-related efforts, creating a nexus based on the shared goal of human rights outcomes. Along with IHL, IHRL principles and standards should be put explicitly at the centre of the political framing of donor states with respect to Area C, and tied to their resource allocations in Area C. The realisation of Palestinians’ economic, social and cultural rights is essential to their survivability in Area C and their ability to remain there, which are requirements for a two-state solution and Palestinian statehood.

## VI. A New Approach to Planning: the Humanitarian-Human Rights Connection

*“We need a rights-based approach, but we also need imaginative and brave diplomacy.”*

**Michael Lynk**, UN Special Rapporteur on the situation of human rights in the Palestinian Territory Occupied since 1967, October 2021

The living conditions of Palestinians in Area C are an urgent distress signal. Palestinians are hanging on to their lives, their land and the dream of sovereign statehood by a thread. The opportunity for generations of Palestinians to live full lives in their own state is vanishing at an alarming pace, if it has not already. After decades of living under Israeli military occupation, not only are Palestinians not being adequately provided for by Israel as required by the Fourth Geneva Convention, but they also continue to be denied the necessities of a dignified life as required under the ICESCR and the SDGs. In terms of development, it is almost as if time has stood still since 1967. After 55 years of occupation Palestinians are still suffering demolitions, forced evictions and forcible transfer, and struggling just to have an adequate home with water and sanitation facilities, electricity, schools, health care facilities, and livelihood opportunities. They have been pushed into enclaves, separated from each other, and severed from their traditional agricultural lands and practices due to Israeli restrictions.

Palestinians in Area C have been prevented from exercising authority over planning processes to ensure the sustainable growth of their communities. This is for three principle reasons. First, contrary to international law, Israel annulled the Jordanian planning law in place in 1967 by military order. If this law had remained in place Palestinians would have been better able to plan and develop their communities over the last 55 years and undoubtedly would be living in far superior conditions. Second, Israel replaced the Jordanian planning law with its own planning system which is discriminatory by design and used to restrict and deny Palestinians in Area C of permanent sovereignty over natural resources, self-determination, political independence, basic human rights to housing, water, education, health, livelihood and culture, and ultimately, statehood. Third, it is also the result of a long history of the international community failing to ensure Israel is held accountable for its obligations under international law, including the Hague Regulations, the Fourth Geneva Convention and its Additional Protocol I, and international human rights instruments including the ICESCR, as well as the Oslo Accords.<sup>128</sup>

As a result, at a rapid clip and across successive governments, Israel continues to use its discriminatory planning policy and mechanisms to effectively implement their own spatial and political plan for Area C, anchored in the idea that Area C should be annexed formally or through the creation of facts on the ground in order to meet Israel’s economic and strategic interests.<sup>129</sup> Meanwhile decade after decade, Palestinians pay the price while the goals of self-determination and their own sovereign state slip further and further away.

It is thus clear that a new approach to planning must be urgently developed and implemented. Spatial planning and mapping of land rights with a focus on promoting, rather than restricting, development have a key role to play in realising the ambitions of the Palestinian people, with a focus on the vulnerable communities in Area C. Planning can be the means to coordinate investments spatially, to create synergies between investments in different sectors, to connect urban and rural areas into functional economic units, to build consensus amongst stakeholders and to chart a



development path that is respectful of local needs and cultures. As noted by the International Advisory Board of planners convened by UN-Habitat, “planning needs to be a means for delivering human rights, not denying them”.<sup>130</sup>

Palestinians are entitled to a planning process and regime that lays the foundation for and breathes life into self-determination and statehood and that protects and promotes their economic, social and cultural rights. Donor states committed to a two-state solution in-line with the Oslo Accords, should be concerned to ensure that the resources they commit to Area C are being used for measures that progressively achieve Palestinian statehood and Palestinians human rights.

The new vision for an effective planning process and regime for Palestinians in Area C uses IHL as the entry point, and uses a human rights framework to guarantee human rights outcomes, creating a stronger nexus between humanitarian, development and political initiatives and laying a better foundation for a permanently sovereign and politically independent Palestinian state. It requires the harnessing of all of the resources and capacities of the international community to hold Israel accountable to its international legal obligations and to provide the PA the capacity and the political backing to guarantee the human rights of Palestinians in Area C.

Drawing on existing efforts on the ground, a more robust and effective planning process should be established as follows:

**a. Formalise a Humanitarian-Human Rights Planning and Accountability Framework**

A humanitarian-human rights planning and accountability framework (HHRPAF) should be formalised and committed to by relevant stakeholders engaged in Area C.

