

The logo of the Norwegian Refugee Council (NRC) is an orange square with the letters 'NRC' in white. The background of the entire page is a high-angle photograph of a densely populated urban area, likely Gaza, showing numerous multi-story apartment buildings and residential structures under a clear blue sky.

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**NORWEGIAN  
REFUGEE COUNCIL**  
المجلس النرويجي للاجئين

# **A Guide to Housing, Land and Property Law in the Gaza Strip**

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**October 2015**





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REFUGEE COUNCIL  
المجلس النرويجي للاجئين

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**October 2015**

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Cover photo (front): Gaza City (NRC, 2013).

Cover photo (back): Graffiti on ruins in Shajaiya neighbourhood following the July-August 2014 conflict (Karl Schembri, 2015).

The **Norwegian Refugee Council (NRC)** is an independent, international humanitarian non-governmental organisation that provides assistance, protection and durable solutions to refugees and internally displaced persons worldwide.



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## Acronyms

ARA	Access Restricted Area
HLP	Housing, Land and Property
ICHR	Independent Commission for Human Rights
ICLA	Information, Counselling and Legal Assistance
IDPs	Internally Displaced Persons
IHL	International Humanitarian Law
IHRL	International Human Rights Law
km	kilometres
MoF	Ministry of Finance
MoPWH	Ministry of Public Works and Housing
NRC	Norwegian Refugee Council
PCDCR	Palestinian Centre for Democracy and Conflict Resolution
PLA	Palestinian Land Authority
PLC	Palestinian Legislative Council
PNA / PA	Palestinian National Authority
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

## Glossary

<i>Dunam</i>	An Ottoman unit of measurement equal to 1,000 square meters.
Gaza Strip	An exclave region lying on the eastern coast of the Mediterranean Sea. It is part of the Palestinian territory that has been occupied by Israel since 1967. It borders Egypt on the southwest and Israel on the east and north. Between 1948 and 1967, the Gaza Strip was under the administration of the Arabic Republic of Egypt.
<i>Mahlul</i>	Under the Ottoman Land Code, <i>Miri</i> land which was designated by the State to private individuals, however was not cultivated for three years, and therefore returned to the State. The designated owner may still reclaim such land by paying an unimproved value. In case the owner fails to do so or if the owner is dead, others specified in the Ottoman Land Code can buy the rights to such land.
<i>Metruke</i>	A classification of land under the Ottoman Land Code of 1858 that has been left for public use, such as abandoned land or common land. <sup>1</sup> No building may be erected and no trees may be planted in this land, nor can the land be bought, sold or cultivated by individuals.
<i>Mulk</i>	The only category of land, as classified under the Ottoman Land Code of 1858, where full ownership belongs to an individual, enabling owners to dispose of the property and perform all legal transactions as they see fit, in accordance with the law.
<i>Miri</i>	The Ottoman Land Code of 1858 designates this category of land owned by the ‘State’ or ‘sovereign’. This type of land can be converted to private land if disposed of by the State in accordance with the law.
<i>Mewat</i>	Under the Ottoman Land Code, land which was not allocated to anyone, is not cultivated and is 2.5 kilometres or more away from the last house in the village/town. Such land is also known as ‘dead land’ or ‘waste land’.
Palestinian Land Authority	The formal government entity responsible for land administration in the State of Palestine. Established by Presidential Decree No. 10 of 2002, the Palestinian Land Authority (hereinafter also: ‘Land Authority’ or PLA) comprises three main departments: the State Property Department; the Public Survey Department; and the Land Registration Department, commonly known as the ‘ <i>Tabu</i> department’.
<i>Tabu</i>	Commonly understood as the ‘title deed’ – the document which constitutes conclusive evidence of a land right. It is the land registration deed issued by the Palestinian Land Authority and it is commonly used to prove ownership of a plot of land.
Usage rights	A right <i>in rem</i> , referring to the right of one individual to use and enjoy the property of another provided that its substance is neither impaired nor altered.
<i>Waqf</i>	This type of land is classified under the Ottoman Land Code of 1858 as religious endowment land that cannot be inherited, sold or transferred either by legal transaction or acquisition through long-term usage. It may only be used for charitable purposes.

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<sup>1</sup> The Ottoman Land Code was published according to the Islamic or *Hijri* calendar, which is a lunar calendar consisting of 12 months in a year of 354 days. When converted to the Gregorian calendar the Ottoman Land Code would have been issued in 1858.

## **Introduction**

Land is a core component of stability for any society. For individuals, the availability of land guarantees shelter, housing and security and, very often, a livelihood. Land is a physical resource and also a gateway to the development and well-being of a society and its people. The control over land and its natural resources often causes disputes between individuals, between individuals and the State, or the eruption of conflict between neighbouring States.

The same is true in the case of Palestine. Land-related disputes in Palestine are exacerbated by the different laws that introduce various classifications of land, and regulate the use and ownership of land. The varying levels of control historically exercised by foreign powers over the Gaza Strip and the adoption of laws affecting land ownership have created problems and challenges, leading to a complex situation in which competing claims to the land are raised.

Moreover, the Gaza Strip has suffered a disproportionate share of armed conflict in recent times. The prolonged occupation and conflict have had a major impact on land issues in the Gaza Strip, which include massive and multiple displacement, chronic overcrowding, poor planning, and insecure land tenure. These humanitarian considerations take place within a context of inconsistent and overlapping land laws, low levels of land registration, and high levels of 'unsurveyed' land. The uncertainty in relation to land rights can be traced back to the Ottoman Land Code of 1858 ("Ottoman Land Code"), a law still in effect in the Gaza Strip, and to other historical developments, including different governing systems and legislation in the Gaza Strip. Finally, the Israeli occupation has had its own direct impact, both through the establishment of settlements and areas to protect those settlements, and through the creation of the Access Restricted Area (ARA) along the borders of the Gaza Strip.

## **Structure of the Guide**

This Guide deals with the legal status of land and with the current challenges relevant to land administration in the Gaza Strip. The main objective of this Guide is to provide a comprehensive description of the complex legal system pertaining to land in the Gaza Strip, and to map the different classifications currently governing the land in Gaza. The information included in this Guide has been presented with a view to provide practical guidance for lawyers, researchers, policy makers, and other practitioners.

The Guide is based on a study of the different types of land, the authorities responsible for administering each type, the procedures required to register or transfer the land, and finally, a legal analysis of the title claim challenges associated with each type of land.

### **Part One: Historical Background**

The Guide starts by presenting the historical background to the laws that regulate the status of land in historical Palestine, focusing on the Gaza Strip. It then describes the categories of land in the Gaza Strip at present. The analysis of the different land categories is divided into four chapters, each one examines the definition, area and geographic distribution of the relevant category of land, and identifies the party or parties responsible for administration and supervision of the land in question. Each chapter concludes with an analysis of the main legal challenges that may trigger disputes between individuals or between individuals and the authorities.

### **Part two: Private Land**

The second chapter of the Guide deals with two types of privately owned land: a) registered private land; and b) unregistered private land. The chapter explains the factors that prevent the registration of unregistered private land at the Land Registration Department (hereafter also referred to as the '*Tabu*

department’) of the Palestinian Land Authority (PLA), and the nature of different classifications and names given to such land. This chapter also introduces the General Directorate of Property Tax at the Ministry of Finance in Gaza and the procedures required for land registration. The final part of the chapter discusses the legal framework relevant to land-related disputes.

### **Part three: State Land**

The third chapter discusses the legal framework applicable to the land which is classified as ‘State land’. It highlights the problematic situation of families and communities residing unlawfully on State land, and considers some solutions.

### **Part four: *Waqf* Land**

The fourth chapter discusses the historical background to *Waqf* land, which is the land allocated by private individuals or entities as a religious endowment for charitable purposes to an Islamic trust called the ‘*Waqf*’. This chapter presents the geographical locations of this land in the Gaza Strip, the parties responsible for its administration, and the laws that govern the use of *Waqf* land. It also points out the main disputes that may arise when local residents use this land.

### **Part five: Land with Special Legal Status or Use**

The final chapter of the Guide discusses land with special status or use due to political events, including land in refugee camps and former settlements land.

## **Methodology**

This Guide is based on a desk review of available primary and secondary sources, as well as on key informant interviews conducted between 12 October 2011 and 28 August 2013, including with:

- Representatives from the Ministry of Public Works and Housing;
- Representatives from the Ministry of *Awqaf*, Sacred, and Religious Affairs;
- Former Director of the Ministry of Finance - Property Tax Directorate;
- The Chairman of the Palestinian Land Authority in the Gaza Strip;
- Former Director of the General Directorate for Liberated Lands;
- Representatives of the Gaza Municipality;
- Two magistrates' court judges;
- Lawyer from the Palestinian Centre for Democracy and Conflict Resolution (PCDCR).

To better understand the complex legal system governing land issues and the resultant land classifications set by the law and different ownership claims, NRC also conducted individual interviews with representatives from Palestinian grassroots organisations, private lawyers, academics, researchers and Palestinians currently living in the Gaza Strip.

