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'ONE UN' APPROACH TO SPATIAL PLANNING IN "AREA C" OF THE OCCUPIED WEST BANK

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**'ONE UN' APPROACH TO SPATIAL
PLANNING IN AREA C
OF THE OCCUPIED WEST BANK**





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FOREWORD

Making up over 60% of the overall West Bank, 'Area C' is fundamental to the contiguity of the West Bank and the viability of the State of Palestine and its economy. With little political progress on the transfer of full authority over these areas from Israel to the Palestine Authority in the 20 years since the Interim Agreement on the West Bank and Gaza Strip ('Oslo II'), for the 300,000 Palestinians resident in Area C life is a precarious existence. Demolitions, confiscations, displacement, restrictions on movement, prevention of access to lands and security incidents are a daily reality for many. Many Palestinians living in Areas A and B are affected as well, where they have property or a livelihood in Area C.

The UN, along with a broad range of members of the International Community, remains highly invested in Area C and strives to both respond to the humanitarian needs of these vulnerable Palestinian households and to help their communities move to a more positive development trajectory. Local planning efforts are an important part of the approach as they help communities steer future development on the basis of their priorities and complement important national initiatives, such as the National Spatial Plan which will, once complete, offer a broader vision for the State of Palestine, including Area C. Developing local outline plans may also help address the current 'no-plan-so-no-building-permit' policy the Israeli authorities frequently cite to justify demolitions and displacement of communities, many of whom – like the Bedouin – have suffered multiple displacements over the years.

There is a lot at stake. The World Bank has calculated that if restrictions on Area C were lifted, the combined direct and indirect economic benefit could total \$3.4 billion (35 percent of 2011 GDP), translating into additional tax revenues for the Government of Palestine of \$800 million a year; a huge contribution at a time when the aid budgets of donors are shrinking globally.

Given the environment, humanitarian and development interventions in Area C carry some risk. For example, despite the backing of international humanitarian law which obliges Israel as the Occupying Power to facilitate humanitarian aid and access, and prohibits the destruction of the private property of protected persons under occupation, internationally-funded humanitarian work - which are implemented without permits - have been subject to demolitions and confiscations by Israeli military authorities. For these and other reasons, we will monitor closely our work at the community level on local Outline plans and proceed on a case-by-case basis.

The "One UN Approach to Spatial Planning in Area C of the occupied West Bank" outlines the principles and approach of the UN towards planning in Area C. In pursuing this approach, the UN will support other complementary initiatives such as the development of city-region plans at the governorate level, the formulation of a National Spatial Plan and the review of the current Palestinian legal framework for planning. We will also continue to advocate for a just and enabling planning regime, as well as the ultimate transfer of authority in Area C to the State of Palestine.

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I. Introduction

This paper outlines the approach of the United Nations presence in the occupied Palestinian territory (oPt) on the topic of Spatial Planning in Area C. Area C was defined in the Oslo II Accords of 1995 accounts for more than 60 percent of the West Bank's land mass and remains under Israeli control. This paper outlines a shared UN approach to address international law concerns related to the Israeli planning regime in Area C, while taking stock of the achievements and potential of an emerging Palestinian planning approach in Area C to respond to unmet needs and aspirations of both the Palestinian population in Area C, or Palestinians whose livelihood depend on access to resources located in Area C. The paper draws upon the findings and recommendations of an International Advisory Board, commissioned by UN-Habitat to review Local Outline Plans in Area C against international planning benchmarks¹.

The main purpose of this paper is threefold: 1) to articulate a position vis-à-vis the current Israeli planning system in Area C; 2) to set out the parameters for UN engagement in planning initiatives vis-a-vis the Israeli planning system; and 3) to support Palestinian planning for a future independent Palestine, including Area C.

The first section describes briefly the Israeli planning regime, concerns under international law with regard to the design and implementation of that regime, and emerging Palestinian planning efforts in Area C, including the potential concerns in relation to International Law by complying with Israeli planning standards in Area C. The second part emphasizes critical UN considerations in developing a framework for a shared UN approach on spatial planning and zoning in Area C, which is presented in part three. Suggested advocacy messages are included in Annex 1.

1. The International Advisory Board was composed of 5 international expert planners chaired by Professor Emeritus Cliff Hague. The findings and recommendations are presented in its report "Spatial Planning in Area C of the Israeli occupied West Bank of the Palestinian territory" (April 2015).



II. SITUATION AND PROBLEM ANALYSIS

1. The Oslo Accords and the division of the West Bank into areas with differing status have not altered the status of the West Bank overall as land occupied by Israel. As an Occupying Power, Israel's actions in Area C – as in the entire West Bank – are subject to the laws of occupation, grounded mainly in the regulations appended to The Hague Conventions and the Fourth Geneva Convention.² Furthermore, under International Human Rights Law (IHRL), Israel must protect the human rights of everyone under its rule, including those of the residents of the West Bank.³
2. One of the basic principles of IHL is that occupation is temporary and hence the Occupying Power is not sovereign in the territory and is prohibited from making permanent changes in the occupied territory. During the temporary period which the Occupying Power holds the territory, it must protect the status quo ante (and specifically respect the law in force in the territory “unless absolutely prevented”), safeguard the assets of the territory and care for its population, which is classified as a protected population.⁴
3. The laws of occupation define the population that lives in the occupied territory, when its people are not citizens of the occupying state, as a protected population.⁵ The occupying state is obliged to act for the benefit and wellbeing of this population, including by protecting their human rights and assuring provision of basic needs.⁶
4. All UN activities in the oPt, including in relation to planning, are bound by international law, including applicable UN law, International Humanitarian Law (IHL), and IHRL. The UN's engagement centers on ensuring the Palestinian People's humanitarian and development needs are met; its presence includes humanitarian, political, development, and human rights components, all with specific mandates and institutional reporting lines and obligations. Given the complex and chronic nature of the crisis in the oPt, the UN recognizes that an effective response to this crisis requires **unity of purpose and integration of strategies, both in addressing the operational reality in the oPt, and providing guidance on mandate implementation.**