The HHRPAF should be based in the following principles drawn from IHL and IHRL, as described above:

1. Area C is the contiguous, sovereign territory of Palestine and is under belligerent occupation by the State of Israel. Acquisition of territory by the threat or use of force, including annexation of occupied territory by any means—formal or informal—is a serious violation of the peremptory norms of international law.<sup>131</sup>
2. On the basis of IHL, including the Fourth Geneva Convention and Additional Protocol I, providing humanitarian aid in Area C is lawful. Israel is unwilling to ensure that the basic needs of Palestinians are being met as is required of them as an occupying power. Basic needs include, for example, food, medical supplies, housing and energy.
3. Under IHL, an occupying power must respect the laws in force in the occupied territory and pre-existing institutions and customs.
4. IHL and IHRL are mutually applicable in situations of occupation, and both should form the foundation for Palestinian spatial planning.
5. The divide between humanitarian aid and development assistance, in its sources of funding and institutional stewardship, shall not be used in a manner that inhibits or limits the implementation of planning that is consistent with international law.

6. Under IHL and IHRL:
  - Palestinians in Area C and throughout the West Bank are entitled to the full realisation of their civil, cultural, economic, political and social human rights.
  - Establishing or expanding Israeli settlements and settlement outposts is illegal.<sup>132</sup>
  - Forcible transfers within occupied territory or deportations of Palestinians from the occupied territory are prohibited and constitute a grave breach of IHL when they occur.
  - Real or personal property belonging to Palestinians individually or collectively cannot be destroyed or confiscated, and its wanton and extensive destruction by an occupying power is a grave breach of IHL, except in strictly limited circumstances.
  - Israel must be held accountable for any and all violations of international law.
7. Israel, as an occupying power; the PA and the PLO; and donor states are duty bearers under IHRL as per their station, and are thus accountable to Palestinians as rights holders. As such, Palestinians are entitled to the immediate and progressive realisation of economic social and cultural rights, without discrimination. Duty bearers must take effective measures in as short a time as possible to implement the economic, social and cultural rights of Palestinians. The Indigenous peoples of Area C are also protected under the provisions in the UNDRIP, including the principles of free, prior and informed consent and self-determination. As duty bearers, Israel (including as an occupying power), the PA and donor states have an immediate human rights obligation to cease and desist or to prevent home demolitions and the destruction of personal property, forced evictions, displacement and homelessness, as well as to guarantee non-discrimination in planning processes.
8. According to human rights principles of international cooperation, both recipients and providers should ensure that a substantial portion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed.
9. In light of the protracted nature of the occupation of Area C, all aid—humanitarian and development—should include provision for meeting the long-term needs of Palestinians to adequate housing, health care facilities, schools, water and sanitation facilities, electricity, roads and other infrastructure, in keeping with IHRL and consistent with the SDGs, as a means of addressing human suffering, providing the baseline for planning and ensuring the enjoyment of basic human rights into the future.
10. The PA and donor states recognise the doctrine of non-retrogression in the context of economic, social and cultural human rights, and its applicability in Area C and will commit to using all available mechanisms to hold Israel accountable for any violation of the progressive realisation of economic, social and cultural rights.
11. A presumption of a need for compliance with IHL and IHRL must be assigned to any readings of the Oslo Accords and their implementation. This includes with respect to the provisions regarding ‘planning and zoning’, authority over which is granted to Israel until its transfer to the PA. Israel’s planning law as administered in Area C violates IHL and IHRL as it is discriminatory, contributes to racial segregation and is regarded as an instrument of

apartheid. Therefore, any policy, programme, initiative or development project that supports, upholds or validates the planning law is contrary to the Fourth Geneva Convention, the law of occupation and the spirit of the Oslo Accords, owing to the obligation not to recognise, aid or assist serious breaches of peremptory norms of international law. Alternative mechanisms that better support Palestinian-led planning and decision-making in keeping with IHL and IHRL must therefore be considered.