# 1 Historical Background

The legal and regulatory reality imposed in historical Palestine, including in the Gaza Strip, throughout various historical phases has had a direct impact on housing, land, and property rights. Many of the laws and orders pertaining to land, and issued by past legislators, have contributed to a legal legacy that largely has remained in place today.<sup>2</sup> The development of the land laws in Gaza dates back to the Ottoman period, during which the current legal framework for land ownership was originally formed. The functions of the *Tabu* department, established during the Ottoman period, were suspended as a result of the dissolution of the Ottoman Empire, and the British Mandate introduced several laws and judicial precedents that regulated land ownership. Similarly to the Ottoman land rules, these rules and precedents remain applicable today. During the British Mandate, a land survey project of all the land in historical Palestine was initiated. However, by the time the British Mandate ended in 1948, this initiative had only been partially completed. The Egyptian Administration, which took over the administration of the Gaza Strip, inherited this burdensome task.

Following the 1948 Arab-Israeli war, the Egyptian Administration allocated certain areas – State-owned and privately owned land – for usage as refugee camps for Palestine refugees. In the refugee camps, the newly established United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) provided shelter and relief assistance to the refugee population. However, it did not exercise any official function with regard to determining the use and ownership of the land, nor was such power conferred on UNRWA by the Egyptian Administration. Other significant developments that took place during the Egyptian Administration of the Gaza Strip concern land registration and the enactment of laws to regulate the transfer of land ownership.

This era was followed by the Israeli military occupation of the Gaza Strip in 1967. The Israeli authorities issued military orders to confiscate and allocate land inside the borders of the Gaza Strip for the construction of settlements. New orders were also issued to enable long-term rental by residents in refugee camps. Following the establishment of the Palestinian National Authority (PNA) in 1994, Palestinian authorities adopted land-related laws, decisions and instructions. However, the PNA has not yet succeeded in unifying the different legal systems applying to land in Palestine, partly due to the political and geographical division between Gaza and the West Bank. It therefore continues to rely on legislation that applied during earlier periods. This situation has been exacerbated by the paralysis of the second Palestinian Legislative Council (hereafter ‘PLC’) following the political division, and thus additional complications in regulating land rights and settling disputes have arisen.<sup>3</sup>

Relevant political and legal developments in each period are further discussed below in order to better understand the context and questions that arise in relation to land today.

## 1.1 The Ottoman Period (1517 – 1917)

Palestine was part of the sprawling Ottoman Empire from 1517 until 1917. During that period, Palestine was subject to the administrative and legal regime imposed on all entities under Ottoman rule. The aim of the Ottoman Empire was to create a unified legal system for all the territory under its control. Various laws were enacted and legislations was standardised to regulate land as follows:

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<sup>2</sup> Birzeit University, Institute of Law, *Palestinian Judicial System: Historical Evolution of the Palestinian Legal System*, available at: <[http://lawcenter.birzeit.edu/iol/en/index.php?action\\_id=210](http://lawcenter.birzeit.edu/iol/en/index.php?action_id=210)> (last visited 28 May 2015).

<sup>3</sup> *Ibid.*

### 1.1.1 The Ottoman Land Code of 1858

This law divided land in the Gaza Strip into five main categories:<sup>4</sup>

1. Mulk land (private land):

This is the only category of land in which full ownership belongs to an individual, enabling owners to dispose of the property and perform all legal transactions in accordance with the law.

2. Miri land (State land):

Land that is owned by the 'State' or 'sovereign'. Like other property, such land can be subject to different transactions such as through lease, sale, mortgage, gift and pre-emption. In case such land is transferred to private individuals from the legitimate owner (the State), such land becomes private land.<sup>5</sup>

3. Waqf land:

This refers to religious endowment land, which cannot be inherited, sold or transferred either by legal transaction or through long term usage, but may only be used for charitable purposes.<sup>6</sup>

4. Metruke land:

Land that has been left for the public use, such as abandoned land or common land (for example, highways, grazing). No building may be erected and no trees may be planted in this land by private individuals, nor can the land be bought, sold or cultivated by individuals.<sup>7</sup>

5. Mewat land ('dead land'):

"Waste land which is not in the possession of anybody, and, not having been left or assigned to the inhabitants, is distant from the town or village so that the loud voice of a person from the extreme inhabited spot cannot be heard, that is a mile and a half to the extreme inhabited spot..."<sup>8</sup>

It is important to note that the Ottoman Land Code contained more detailed provisions regarding *miri*, *mewat* and *metruke* lands.<sup>9</sup>

### 1.1.2 The provisions of the Majallah (Ottoman Civil Code) of 1858

The Ottoman Civil Code, set up in accordance with the *Hanafi* legal tradition includes 1,851 articles and contains detailed provisions relating to ownership of State land.<sup>10</sup>

## 1.2 The British Mandate Period (1917 – 1948)

Following the defeat of the Ottoman rulers at the end of the First World War, the British entered historical Palestine in 1917 and took control of the south. In 1918, Britain assumed control over all of the country, starting with military occupation and ending with civil administration. In July 1922, the League of Nations entrusted Great Britain with the mandate for Palestine.<sup>11</sup> This had a major impact on

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<sup>4</sup> The Ottoman Land Code of 1858, Article 1.

<sup>5</sup> NRC, *Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip*, October 2013, p. 14, available at: <[http://www.nrc.no/arch/\\_img/9194678.pdf](http://www.nrc.no/arch/_img/9194678.pdf)> (last visited 28 May 2015).

<sup>6</sup> *Ibid.*

<sup>7</sup> NRC, *A Guide to Housing, Land, and Property Law in Area C of the West Bank*, February 2012, p. 23.

<sup>8</sup> The Ottoman Land Code of 1858, Article 6.

<sup>9</sup> Both *Mewat* and *Metruke* land ceased to exist in the Gaza Strip. Therefore, both land categories will not be discussed further.

<sup>10</sup> Other rules and regulations were issued that are relevant and most of them are still in effect in the Gaza Strip today. For more information on relevant land legislation, see, *infra*, Annex 1.

<sup>11</sup> The British Mandate for Palestine, also known as simply the Mandate for Palestine, was formally confirmed by the Council of the League of Nations on 24 July 1922, and later amended by the 16 September 1922 Transjordan Memorandum. It came into effect on 29 September 1923 following the ratification of the Treaty of Lausanne.

the administration of land ownership. These new rulers of historical Palestine would enact several laws that altered the common practice that until then regulated land ownership.

Between the end of the First World War and the start of the British Mandate era, all cases related to land ownership in historical Palestine were halted. All the *Tabu* offices were closed in 1918 as the Ottoman troops, upon leaving Palestine, took with them many official documents, including *Tabu* land title deeds.<sup>12</sup>

At a later stage, two years after the closure of the *Tabu* office to be precise, the British Mandate authorities reintroduced the role of the *Tabu* departments in the newly established Land Registration Department based on legislation dating back to the Ottoman era.<sup>13</sup> The British Mandate authorities also enacted new legislation.<sup>14</sup> These new laws introduced new procedures, including the requirement for written approval from the head of the *Tabu* department for any real estate transaction, without which the transaction would be considered null and void. One of the new procedures stipulated that the registration of a right in land in the new registry would invalidate any other claim regarding land rights prior to this registration.<sup>15</sup> In addition, between 1920 and 1933, the British Mandate authorities introduced a system that granted authority to the High Commissioner to transfer *miri* land to private land without the need to follow the provisions in the Ottoman Land Code, or any other land laws that were applicable during the Ottoman rule.<sup>16</sup>

Despite the fact that the Ottoman Land Code remained the basis for regulating land associated rights and interests, the British Authorities introduced new legislation. For example, the Law of Land Transactions No. (39) of 1920 established new procedures including the requirement to obtain the written consent of the Land Registration Director for any transaction concerning real estate, otherwise, the transaction will be considered null and void. Article 2 of the Palestine Order in Council of 1922 introduced a new type of land in the form of public land. This refers to all land under the supervision of the government of Palestine in accordance with treaties, agreements or inherited laws, as well as all land owned for the public interest, or other land. Other provisions in the 1922 Order in Council granted the High Commissioner the authority to act on all rights involving public land or any related rights.<sup>17</sup> Moreover, Article 13 granted the governing authority the power to grant, lease, or use the land on a temporary basis in accordance with the law or the instructions issued to the High Commissioner by the British Crown in order to implement the provisions of the Mandate Decree. The provisions of the Order in Council were amended in 1933 to grant the High Commissioner the authority to issue a decision, announced in the Official Gazette, that changes the status of *miri* land to private land.

During this period, several important judicial precedents were set which continue to have implications today on the transfer of ownership over land. These include the remedy of execution in kind, which allows the buyer of land to demand from the seller the execution, or implementation, of the land sale agreement by filing a spute before the land court as an 'execution in kind' case. In these circumstances the buyer may obtain a court order to register the property in his name at the *Tabu* department at the PLA. As such, the court would validate the chain of ownership over a plot of land, regardless of whether

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<sup>12</sup> Darweish Al Wheidi, *General Provisions of Palestinian Land Law*, Volume II, Al Amal, Gaza, 2001, p. 24 (in Arabic).

