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Transparency Palestine

Report Series No. 9

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Land Administration in Palestine

October 2007

Introduction

Land represents not only one of the most important sources of production and wealth, but is also the primary factor behind the political and economic challenges countries face, particularly within developing countries and especially those under occupation such as the Palestinian Territories. The struggle between the occupying authorities and the Palestinian people revolves around territory, with the Israeli occupation utilizing various methods to Annex and control Palestinian land. Accordingly, it is important for Palestinians to establish their property rights through land registration at official departments.

The establishment of property rights has encountered many obstacles, and the Israeli military occupation has resulted in weakening Palestinian control over most of the lands of the West Bank. Unfortunately, the legal framework regulating land administration has not yet been completed.

In addition, the institutional framework responsible for the supervision of land administration and registration is divided between the Palestinian Land Authority and three ministries; Ministry of Public Works and Housing, Ministry of Finance and the Ministry of Justice.

Numerous legislations and bodies govern the allocation of state land for public use, as well as their administration, investment, and protection from transgression. As the fate of the majority of state land in the Palestinian Territories, particularly in the Gaza Strip, lies in the hands of a few individuals who have seized it by force, manipulation, deceit, or appropriation.

This report examines land administration and mechanisms put in place for monitoring and accountability, and the regulatory framework and environment that has thus far enabled the pervasiveness of the corruption within this sector in general and public land particular.

The report explores the issue with focus on the following themes:

- 1.1 Current legal framework governing land administration
- 1.2 Current institutional framework regulating land administration
- 1.3 Mechanisms for land registration
- 1.4 State land administration

I: The Legal Framework Governing Palestinian Land Administration

A multitude of legislations from various eras coexist to form the legal framework governing land in the Palestinian Territories. They include Ottoman, British, Jordanian and Egyptian laws, in addition to Israeli military orders. Apart from the Palestinian Presidential decree No. 10, 2002, on the establishment of the Palestinian Land Authority¹, there were no comprehensive Palestinian legislations on land registration despite the formation of the Palestinian National Authority in 1994 following the Oslo Accords; signed between the (PLO) and the Israeli government.

The PNA Council of Ministers has presented a draft land law to the Palestinian Legislative Council (PLC), which stayed on the Council's agenda from March 2004 until it was approved in a general session on April 4, 2005. Since then, the PLC has not taken further legislative action on the draft law, but instead referred it to PLC Legal and Land Committees.

These committees held a number of workshops for the discussion of the draft law in cooperation with the World Bank, the Land Authority and the Ministry of Planning. However, to date, no public policy has been developed concerning the land portfolio to be taken into consideration when the draft law is passed.

1 The decree, which authorized the establishment of a Palestinian Land Authority, was published in the Palestinian Official Gazette (PNA), 5/9/2002, issue No. (43). (see Appendix no. 1).

The following is a list of the most pertinent laws to land administration still in force in the Palestinian Territories:

- I.1. Presidential Decree No. 10 of 2002
- I.2. Ottoman Land Law of 1854 (1274 Hijri)
- I.3. Law for Settling Disputes over Land Property Rights No.9 of 1928.
- I.4. Land Ordinance (Acquisition of Land for Public Purposes) No.24 (1943)
- I.5. Law for Disposal of Immovable Assets (1331 Hijri)
- I.6. Law for Division of Common Immovable Assets (1329 Hijri).
- I.7. Law for Using Immovable Assets as Collateral (1331 Hijri).
- I.8. Amended Land Law No. 25 (of 1933).
- I.9. Land Transfer Law No.39 (of 1920).
- I.10. Land Dispute (Land Appropriation) Law No. 12 (of 1932)
- I.11. Land Registry Law No. 30 (of 1944).
- I.12. Public Land Law No.6 (of 1942).
- I.13. Land Restoration and Reclamation Law No. 10 (of 1921).
- I.14. Law No. 5 of 1960 on Redressing Transgressions on State Land.
- I.15. Order no. 57/575 Concerning the Administration of Land Registration In Force in the Gaza Strip.
- I.16. Land Transfer Law of 1920.
- I.17. Land and Water Settlement Law no. 40 of 1952.
- I.18. Land Registry Law No.40 of 1944.
- I.19. State Land Administration and Delegation Law No.1 of 1953.
- I.20. State Land and Property Preservation Law No.14 of 1961.
- I.21. Law on the Acquisition of Land for Public Purposes No.2 of 1953, in force in West Bank governorates.
- I.22. Immovable Assets Registration Law for the

Never Registered Assets no. 6 of 1964 and its amendments.

- I.23. Towns, Villages and Buildings Schemes Law No.79 of 1966 and its amendments.
- I.24. Amended Immovable Assets Law No. 51 of 1958.
- I.25. Survey Regulations No.6 of 1976.