2. Convention respecting the Laws and Customs of War on Land (Hague, 1907), <http://www.icrc.org/ihl/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079> ; Convention (IV) relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949), <http://www.icrc.org/ihl/INTRO/380>.

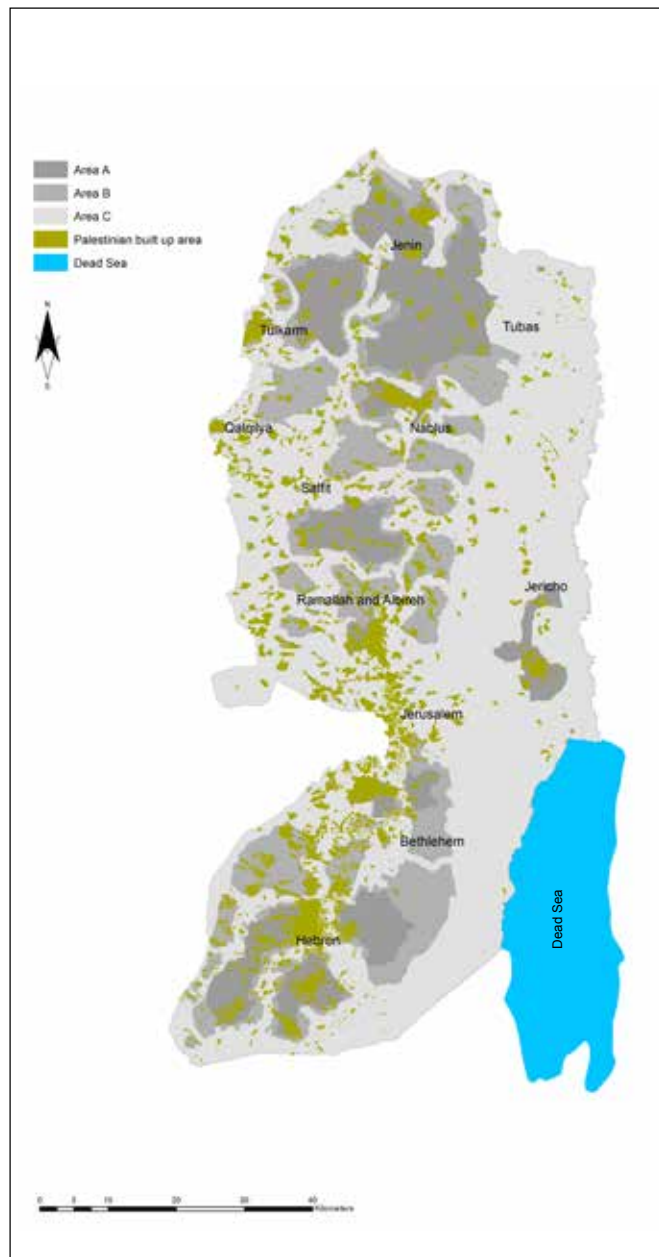
3. The UN human rights treaty bodies have consistently determined, and the International Court of Justice has confirmed, that Israel's human rights treaty obligations are owed to all individuals under its jurisdiction but outside its territory, including all individuals in the occupied Palestinian territory. Furthermore, in those fields where competence has been transferred to Palestinian authorities, the ICJ has ruled that Israel is under an obligation not to raise any obstacle to the exercise of such rights. See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, [2004] ICJ Rep. 136 (July 9, 2004), para. 102-113; Human Rights Committee, Concluding observations on the fourth period review of Israel, CCPR/C/ISR/CO/4 (Nov. 21, 2014), para. 5. See also B'TSELEM- Acting the Landlord: Israel's policy in Area C, West Bank, June 2013, p.93

4. Articles 43,55 of the Hague Regulations- Ibid p.93

5. Article 4 of the 4th Geneva Convention on the protection of Civilian Persons in Time of War; B'TSELEM, Acting the Land Lord- Israel's Policy in Area C, the West Bank- June 2013, p.96

6. Article 43 of the Hague Convention obliges the military commander “to restore, and ensure [...] public order and safety, while respecting [...] the laws in force in the country”. Israel's High Court of Justice has ruled that the needs of the population must be assured in accordance with the prevailing standards of modern life at the present time. It further ruled that this obligation extends to all aspects of public life, including “economic, social, educational, welfare, sanitation, health, traffic, and so forth”. HCJ 393/82 ruling dated 28 December 1983, p. 786; Ibid p. 96.