<sup>13</sup> *Ibid.*

<sup>14</sup> See, for example, Law on Land Transfer No. 39 of 1920.

<sup>15</sup> Law on Settlement of Land Titles of 1928, Article 43.

<sup>16</sup> Land Law (Amended) Ordinance of 1933, Article 3.

<sup>17</sup> The Palestine Order in Council of 1922, Article 12, available at: <<http://unispal.un.org/UNISPAL.NSF/0/C7AAE196F41AA055052565F50054E656>> (last visited 27 May 2015). The Palestine Order in Council was a law issued by the British Crown, while the British High Commissioner for Palestine issued Ordinances. Additional subsidiary enactments (regulations) were also issued by the head of a governmental department based on the relevant Order in Council. In this sense, the Palestine Order in Council can be considered the constitution for Palestine, and it was issued in conformity with the international framework of the mandatory text, Asem Khalil, 'Which Constitution for the Palestinian Legal System?', Pontificia Universita' Laternanense, Roma, 2003, p. 15.

the original owner has contested the transfer, thus allowing the new owner to register the land in his name.<sup>18</sup>

The most prominent amendment during this period was the enactment of land settlement laws, including Land (Settlement of Title) Ordinance of 1928, which continue to affect the status of land in the Gaza Strip today. The Land (Settlement of Title) Ordinance aimed to map and register land in all areas of historical Palestine. Based on the Ordinance, committees in villages were formed in order to reach settlements and determine the rights of both residents and the government in the land. This was necessary because the British Mandate authorities did not have full control over the archives of the *Tabu* department that had existed during the Ottoman era, and various legal actions had taken place without following the conditions or rules of the *Tabu*. The purpose of this law was to provide the government with up to date information. These village committees surveyed, mapped and registered land with the *Tabu* department all over historical Palestine, but could not complete the task because their powers were suspended with the end of the British Mandate of Palestine. By the end of 1948, around 70 per cent of land in the Gaza Strip had been registered at the *Tabu* department as a result of land surveys.<sup>19</sup>

### 1.3 Egyptian Administration of the Gaza Strip (1948 – 1967)

Following Great Britain's request to the United Nations (UN) in April 1947 to relinquish the British Mandate for Palestine, the UN General Assembly recommended the partition of historical Palestine by Resolution 181 of 1947 (also referred to as 'the UN Partition Plan'). The series of political events, including the declaration of the establishment of the State of Israel, led to the outbreak of the Arab-Israeli war in 1948. As a result of the war, historical Palestine was divided into three regions: the West Bank came under Jordanian control and was annexed to the Jordanian Kingdom; the Gaza Strip came under Egyptian control; and the largest part of historical Palestine came under the control of Israel.

Many Palestinians had to flee their homes and were driven off their land in historical Palestine. Palestinians from historical Palestine sought refuge in the Gaza Strip and other locations in the region.<sup>20</sup> In response, UNRWA was established and started its operations on 1 May 1950. These operations included providing relief services and shelter assistance to Palestine refugees in refugee camps located in different areas in the Gaza Strip.

Following the 1948 war, the Egyptian Administration managed all public affairs in the Gaza Strip and issued significant decisions in matters that concern the land in Gaza, some of which are still in effect today. In 1954, the Egyptian Governor issued a declaration ordering the registration of unregistered land with the Property Tax Directorate. By this decision, land was registered in the name of the individual in physical possession of the land in exchange for a land tax of one tenth of the value of the land. Later, in 1957, Order No. 575 was issued to commence the operations of the land registration department. Article 14 of this Order stated that the records established by the new registration department are the sole means to prove a right. Article 15 of the same Order stipulated that any person who owns land or has rights registered in lost records must apply to the land registration department and show official certificates that prove his rights within one month from the date of issue of the administrative order.<sup>21</sup>

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<sup>18</sup> The execution in kind precedent was introduced in Palestine by a decision of the High Appeals Court No. 132/1938 with the purpose of forcing people to abide by their pledges and commitments. An application of execution in kind is based on a contract to sell and pay the amount in full, and further permits the buyer to make use of the real estate within a reasonable period of time, and to officially transfer the title deed at the *Tabu* from the owner to the buyer's name.

<sup>19</sup> NRC interview with Hasib al-Rai, former Director of Ministry of Finance of Property Tax Directorate, 5 February 2013.

<sup>20</sup> Mahmoud Karim, *Conditions of Palestinian Refugees and Displaced Persons and the Right of Return, UNRWA and the International Approach to the Question*, 2010, p. 69.

<sup>21</sup> Order No. 575 of 1957 on the commencement of operations of the Land Registration Department, published in edition No. 87 of the Palestinian Gazette during the period of the Egyptian Administration.

The Egyptian Administration also played an important role in establishing the refugee camps and their facilities. The Egyptian Administration allocated State and private land to absorb the influx of refugees. Pursuant to Order No. 24 of 1960, issued on 7 December 1960, the Egyptian Administration defined the boundaries of the camps, the blocks and parcels of land, and the area that each camp will occupy in *dunams*. Decision No. 22 of 1961 added additional areas to Jabalia and Rafah camps.<sup>22</sup>

Other relevant legislation during this period includes Law No. 5 of 1960 which prohibited government or public figures from owning private assets, including *Waqf* assets, or to gaining any rights in kind. The Egyptian Administration also introduced Law No. 13 of 1962 on Obligatory will,<sup>23</sup> and Law No. 1 of 1965 on the application of the provisions of Islamic *Sharia* to *miri* land.

While the legislation adopted under the Egyptian Administration could have provided legal protection to individuals, many landowners did not register their lands to avoid having to pay the hefty registration fees. At times, landowners chose to register parts of the land, leaving significantly larger swaths of land unregistered and beyond the reach of the taxman. This created a complex legal reality under which some of the 'original' land was registered, keeping the majority of the land off the Property Tax Directorate's books. The lack of registration would later enable the Palestinian National Authority (PNA) to designate these lands as government land.<sup>24</sup>

#### **1.4 Israeli Control (1967 – 1994)**

The defeat of the Arab armies in the June 1967 War led to the Israeli occupation of the West Bank, including East Jerusalem, and the Gaza Strip. As the Occupying Power, Israel issued a series of military orders, applicable to the territory and the residents under its control. Such orders were also used for the confiscation and subsequent allocation of land inside the Gaza Strip for the establishment of settlements in contravention of international humanitarian law (IHL). The military orders further stipulated that all laws applicable to the West Bank and Gaza Strip prior to 1967 would remain valid, thereby using and relying on the existing land legal system.

The military orders, issued during a 27-year period between 1967 and 1994 when the PNA assumed authority in the Gaza Strip, covered the entire coastal strip, including the organisational structure of the refugee camps and the opening and widening of roads inside some camps. This took place through agreements with camp residents to evacuate their homes in exchange for land through beneficial long-term rental contracts of 99 years.<sup>25</sup> Several housing projects were built and allocated to shelter Palestine refugees who lost their homes in the camps due to road planning. These projects included the Sheikh Radwan quarter in the city of Gaza and the Tal Sultan quarter in Rafah.

The Israeli occupation authorities also began to establish a number of settlements on large areas of land in the Strip. These settlements broke up the geographical unity of the Gaza Strip and gave Israel control over the most fertile land and areas with water resources. Military orders were enacted to confiscate large areas of land for settlements, absorbing between 6 to 12 per cent of the total area of the Gaza Strip. Israel unilaterally withdrew from Gaza and evacuated Israeli residents from these settlements in 2005.

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<sup>22</sup> See, *infra*, Annex 1 which includes Decision No. 24/1960 issued by the Egyptian Administrative Governor of the Gaza Strip, on 1 August 1964, published in the Palestinian Gazette No. 247 on 15 August 1964.

<sup>23</sup> Dealing with inheritance rights of grandchildren to their grandparent's inheritance, in a scenario when one of their parents, the son or daughter of the deceased, had already passed away.

<sup>24</sup> NRC interview with Engineer Ibrahim Radwan, Chairman of the Palestinian Land Authority, Gaza Strip, 18 March 2013. According to Order No. 575 of 1957, the PLA in the Gaza Strip distinguishes between registered and unregistered land, and the latter is considered as government land.

<sup>25</sup> Order No. 494 of 1974 on granting and registering real estate rights.

## 1.5 The Palestinian National Authority

With the signing of the Oslo Accords in 1993 between Israel and the Palestine Liberation Organisation (PLO) and the establishment of the PNA in 1994 came additional land-related laws, decisions and instructions, further complicating the legal framework. The President of the PNA, Yasser Arafat, issued Decision No. 1 on 20 May 1994, which stipulated that the laws and regulations in existence prior to 5 June 1967 will remain in effect until the unification of the laws of the West Bank and the Gaza Strip.<sup>26</sup> In December 1996, the first legislative elections were organised in the occupied Palestinian territory. The elected Legislative Council enacted several laws to unify the laws of the West Bank and Gaza Strip, but this goal has not been achieved to date.