In addition, there are more than 70 Israeli military orders still in forced in the West Bank and Gaza Strip. In the West Bank, the most notable are:

- Military order No. 1006 of 1982 concerning Appointments and Jurisdictions in accordance with Law for the Preservation of State Land and Property (Judea and Samaria Areas)
- Military order No. 25 of 1967, concerning Transactions in Property (West Bank areas)
- Military order No. 150 of 1967 concerning Absentee Property (Private Property) (Additional Regulations) (No. 1) (West Bank areas)
- Military Order No.59 of 1967, concerning State Property (West Bank areas)
- Military Order No. 291 of 1968, concerning Settlement of disputes over Land and Water (West Bank Areas).
- Military Order No. 450 of 1971, concerning Land Laws (West Bank areas)
- Military Order No.451 of 1971, concerning the Surveying and Definition of Land Boundaries (West Bank areas)
- Military Order No.875 of 1980, concerning the Amendment of the Land Registration Fees Law No.10 (Judea and Samaria)

The most important military orders issued with regard to the Gaza Strip are:

- Military Order No. 102 of 1967, concerning Jurisdictions to Sign Transactions (Gaza Strip and North Sinai)
- Military Order No. 335 of 1970, concerning Amendment to Land Law (Acquisition for Public Purposes) of 1943 (Gaza Strip and North Sinai)
- Military Order No 432 of 1972, concerning State Property (Gaza Strip)

- Military Order No 494 of 1974, concerning Granting and Registration of Estate Titles (Gaza Strip)

Among the plethora of land laws, Presidential Decree No. 10 of 2002 is the most notable. Article 1 stipulates the establishment of a “Land Authority” that enjoys an independent legal status and full legal capacity, to assume all actions and measures and achieve all purposes for which it was established in accordance with the provisions of the law. The “Land Authority” has an independent budget within the General Budget of the PNA, as stipulated by the same article which also states that the Land Authority shall be accountable to the Cabinet.

Article 2 states that land registration departments at the Ministry of Justice and the Surveying departments of the Ministry of Housing should be placed under the Land Authority. Article 4, however, states that both the appointment and rank of the head of the Land Authority should be established by a decision from the President of the PNA. Finally, Article 5 affirms that the jurisdiction and mandates of the Land Authority should be determined by a specific law, which has not yet been enacted.

Problems Pertinent to the Legal Framework

The legal framework governing the land sector in the Palestinian territories is afflicted by a number of problems, one of which is the overlapping of conflict induced by the diversity of legislations or their ambiguity. The most important challenges can be summarized as follows:

1. Despite their sheer number, land laws enacted long ago have not undergone modernization or integration, resulting in the divergence and incongruence of their legal provisions. In addition, some laws have been solely applicable either to the Gaza Strip or the West Bank, without being congruent with each other hence making it difficult to create a unified legal framework in Palestine.
2. The existing web of regulations has relegated authority to a large number of public institutions – such as the Land Authority which includes four ministries (Public Works,

Housing, Justice, Local Governance and Finance), and the President’s Office. This has complicated the formation of complementary divisions of authority and responsibility in land administration. The outcomes have been reflected in the constant weakening of monitoring and accountability systems of relevant institutions, and has complicated procedures as well in the fragmentation of public policy.

3. The accumulation of land laws through the various historical eras has led to many types of land divisions and classifications. According to the Ottoman system, land was classified according to five major types: “Mamluk” (privately-owned); “Amiri” (state-owned); “Waqf” (religious endowment); “Matruk” (absentee or abandoned) and “Mawat” (barren or infertile) land. The British mandate reduced these classes to three by combining “Amiri” and “Mawat” into a new category of governmental or public land, which sought to facilitate the creation of Jewish settlements on governmental land. Due to this diversity, there is pervasive disagreement over the concept of land ownership depending on the applicable legislation.²
4. The Presidential Decree No. 10 of 2002 is considered to have the power of law. However, the law is constitutionally problematic as it threatens the legitimacy of PNA resolutions and the rights ensuing from them. This contravenes the provisions of Article 43 of the Basic Law, which restricts the President’s power to issue legislation to specific periods.

The Article clearly states that “the President of the National Authority shall have the right in exceptional cases, which cannot be postponed, and while the Legislative Council is not in session, to issue decisions and decrees that have the power of law. However, the decisions issued shall be presented to the Legislative Council in the first session convened after their issuance; otherwise they will cease to have the power of law.” But at the time the presidential decree was issued the PLC was in session, hence the necessity

² Palestinian Legislative Council, explanatory memorandum of the draft land law, Ramallah, 2004

of this decree was debatable. Moreover, some argue that the decree lost its legal effect since it was not presented to the PLC as illustrated by Article 43 of the Basic Law.