5. Contrary to the transitional nature of the arrangements under the Interim Agreement on the West Bank and Gaza Strip ('Oslo II') signed in 1995⁷, **Israel continues to have exclusive control over planning and construction in Area C** of the West Bank. Palestinians are largely excluded from the planning and decision making process under an unjust planning regime.⁸ As Occupying Power, Israel is implementing policies and measures that are contrary to international law, including forced evictions⁹, destruction of property, settlement activity and continued construction of the West Bank Barrier. The illegality of Israeli settlements in the West Bank, including East Jerusalem, has been repeatedly reaffirmed by the United Nations: settlements are in violation of Article 49(6) of the Fourth Geneva Convention which prohibits the transfer of parts of the Occupying Power's own civilian population into territory it occupies. The UN Secretary-General has clearly stated in his reports to the General Assembly and more recently to the Human Rights Council that the planning and permitting regime implemented by Israel in Area C is discriminatory and restrictive and not in conformity with international humanitarian and human rights law.



Geopolitical Classification of the West Bank.

7. Oslo Accords, Article 27 of Annex III of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995): "In Area C, powers and responsibilities related to the sphere of Planning and Zoning will be transferred gradually to Palestinian jurisdiction that will cover West Bank and Gaza Strip territory except for the issues that will be negotiated in the permanent status negotiations, during the further redeployment phases, to be completed within 18 months from the date of the inauguration of the Council."

8. See also "Finding 23" of the report of the International Advisory Board: "The aspects of the occupation that constrain plan preparation, combined with the failings in the procedures and practices for processing and authorising the Local Outline Plans and the disregard for International Humanitarian Law and the Law of Occupation amount to a denial of administrative justice."; in "Spatial Planning in Area C of the Israeli occupied West Bank of the Palestinian territory – Report of an International Advisory Board, <http://unhabitat.org/spatial-planning-in-area-c-of-the-israeli-occupied-west-bank-of-the-palestinian-territory/>.

9. According to OCHA (2014) there are 38 Palestinian communities located in parts of Area C that have been designated by the Israeli authorities as "firing zones" for military training, and these communities are under an increasing risk of displacement and forced eviction. See OCHA's Area C of the West Bank: Key Humanitarian Concerns, 2014.



6. An estimated **300,000 Palestinians live on land designated as Area C and a larger number depends on natural resources located in Area C for their livelihoods**. Development in Area C is tightly restricted by the Israeli authorities¹⁰ through means such as limiting or refusing permits for construction of individual buildings and services, and by issuing demolition, eviction and seizure orders in relation to buildings constructed without a permit.
7. As a result of land seizure and allocation for Israeli settlement construction and expansion, the designation of military zones and the construction of the West Bank Barrier, only 1,050 km² out of a total Area C of 3,502 km² is available to Palestinian construction, which represents a meager of 30 percent of Area C. The Israeli planning and zoning regime as applied to Palestinians in Area C has meant however that within this already limited geographic area, Palestinians have so far been permitted to build only within the boundaries of Israeli-approved plans, which to date cover 18,009 dunums, or 0.4% of the land in Area C. In contrast, the boundaries of approved plans for Israeli settlements to date, cover 950,033 dunums, or 20.1% of the land area of Area C.¹¹
8. Between 1988 and 2014 the Israel Civil Administration (ICA)¹² issued 14,087 demolition orders against Palestinian property in Area C of the West Bank. During this period, while only 151 orders were revoked, 2,802 orders were executed as of the end of December 2014. The remaining 11,134 demolition orders were, as of January 2015, still outstanding.¹³
9. The West Bank planning process reflects elements of multiple historical, contemporary, civilian and military systems. After the 1967 war, Israel as the Occupying Power initially maintained in force the 1966 **Jordanian Planning Law** Number 79;¹⁴ Israel subsequently amended the Law with numerous military orders (MO) and regulations.¹⁵ Of specific note, in 1971 Israel issued MO 418, depriving Palestinians of the planning mechanisms in place under the Jordanian Planning Law. MO 418 concentrated all planning powers within an Israeli, military-led Supreme Planning Committee. MO 418 has not been formally repealed and remains in force in Area C today, despite the Oslo Accords envisaging the transfer of planning authority in Area C to Palestinian jurisdiction.
10. Israel initially granted building permits to Palestinians in the rural areas of the oPt based on the **British Mandatory Regional Outline Plans**.¹⁶ These plans were established in the 1930-40s under British Mandatory rule, and from 1947 were adopted by the Jordanian planning authority of the West Bank.

10. See OCHA's "Area C Vulnerability Profile" 2014

11. See NRC's Guide to Housing, Land and Property Law in Area C of the West Bank, February 2012, as well Bimkom – Planners for Planning Rights. Under the Guise of Green, 2014.

12. The ICA was established in 1981. See Order regarding the establishment of a Civilian Administration (Judea and Samaria) (Order No. 947) 5742-1981.

13. See OCHA's In The Spotlight - Under Threat: Demolition Orders in Area C of the West Bank (Forthcoming).

14. This law entrusted the Kingdom of Jordan with full planning authority for the West Bank. The law requires development plans to be prepared, approved, kept up to date and for public notices on changes to be issued in the press). A permit may be refused if the development conflicts with a plan; penalties for unpermitted development may include, in extreme cases, demolition. A High Planning Council advised by a Central Planning Department would prepare and approve «regional» plans, and local commissions (municipalities or groups of villages) would prepare «outline» and "detailed" plans, to be approved by the High Planning Council and District Commission, respectively.