The PNA has not enacted any legislation to regulate land in refugee camps. Successive Palestinian Authority (PA) governments have sought to limit intervention in the affairs of refugee camps. This may be interpreted as a desire to maintain the conditions inside the camps, because any intervention could be seen as an attempt to transform the situation into a permanent solution for the Palestine refugees and could be seen to prejudice the right of return. In practice, the supervision of the camps in all areas of the Gaza Strip has been in the hands of UNRWA although UNRWA does not have any formal governance authority with regard to the administration of land and usage thereof. This reality has imposed new complications in disputes over homes in the camps. New claims were raised by refugees arguing they are entitled to the right to use land and property inside the camps. Some, if not many, began transferring their title through sale or inheritance of these homes, although the right of refugees was limited solely to usage rights rather than formal ownership.

In September 2005, the Israeli army withdrew from the Gaza Strip after 38 years of occupation and evacuated its illegal settlements. The PNA regained control over the land. Following the Israeli government's declaration of disengagement from the Gaza Strip on 15 March 2005, a decision was issued by the Palestinian Prime Minister to form a special ministerial committee to oversee the Israeli withdrawal from the Gaza Strip.<sup>27</sup> The PNA President issued Decree No. 20 of 2005 regarding the areas from which the Israeli occupation troops withdrew. The Decree stipulated the PNA's control over all real estate and movable properties in the evacuated settlements and reiterated its temporary control over them pending legal decisions. The same Decree detailed the tasks of the ministerial committee. Another committee was formed to look into claims presented by local residents regarding any rights to assets inside the areas from which Israel withdrew.<sup>28</sup>

Despite the Israeli withdrawal from the Gaza Strip and the redeployment of its troops on the borders, Israel has maintained a presence by establishing a buffer zone along the ground and maritime borders with the Gaza Strip. This area is now known as the *de facto* Access Restricted Area (ARA) whose dimensions are subject to developments in the political situation and military tension between Israeli and the Gaza Strip. The ARA ranges in size from between 300 and 1,500 metres along the eastern border of the Gaza Strip, starting from the far northeast, to the Karam Abu Salem crossing in the southeast of the Gaza Strip. According to a local NGO, the ARA comprise a total distance of around 62 kilometres (km), which is 17 per cent of the total area of the Gaza Strip and 35 per cent of all agricultural land.<sup>29</sup>

In June 2007, following the second Palestinian legislative elections, tension between the Fatah and Hamas movements reached a climax and led to a state of paralysis, and then a division in PNA government institutions. This also caused the paralysis of the Legislative Council and the establishment of a parallel judicial body in the Gaza Strip. Hamas has consolidated its control over the Gaza Strip while the PA controls the West Bank.

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<sup>26</sup> At the same time, this Decision did not annul transactions or even military orders that were issued during the Israeli occupation period (after 5 June 1967). In practice, precedents from that era and even some of the Israeli military orders are still applicable today.

<sup>27</sup> Palestinian Cabinet Decision No. 01/04/09/R.M.O/A.Q of 2005.

<sup>28</sup> Presidential Decree No. 20 of 2005, Article 4.

<sup>29</sup> Al Mezan Centre for Human Rights, *2013 Statistical Report on Israeli Attacks in the Access Restricted Areas, Gaza*, January 2014, available at: <<http://www.mezan.org/en/uploads/files/18469.pdf>> (last visited 28 May 2015).

Under the split, the Legislative Council in the Gaza Strip, known as the Reform and Change Bloc, issued legislation regulating the right to housing, ownership and land in the Gaza Strip, such as the Palestinian Civil Law No. 4 of 2013 and Law No. 5 of 2013 on the Lease and Rent of Real Estate. The 2013 Civil Law regulates cases dealing with ways of obtaining ownership and the regulation of common property, family ownership, ownership of housing units and floors, rental contracts for farming and planting, registering transactions, and all matters pertaining to procedures to acquire and prove ownership.

The fact that the Palestinian Legislative Council did not issue these laws creates a challenge. These 'Gaza-specific' laws are detrimental to the legal unity of the two parts of the Palestinian Authority, given that one law will apply to the West Bank, and a different law will apply in Gaza. The new Civil Law did not annul existing legislation regulating land and thus raises additional legal questions and complications about the applicable land laws in the Palestinian courts and regarding transactions performed between residents of the West Bank and Gaza Strip.

The *de facto* authorities in Gaza inherited a system beset with problems that include inconsistent and overlapping land laws, severely overcrowded refugee camps, long-term unlawful residence on State lands, poor infrastructure and virtually non-existent urban planning. This complex land situation is exacerbated by the ongoing military conflict between Israel and Hamas, the isolation of Hamas by much of the international community, Israel's imposition of the blockade, Egypt's vacillating trade and border policies and the resulting severe limitations on the import of goods, including construction materials necessary for building or repairing humanitarian structures and homes.

## 2 Private Land

Private land provides the individual with full ownership, enabling the owner(s) to dispose of the property and perform all legal transactions in relation to the land as long as these are in accordance with the local laws. The land can be freely bought or sold or passed onto heirs.

Private land comes in two forms. The first type of private land is registered with the land registration department (commonly known as the *Tabu* department) of the PLA. Land can be registered in the names of joint owners, including family members. The owners of this land possess title deeds from the *Tabu* department that prove their ownership. According to data provided by the PLA, up to 50 per cent of the land registered is private land.<sup>30</sup>

The second type of private land is unregistered. This land was not included in the land survey project, initiated during the British Mandate, as this project was never completed.<sup>31</sup> According to the Land (Settlement of Title) Ordinance of 1928, all land should have been surveyed and registered at the Land Registration Department and given bloc and parcel numbers and certificates, similar to private land that has already been registered at the *Tabu* department.<sup>32</sup> Today, the records of unregistered land are held at the Property Tax Directorate at the Ministry of Finance.

Registered and unregistered land is reviewed below in two separate sections.

### 2.1 Private Registered Land

#### 2.1.1 Definition of registered private land

Privately registered land is owned by a natural person or a legal entity with the right to use and/or exploit the land at its discretion and in accordance with the law. Article 1 of the Ottoman Land Code defines private land as areas that can be used in their capacity as owned by someone. In other words, the owner has the right of ownership and usage and possesses all forms of authority in relation to the land, such as offering it for sale, as a grant, mortgaging it, leasing it, entrusting it to another person or any other form of transaction in accordance with the law. In addition, this type of land can be transferred through inheritance to the heirs of the owner. If no heirs exist, the property is transferred to the public treasury (the State) and is subject to the provisions of the Ottoman Civil Code.<sup>33</sup>

Today, private land is registered in the names of the owners at the formal entity responsible for registering land, which is the PLA (*Tabu* department). At present, the total area of registered land in the Gaza Strip is around 182,173 *dunams*.<sup>34</sup>

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<sup>30</sup>All three types of land (State, *Waqf*, and private land) are supposed to be registered at the *Tabu* department. The remaining 50 per cent therefore includes State and *Waqf* land. The land size percentages provided are an estimation of what each land type represents in comparison to the total area of the Gaza Strip. This information is based on estimations provided by the PLA in the Gaza Strip. It must be noted that unregistered land, refugee camp land, and former settlement land may influence the percentages once land is registered.

<sup>31</sup> See chapter 1.

<sup>32</sup> NRC interview with Hasib al-Rai, former Director of Ministry of Finance of Property Tax Directorate, 5 February 2013. See also the official website of the Finance Ministry – the General Directorate of Property Tax, available at: <<http://www.pmf.ps/web/guest/92.jsessionid=B2702FC5EBA448223180392927AB86B7>> (last visited 28 May 2015).

<sup>33</sup> Darweish Al Wheidi, *General Provisions of Palestinian Land Law*, Volume II, Al Amal, Gaza, 2001, p. 37 (in Arabic).

<sup>34</sup> NRC interview with Engineer Ibrahim Radwan, Chairman of the Palestinian Land Authority, Gaza Strip, 18 March 2013.

### 2.1.2 Government bodies responsible for the registration of private land in the Gaza Strip

The PLA, established in 2002, is the body responsible for the management of private land.<sup>35</sup> The PLA comprises three main administrative sections: 1) the government's property department; 2) the public land survey department; and, 3) the land and real estate registration department, commonly known as the *Tabu* department at the Land Authority.

- The government property department performs several tasks related to land administration. It allocates and prepares an inventory of State land and performs all steps necessary to safeguard this land.<sup>36</sup> It prevents encroachments over State land, proposes appropriate public projects for State land, and supervises the rent of State land and the acquisition of private land in the public interest.
- The public land survey department is responsible for demarcating borders and preparing maps of land parcels and numbers. It also marks roads, establishes geographic coordinates, and archives all maps on computer files. This department reviews and audits the work of licensed land surveyors in the Gaza Strip.
- The *Tabu* department of the PLA maintains records of real estate (land and buildings) and records newly registered properties. It performs all types of land registration transactions in accordance with the law and standard regulations, including transactions of sale, endowment as a grant, commissioning of land, exchange, rent, planting, insurance, seizure, transfer, inheritance revocation agreements, inheritance provisions, court rulings, debt execution, and the renewal of registration.