5. Even though the Palestinian Land Authority was founded, no legislation has been enacted to date to define its specific duties as stipulated in the Presidential decree.

II: Institutional Framework Regulating Palestinian Land

The Land Authority, Ministry of Finance, Ministry of Local Government, Ministry of Public Works and Housing, and the office of the President all take part in administering land in PNA areas. Until 2002, each ministry and the President's office exercised different powers in administering the land. Their mandates and exercise of authority changed dramatically after the creation of the Land Authority in 2002. Prior to that, responsibilities of the ministries for land regulation was defined as follows:

- Ministry of Justice: Monitoring of departments of Land Registration and Immovable Assets;
- Ministry of Public Works and Housing: had the mandate over Surveying Departments responsible for the inspection of land schemes in registration applications referred by the Land Registration department;
- Ministry of Finance: supervises Land and Property Tax Departments;
- Ministry of Local Government: controls central, district and local (physical) planning departments, issues master plans for municipalities and village councils and grants building licenses.

The Land Authority was established in 2002 by the Presidential Decree No. 10 it is responsible for land survey and registration; departments that had previously been administered by the Ministry of Justice and the Ministry of Public Works and Housing.

The mission of the Land Authority is to preserve land, property titles and other ensuing rights of citizens and government, as well as civic and official institutions through survey and registration in the

Land Registry. Its mission also includes resolution of disputes over land demarcation, and the preservation and proper disposal of public land and property.³

However, several obstacles hinder the Land Authority's ability to undertake the above-noted duties satisfactorily or effectively. First, Israel remains in control of land administration, including physical planning and zoning in approximately 50% of the West Bank areas that is not under Palestinian sovereignty. Secondly, the construction of Israel's apartheid wall and the expansion of Israeli settlements have continuously impeded land administration by Palestinians. Finally, internal factors resulting from shortage of required personnel at the Land Authority, for efficient and transparent execution of the Authority's mandates and functions, have also contributed to the problems.

Structure of the Land Authority

The Palestinian Land Authority operates from two headquarters, located in the West Bank and Gaza Strip, in addition to a number of district branches and offices. There are three main departments: Land Registration, Land Survey, and State Property.

Authority begins with the head of the Land Authority, assisted by two directors (one in the West Bank and the one in Gaza), three department heads and their personnel.

Objectives⁴:

1. Completion of the process of land survey and registration tasks in areas not included in the settlement process.
2. Upgrading and computerization of Survey Department registers.
3. Preservation, improvement and computerization of maps available at the Survey department.
4. Automation and modernization of all maps for the West Bank using aerial photography.
5. Establishment of a geographic information system (GIS).

³ Palestinian National Information Center.

⁴ Ibid.

6. Identification and preservation of all state-owned land.
7. Follow-up on the execution of all land allocations to natural or legal persons.
8. Elimination of transgressions against state property through administrative and/or judicial means.

Problems and Difficulties Related to Institutional Framework

The Land Authority faces administrative, political and legal challenges, which impact its performance, administrative structure, professionalism and transparency. These challenges can be summed up as follows:

1. The variety of laws governing land registration dating to the Ottoman, British, Jordanian, Egyptian and Israeli occupation eras have driven each registration office to keep three types of land registers. The Ottoman, British and Jordanian registers in the West Bank, and Ottoman, British and Egyptian registers in the Gaza Strip. This was done so that land registration applications can be carried out according to the system in which they were originally registered⁵.
2. The Land Authority still lacks an approved organizational structure, hence contributing to the present state of conflict and competition over authority and responsibilities between the various ministries and offices.
3. The Land Authority lacks a number of infrastructures, such as maps preservation, and improvement and computerization in the Land Survey department. In particular the creation of modern computerized maps for all West Bank area archives through the use of aerial photography, to replace the decades- and sometime centuries-old paper maps that are still in circulation is most important.
4. The Authority has no legal departments or consultants at its headquarters or district offices. Legal provisions of regulations and procedures of daily functions are left to the

⁵ World Bank Report on Land Registration Administration in the West Bank and Gaza, May 4, 2006.

interpretations of employees at each district office. This has created a discrepancy between the bylaws and regulations applied in the northern areas of the West Bank and those in central areas, and has sometimes caused the Land Authority a number of law suits.