15. For an overview of the military orders see "Ruling Palestine", COHRE/BADIL, 2005.

16. The Mandatory Regional Outline Plans were established under British rule (1918-1948) and remain valid to this day since they were never formally declared invalid or overruled under Jordanian and Israeli rule. For more see Bimkom's "The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C", June 2008.



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The British Mandatory Regional Outline Plans were never formally replaced by the 1966 Jordanian Planning Law Number 79.¹⁷ While these Mandatory Plans have not been applied when it comes to planning and building Israeli settlements, Palestinian building applications are often rejected based on a highly restrictive interpretation of these outdated Mandatory planning regulations.¹⁸

11. Another aspect of the planning system in place that restricts development in Area C are the **Israeli-initiated Special Outline Plans or Special Partial Outline Plans** for Palestinian villages.¹⁹ These types of plans were first commissioned by the ICA in 1984. The Special Partial Outline Plans are characterized by an imposed demarcation of the existing built-up area with no or little room for growth and with no involvement of the local population in the drafting and decision making process of the plan.²⁰ By

17. The Mandatory Regional Outline Plans were prepared to regulate planning and building outside cities and town, more particularly for the large tracks of rural areas. There are four Mandatory Regional Outline Plans; two of which are still relevant to West Bank/Area C, namely: District Plan for Jerusalem (RJ-5) for the year 1942 and District Plan for Samaria (Nablus) (S-15) for the year 1948.

18. See NRC's Guide to Housing, Land and Property Law in Area C of the West Bank, February 2012 as well UN-Habitat's Report of a Workshop on the Current Use of and Future Role for British Mandatory Regional Outline Plans (September 2014). In its report (Ibid note 1, p.21), the IAB argues that "(it is not aware of any example from elsewhere of 70-year old plans still being statutory today."

19. See Bimkom's "The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C", June 2008.

20. Ibid. p. 23.



the time the Oslo Interim Agreement was signed in 1995, some 400 Special Partial Outline Plans had been approved by the ICA for Palestinian villages across the West Bank.²¹

12. **For Bedouin and herding communities** Israeli plans have been and continue to be drafted and deposited to facilitate relocation of pastoral communities to sedentary urbanized areas, without consent of the targeted communities. There are concerns that the relocation of these communities on the basis of these plans would be contrary to international law, including the prohibition of forcible transfer as set out in Article 49²² of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. A violation of Article 49 is classified as a grave breach of the Geneva Conventions.²³ The IAB reported that “The ICA planning approach is insensitive to the culture, traditional lands and livelihoods of Bedouin and herding people and disregards the 2007 UN Declaration on the Rights of Indigenous Peoples and current international good practice in planning in resident countries.”²⁴
13. **Since 2011 Palestinian villages began drafting their own Detailed Local Outline Plans**, eventually submitting them to the ICA for their endorsement.²⁵ The planning process and negotiation with the ICA is coordinated by the Government of Palestine (GoP) Ministry of Local Government (MoLG), and is based on consent of the local communities. This marks a significant policy change of the MoLG in terms of the engagement with the ICA mainly to respond to the planning inequalities resulting from the restrictive planning practices noted above. As of August 2015, 108 plans have been drafted for 116 communities of which 77 have been submitted to the ICA. Only three have been approved to date. Seven were rejected for reasons including location in firing zone, a nature reserve or others, and another 44 plans have passed more than 18 months of technical discussions with the ICA without decision. These community-led plans are supported by the MoLG and funded by members of the International Community. They take into account population growth and internal zoning of future built-up areas to the extent possible. However, to comply with ICA planning criteria, these plans must also take Israeli settlements and the West Bank Barrier into account, in addition to other constraints imposed by Israel such as closed military zones and Israeli-designated nature reserves and archaeological sites. Further, the ICA excludes village lands for agriculture and other development purposes from these plans, because their interpretation of the Jordanian Planning Law of 1966 is that these ‘Detailed Outline Plans’ are only designed for built-up areas.²⁶

21. See Bimkom - Planners for Planning Rights. (2008). The Prohibited Zone - Israeli Planning Policy in the Palestinian Villages in Area C. (2008). p. 101.

22. Article 49 of the Fourth Geneva Convention, prohibits the expulsion and forcible transfer of protected civilians – whether within the occupied territory or to areas outside it – “no matter the motive”. The only circumstances under which the Occupying Power is allowed to evacuate residents from their homes is when doing so is critical for their own safety, or by virtue of “considerations of military necessity” – when the presence of the civilians at that location hinders a military action during hostilities. Even then, the evacuees must be permitted to return to their homes “immediately upon cessation of the hostilities in that area”. During the temporary evacuation, the occupier must provide the evacuees with alternate living quarters and basic life necessities. Geneva Conventions of 12 August 1949: Commentary, Convention IV, art. 49; B’tselem “Acting the Landlord- Israel’s Policy in Area C, the West Bank, June 2013, p.97

23. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, art. 85(4)(a) (recognizing a violation of Geneva Convention IV, art. 49, as a grave breach of the Protocol).