12. The separation and division of Areas A, B, and C created through the Oslo Accords were not intended to be permanent. Under the Oslo Accords, Israel committed to transferring administrative powers over Area C to the PA within five years. More than 20 years later, and in keeping with the spirit of the Oslo Accords, Areas A, B, and C must be viewed as one contiguous area for the purposes of planning, and Palestinians must be presumed to have an entitlement to exercise planning powers.
13. While the PA must lead in operationalising the HHRPAF, the necessity of active international intervention is understood, particularly in the context of the asymmetry in power between Israel and the Palestinians with respect to planning in the West Bank.<sup>133</sup>
14. In accordance with the Fourth Geneva Convention, all states are under a legal obligation to ensure compliance by Israel with IHL, including through the use of any or all of the following mechanisms: political dialogue, public statements, non-public demarches, invocation of state responsibility, unilateral restrictions, measures of retorsion and lawful countermeasures, international dispute settlements and international cooperation to that effect. These tools can be used in the context of planning when planning is a vehicle to respect IHL and realise international human rights.
15. Operationalising the HHRPAF is not intended to resolve the conflict between Israel and the Palestinians, but rather to keep alive the possibility of Palestinian sovereign statehood through the implementation of Palestinians' full human rights, including economic, social and cultural rights, and rights to non-discrimination, self-determination and political independence.

## **b. Operationalising the HHRPAF**

Operationalising the HHRPAF has as its goal the creation of a robust rights-based planning and accountability regime that is based in IHL and the right of Palestinians in Area C to live in dignity in accordance with IHRL. This new planning regime will recognise that after 55 years of occupation the humanitarian needs of Palestinians have necessarily changed in nature and scope. It embraces IHRL, standards and obligations as establishing the framework that will lead to Palestinian well-being and development into the future.

Operationalising the HHRPAF will be based in human rights principles associated with the right to housing as a starting point, but will ensure much broader protection of Palestinian human rights including rights to non-discrimination, self-determination, and to housing, water/sanitation, food, health, education, employment, culture and to life itself.

The HHRPAF should have a three-fold focus:

- i. Engaging with the PA—with the technical support of UN-Habitat and other relevant actors—to encourage the adoption of this approach, including with respect to their national plans for Areas A, B and C;

- ii. Further enhancing the capacity of Palestinians in Area C and beyond to engage in human rights-based planning processes; and
- iii. Building political solidarity and a unified strategy among international actors, including donor states, to hold themselves and Israel accountable to the human rights of Palestinians.

The HHRPAF will commence with a focus on developing familiarity with the HHRPAF approach, determining existing policies and programmes that are consistent with this approach and creating political support for a more robust rights-based planning and accountability system that will contribute to the progressive realisation of economic, social and cultural rights of Palestinians in Area C.

What follows is a preliminary high-level outline of the initial phase of this new approach to planning in Area C. Developing the granular details to operationalise the HHRPAF will require the establishment of a working group of local and international representatives with expertise in planning law and processes, development, and human rights and humanitarian law.

## 1. Develop a Parallel Palestinian-led Planning System for Area C

The PA should be encouraged to build on and extend its planning activities in Area C with a view to creating a parallel planning process to the Israeli system currently in place. In other words, the PA should commence activities in Area C commensurate with a formal transfer of planning authority. This parallel process would be based in and would modernise the Jordanian planning law that was in place at the start of Israel's occupation. Such a process would be in keeping with the spirit and letter of the Oslo Accords—which anticipated the transfer of planning powers to the PA—and the Fourth Geneva Convention, which bars an occupying state from replacing local law with its own domestic law.

In light of the antiquated nature of the Jordanian Planning Law, the PA, with technical support, should conduct a public and inclusive review of the planning law and revise this legislation so that it better reflects the Palestinian context and addresses the discriminatory effects and human rights violations of Israel's regime. The PA should also document all of the planning, humanitarian, development and private projects currently in place in Area C so that they may be coordinated and streamlined into the new Palestinian planning process proposed here.

In keeping with this parallel process, the PA should, where appropriate and possible, continue to register lands in Area C (and Areas A and B) in the name of their respective owners using the Jordanian Law.

While many Palestinian communities and villages in Area C have already developed local outline plans, this opportunity should be extended to all interested communities. In keeping with the MoLG's Human Rights Impact Assessment Mechanism and Local Outline Plans in the so-called *Area C – Guidelines for Implementation for Planners*, all local outline plans should be developed and assessed using international human rights standards and norms. In order to contribute in a meaningful way toward the establishment of a Palestinian state, local outline plans must also be connected to and integrated with the cluster plans and national plan being undertaken by the PA.

Where relevant and appropriate, the right to housing under IHRL could be used as a useful starting point for local plans, given that the right to adequate housing has specific standards that must be met and is understood broadly to require adequate social infrastructure and services such as paved roads, water/sanitation/sewerage, as well as schools, health facilities, employment opportunities, etc.