5. The Authority has yet to develop and obtain approval from the Cabinet. The World Bank reports that the average rate of land registration is less than 50% in the Gaza Strip and 30% in the West Bank. Furthermore, there does not seem to be an official policy for governmental interventions in land administration in West Bank Areas "A" and "B" addressing the right to ownership and disposition of property; issues of gender, environment, socio-economic development, and market development. The absence of such a land policy can result in one based on the status quo, or a combination of discrepancy and failure at the same time. To remedy this situation, it is crucial to enforce efficient procedures for land titles and increase the rate of land registration applications, as well as provide a transparent mechanism for the administration and disposition of state property.
6. Despite the stipulation of the Presidential Decree No. 10 of 2002 regarding the affiliation of Land Authority to the Council of Ministers, it is apparent that the latter has not assumed its control and accountability roles. On the other hand, the Land Authority does not present periodical reports on its operations to the Cabinet as required by the law.

Current records indicate that only 10% of land transactions are documented with the Palestinian Land Authority, as most transactions are registered through an irrevocable power of attorney by the notary public. This common method of registration has led to the existence of conflicting claims of property⁶.

III: Land Registration

Survey departments at the Ministry of Housing, and the Land Registration departments at the Ministry of Justice, had responsibility for land registrations until 2002 in accordance with the following procedures:

⁶ World Bank Report, *ibid*.

Surveying department: Ministry of Housing

1. The Surveying department initially approves maps and land schemes presented by citizens applying for land registration upon referral from the registration department.
2. After initial endorsement and clearance, the Surveying department returns the map(s) to the land registration department for review and evaluation before the application is referred back to the survey department for a final assessment. Finally, the application is sent back to the land registration department.
3. The completion of this process at the survey department requires 1-1.5 months.

Ministry of Justice

This ministry supervises all land and immovable assets registration departments, where most land registration procedures are carried out.

Land registrations are implemented in two manners:

- If title deeds are provided, the land is deemed to be completely at the owner's disposal and is registered at the Land Registration Department, if cleared by the Surveying Department.
- For registration of land located outside the town planning zone or considered "Amiri" land, the owner must present documents indicating the number of ownership years, which is for a period of at least ten years for "Amiri" land and fifteen years for owned land and properties. The most important document required is the invoice issued by the accountant in the financial department showing the date of initial registration and the name of the person responsible for paying the land taxes. This document must indicate the name of the person to whom the property should be registered, and from what year to what year. But if the property has previously been registered under the name of a testator or the person who left an estate to the applicant for registration, or in the names of previous owners, this must be

noted in addition to the duration, or date of registration in the testator's name, since its inclusion in the taxpayers' registers in addition to all property deeds possessed by the owner. Then the applicant for registration must carry out the following:

1. Have prepared a land survey map for the property to be registered by a licensed surveyor.
 2. Fill out a land registration application at the land registration department, using the immovable assets registration form for the land that has never been registered.
 3. Obtain a certificate of disposition from the municipality, the head of the local council or notables from the area, which is considered assurance of the person's right to dispose of the land to be registered.
- The land registrar, once he receives a registration application, shall place an announcement in one or two newspapers at the expense of the applicant, which include all details of the application and requests from all those who claim any objection. The complainer should present the Ad along with the supporting documents to the registrar within 15 days from the date of announcement in the newspapers.
 - The application is then referred to the Surveying department, which conducts an initial inspection before approval.
 - The registrar, after receipt of inspection fees, carries out a field visit to check the location of the land and verifies its ownership. The registrar also listens to all objections and prepares minutes to be signed by the owners of neighboring lots and experts who indicate the specific details of the immovable assets and their current status of both the registration application or the objections to it.
 - A report is then issued with an appendix including an accurate map of the immovable assets and its demarcation and area specified. All documents related to the application are

then presented along with a cover letter to a committee comprising of the governor or his assistant, the administrative officer, or the *charge d'affaires*, the accountant and the registrar in the area, in order to investigate the registration and issue the appropriate decision.

- If no objection to registration is filed, the registrar may register the immovable assets in the applicant's name upon the committee's decision.
- If there is dispute over the application, the affected parties may appeal the committee's decision within 15 days of receipt to an Appeals Committee composed of the head of the Land Authority, one of the Appeal Court's judges and the assistant Public Prosecutor. After the affected persons receive the Appeals Committee's decision, the land is registered 15 days after the issuance date if no court order is issued to halt the registration. If registration takes place, the ensuing deed is considered an irrevocable document that the plaintive cannot object to or refute before the courts.
- Both the Committees of First Instance and Appeals, while addressing the application, can delay their decision until settlement procedures are completed in the area in which the plot of land in question is located.

Problems Related to Land Registration:

1. Multiplicity of agencies and departments involved in land registrations, even though the Land Registration and Surveying departments should be primarily be responsible;
2. Numerous laws, regulations and decisions in force or followed in the field of land settlement and registration could lead to overlapping, contradiction or conflict with each other;
3. Inadequacy of resources available to departments involved in land registration, including small waiting areas for applicants, old equipment, and inexperienced and insufficient personnel.