24. Ibid note 1, p.21

25. The majority of the plans have been co-drafted with the International Peace and Coordination Centre (IPCC), a Palestinian NGO, while other plans have been co-drafted by Palestinian planning consultancies. Most of the plans have been funded by the International community (the majority by UK, Belgium, France and EU). Detailed information about the localities and status of the plans can be obtained from the GoP/MoLG.

26. This could be legally challenged. The Jordanian Planning Laws makes a distinction between Outline Plans – that can be developed for the entire area of the city, town or village, thus larger than its built-up area, whereas Detailed Plans are usually designed to detail the Outline Plan for construction areas, usually confined to the existing (and mostly enlarged) built-up area. However, for small villages the law allows for a single plan by merging the Outline and Detailed Plans (hence its name ‘Detailed Outline Plan’).

14. While only three plans have been approved to date, the IAB found, based on a sampled review of 10 of these plans, that within the constraints imposed by the Israeli planning regime the plans have met basic professional standards in terms of community engagement and in terms of land-use zoning. The IAB concluded "...on the basis of the evidence available, there are no appropriate technical grounds for delay or refusal of these plans" [by the ICA].²⁷
15. **Palestinian Detailed Local Outline Plans are different from Israeli-initiated Special Outline Plans in important ways.** These Palestinian plans are drafted by a Palestinian planning contractor, provisionally approved by the Village Council and informally validated by the MoLG.²⁸ The Village Council decides if it wishes to submit their plan to the ICA for formal endorsement²⁹, mainly to secure the recognition of the existence of the village and to protect against demolitions and displacement. However, the plan also aims at steering future development within the planning perimeter, based on a zoning scheme, planning and building regulations and an action plan with prioritized community infrastructure. Thus, inside the boundaries of an ICA-endorsed plan, 'legal' building may take place.³⁰
16. **Palestinian Plans in Area C of the West Bank have the potential to provide protection from demolition and evictions** for Palestinian communities covered by community approved plans, and to enable the development of certain infrastructure. Although plans endorsed by the ICA provide a high level of protection³¹, all plans initially supported by local Village Councils and submitted to the ICA may provide de facto protection from demolitions and evictions. Anecdotally,³² communities have also noted the benefits of public participation in the process of preparing the local outline plans including the ability to organize their social structures, improve problem solving, and overall increase their resilience in the face of the restrictive planning regime.
17. **Planning for communities in Area C continues to be a key policy of the GoP.** The GoP notes that "Area C is an integral part of the State of Palestine, the backbone of the Palestinian economy and true sovereignty thrives or dies with control over it."³³ Furthermore, the GoP has called on international partners to cooperate on the prioritization and development of local plans vis-à-vis the ICA approval process, and to support the Ministry of Planning and Administrative Development (MoPAD) to establish national development plans and investments in Area C.
18. **The MoLG supports Palestinian Local Outline Plans** through means such as coordinating donor funding for planning support, identification and stewardship of the Palestinian communities in need of planning, supporting the planning contractors to prepare the plans, observation of the technical

27. International Advisory Board Report "Spatial Planning in Area C of the Israeli occupied West Bank of the Palestinian territory, May 2015, p.38

28. 'Informally validated' refers to the lack of formal planning powers of the PA in Area C up to date.

29. Formal endorsement refers to approval by the ICA, upon which the PA considers the plan a statutory (master) plan.

30. The use of the wording "may" in this sentence refers to the "understanding" or "assumption" that the ICA will no longer interfere in the internal development of approved planning perimeters, yet without a formal transfer of local permitting power. This assumption is based on information obtained by UN-Habitat from the GoP/MoLG and IPCC. This is the case for plans that have been finally endorsed but also for the plans that have gone through a number of stages in the ICA plan review process.

31. To date only 3 out of the 77 submitted Palestinian plans have been formally endorsed since 2011: a plan for the village of Imneizel in Hebron, a plan for the village of Wadi Nis in Bethlehem, and a joint plan for the twin villages of Ras Tira and Da'aba in Qalqiliya.

32. Based on local experiences recorded by GoP/MoLG and IPCC. In the three outline plans endorsed by the ICA, demolitions have been stopped.

33. The Governments of Palestine's Reports to the meetings of the Ad Hoc Liaison Committee September 2012 and March 2013, as well "National Strategic Framework for Development Policies and Interventions in Area C (2014-2016), Ministry of Planning and Administrative Development, State of Palestine, May 2014.



discussions between the planning contractor and the ICA to monitor the planning progress, and harmonizing the planning approach in Area C with planning and development in Areas A and B.

19. The UN is aware of **concerns about possible negative impacts or side-effects of the Palestinian Detailed Local Outline Plans**. These include: a) de facto acceptance of spatial limitations and restrictions related to Israeli structures and measures e.g. settlements, the West Bank Barrier and military/firing zones; b) a potential heightened risk of demolition for structures outside the planned perimeters and for communities that are not considered as eligible for planning approval by the ICA; c) the absence of Palestinian representation in the final decision making structures; d) the risk of further fragmentation of the West Bank into segregated enclaves, also in light of the absence of national and regional spatial planning; and, e) the risk of creating new realities that narrow the urban expansion necessary for future growth and sustainable development of Palestinian cities and towns (in Areas A and B)³⁴. Overall, the UN acknowledges the growing concerns related to the administrative injustice and lack of transparency in planning in Area C under the Israeli planning regime. However, for reasons mentioned in paragraph 16, engaging in local planning under the Israeli planning regime can still outweigh these disadvantages if combined with a more holistic planning approach, including national and regional planning that guides and that connects local, city-region, and national levels of planning all together in a coherent way. Therefore, it is recommended that the international community not only continues its support for the local outline plans but also supports the development of regional and national spatial plans, with the aim of getting comprehensive coverage in Area C.³⁵