A rights-based local outline plan that has the enjoyment of the right to housing at its centre would raise questions such as:

- Do all people in the community live in a home that meets the requirements of adequacy to their satisfaction, as articulated in IHRL? If not, what are the barriers to achieving those characteristics and what are creative ways to overcome those barriers?
- What buildings and other property are threatened with demolition or confiscation?
- Which households are threatened with forced eviction? How might they be protected?
- Are human rights-mandated services/infrastructure (eg, hospitals, schools) that are lacking in Area C available (or more easily available) in Areas A or B?
- Are there lands in Area C that those living in Area A and B need to access in order for their economic, social and cultural rights to be realised?
- Has land-use planning<sup>134</sup> been undertaken?
- Are lands registered and are they in a position to be registered?
- Do we need to establish new local mechanisms so that residents can claim their land, housing, and property rights?

Local outline plans must also correspond with the cultural requirements of communities. With respect to the planning of Bedouin communities, the principles of self-determination and free prior and informed consent (“nothing about us, without us”) as articulated in the UNDRIP must be implemented.<sup>135</sup> Bedouin villages must be recognised as a “unique type of locality, with distinct cultural and spatial characteristics.”<sup>136</sup> Any plan developed must ensure it is based in Bedouin socio-cultural rules, maintenance of their way of life, seasonal locations and also allow for future development.<sup>137</sup>

To ensure swift development of local outline plans and integration with cluster plans and the national plan, consideration should be given to bolstering the expertise and ambit of Palestinian planning bodies and projects.<sup>138</sup> As envisioned, through an enhanced system, Palestinian planning bodies would make planning decisions in their own right and would exist in parallel but would not interact with the ICA and the High Planning Council. This would require the PA to take greater risks and action in Area C. In order to do so, they will need political cover from donor states and ongoing technical support from UN-Habitat.

The following bodies would comprise the Palestinian planning system:

- i. International Advisory Board. An International Advisory Board of planners established by UN-Habitat or a similar body could be established to act as an external resource for local, regional and national planning committees. The International Advisory Board could meet yearly with Local Planning Committees and the Palestine National Planning Committee to offer arms-length, neutral support and legitimacy to the work undertaken domestically.
- ii. Local Planning Committees. The local planning committee structure that was in place under the Jordanian law will be re-instituted, drawing on existing village councils and planning

teams in place. These committees will be responsible for reviewing and approving all local outline plans (existing and new) and related projects. The committees will have the power to issue building permits. These committees should be comprised of the leader of the local council as well as persons with planning expertise, and community representatives, including Bedouin, women and youth delegates. Where technical expertise is lacking, the Local Planning Committees can liaise with counterparts in Areas A and B, the Palestine Higher Planning Council and, where appropriate, draw upon the expertise of the international advisory board. Appeals to decisions taken by the Local Committee would be heard by the Palestine Higher Planning Council.

- iii. Palestine Higher Planning Council. The Palestine Higher Planning Council will continue to be responsible for reviewing national and cluster plans, as well as projects that come under these plans. The Council can request the services of the International Advisory Board as needed. As a point of first order, the Palestine Higher Planning Council, on consultation with the international community, will develop a policy position regarding the recognition of Israeli infrastructure in all plans (local outline, cluster and national). They will also hear appeals to decisions taken by the Local Planning Committee.

While the potential impact of a parallel planning regime is unknown, it will be essential that the PA and the international community communicate with Israel that the establishment/extension of the above bodies flows from requirements under IHL and IHRL to ensure the well-being of Palestinians in Area C to be protected as is their right and so that they can enjoy the immediate and progressive realisation of their economic, social and cultural rights.

## **2. Build Deeper Capacity for a Human Rights-based Approach to Planning**

The PA, through the MoLG, with the technical support of UN-Habitat and other UN agencies,<sup>139</sup> and with the aid of the Norwegian Refugee Council and the support of donor countries, should lead a capacity building process to build deeper knowledge and understanding of the meaning and application of IHRL in the context of planning, in particular Indigenous rights and economic, social and cultural rights, especially the right to housing. This could include modules on rights-based planning, non-discrimination, and human rights accountability, including the meaning of the progressive realisation of the right to housing and the doctrine of non-retrogression and the requirements these may impose in a planning system.

As there are scant resources in this regard, training materials and modules must be developed. It is imperative that diverse groups be included in capacity building: women, Bedouin, refugees, young people, LGBTQ, divorced/widowed/single women, community leaders, etc.

This capacity building process should be used as an opportunity to review and assess existing humanitarian and development projects and approaches (eg, local outline plans/tacit-approval, West Bank Protection Consortium initiative), to determine their efficacy and consistency with the HHRPAF and whether they might be enhanced or modified to create more of a nexus between humanitarian and development aid and contribute to the progressive realisation of the right to housing.