IV: Legal Framework Regulating State Land

Following the Oslo Accords the most critical of Palestinian state land laws were issued: in the period that extended from the establishment of the PNA in 1994, and up until the issuance of the establishment of the Presidential Decree No. 10 of 2002 stipulating the establishment of the Land Authority. Prior to that decree, laws valid in the Gaza Strip, specifically Article 4 of decision No. 532 of 1957 on the formation of the State Land Committee in the Gaza Strip, and the sale, exploitation and rental of state land were made upon recommendations of this committee provided that that such recommendations are presented to the administrative governor (the President of the National Authority after the establishment of the PNA) for approval⁷.

In the West Bank the laws did not allow the disposal of state land by sale. In some cases the Finance Minister or Prime Minister were allowed, upon recommendations from the Director of the Land and Surveying Department, to rent out or lease state land except in the interest of the public and without sale, as stipulated by Articles 4-5 of the draft State Land Administration Law No. 32 for the year 1965.⁸

The issuance of Presidential Decree No. 10 in 2002 marked the start of a new era, as Article 3 stipulates the methods to be used for state land disposal: according to a decision by the Head of the National Authority upon recommendations from a committee that is comprised of the Head of the Land Authority, the Minister of Public Works and Housing and the Minister of Local Government.

State Land Disposal

Since the establishment of the Palestinian National Authority in 1994, state land has been disposed of in various ways in the West Bank and Gaza Strip, especially within Areas "A" and "B" that are under the direct jurisdiction of PNA. The greatest part of state land in the Gaza Strip in particular was disposed of through widespread privatization for the benefit of public institutions such as

⁷ See Appendix No. 2.

⁸ See Appendix No. 3.

ministries, governmental bodies and security apparatus. It also benefited local, civil and trade unions associations in addition to Palestinian political parties and movements as well as Arab and foreign embassies. Finally, state land was allocated to individuals for the purposes of house construction.

Disposal of state lands included land swapping with privately-owned properties (i.e., between the government and private citizens). In many cases ownership of private land was disputed, which required the government to become a party to this dispute unlike the citizens who received undisputed land and ownerships title.

State land disposal was carried out through allocations to private investment companies in the construction, agriculture and tourism sectors. In some cases state land was allocated for the erection of high-rise residential buildings in return for state-owned shares in the property, e.g., allocating a number of state-owned apartments within the building. Often the allocated state land was used for purposes contrary to the ones initially agreed upon; one of the most conspicuous examples was the “al-Maqusi” housing project in the Gaza Strip, where parts of the disposed land were used to build villas instead of apartment blocks, and the investor declined to hand over the allocated share of apartments to the state. In other cases disposed state lands were sold to other parties.

Moreover, a great portion of state land allocations took place without using clear criteria or following the established practices and procedures. For example, some individuals were either allocated state land more than once, or the same land plots were allocated to various entities only to have the allocation canceled later. Such practices took place continuously, which indicate the extent of disorder and confusion surrounding this issue, a conclusion that was also reached by the PLC Economic Committee which examined and reported on state-land disposal practices and procedures. The report called for the suspension of all allocations until the government formulated its state-land disposal policy and carried out a review of all allocations that took place to date to ensure that they were executed in compliance with the

legal provisions and standards in force⁹.

Problems related to State Land Administration

1. Public policy of state land disposal and its procedures, whether in terms of objectives or allocation methods, are largely conflicting and chaotic as indicated by the numerous decisions of allocation and repeal of such decisions.
2. Public policy regulating land swaps between the state and privately-owned lands, by individuals or institutions shared the same problem. In many cases the private land ownership has been disputed by a number of parties to which the state has become a party.
3. Control or follow up of state land allocation procedures, especially on part of the Cabinet and the Administrative and Financial Control Bureau, is weak if nonexistent. In addition to the shortage of monitoring reports submitted to relevant agencies. Large portions of state lands have been allocated to individuals and PNA security agencies in return for nominal amounts of money. In some cases, individuals were granted more than one allocation, while other allocations were made to individuals or parties without justification.
4. Fate of many allocations is unknown: whether or not they were used for the purpose for which they were intended or remain unused, or whether the land swap had actually taken place. Similarly, it is also unclear whether the agreements signed between the disposing parties and those parties to whom state land was allocated were actually implemented; whether they were paid for in installments or cash; and whether such amounts were deposited to the state's treasury.