### 2.1.3 Registration procedures for private land at the *Tabu*

A legal transfer of ownership takes place in one of three ways, two of which can be subject to registration at the *Tabu*, those are:<sup>37</sup>

1. Through a contract, whether a contract of sale, a grant or another form of consensual contract;
2. Through inheritance;

As for land in which ownership was transferred through adverse possession,<sup>38</sup> while the law considers adverse possession over private land a legitimate process, lands acquired through adverse possession cannot be registered at the PLA for the new owner. Thus, while the new ownership claim will be recognised by the court, the 'original' owner will remain the registered owner. Only land transferred through a consensual agreement or through inheritance can be registered at the PLA.

The means of selling unregistered land, including land acquired through adverse possession in which the new ownership is unregistered, is discussed in the next section.

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<sup>35</sup> This authority has an independent legal personality to conduct all work and activities to fulfil the purposes for which it was established in accordance with the provisions of the law.

<sup>36</sup> Approximately 30 per cent of land in the Gaza Strip is estimated to be State land (also known as government land). Typically this land is used for public purposes, such as schools, hospitals, housing projects, roads, government offices, parks, and in some cases State land was allocated for refugee camps.

<sup>37</sup> The Palestinian Land Authority, *Tabu Procedures Handbook in Gaza*, Gaza, September 2010.

<sup>38</sup> If a person possesses someone else's private land for an extended period of time, the claim to that land is called adverse possession. According to the Ottoman Civil Code and subsequent legislation, the period of time required to transfer ownership in private property through adverse possession is 15 years of holding the land continuously without opposition. If the land is occupied for the relevant period of time, the occupant becomes the titleholder of the property and a case filed against the titleholder and for his evacuation from the land by the registered owner may not be heard. Following the issuance of Law No. 5 of 1960, and regardless of the period of time that a third party has occupied the land, land that has been classified as *miri* and *Waqf* land cannot be acquired through adverse possession.

In order to register private land in the *Tabu*, there are two types of procedures: 1) procedures that deal with the transfer of private land through sale; and 2) procedures that deal with the transfer of property ownership through inheritance.

#### **2.1.4 Procedures for the sale of property**

The process for registering sales transactions is as follows:

1. A transaction of sale takes place by submitting an application to the *Tabu* department of the Land Authority. The buyer usually submits the application.
2. A contract of agreement to sell is submitted with a correct chain of property ownership and a new transcript or copy of the register in the name of the owner to whom the property belongs.
3. If the owner is living abroad and is selling the land through a power of attorney, the power of attorney must be accredited and certified by the Foreign Affairs Ministry and the Ministry of Justice before submitting the transaction.
4. Two copies of the final contract of sale are filled out at the Land Authority in the presence of the buyer and the purchaser, witnessed by the relevant employee, with the signature and thumb print of each of the two parties to the sales transaction. This is called an initial signature.
5. An application to the land registration department for a permit to publish the details of the sale transaction in one of the local newspapers is made. The period of publication is defined as 15 days, during which time any person who has any objection to the power of attorney or to the registration of the land in question may submit an appeal to the land registration department, attaching the newspaper to the appeal. If no objections are presented during this period, the registration procedures will proceed.
6. The transaction file is submitted to an appraisal committee to estimate the value of the land for the purposes of paying the fees. These are calculated as follows: one per cent of the value of the appraisal; 0.05 per cent if the parties to the transaction are relatives of up to second degree.
7. Following payment of the fees, the final contract of sale is signed in front of the director of the Land Registration Department. This is called the final signing and at this stage it is possible to obtain a registration certificate (*Tabu* title deed), which states that the land is registered in the name of the purchaser as the new owner of the land.

#### **2.1.5 Procedures for the transfer of property ownership through inheritance**

Ownership of property may also be the result of inheritance. When the owner of a property or land passes away, ownership is transferred to all the heirs upon confirmation of inheritance as issued by the *Sharia* court in the area in which the deceased person had resided. This document defines the legal heirs and the number of shares per heir. In order to formally transfer shares from the deceased person to the heirs, a transfer of inheritance procedure must be undertaken in the following manner:

1. Opening an inheritance transfer transaction, attaching an up-to-date copy of the title deed, plus copies of the identity cards of the heirs and the confirmation of inheritance that defines the legal heirs and their share.
2. If the inheritance transaction is submitted within a period not exceeding six months from the date of the death of the deceased, it will be exempt from fees.
3. If the inheritance transaction is submitted after the six-month period, the heirs must pay fees equivalent to 0.001 per cent of the value of the land after submitting the transaction to the appraisal

committee to estimate the value of the land in question. Once the fees have been paid, registration certificates are issued in the name of all the heirs.

The Land Authority has introduced new methods to minimize disputes between heirs and prevent the use of the property outside the limitations of the registered share of the heir. If one of the heirs wishes to transfer ownership of the property into his name, he/she may do so and may pay the fees for his own share independently of the other heirs. In the past, it was necessary to deal with all shares of the inheritance at the same time. Until the remaining heirs register their shares, all shares remained under the control of the Land Authority. This updated policy prevents one heir from blocking all other heirs to use and enjoy their share, while preventing the use of the property of other heirs in an illegal manner.

### **2.1.6 Expropriation of private registered land**

In principle, the owner of registered private land enjoys the highest degree of legal security and protection. However, in 2012 road expansion projects started all over the Gaza strip, including Salah Eddin Street, the coastal Al-Rasheed Street, and other major and secondary roads, and municipalities expropriated areas of private land, registered in the name of individuals, without offering any compensation. The local authorities relied on Article 27 of Cities Planning Ordinance No. 28 of 1936 which enables the confiscation of land without compensating the owners and authorises the authorities to expropriate any land within the zoning scheme necessary to open or widen a road or public square. Up to one quarter of an area of private land may be expropriated without compensation.

The use of this law raises several legal issues. To begin with, the Cities Planning Ordinance expresses the legislative goals of the ruling authority during the British Mandate. The aim was to resettle Jewish immigrants in Palestine by granting the High Commissioner the authority to expropriate property and use it in the manner deemed appropriate at the time. This was reflected in several texts drafted during that period, mainly the Palestine Order in Council of 1922. Its preamble stated: *“Whereas the Principal Allied Powers have also agreed that the Mandate should be responsible for putting into effect the declaration originally made on 2 November 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people.”* It seems inappropriate to rely on laws enacted during the British Mandate for purposes that are irrelevant today, in order to expropriate registered private land for public use in the Gaza Strip. A new national law, that takes into consideration the needs of the local authorities for development without prejudicing the rights of owners to compensation, is therefore required. Generally speaking, the expropriation of private property without some form of reparation is considered today a violation of constitutional and human rights laws.

It should be noted that the Cities Planning Ordinance No. 28 of 1936 may offer *some* protection regarding expropriation and compensation for the acts of local authorities. However, in most cases, these guarantees in the law were ignored. Careful analysis of the text of the Cities Planning Ordinance demonstrates that Article 26 grants the local committee the authority to offer alternative land to the owner of expropriated land or to refer the case for arbitration in case the owner refuses the exchange of land. Moreover, while Article 27 allows the confiscation of up to one quarter of the total area of land without compensation, the law granted the High Commissioner the authority to order the payment of compensation of up to 25 per cent of the land if it is proven that failure to pay compensation may place the owner in distress. Finally, Article 29(1) stipulates that no house can be vacated on expropriated land until appropriate alternative housing is found to provide shelter to residents of the affected area.

Moreover, a comparison of Article 27 of Cities Planning Ordinance No. 28 of 1936 with national laws and texts legislated by the PNA reveals discrepancies between them, especially with regard to expropriation without fair compensation. Article 27 conflicts with the constitutional protection provided by the Palestinian (Amended) Basic Law of 2003. The Basic Law states in Article 21(3): *“Private property, both real estate and movable assets, shall be protected and may not be expropriated except in the public interest, in accordance with the law, for fair compensation or pursuant to a judicial ruling”*.

Paragraph 4 of the same Article states: *“There shall be no confiscation unless there is a judicial ruling”*. Therefore, no party has the right to confiscate any property without a due process authorising such acts.

In accordance with the principle of constitutional supremacy, the Palestinian Basic Law is the highest law in the State of Palestine and its rules are binding. Any legal text that conflicts with the Palestinian Basic Law must be considered null and void. It therefore seems that once the Palestinian Basic Law had been enacted, the provisions of Article 27 of the Cities Planning Ordinance No. 28 of 1936 were implicitly revoked from the date the Palestinian Basic Law came into effect in 2003. The statement “in accordance with the law” included in Article 21 of the Basic Law does not authorise the Legislator to confiscate without judicial review or fair compensation. It is also arguable that the 1936 Cities Planning Ordinance should be interpreted, as much as possible, according to the Basic Law in disputes that arise today in relation to legal actions that took place based on the Ordinance before the Basic Law came into effect (before 2003).