III. CONSIDERATIONS

20. Area C is fundamental to the contiguity of the West Bank and the viability of the State of Palestine and its economy. It is essential for the potential growth in vital sectors like agriculture, tourism and housing, for the expansion and operation of public infrastructure³⁶, for private sector development, and for meeting the development needs of communities in Areas A and B. **The UN recognizes the importance of Area C to the viability of the State of Palestine**, which it shall continue to highlight across the spectrum of UN engagement, without prejudice to political negotiations. It is within this context that the UN seeks to support Palestinian efforts that enhance both public and private sector driven development in Area C. The UN also recognizes the importance to integrate, plan and develop all other parts of the State of Palestine, including East Jerusalem and the Gaza strip³⁷.

34. See also the "National Strategic Framework for Development Policies and Interventions in Area C (2014-2016), Ministry of Planning and Administrative Development, State of Palestine, May 2014: "Although the master plans recognized by the Israeli Civil Administration may provide a realistic solution that limits Israeli demolition of Palestinian homes in Area C, they carry within them the implicit danger of reinforcing the division of the West Bank into segregated enclaves in light of the absence of national and regional spatial plan. The master plans also carry the risk of creating new realities that narrow urban expansion necessary for future growth and sustainable development. Therefore, the master planning practices must allow for continuity within and between built-up areas, and accommodate for the needs of future growth and expansion. (p14)

35. Ibid Note 1, p.46

36. E.g. transportation, water and electricity networks, wastewater treatment plants and landfills.

37. See also p.21 of "National Strategic Framework for Development Policies and Interventions in Area C (2014-2016), Ministry of Planning and Administrative Development, State of Palestine, May 2014.

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21. Currently, in Area C, the Humanitarian Country Team partners which include UN entities. and NGOs provide both coordination and assistance of immediate **humanitarian response**, including shelter, non-food items (NFIs) and livelihoods-support in cases of evictions and demolitions; monitoring of and advocacy around the human rights situation, settlement activity, settler violence, evictions and demolitions; the facilitation of **legal assistance, protective presence and psychosocial support** for affected persons and communities, and information analysis and dissemination. Stabilization activities focus mainly on infrastructural interventions such as the construction/rehabilitation of physical structures (e.g. wells, schools and health clinics) and short-term livelihoods support. Only limited development activities are possible in the current circumstances but include specialized technical assistance and support to Palestinian communities and the GoP in preparing plans so as to build community resilience, generate income and establish local planning control including issuing local building permits.

22. **The development of Palestinian Local Outline Plans is an integral part of a range of mutually supportive Palestinian planning efforts**, which include the National Spatial Plan (NSP), regional plans and/or any other area based development plans that are helpful to unlock the development potential in Area C. This multi-tiered planning approach is essential to ensure a cohesive development approach that encompasses all Palestinian communities and economic resources, allows for optimal investment and helps to link Palestinian communities across the oPt. This comprehensive planning approach across the current ABC and East Jerusalem divide is mainly intended as a preparedness mechanism of the GoP to finally take over planning control in Area C.³⁸

38. See also p.22 and p.35 of "National Strategic Framework for Development Policies and Interventions in Area C (2014-2016), Ministry of Planning and Administrative Development, State of Palestine, May 2014.





23. **The Report of the IAB, "Spatial Planning in Area C of the Israeli occupied West Bank of the Palestinian territory",** is a valuable basis to advocate a more fair planning approach that will enable Palestinian sustainable development.

IV. Spatial Planning Approach

24. **The UN in oPt will continue to raise the fundamental concerns it has regarding the current Israeli military planning and zoning regime as implemented in Area C.** The Israeli planning and zoning regime in Area C must be amended to ensure full conformity with international law, including International Humanitarian Law and International Human Rights Law. International law requires that Israel, as the Occupying Power, ensure public order and safety, while respecting, unless absolutely prevented, the Jordanian law in place in 1967.³⁹ The planning and zoning regime applicable to Area C must serve the interest and needs of the protected population. A planning and zoning regime that is unjust, restrictive and facilitates settlement construction/expansion is not compatible with international law.
25. **The UN will continue to advocate for the establishment of a planning and zoning regime for Area C on the basis of Jordanian law in force prior to the occupation with any amendments that may be necessary to the benefit of the protected population.** This regime should, at a minimum, allow for genuine representation in the decision making process and allow for Palestinian needs to be met, in line with the Palestinian way of building and dealing with land, and with full participation of and ownership by Palestinian Communities.⁴⁰ A planning and zoning regime that facilitates Israeli settlement construction or expansion runs contrary to the provisions of international law.
26. **The UN advocates for the replacement of the outdated British Mandatory Regional Outline Plans by regional plans made by and for the Palestinian population.**⁴¹ These regional plans, commissioned by the GoP and prepared by qualified planning experts with proper consultation of the affected Palestinian population, would not be submitted to the ICA but approved by the GoP and used as guidance for regional development and local planning in Area C.
27. **The UN will continue to advocate for the transfer of planning powers in Area C to the GoP** to the largest extent possible, as an essential component in the state building process.
28. **The UN supports the GoP decision to establish a National Spatial Plan** for the State of Palestine, within the pre-1967 borders and with East Jerusalem as capital. The plan should provide guidance to regional and local planning, while offering a visionary territorial outlook for the entire State of Palestine, across the current divide of ABC, Gaza and East Jerusalem.⁴²

39. This derives from Article 43, Hague Convention (IV) – Annex to the Convention Regulations Respecting the Laws and Customs of War on Land (1907). See also footnote 16.