⁹ A report by the PLC Economic Committee on state land that was presented to the seventh meeting of ninth session. See Appendix No. 4

Recommendations

Land administration in Palestine provides a salient example of the legislative and institutional confusion at Palestinian public institutions due to conflicting jurisdictions, authorities, roles, policies and procedures among the relevant parties, perspective or the public policies that guide activities and procedures. The chaotic status of land administration is the same for privately and state-owned land and requires urgent action at the various levels, taking into consideration the following:

1) Recommendations Pertinent to the Legal Framework

1. It is necessary to approve the draft Palestinian Land Law which has been on the PLC's agenda since 2004 so that all laws and regulations related to land administration can be compiled and unified; and conflict over authorities and jurisdictions resolved.
2. New land legislations should consider the unification of land classifications and divisions in all Palestinian areas so that the concept of land ownership is consolidated and unified.
3. It is necessary to finalize the legislation initiated by the Presidential Decree No. 10 stipulated in by the Land Authority Law which outlines its authorities and responsibilities, in addition to its monitoring and accountability mechanisms.
4. It is necessary to unify all regulations and provisions pertaining to state land administration and disposition and prohibit the sale of state land.

2) Recommendations Pertinent to Institutions and Policies

1. It is necessary to review the role of ministries in land administration, and delineate the authorities and functions of each institution so that legislative conflict is removed and

proper procedures instilled. In addition, their relationships should be clarified especially between the Land Authority and the ministries of Public Works and Housing, Justice and Local Government.

2. It is essential that the Cabinet assume its role in ensuring control and oversight of the performance of the Land Authority. It also should develop a national policy on the use of state land, in addition to the separation of functions between the institutions whose role is to preserve state lands from those who are responsible for their administration. In this manner, the Land Authority would be mandated for land preservation and registration, while the Ministry of Finance would take responsibility for their administration.
3. It is crucial to devise a land settlement plan for the Palestinian Territories where no settlement procedures have been carried out within a defined time frame and to make the role of the Land Authority more effective in this area.
4. It is necessary to simplify land registration procedures, educate the public on the changes applied, and encourage land registration, as this is extremely important for the preservation of lands in the face of Israeli measures such as land seizure and expropriation.

3) Recommendations Pertinent to the Role of the Land Authority

1. The Land Authority should be strengthened by the recruitment of trained and experienced personnel capable of meeting the increased workload in land survey and registration departments. This should occur as part of the development of an effective and reliable organizational structure devised in accordance with due process.
2. The Land Authority should be provided with the necessary performance-enhancing means and capacities such as personnel, vehicles,

computers and information technology, and surveying equipment in order to facilitate and accelerate land surveying and registration operations.

3. Accelerate the automation of land registration procedures and registers. It is necessary to link such registers to those of the Public Notary responsible for the issuance of land-specific powers of attorney in order to monitor any developments in land ownership.
4. Apply the special code of conduct for employees of the public sector to the personnel of land settlement and registration departments.

4) Recommendations Pertinent to State Land Administration

1. Allocation of state land should be halted until a national public policy on state land use is enacted.
2. An official inspection committee should be formed so as to review all state land allocations that had already taken place in the Gaza Strip, to ensure that they were made according to the proper legal procedures and to investigate transgressions of state land in the West Bank, particularly with regard to the following cases:
 - Allocation and construction of a hotel in Bethlehem which was converted into a university project.
 - Allocation for building a diplomatic residences in the al-Irsal neighborhood of Ramallah.
 - Allocation for building a governorate headquarters in Hebron.
 - Allocation for building a governorate headquarters in Nablus.
 - Allocation related to al-Irsal land in Ramallah.

Appendices

Appendix I

Presidential Decree No. 10 of 2002: The Establishment of Land Authority

The Chairperson of the Executive Committee of the Palestinian Liberation Organization

The President of the Palestinian National Authority

Having seen the Land Law of 1274 Hijri and the Land Registration Law no 30/1944 both in force in Palestine:

Having seen the Law for Property for Public Interest no. 24/1943 in force in the Gaza Strip and the State Land Department Law no. 32/65 in force in the West Bank

In the best interest of the Palestinian public, I hereby promulgate the following decree

Article 1

Establishment of the Land Authority

1. An authority, named the Land Authority, shall be established which shall enjoy an independent legal personality and full legal capacity, to assume all actions and measures and achieve all purposes for which it was established in accordance with the provisions of the law.
2. The Land Authority shall have an independent budget within the public budget of the Palestinian National Authority.
3. The Land Authority shall be subordinated to the Council of Ministers.
4. The main headquarters of the Land Authority shall be located in Jerusalem. The temporary headquarters shall be established in any location of its choice and is allowed to establish branches in all Palestinian governorates.

Article 2

Annexation of Departments to the Land Authority

The Land Registration Departments at the Ministry of Justice and the Surveying departments at the Ministry of Housing shall be annexed to the Land Authority; and employees of these departments shall be transferred to this Authority, each according to his financial rank and employment status.

Article 3

State Land Disposal

State land disposal can only occur upon a decision by the President of the Palestinian National Authority on the basis of recommendations made by Head of the Land Authority, the Minister of Public Works and Housing and the Minister of Local Government.