Finally, the Palestinian Civil Law No. 4 of 2012, issued by the Change and Reform Bloc in the Legislative Council in Gaza Strip during the political division, addressed the protection of ownership rights. Article 931 stipulates that *“[i]t is forbidden to deprive any person of their property or make use of their property, and no property shall be expropriated unless it is for the public benefit, and these cases must be decided by the law and in the manner decided by the law in exchange for fair compensation.”* A review of the explanatory memoranda on the text of this article reveals that the Palestinian Legislator intended to provide protection for the right of ownership. Expropriation of property was permitted as an exception and subject to three conditions: 1) the presence of a law that allows the expropriation of private property; 2) the expropriation takes place in accordance with the procedures defined by law and in the public interest; and 3) the owner must be offered fair compensation in return for the expropriated property.

The power to expropriate 25 per cent of property without compensation according to Article 27 of the Cities Planning Ordinance No. 28 of 1936 conflicts also with the Palestinian Civil Law No. 4 of 2012 applicable in the Gaza Strip. Again, whether the 2012 Palestinian Civil Law and the 2003 Basic Law apply retroactively to past expropriations is a matter to be decided by the Palestinian Supreme Court in its constitutional capacity. In the meantime, discrepancies should be dealt with by creative interpretation that will protect, as much as possible, constitutional and human rights.

## **2.2 Unregistered Private Land**

### **2.2.1 The nature of unregistered private land**

Over 30 per cent of private land in Gaza,<sup>39</sup> and around 70 per cent of the West Bank,<sup>40</sup> is estimated to be unregistered. This is the consequence of the difficulty of providing a ‘chain of ownership’, complex land laws and registration procedures, and past efforts of owners to avoid paying land tax through by failing to register their land. As a result of the different administrations ruling in the Gaza Strip, various procedures have been created to determine the status of unregistered land. This led to different names and classifications of the land, based on the procedures imposed by the different administrations. In addition, the status of unregistered land and the procedures required to register it have become somewhat unclear, because the laws inherited from the different legislative periods are all still in effect. This legal situation puts the rights of owners of unregistered land at risk.

It is common for a number of names to be used in order to describe unregistered private land. The term ‘finance land’ is one of the most commonly used terms. The handling of unregistered land is undertaken by the Finance Ministry’s Property Tax Directorate. The term ‘finance land’, however, includes all types of unregistered private land, including land in which the title deeds are not documented at the Property

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<sup>39</sup> NRC interview with Hasib al-Rai, former Director of Ministry of Finance of Property Tax Directorate, 5 February 2013.

<sup>40</sup> *Ibid.* See also the official website of the Finance Ministry – the General Directorate of Property Tax, available at: <http://www.pmf.ps/web/guest/92;jsessionid=B2702FC5EBA448223180392927AB86B7> (last visited 28 May 2015).

Tax Directorate. This department supervises the 30 per cent of the land in the Gaza Strip that has not been mapped or surveyed. The Directorate conducts appraisals of land and imposes taxes on all land, whether registered only with the Directorate or with the PLA (in the *Tabu*).

Other terms have also been used to refer to unregistered private land, for example, according to the tax or fee imposed on them during the various legislative periods in the Gaza Strip. The term '*Wirko*' refers to the property tax (property *wirko*) imposed by the Ottoman administration.<sup>41</sup> The name '*tithe*' land refers to the one-tenth tax imposed on the produce from the land.<sup>42</sup> The British Mandate Legislator conditioned the registration of any transaction upon proof of payment of the *tithe* tax or land tax imposed on the relevant plot of land.<sup>43</sup> It is reasonable to assume that in many cases, unregistered private land was sold and purchased without referring back to the registration department, because uncollected tax on the land and/or outstanding tax debts prevented the landowner from registering the land with the official departments.

## 2.2.2 Provisions concerning unregistered land

In 1954, during the Egyptian Administration, the Egyptian Governor issued a declaration calling for the registration at the Property Tax Directorate of previously unregistered land. Land was to be registered in the names of the possession holder in return for a land tax of 10 per cent of the value of the land. To evade payment of the tax in full, many landholders did not register their lands. At times, landowners chose to register parts of the land, leaving significantly larger swathes of land unregistered and beyond the reach of the taxman. This has resulted in vast areas of land with no records and documentation, including at the Property Tax Directorate. Over time, many landholders conducted purchases or sales of unregistered land using the customary contracts despite the absence of an official title deed. The successive contracts and exchange of land from one seller to another came to resemble ropes, and this land became known as 'rope land'.<sup>44</sup>

Later, in 1957, the Administrative Governor of the Gaza Strip issued Order No. 575, ordering the Land Registration Authority to resume its work. While previously the Egyptian Administration relied on documents provided during the Ottoman and British Mandate eras to prove land rights, it was decided to update this position. Under Article 14 of this Order, from now on only the new records established by the Egyptian registration authorities would constitute the means to prove rights. Article 15 of the Order stipulated that any person who claims to own land or claims that his/her registered rights have been lost must reapply to the land registration department with official documents proving his/her rights within one month of the issue of the Order.<sup>45</sup> The PLA in the Gaza Strip considers this Order the basis by which registered and unregistered land in the Gaza Strip can be distinguished from each other.<sup>46</sup>

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<sup>41</sup> See, for example, Article 11 of the Decision on Resolution of Disputes on Non-Transferable Funds of 1327 *Hijri*, which refers to the *Tabu* and the *Wirko* department.

<sup>42</sup> The *tithe* is a tax of 10 per cent imposed on land production. The Ottoman Law of *Tithe* Tax was amended by the British *Tithe* Tax of 1920.

<sup>43</sup> Law of Land Ownership Rights Settlement of 1928, Article 49.

<sup>44</sup> NRC interview with Hasib al-Rai, former Director of Ministry of Finance of Property Tax Directorate, 5 February 2013.

<sup>45</sup> Order No. 575 of 1957 on the commencement of work of the Land Registration Administration, published in edition No. 87 of the Palestinian Official Gazette during the Egyptian Administration.

<sup>46</sup> NRC interview with Engineer Ibrahim Radwan, Chairman of the Palestinian Land Authority, Gaza Strip, 18 March 2013.

### 2.2.3 Bodies responsible for unregistered private land

The Property Tax Directorate (previously known as the Directorate of Income and Property Tax) is part of the Ministry of Finance and supervises the 30 per cent of the land in the Gaza Strip and 70 per cent of the land in the West Bank that has not been mapped or surveyed during the British Mandate era. The Directorate organises, registers, and issues title deeds to prove ownership, which is an essential step to obtaining a building permit and construction. It has maintained records of this type since the period of the British Mandate – and in some cases prior to that. The Directorate conducts appraisals of land and imposes taxes on all land, whether registered with the Directorate or with the PLA (*Tabu* department).

The Directorate cooperates with the PLA in the ongoing process to register land in accordance with a series of procedures, starting from the issue of a copy of the land plot and its number at the Directorate, and the submission of the transaction to register the land at the PLA (*Tabu* department).

A registration transaction is a special procedure for unregistered land, whether it is unregistered and has no official records at all, such as ‘rope land’, or whether it has been registered at the Property Tax Directorate ('finance land' or *wirko* land). In this case, the Directorate at the Finance Ministry issues financial certificates, declaring that taxes on the land have been paid and that the person whose name is registered is the sole owner of the land.

### 2.2.4 The legal status of unregistered land and legal disputes

Owners of ‘finance land’ who register their rights in the Property Tax Directorate can obtain a copy of the statement issued by this authority. This is not considered a title deed as in the case of registered private land (*Tabu*), but grants the owner the ability to use the land. The owners of unregistered land can sell their land, but cannot exercise the full authority of a landowner as is the case when the owner of registered land is in possession of the *Tabu* (title deed). For example, the owner of unregistered land cannot mortgage the land and ownership of the land is restricted. Another advantage of private registered land is that private land will be surveyed and demarcated while unregistered land will not be. In addition, private registered land can be subject to ‘enforcement in kind’ through lawsuit while unregistered land cannot as such lawsuits require the land to be registered. This may result in legal disputes, especially if the original owner of the land holds ownership documents dating back to the Ottoman period or the British Mandate, but failed to register the plot in the Land Authority’s records during the Egyptian Administration era (in accordance with Order No. 575 of 1957).

Generally speaking, the person in possession of unregistered land is considered the owner of the land. Such a conclusion can be reached when examining other laws and regulations, such as Law No. 5 of 1940 and Law No. 40 of 1941. Both laws regulate the preparation of special registries to collect taxes from the landowners of this type of land. A special committee calculates the amount of tax to be collected from landowners – whether the land is located inside or outside the cities. The name mentioned in those registries as the owner of the land is a sufficient proof of land ownership unless proven otherwise. This applies to all land whose status has not been determined by survey or land that has not been registered by the current users with the Property Tax Directorate.

However, a difficulty arises if the land was not registered, either in the *Tabu* registry or with the Property Tax Directorate. In these cases, the mere possession of the land, and even tax payment records, may not be enough. In the view of the PLA in the Gaza Strip, people in actual possession of such unregistered land are not necessarily owners of the land and do not enjoy all ownership rights. The legal basis for this is because they failed to fulfil the Article 14-requirement of the Egyptian Governor in Order 575 of 1957, which states that any person who claims ownership of land must prove ownership by presenting documents for the land to be registered in his name, or a contract made with the administration of the Egyptian Governor with the price of the land paid in full. A title deed would then be issued in the name of the owner in accordance with the contract.