40. Meanwhile, the UN supports the GoPs intention, to establish de-facto Palestinian local and regional planning committees in Area C, and to strengthen planning and development capacities local and district authorities in Area C (see also p.22 of "National Strategic Framework").

41. See also p.22 and p.42 of "National Strategic Framework for Development Policies and Interventions in Area C (2014-2016), Ministry of Planning and Administrative Development, State of Palestine, May 2014.

42. See also p.35 of "National Strategic Framework".

29. **The UN will consider its support to Palestinian-initiated and led planning in Area C** on a case-by-case basis in accordance with International Humanitarian Law, without prejudice to the UN's general position with regard to the illegality of Israeli settlements and the current Israeli planning and zoning regime as applied in Area C. The protection of Palestinian communities in Area C, including from the threat of the destruction of property, forced eviction or forcible transfer, will be a key consideration in the allocation of such support. To this end, the UN supports the establishment of a monitoring system that enables the assessment of the protection risks and impact of Palestinian-led planning efforts submitted to the Israeli authorities for endorsement. The outcomes of such risk and impact assessments will inform UN support to such plans and the UN will commit to monitoring the impact of the plans it supports. The UN also commits to support Palestinian Authorities at central and local level to establish a mechanism that enables an assessment of the protection risks and impacts of Palestinian planning led initiatives in Area C. This support should include both statutory and non-statutory planning.⁴³
30. To address all Palestinian needs in and aspirations for Area C, the UN will support the GoP in its intention to **review and upgrade the Palestinian legal framework** for planning and building in the current and future (independent) State of Palestine, as well the review and further development of the current and future Palestinian institutional framework⁴⁴ to support compliance with the international human rights obligations of the State of Palestine.
31. The UN's interventions with regard to the planning and zoning regime as applied in Area C should be in accordance with support provided by the UN to the GoP **pursuant to the UNDAF⁴⁵ and other applicable frameworks for cooperation with the GoP**. The UN will continue to provide strong support to GoP leadership and programmatic strategies in Area C in accordance with international law. Planning undertaken by the GoP should be in accordance with applicable standards under international law, including those set out in human rights instruments to which the State of Palestine is a party.
32. The UN unequivocally affirms that **the rights provided under international law of Palestinian communities or individuals in Area C - and across the entire oPt - remain independent of the planning status of Palestinian localities as well the status of the Israeli settlements**. Further, UN support to Palestinian communities in the preparation of Outline Plans does not in any way suggest that forced evictions, demolitions or other forms of displacement could be characterized as justified in communities that are without an Israeli recognized plan.
33. **The UN will support the GoP to ensure the compliance of planning initiatives with the principle of non-recognition of unlawful acts under international law.**
34. **The UN will encourage the GoP to prioritize the planning needs of Bedouin, farming, and herding communities**, which are the most vulnerable to forced evictions, demolitions and displacement, and calls for a halt to such actions across Area C.⁴⁶ The UN will advocate for the Israeli recognition of

43. See point 9 of this note and also p.22 of "National Strategic Framework".

44. See also p.17 and p.23 of "National Strategic Framework".

45. United Nations Development Assistance Framework for Palestine 2014-2016

46. See also p.28 of "National Strategic Framework".



agricultural and grazing on which the Bedouin and other communities rely for their livelihoods as well to include these lands in eventual local plans, with the aim of protecting these areas from acts of forced evictions, demolitions and displacement. In the absence of GoP planning authority in Area C, the UN also encourages agencies to support Bedouin, farming, and herding communities in Area C to establish and advocate community-driven planning approaches and proposals to address their specific needs and to protect against forced displacements.

35. In light of the above, **UN agencies will support Palestinian communities and the GoP in the context of spatial planning in Area C on a case-by-case basis** coupled with:

a. The **monitoring and evaluation** of Palestinian Local Outline Plans under development in Area C, to assess the human rights impact of the plans and their eventual endorsement by the ICA on the beneficiary and neighboring communities.

b. An **assessment of and messaging on the protection risks and impacts** for new Palestinian plans in Area C, including a do-no-harm analysis. Engagement in planning support does not imply the recognition of Israeli settlements, nor destruction of Palestinian structures outside the areas covered by the plan, nor the forcible transfer of communities or families to areas within the plan as lawful.

c. A strong focus on **broad community participation** in the development of Palestinian plans in Area C, and on information sharing on the planning limitations and restrictions on planning options. Importantly, the communities - and in particular the most vulnerable communities - must be made



aware of the potential risks of demolition and displacement, either due to non-engagement in planning or due to exclusion of communities and families from the geographic area of the plan. UN agencies involved in planning bear the responsibility to ensure such participation in the planning processes they are supporting.