### 3. Develop a Unified International Diplomatic Action and Accountability Plan for Area C

In a 2021 report, the former UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, reflected on the responsibilities and performance of international actors with respect to seeking an end to the occupation.<sup>140</sup> In that context he concluded that the international actors upon whom the report focused had not leveraged their political power to effect change. A similar conclusion can be reached with respect to actions in Area C.

The research visit conducted for this report revealed that for most donor states there are four impediments to a stronger defence of the rights of Palestinians in Area C:

- i. Guilt regarding the atrocities of World War II and antisemitism more generally, and thus the adoption of a non-confrontational approach with Israel;
- ii. Fear of being labelled antisemitic when taking actions to defend the rights of Palestinians;
- iii. The desire to protect trade and trade relations with Israel;
- iv. Reliance on Israel's intelligence to protect their own security interests.

A political calculation seems to have been made that these interests will be protected even if it means the human rights of, and rule of law for, Palestinians are sacrificed, as they have been. If this status quo is maintained, discussions over a two-state solution, in keeping with the Oslo Accords, will be moot. The only way in which Israel's annexation of Area C, and the death of a two-state solution, will be avoided is through diplomatic action. Without it, the HHRPAF will simply fail. Moreover, in light of the asymmetry between Palestinians and Israel, especially after 55 years of occupation, it is inconceivable to think that the rights of Palestinians—to economic, social and cultural rights, to self-determination, to the end of occupation, or to statehood—can ever be realised without the full political support of the international community.

Area C offers a concrete opportunity to do so through a nexus approach between humanitarian and development programmes and those working on the political side,<sup>141</sup> with human rights outcomes as the unifying goal. The situation in Area C requires urgent action in light of the violations of international law suffered by Palestinians and the rapidity in which Israel is moving forward its annexation of Area C. The United Nations, donor states and INGOs must speak with one voice and harness all of their political leverage and available resources to enforce international law. This will be accomplished by joining and scaling the best practices from the various humanitarian and development projects—local outline plans, the WBPC, the planning initiatives being led by the PA—and developing new, creative and bold projects in a coordinated fashion for Palestinians in Area C.

Given that the Oslo Accords and keeping the two-state solution alive are the basis of much donor states' aid to Area C, it is now time for donor states to provide the political backing necessary so that the PA may exercise planning authority for Area C, and begin rapid development in the area. The PA cannot move forward with development projects and take the risk of confrontation with Israel without the political backing of donor countries. This means that donor countries must be willing to do what is politically necessary to defend Palestinian human rights.



To this end, the following short-term activities should be undertaken:

- i. As a starting point, a coordination meeting on the HHRPAF in Area C should be convened by the Norwegian Refugee Council with the PA, UN representatives, donor states, INGOS and local NGOs, with the goal of producing a humanitarian/development/diplomatic action plan for asserting the planning rights of the PA in Area C. This plan should outline basic planning principles and processes that shall be implemented in Area C to achieve human rights outcomes.
- ii. The international community needs to do much more to assert the IHL and IHRL protections of Palestinians, and ensure Israel is held accountable for its violations of international law. Under the Fourth Geneva Convention there are a variety of means that can be deployed, including enhanced use of public statements and demarches, and utilising strategic measures like sanctions in trade relations or attaching conditions to trade agreements. The efficacy of all of these should be explored, and a response protocol should be developed, especially with respect to forcible transfer, deportation and forced eviction. To this end, standard procedures to be implemented by donor states will be developed, which will be triggered upon infraction. The work of the WBPC should be drawn on to inform the protocol, and recommendations from International Crisis Group considered, such as shortening the tacit approval deadline from 18 to six months and withdrawing funds from the EU's cooperation programme with Israel equivalent to the cost of the damage Israel inflicts upon EU-funded projects.<sup>142</sup>
- iii. The international community should also escalate its communications with Israel—through private diplomacy and/or public declarations—to hold Israel accountable to Palestinian as rights holders. These communications should focus on the need for the PA to be able to secure basic human rights for Palestinians in Area C; and the requirement that Israel contain any further settlement expansion and settler violence.
- iv. In light of Israel's new government and related decisions regarding governance, such as transfer of responsibilities of the Coordinator of Government Activities in the Territories (COGAT) from the Defence Ministry, it may be the right moment for donor states to consider strategic and effective engagement with the Government of Israel. States must determine the efficacy of engaging with Israeli governmental officials who have stated unequivocally their intentions to violate IHL and IHRL with respect to Palestinians in Area C and beyond, and also assess whether such interactions may be considered as, or be seen to be, recognition of unlawful Israeli policies and practices (including annexation) as lawful. This is an issue that could be taken up with the EU Interest Group on Area C, which has recently been revived.