If no documents were presented at the time within the deadline and no registration took place according to Article 15 of Order 575 of 1957, the norm during the Egyptian Administration was to register that land 'without an owner' in the name of the Egyptian Governor pending the appearance of a claim of ownership.<sup>47</sup> At the time of writing, the PLA considers only documents and deeds produced during and/or after the Egyptian era as proof of ownership in accordance with Order 575 of 1957. Anyone granted ownership *prior* to that period who failed to apply to the land registration department during the Egyptian era cannot present documents to the PLA as proof of ownership of the land for the purpose of registering his private ownership in the *Tabu* (unless otherwise decided by the court).<sup>48</sup>

Decision No. 13/232/11/M.H/A.H of 2012, issued by the Palestinian Cabinet in Gaza and proposed by the PLA, stipulated the formation of a special committee to conduct a field survey of *mahlul* land in which the ownership reverted to the government. This survey identifies the area of land and those with an ownership claim to it. A settlement is reached in which around 45 per cent of the land is registered in the name of the original claimant to the land at the *Tabu* department of the Land Registration Authority, while the rest is registered as State land. For the 45 per cent, the landholder must pay to the PLA a sum of money equal to 20 per cent of the estimated value of the land in advance, with the deduction of 20 per cent of the overall value of the land, and the remaining amount of 60 per cent to be paid through a number of instalments within ten years (20% advance pay + 20% deduction + 60% within 10 years). This indicates a move to end the state of ambiguity on the legal status of land unregistered in the *Tabu* department or in the Property Tax Directorate, but at the time of writing, this Decision has been suspended until further notice.<sup>49</sup>

Matters are further complicated when there is a party contesting the settlement. This individual is often the owner of the land according to official documents issued prior to the decision of the Egyptian Governor. It is to be expected that these individuals will contest the government's attempt to present itself as the owner of *mahlul* land and to reach a settlement with those unlawfully residing on the land in question. Many land cases are brought before Gaza's courts as a result of disputes between the owners of this land prior to the Egyptian Order 575 of 1957 who failed to register their rights, the PLA, and those who are currently residing on such land for extended periods of time.

### **2.2.5 Procedures to register finance land at the *Tabu* department**

Several procedures and documents are required to register 'finance land' with the PLA. The procedures are as follows:

1. A copy of the identity card of the applicant must be provided;
2. The finance certificate issued from the Property Tax Directorate, which proves that the applicant has paid the taxes due on the land, must be submitted;
3. The chain of contracts in chronological order must be presented to demonstrate the 'chain of ownership';
4. Confirmation of inheritance must be provided if the applicant is a heir to a deceased person whose name is stated on the financial certificate;

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<sup>47</sup> NRC interview with Hasib al-Rai, former Director of Ministry of Finance of Property Tax Directorate, 5 February 2013.

<sup>48</sup> NRC interview with Engineer Ibrahim Radwan, Chairman of the Palestinian Land Authority, Gaza Strip, 18 March 2013. This is the reason why a number of cases that concern the ownership of similar land inside the former settlements are still pending in the Gaza courts. For example, the 2011 claim of the Odeh family to the Gaza Court of First Instance asking the Court to recognise their right to a plot of land of about 2000 *dunams* in the former *Netzarim* settlement. (This information is based on a telephone conversation between an NRC lawyer and the attorney of the Odeh family, Jamil Sarhan, on Wednesday, 4 September 2013).

<sup>49</sup> Palestinian *de facto* Cabinet Decision No. 13/232/11/M.H/A.H of 2012.

5. If the purchaser of the land wants to register the land in their name from the person whose name is registered on the financial certificate, they must produce the chain of contracts transferring the land in chronological order (chain of ownership), in addition to a certified statement from a public notary, a statement sworn in front of a competent judge and a certificate from a *mukhtar* to testify that the land in question is owned solely by the applicant without any claims from any party. This must also be stated in the sworn statement.

6. A map must be obtained from the General Land Survey Department of the Land Authority. An application for this map can be made to the General Land Survey Department, attaching a copy of the identity card of the person requesting registration, the financial certificate, the title deeds of the land in chronological order, and confirmation of inheritance (if required). Once the application is submitted, a date is set for the plot of land to be surveyed by government land surveyors. Another date is set for an aerial survey of the land by GPS; then a final inspection of the land is conducted in the presence of the land survey delegate and a Land Registration Department delegate in order to obtain the signature of the neighbours to the land, plus the signature of the *mukhtar* of the region in question. Once these procedures have been completed and the payment of the fees was made, the map is issued.

7. Subsequently, the applicant must submit a request to publish registration in one of the local newspapers for a period of 30 days to give any person the opportunity to submit an appeal against the registration of the land with the Land Authority.

8. All these documents must be presented to the appraisal committee at the Land Authority to calculate the registration fees, which are calculated as 0.5 per cent of the value of the land. The title deed is then issued for the first time, known as the *Tabu*.<sup>50</sup>

Currently, all procedures to register land located outside cities have been suspended by the Land Authority until a complete land survey of all unregistered land is conducted and the project of mapping land is completed. The procedures to register land inside the borders of cities remain the same at present.<sup>51</sup>

Thus, the papers that need to be presented are as follows:

- a- Copy of the identity card of the person requiring registration;
- b- The financial certificate;
- c- Title deeds of the land in chronological order;
- d- Devolution of estate statement;
- e- A certificate from the *mukhtar* of the region;
- f- A sworn statement;
- g- An attestation statement signed before a public notary;
- h- Registered map;
- i- An application form to start the transaction.

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<sup>50</sup> The Palestinian Land Authority, *Tabu Procedures Handbook in Gaza*, Gaza, September 2010.

<sup>51</sup> NRC interview with Engineer Ibrahim Radwan, Chairman of the Palestinian Land Authority, Gaza Strip, 18 March 2013.

### 3 State Land

This chapter presents a detailed legal analysis of State land. The term ‘State land’ is defined as non-transferable assets used or owned by the State in accordance with the laws of the State. There are approximately 365,000 *dunams* of land in the Gaza Strip. State land registered at the Land and Real Estate Registration Department of the PLA, commonly known as the *Tabu* department, comprises of around 112,000 *dunams*, which amounts to 31 per cent of all land in the Gaza Strip.<sup>52</sup>

These percentages do not fully reflect the reality on the ground. State land has been subjected to numerous Israeli transgressions by the establishment of settlements. In addition, the Egyptian Administration and the PNA have used land, for example to build roads, without altering its status in the land registry, thus the actual amount of State land may be less than the amount inferred from the land registry records.

The greatest difficulty facing State land is perhaps the encroachments on State land by the growing population in the Gaza Strip. As a result, it is difficult to obtain an accurate estimate of the actual area of State land. Over the past years, a large area of State land has been used for different purposes, and the remaining area may not be sufficient for future generations. Future development needs may include establishing roads, housing, health, educational, cultural and sports facilities.

Table 1: Gaza Strip State land and encroachments

Category	Size in <i>dunams</i>	Land percentage (in%)
Gaza Strip overall land size	365000 <i>dunams</i>	100
Area of State land	112000 <i>dunams</i>	31
Encroachments over State land	12000 <i>dunams</i>	11

The PLA is currently the entity responsible for the administration of State land. As mentioned earlier, the PLA was established by Presidential Decree No. 10 of 2002. Prior to this date, the administration of State land belonged to the Ministry of Public Works and Housing.<sup>53</sup>

#### 3.1 The Nature of State Land

As detailed earlier, the Ottoman Land Code deals with the land owned by the State, including *miri* (State) land. Article 3 of the Ottoman Land Code defined *miri* land as ‘land owned in full by the treasury of the State and the guardians of the State (sultans and princes)’. They have the right to assign *miri* land to anyone who wants to use it for an unlimited period of time in return for a sum of money paid to the State

<sup>52</sup> Palestinian Land Authority, *Statistics Regarding State land in the Gaza Strip*, available at: <<http://www.pla.gov.ps/ar/?action=pages&id=247>> (in Arabic) (last visited 28 May 2015).