Article 4

Appointment of the Head of the Land Authority

The Land Authority shall have an appointed Head, whose appointment and rank shall be determined in accordance with a decision issued by the President of the PNA.

Article 5

Jurisdictions and Mandates of the Land Authority

The jurisdictions and mandates of the Land Authority shall be delineated by a law.

Article 6

Cancellation due to Contradiction

Each provision contradicting the provisions of this decree shall be canceled.

Article 7

Applicability and Enforceability

All responsible parties, each within their own capacity, shall implement this decree which shall become in force as of the date of its issuance and publication in the Official Gazette.

Issued in Ramallah on 5/6/2002
Yasser Arafat
Chairperson of Executive Committee of the Palestine Liberation Organization
Palestinian National Authority

Appendix No. 2

Order concerning the Formation of a State Land Committee in the Gaza Strip **Order no. 532 of the year 1957**

General Mohammad Hassan Abdul Latif,

Administrative Governor General of the Gaza Strip

Having seen the decision by the President of the Arabic Republic of Egypt No. (253) issued on 11th March, 1957

Having seen the decision No. 380 issued by the Minister of Defense on 2nd April 1957

The following are decided:

Article 1

The formation of a state land committee in Gaza Strip composed of:

1. Head of Municipal and Village Council Affairs, as the Chairperson
2. The Administrative Director, as the Deputy Chairperson
3. The Financial Director, as a member
4. Director of the Surveying and Town Planning Administration, as a member
5. The Forest Officer, as a member
6. The Agricultural Inspector, as a member

Article 2

Committee Convention

The committee shall convene upon the request of the Chairperson and the meeting shall not be legal except by the presence of at least 4 of its members.

Article 3

Decision-Taking

Decisions shall be taken by the majority of votes of attending members and in case of tying of votes; advantage is given to the side supported by the chairperson.

Article 4

The Mandate of the Committee

This committee shall be mandated to submit recommendations on the sale, rental, division or exploitation of state land that should be presented to us for endorsement.

Article 5

Cancellation and Cessation

All provisions in contradiction with this order shall be cancelled. This order shall be implemented from the date of its publication in the official gazette.

Issued in Gaza on 19th of August 1957

**General Mohammad Hassan Abdul
Latif
Administrative Governor General
of the Gaza Strip**

Appendix No. 3

Law No.(32) of 1965

Temporary Law for the Administration of State Land

We, Mohammad Bin Talal, the Deputy of His Majesty the King

In accordance with Paragraph (1) of Article (94) of the Constitution And

In accordance with the decision by the Cabinet on 7/7/1965

Do hereby approve the following temporary law in accordance with Article (31) of the Constitution and order its issuance and placement in temporary force and addition to state laws on the basis of its presentation to the Parliament at its first forthcoming meeting.

Article 1

Name

This temporary law shall be named (The Temporary State Land Administration Law for 1965) and shall be applied as of its date of publication in the official gazette.

Article 2

Definitions

State Land means immovable assets that the state can dispose with or owned by the state according to current laws. , Minister) means the Minister of Finance / Land and Survey.

(Director) means the Director of Land and Survey.

Article 3

The Authorities of the Director of Land and Survey

The Director of Land and Survey shall be responsible for all issues pertinent to the administration of state land and property.

Article 4

The Authorities of the Minister

The Minister, upon recommendations by the Director, shall have the power to:

1. Temporarily leasing or renting out of any plot of land or state property for its improvement and without the intention of delegation
2. Delegation of any plot of state land or property with an area of no more than 20 dunums in exchange for the agreed upon amount decided by the minister
3. Delegation of any plot of state land or property even if its area exceeds 20 dunums provided that the agreed upon amount does not exceed 200 dinars

Article 5

Delegation

In the event that the land and property to be delegated do not fall under items 1, 2, or 3 of the Article (4), delegation is determined by a decision of the Cabinet upon the recommendations of the Minister.

Appendix No. 4
Excerpt from the PLC's Economic
Committee's Report
on the State Land Portfolio,
dated 3-6/1/200

... After the Committee had reviewed the allocations made to aforementioned parties and information it obtained in relation of this portfolio, the committee identified a number of flawed aspects whether in terms of compliance to the legal framework, the institution with inherent jurisdiction and authority for the regulation of the institution state land affairs, adherence or respect to set procedures of the process of allocation, or in terms of criteria adopted for these allocations. The most problematic issues can be summarized as follows:

1) Legal and Institutional Frameworks

The Committee noted the chaotic legal and institutional environment in relation to state land, particularity concerning the permissibility of land disposal and the party responsible for such disposal. Two phases could be distinguished in this sector:

The first is the period that extended from the PNA establishment until the issuance the Presidential decree No. (10) for the year 2002 stipulating the creation of the Land Authority. Prior to the decision, laws valid in Gaza Strip, more specifically Article (4) of decision No. (532) for the year 1957 on the formation of the State Land Committee in Gaza Strip, the sale, exploitation and rental of state land was made upon recommendations of this committee provided that that such recommendations are presented to the administrative governor (the President of the National Authority after the establishment of PNA) for approval. In the West Bank, the laws in force did not allow the disposal of state land by sale. In some cases, the Finance Minister or Prime Minister were allowed, upon recommendations from the Director of the Land and Survey Department to rent out or lease state land except in the interest of the public and without sale, as stipulated by

Article (4-5) of the draft State Land Administration Law No. (32) for the year 1965.¹⁰

The issuance of the Presidential decree No. (10) for the year 2002 marked the start of the second period since Article (3) stipulates the methods to be used for state land disposal whereby disposal is carried out according to a decision by the Head of the National Authority upon recommendations from a committee that is comprised of the Head of the Land Authority, the Minister of Public Works and Housing and the Minister of Local Government.

Theb aforementioned presidential decree represents a blatant constitutional violation of the provisions of Article (43) of the Basic Law which restricts the President's power to issuance of legislations to certain times. The articles clearly states that "The President of the National Authority shall have the right in exceptional cases, which can not be postponed, and while the Legislative Council is not in session, to issue decisions and decrees that have the power of law. However, the decisions issued shall be presented to the Legislative Council in the first session convened after their issuance; otherwise they will cease to have the power of law".

This means that the mentioned presidential decree is unconstitutional since it has stipulated amendment to the laws and its legal content required presentation to the PLC for approval, in the manner stipulated for by the Basic Law.

As for the institutional framework, and in accordance with the afore-mentioned legislations, numerous parties were found to have assumed responsibility for the state land administration – (i.e. the Office of the President, the Ministry of Public Works and Housing, the Ministry of Justice, the Land Authority, the Ministry of Local Governance, and the Ministry of Finance)

2) Public Policy

The public policy of state land disposal and its procedures, whether in terms of objectives or allocation methods, are largely conflicting and chaotic.

¹⁰ See Appendix No. 3.

Due to the largest portion of state land allocations, especially in the Gaza Strip, there is no state land left as a future reserve for public use.

In addition, state land was also allocated to foreign embassies and it is not clear whether these states would reciprocate a similar treatment.

In addition to the numerous allocations, decisions or revocation of allocations, it is unclear whether such allocations were actually implemented; a clear indication of the chaotic public policy in this regard.

The same applies to public policy regulating land swaps between the state and privately-owned lands (by individuals or institutions). The ownership of private land has often been disputed by a number of parties to which the state has become a party to such conflicts; whereas individual citizens receive undisputed lands from the state.

3) Control and Monitoring

Control or follow up of state land allocation procedures, especially on part of the Cabinet and the Administrative and Financial Control Bureau, is weak if nonexistent in addition to the shortage of monitoring reports submitted to relevant agencies on land disposal.

Large portion of state land has been allocated to individuals and PNA security agencies in return for nominal amounts. In some cases, certain individuals were granted more than one allocation, other allocations were made to individuals or parties without any justification.

The fate of many allocations is also unknown, i.e. whether or not they had actually taken place or whether they were used for the purpose for they were disposed for, or used for other purpose or remain unused.

Similarly, it is also unclear whether land swaps and the agreements signed between the disposing parties and those parties to whom state land was allocated were actually implemented; and whether they were paid for (in installments or cash) and whether or not such amounts were deposited to the state's treasury.

Ambiguity also shrouds the fate of apartments received by relevant governmental parties in exchange for allocated lands.

Thus, the Economic Committee recommends to the honorable Council the demand the following from the President of the PNA, the Council of Ministers, the Head of the Land Authority, the Minister of Housing and the Minister of Local Governance:

Immediate halting of all state land disposal and suspending the application of the presidential decree No.(10) of 2002 due to its unconstitutionality and consider all ensuing decisions as null and void unless considered acquired rights for others.

It is necessary that the PLC adopt a public policy for the government concerning state land disposal.

A special high-level official investigation committee should be formed to review all decisions taken concerning state land, and identify cases of allocations and transactions made outside the legal framework or non-compliant with the adopted public criteria or policies on which the committee should prepare and submit its recommendations.

The committee should present a detailed report on its activities to the Palestinian Legislative Council within two months of issuance of the Council's decision of the Council matter.

This report was written in a "gender-blind" style to simplify reading.

Rapporteur of the Economic Committee

Jalal al-Masdar

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Translation and Printing of this report was funded by the World Bank