#### **4. Maximise Humanitarian Aid and Development Assistance to Area C**

It is clear that to breathe life into the Oslo Accord's two-state solution will require the mobilisation of far greater financial resources for humanitarian assistance and development in Area C, to match political commitments in this regard. Maximised resources should be used to enhance the humanitarian-development nexus. This could be achieved through joint analysis and joint prioritisation of Area C followed by joint-funding initiatives. Resources must be allocated in keeping with international human rights obligations, in particular, the progressive realisation of economic, social and cultural rights.





## 5. Develop Rights-based Strategic Communications

A rights-based communications strategy should be developed as part of and to complement the international diplomatic action and accountability plan.

The PA and the international community, including donor states, need a much stronger and more strategic narrative asserting the human rights of Palestinians outside of the context of violations of IHL. To this end, communications should also focus on economic, social and cultural rights and related political commitments such as the SDGs.

It could be very powerful for the PA and other stakeholders in Area C to develop a communication strategy that provides a vision and visuals for Area C bringing to life what Area C might be if Palestinians enjoyed the full set of human rights through scaled and rapid development projects. For example, as local, cluster and national plans emerge, a communications strategy should be developed to disseminate these visions of a future for Palestinians in the West Bank.

The international community—with the support and engagement of local representatives including the EU Interest Group on Area C—should also develop a coordinated communications strategy with respect to Area C that is aimed at Israelis, as well as their own constituents in Europe and North America. This strategy might focus less on the conflict and more on the legitimacy of Palestinians in Area C to enjoy the rights to housing, water and sanitation, health, education, and dignity. This communication strategy could have the effect of creating a broader knowledge base, particularly in the domestic contexts of donor states, so that they may be able to pledge greater amounts of capital towards development and planning aid.



The proposed HHRPAF will neither end the occupation of Area C, nor will it create a Palestinian state. If fully implemented, however, it will provide Palestinians with greater control over their own planned growth and development in Area C and will result in greater enjoyment of basic human rights to housing, water/sanitation, education, health care and livelihood. These are the basic elements required to keep alive the viability of a sovereign Palestinian state.



## Annex: Glossary of Acronyms

AFD	Alternative for Germany
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CRPD	Convention on the Rights of Persons with Disabilities
CESCR	Committee on Economic, Social and Cultural Rights
DOP	Declaration of Principles
EU	European Union
FCDO	Foreign, Commonwealth and Development Office
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit <i>A German development agency</i>
HHRPAF	Humanitarian-Human Rights Planning Framework
HPC	High Planning Council
ICA	Israeli Civil Administration
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IHL	International Humanitarian Law
IHRL	International Human Rights Law
INGO	International Non-Governmental Organisation
MDLF	Municipal Development and Lending Fund
M.O.	Military Order
MoLG	Ministry of Local Government
NGO	Non-Governmental Organisation
NRC	Norwegian Refugee Council
OCHA	United Nations Office for the Coordination of Humanitarian Affairs



OHCHR	Office of the United Nations High Commissioner for Human Rights
oPt	occupied Palestinian territory
(UN)OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PA	Palestinian Authority
PUI	Première Urgence Internationale
PLO	Palestine Liberation Organisation
SDG	Sustainable Development Goals
SLPC	Special Local Planning Committees
UN	United Nations
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UN-Habitat	United Nations Human Settlements Programme
UNRWA	United Nations Relief Works Agency
WASH	Water, Sanitation and Hygiene
WBPC	West Bank Protection Consortium