d. Further UN engagement in **institutional capacity building** on planning in Areas A, B and C for the GoP, civil society and relevant stakeholders (i.e. private planning contractors) will be promoted. In particular, a focus on community involvement and awareness of human rights, in particular the economic and cultural rights of the Bedouin, farming, and herding communities are to be encouraged.

e. The preparation of a **framework of Palestinian plans** that will cover the whole of Area C and across the A/B/C-divide. More resources and efforts are required to support the MoPAD on the NSP as to support the MoLG for the progress in the preparation of statutory and non-statutory plans to incorporate the land surrounding a village, plans for groups of villages or other 'area based plans' (e.g. to link urban areas in A and B to their hinterlands in Area C) - all plans that would not be submitted for Israeli approval. Developing this integrated framework of Palestinian plans is key to safeguarding the future for all Palestinians living in Area C and would help guide UN advocacy with the Government of Israel.

f. **Mobilizing donor support for implementing statutory and non-statutory plans** for Palestinian development in Area C (and across the ABC and East Jerusalem divide).⁴⁷

36. Where the UN is compelled for operational reasons to engage with legal and administrative measures imposed by Israel in Area C, it will make clear that such engagement does not in any way prejudice the **position of the UN in respect of the legal and political status of the West Bank, including East Jerusalem**, as articulated by the General Assembly, Security Council, the International Court of Justice and the Secretary-General.
37. Finally, the **UN will further advocate towards the Israeli authorities as well as with the donor community and with the GoP**, on the positions outlined in this note (see suggested advocacy messages in Annex 1).

47. See also p.28-29 of "National Strategic Framework"; see also Placemaking Note for donors, UN-Habitat oPt, January 2015.



ANNEX 1

Suggested advocacy messages on Spatial Planning in Israeli controlled Area C

For the planning work to be effective, high level advocacy will be needed in order to improve the way the Israeli Authorities deal with planning and building permits in Area C, as well how the GoP and the International Community is dealing with this complex issue. This advocacy has to be based on clear principles and a solid understanding of the legal context (Jordanian Planning Law, International law, International Planning Guidelines, etc.), and obligations under international human rights law and International Humanitarian Law. The Report of the International Advisory Board, "Spatial Planning in Area C of the Israeli occupied West Bank of the Palestinian territory", is a valuable basis to advocate a human rights-based planning approach that will enable Palestinian sustainable development.

Israel as the Occupying Power is under the obligation to:

- Cease the implementation of a planning regime that, independently of the underlying illegality of the settlements and the unlawful changes to the planning regime established under Jordanian law, is discriminatory and restrictive, fails to be designed and implemented for the benefit of the protected population, and facilitates the construction and expansion of illegal Israeli settlements and the West Bank Barrier, and for these additional reasons, is not in conformity with international law.
- Cease and desist from the destruction of property, and other enforcement measures undertaken pursuant to this planning regime, which may result in forced evictions and displacement. As the Occupying Power, Israel is under an obligation to respect the prohibition of forcible transfer as set out in international humanitarian law (Article 49 of the Fourth Geneva Convention). In addition, Israel must abide by its obligations to respect, protect and fulfil the human rights of Palestinians, in particular the right to adequate housing.
- Rescind all pending demolition and eviction orders and halt the issuance of new demolition and eviction orders on the basis of the discriminatory planning and zoning regime currently in place for Area C.
- Revoke or limit land-use classifications as Closed Military Zones and Firing Zones to the maximum. They cannot be arbitrary and discriminatory and must be in conformity with international law, which sets out strict conditions which must be met for the destruction of private property and relocation of the protected population to be lawful.



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- Revoke Military Order 418 issued in 1971 and establish a planning and zoning regime for Area C on the basis of Jordanian law in force prior to the occupation with any amendments that may be necessary to the benefit of the protected population. This regime should, at a minimum, allow for genuine representation in the decision making process and allow for Palestinian needs to be met, in line with the Palestinian way of building and dealing with land, and with full participation and ownership by the Palestinian Communities.
- Update or replace the outdated British Mandatory Regional Outline Plans as statutory basis for issuing building permits for Palestinians in Area C and allow for genuine representation in the decision making process to replace these plans by regional plans that will meet current and future development needs in Area C.
- Allow the independent review and dispute resolution of all Local Outline Plans in Area C, with focus on Palestinian development opportunities in Area C.



The international community should:

- Take all measures to ensure that Israel abides by its international obligations, and call on Israel to cease the application of the current planning regime, which fails to conform to principles of international law.
- Foster the hand-over of planning and zoning powers from the Occupying Power to the GoP for Palestinian development in Area C, as foreseen in the Oslo II Accords.
- Support Palestinian planning efforts for the entire West Bank, across the ABC and East Jerusalem territorial divide.

The Government of Palestine should:

- Establish planning beyond the current planning boundaries of the Local Outline Plans (notably through development schemes for the hinterland of the built-up areas, for clusters of hamlets and villages, for towns in Area A/B extending in Area C, for new regional approaches and for entire Area C as part of the National Spatial Plan for the State of Palestine).
- Establish rural planning guidelines including a specific planning policy for Bedouins, farming, and herding communities at the regional level that is compliant with applicable standards under international law.

END



