

Area C is Everything

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.