## Endnotes

1. Research conducted for this report included: desk research; site visits through Area C from Jericho Valley to the Hebron Hills, which included visiting Bedouin Communities, traditional herding communities, and villages facing demolition orders; both in person and online key interviews with technical experts, urban planners, international legal experts, donor states, and the Palestinian Authority.
2. OCHA. (December 2009). Restricting Space: the Planning Regime Applied by Israel in Area C of the West Bank. <https://www.un.org/unispal/document/auto-insert-201838/>
3. Stakeholders include Palestinians, donor states, UN bodies, INGOs, NGOs, the Palestinian Authority, as well as the occupying power, Israel.
4. Secretary General. (2022, September 14). Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel, para. 7. United Nations General Assembly. <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiopt/2022-10-19/Report-COI-OPT-14Sept2022-EN.pdf>
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6. Bothe, M. (2015, July 15). Legal Expert Opinion on the Right to Provide and Receive Humanitarian Assistance in Occupied Territories, p. 10. Norwegian Refugee Council. [https://www.nrc.no/globalassets/pdf/legal-opinions/bothe\\_expert-opinion-on-humanitarian-assistance.pdf](https://www.nrc.no/globalassets/pdf/legal-opinions/bothe_expert-opinion-on-humanitarian-assistance.pdf)
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9. “A. Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand”. See: International Committee of the Red Cross. (n.d.). Practice Relating to Rule 129: The Act of Displacement. International Committee of the Red Cross. <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule129>
10. International Committee of the Red Cross Database. (1949, August 12). Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Article 59. Geneva Convention. <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>
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12. For a description of the meaning and application of each of these, see: Bothe, M. (2015, July 15). Legal Expert Opinion on the Right to Provide and Receive Humanitarian Assistance in Occupied Territories, pp. 19-21
13. “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, are prohibited, regardless of their motive. Nevertheless, the occupying power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand.



Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased. The occupying power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated. The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place. The occupying power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand. The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies.” See: International Committee of the Red Cross Database. (1949, August 12). Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Part III, Section III, Article 47 and Article 49. Geneva Convention. <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>

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16. United Nations Security Council. (1993, October 11). Declaration of Principles on Interim Self-Government Arrangements (Oslo Accords). United Nations. <https://peacemaker.un.org/israelopt-osloaccord93>
17. Permanent Representatives of the Russian Federation & United States of America. (1995, September 28). Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Article XI. United Nations. <https://www.un.org/unispal/document/auto-insert-185434/>
18. In 1993, Palestinians did not have a government and were therefore represented by negotiators for the Palestine Liberation Organisation. The Oslo Accords helped establish an Interim Self-Government Authority which eventually led to the creation of the Palestinian Authority. See: United Nations Security Council. (1993, October 11). Declaration of Principles on Interim Self-Government Arrangements (Oslo Accords). United Nations. <https://peacemaker.un.org/israelopt-osloaccord93>
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23. International Advisory Board. (2015, May). Spatial Planning in Area C of the Israeli Occupied West Bank of the Palestinian Territory, p. 12. United Nations Human Settlement Programme, Palestine. <https://unhabitat.org/sites/default/files/download-manager-files/IAB%20Report%20on%20Area%20C.pdf>

24. There is no official population count of Area C. See: Office for the Coordination of Humanitarian Affairs occupied Palestinian territory. (2014, August). Area C of the West Bank: Key humanitarian concerns. United Nations. [https://www.ochaopt.org/sites/default/files/ocha\\_opt\\_area\\_c\\_factsheet\\_August\\_2014\\_english.pdf](https://www.ochaopt.org/sites/default/files/ocha_opt_area_c_factsheet_August_2014_english.pdf)
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27. Katz, Yaakov “Ketzaleh”. (2022, January 30). West Bank Jewish population stats, p. 3. (n.p.). <https://drive.google.com/file/d/1JZaYCXwRBZP-U5pBk9Ceqhyfu9ttUtYL/view> ; Outposts are areas settled by Israelis but which are not formally recognised by the Government of Israel. The creation of outposts typically precedes formal development of Israeli settlements.
28. Peace Now. (n.d.). Population. <https://peacenow.org.il/en/settlements-watch/settlements-data/population>
29. Katz, Yaakov “Ketzaleh”. (2022, January 30). West Bank Jewish population stats, p. 3. (n.p.). <https://drive.google.com/file/d/1JZaYCXwRBZP-U5pBk9Ceqhyfu9ttUtYL/view>
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31. Under Jordanian Law, District Planning Committees mediated between the national level (Higher Planning Council) and the local level (Local Committees). Every administrative district had a District Committee comprised of six members, including a local committee member, representing a range of interests in planning, building, law and health. The District Committee approved detailed plans, heard objections to regional and outline plans, and submitted opinions to the Higher Planning Council. See: Shalev. et al. (2008, June). The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C. Bimkom. <http://bimkom.org/eng/wp-content/uploads/ProhibitedZone.pdf>
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41. United Nations Office for the Coordination of Humanitarian Affairs. (2021, December). 2022: Humanitarian Needs Overview: OPT, p. 48. United Nations. [https://www.un.org/unispal/wp-content/uploads/2021/12/OCHAHUMNEEDSOVERVIEW2022\\_161221.pdf](https://www.un.org/unispal/wp-content/uploads/2021/12/OCHAHUMNEEDSOVERVIEW2022_161221.pdf)
42. The Health, Development, Information, and Policy Institute. (2021, December). Comprehension Needs Assessment of Palestinian Communities in Area C. Deutsche Gesellschaft für Internationale Zusammenarbeit; Federal Ministry for Economic Cooperation and Development (Germany).
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45. a) According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), since 2019 in Area C “seven schools have been partially or fully destroyed/confiscated, and 14 schools have received demolition or stop work orders. As of September 2021, a total of 54 schools have such orders pending against them, putting students at these schools at risk of losing their right to education at any moment”. See: OCHA. (2021, December). 2022: Humanitarian Needs Overview: OPT, p. 45. United Nations. [https://www.un.org/unispal/wp-content/uploads/2021/12/OCHAHUMNEEDSOVERVIEW2022\\_161221.pdf](https://www.un.org/unispal/wp-content/uploads/2021/12/OCHAHUMNEEDSOVERVIEW2022_161221.pdf) ; b) Israeli forces demolished a school in the Masafer Yatta region of Area C in November 2022. See: Al Tahhan, Z. (2022, November 23). Al Jazeera. Israeli forces demolish Palestinian school in Masafer Yatta. <https://www.aljazeera.com/news/2022/11/23/israeli-forces-demolish-palestinian-school-in-masafer-yatta> ; c) Daglas, A. (2021, November 18). Jordan Valley: Kindergartens facing Israeli threats give vulnerable communities hope. Middle East Eye. <https://www.middleeasteye.net/news/palestine-jordan-valley-kindergartens-challenge-israeli-occupation>
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49. Reasons for refusal include: the construction of more than one building on an original plot; the division of land without an approved subdivision scheme; building area is in excess of that permitted in the regional outline plan; and deviation from prescribed building lines. See: International Advisory Board. (2015, May). Spatial Planning in Area C of the Israeli Occupied West Bank of the Palestinian Territory, p. 19. United Nations Human Settlement Programme, Palestine. <https://unhabitat.org/sites/default/files/download-manager-files/IAB%20Report%20on%20Area%20C.pdf>
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- <sup>132.</sup> Israeli settlements may also constitute a war crime under the Rome Statute.
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137. Bimkom has suggested that the following approaches be employed: i/ resident involvement ii/ dynamic planning based on on-the-ground needs and lifestyle, according to which uses of land and resources are defined iii/ planning that allows for rights to use land and natural resources without defining ownership and iv/ location planning that allows flexibility of movement based on seasons and climate. Conventional planning tools may not be adequate for these purposes. See: Zuabi, A. et al. (2017). Planning for Bedouin Communities in the West Bank, p. 11. Bimkom. [http://bimkom.org/eng/wp-content/uploads/Bimkom\\_-\\_Planning\\_for\\_Bedouin.compressed.pdf](http://bimkom.org/eng/wp-content/uploads/Bimkom_-_Planning_for_Bedouin.compressed.pdf)
138. It is envisioned that the following projects, bodies, and expertise would be incorporated in an organised fashion into this new planning system: The Human Rights Impact Assessment Mechanism (HRIAM); Achieving Planning and Land Rights in “Area C”; Master Plans for Palestinian Communities in Area C – “Cluster Plan” in the Central Jordan Valley; The West Bank Protection Consortium; United Nations Human Settlement Programme’s Planning Support to the Palestinian Communities in Area C; the Palestinian Authority’s Strategic Action Plan, “Planning Support to Palestinian Communities in Area C”; the World Bank funded, Integrated Cities and Urban Development Project.
139. For example: the Office of the High Commissioner for Human Rights, United Nations Relief Work Agency, United Nations Development Programme, and UN Women.
140. Lynk, M. (2021, October 22). Situation on Human Rights in Palestinian Territories Occupied Since 1967. United Nations General Assembly. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/299/65/PDF/N2129965.pdf?OpenElementpar>
141. In a recent report the International Crisis Group suggested that humanitarian and development aid in Area C will have little effect in keeping the two-state solution viable, unless and until European capitals take a stronger political stand to protect Area C. See: International Crisis Group. (2022, August 23). Realigning European Policy Toward Palestine With Ground Realities. International Crisis Group. <https://www.crisisgroup.org/middle-east-north-africa/east-mediterranean-mena/israelpalestine/realigning-european-policy-toward>
142. International Crisis Group. (2022, August 23). Realigning European Policy Toward Palestine With Ground Realities. International Crisis Group. <https://www.crisisgroup.org/middle-east-north-africa/east-mediterranean-mena/israelpalestine/realigning-european-policy-toward>