<sup>53</sup> The following are some of the most important relevant decisions and Decrees:

- Presidential Decree No. 10 of 2002 on the establishment of the PLA.
- Presidential Decree issued on 8 January 2003 on the establishment of a committee responsible for government properties.
- Presidential Decree issued on 30 July 2005 annulling all decisions issued regarding the allocation of government properties and land to citizens in the northern and southern districts.
- Presidential Decree No. 18 issued on 9 August 2005 on the allocation of government land and properties and redressing conditions.
- Decision of the Palestinian Cabinet No. 9 of 2007 on an immediate halt on decisions to allocate government land.
- Decision of the head of the PLA of 2010 regarding procedures for the allocation of government land for the purposes of rehousing residents of slums.
- Decision of the Minister of Public Works and Housing No. 40 of 2010 regarding the allocation of government land for low cost housing.
- Decision of the Minister of Public Works and Housing No. 23 of 2011 regarding ownership of government land for low cost housing.

treasury. Upon receipt of the payment, an official certificate allowing the use of the land is granted. The State is able, through its agents, to enter into legal transactions, including sale, lease, allocation of land, and granting usage rights in the land in accordance with the law. For instance, usage rights were provided for certain periods of time by the authorities to individuals willing to invest in land reclamation in return for concessions on taxes or other financial dues, according to a statement by the *Tabu* department.<sup>54</sup>

The introduction of the notion of 'public land/State property' by the British Mandate under Article 2 of the Palestine Order in Council of 1922 marked an important development. This provision refers to all land in Palestine supervised by the Palestine government under treaties, agreements or inheritance, and all land expropriated in the public interest and granted to the High Commissioner with the authority to oversee and use public land/State property in accordance with Articles 12 and 13 of the Palestine Order in Council of 1922.

In 1933, the Palestinian Order in Council of 1922 was amended to stipulate in Article 16 that the High Commissioner may, at his discretion, transform the legal status of a land from *miri* to privately owned land by a decree published in the Official Gazette.

In order to avoid conflicting ownership claims, Law No. 5 of 1960, issued during the Egyptian Administration, prohibited the transfer, through adverse possession, of ownership of assets belonging to the government or to the *Waqf* to other persons, or obtaining any right in kind to them.

### 3.2 The Case of *Mahlul* Land

A special type of *miri* land is *mahlul land*. *Mahlul* land is named after the text of the Ottoman Land Code 1858, Articles 59-90 ('Provisions of *mahlul Miri* land'). The law considered *mahlul* land as 'empty' or 'abandoned' land, which means that ownership reverts to the State when the owner neglects this type of land and fails to maintain its fertility for three years, or if the owner dies without leaving any heirs. However, the Ottoman Land Code sets out the respective priorities for nine different categories of persons that can obtain the land if they pay the land's *Tabu* unimproved value. If none of the nine categories named in the law use their right to claim this land, at that point, the government may put the land up for sale by auction and the land becomes the property of the highest bidder. The term *mahlul* is no longer used for the land after it has been sold by auction, but only for the land that the government is supposed to transfer for sale by auction due to the death of the original owner.<sup>55</sup>

*Mahlul* land is therefore considered a special case of *miri* land. Although it 'returns' to the government, certain people still enjoy certain rights in relation to that land. In addition, according to Article 78 of the Ottoman Land Code, if a person possesses and cultivates such land for 10 continuous years – regardless of the legality of their possession – the possessor becomes the legitimate owner of the land and is accredited a *Tabu* certificate without any additional fees. Thus, people holding *mahlul* land for more than 10 years, whether the initial basis of their possession was lawful or not, could have been registered as the owners and the land could have been categorised as private land. As will be discussed below, this is no longer the case today.

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<sup>54</sup> Palestinian Land Authority, *Allocation of State Land in the Gaza Strip*, available at: <http://www.pla.gov.ps/ar/?action=pages&id=244> (in Arabic) (last visited 23 August 2015).

<sup>55</sup> Deibes Al-Mor, *Provisions of Land Adopted in Arab Countries Separated From the Ottoman Sultanate*, Al-Maqdes Printing House, 1923, p. 189.

### 3.3 Legal Status of State Land and Ownership Disputes

Private ownership of State land can be secured through a legal contract between the competent government entity and the citizen and/or legal entity. For instance, the PLA, in cooperation with other relevant stakeholders, such as the Ministry of Housing and Public Works, may issue a decision to allocate State land for a shelter project.

According to Articles 20 and 78 of the Ottoman Land Code, ownership of State land could also be transferred to the person in control of such land by adverse possession if the land remained in his control without any opposition for ten years. This was reaffirmed by article 1662 of the Ottoman Civil Code, which stipulated a statute of limitations of 10 years for ownership claims regarding State land to be brought in front of the court, or otherwise such cases would not be accepted.<sup>56</sup>

However Law No. 5 of 1960, issued by the Egyptian Governor, rendered the adverse possession path to acquire ownership of State land null and void, thereby protecting State and *Waqf* land against transfer to private ownership through adverse possession. As stipulated in Article 1 of the Law No. 5 of 1960: *“It is forbidden to own property owned by the government or public legal persons, and the same applies to charitable Waqf assets through adverse possession, and it is forbidden to obtain any right in kind to them by statute. It is also forbidden to encroach on these lands, and if any encroachment occurs, the concerned party has the right to remove the encroacher through all administrative measures as deemed necessary to preserve public interest.”* Thus, on the basis of this law, adverse possession was no longer a means to obtain ownership of government or *Waqf* land. However, some issues arise when dealing with cases of ownership transfer through adverse possession that took place prior to the date the law was enacted (1960).

As a general rule, new legislation does not apply retroactively to events that took place prior to the issuance of the new law, unless the law explicitly stipulates so. The provisions of Law No. 5 of 1960 imply that the law applies to events that will take place after its issuance. Therefore, adverse possession and statute of limitations as stipulated in the Ottoman Civil Code and the Ottoman Land Code remain applicable in relation to cases concerning State and *Waqf* land prior to the issuance of Law on Order No. 5 of 1960. In these cases, an individual claiming ownership of State land through adverse possession has to prove that he/she has acquired a legal status by having seized and used State or *Waqf* land. Sufficient proof must be provided to show that the individual was present on and in control of the land, without opposition, for a period of at least ten years if State land, and 36 years if *Waqf* land, prior to 1960.

While in theory ownership claims, based on adverse possession prior to 1960, are legitimate, it should be noted that the official position of the PLA in the Gaza Strip is to abide by Order No. 575 of 1957.<sup>57</sup> This Order stipulates that people, who claim rights under lost records prior to the formation of the Land Administration during the Egyptian era, were required to present to the new Land Registration Administration sufficient proof of ownership rights within 30 days from the publication of the Order in 1957. Thus, the PLA considers that any individual who failed to register ownership rights within this period has permanently lost their legal claim.<sup>58</sup>

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<sup>56</sup> The following decisions of the Palestinian Supreme Court deal with cases submitted by alleged title holders claiming to own land through adverse possession:

- Precedent No. 289/44 decided that use of the land for a defined period of time prevents claims by the registered owner of the land; these cases are inadmissible although the use of the land may be based on an illegal transaction.
- Precedent No. 110/43 that failure to use the land for a period of time prevents the case from being heard.
- Precedent No. 164/43 that it is insufficient for the claimant not to have used the land for a period of time, but the defendant must have used the land.

<sup>57</sup> Order to Commencement of Operations of the Land Administration No. 575 of 1957, Article 15.

<sup>58</sup> While At times, judicial precedents issued by the Palestinian Supreme Court on the administration of State land in some cases reaffirmed the position of PLA, in other cases the Court had a different view. For example:

In any event, it is also questionable whether it was still possible in 1966, for procedural reasons, to raise an ownership claim, based on adverse possession that had been consolidated prior to 1960. In 1966, the Egyptian Authority amended Law No. 5 of 1960 (Amendment No. 8 of 1966) to make it impossible to raise title claims over State and *Waqf* lands as they considered any title claims over State or *Waqf* land based on Articles 20 and 78 of the Ottoman Land Code inadmissible. Therefore, if a person wants to submit a ownership dispute to the court and to challenge the position of the PLA that a certain plot of land belongs to the State or the *Waqf*, it is expected that the PLA will argue that these kind of disputes are not admissible in court due to the following reasons: 1) the case concerns ownership based on adverse possession that has not been consolidated prior to 1960; 2) private ownership rights were not registered as required in 1957; or 3) any case concerning title claims through adverse possession over State or *Waqf* land are deemed inadmissible in front of the judicial system in the Gaza Strip.

### 3.4 Encroachments on State Land

There are numerous cases in which individuals have, either directly or indirectly, illegally occupied and taken unauthorised possession of State land. This is commonly understood as encroachment. The PLA, as the entity responsible for preserving public assets, is tasked with the responsibility to safeguard State land and protect it from encroachments or any other type of violation.

Encroachment takes place for a variety of reasons as identified through an assessment conducted by the PLA:

- Encroachment on State land by residents seeking shelter:  
Most houses are erected randomly by poor residents who are residing unlawfully on State land. This is commonly referred to as ‘squatting’. Often they do not claim to have any legal rights to the land and their only purpose is to find shelter.

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- Decision No. 137/1996, 14 April 1997: “The intention of Law No. 5 of 1960 is to address those who encroach over State land and who seize land without any legal grounds, and without the knowledge of the competent authorities, and they pay tax in return for making use of the land. This type of relationship creates a legal relationship. Therefore, the Ministry of Housing must take legal proceedings if it wishes to make any changes or amendments to this legal relationship”.
  - Decision No. 51/1997, 11 July 2001: “When it is proven that the seizure of a government land has taken place prior to the passing of Law No. 5 of 1960, the Minister of Housing may exercise his authority to remove the violation on the basis of this law, but this does not render the status of the owner of the land invalid and the Minister must take legal proceedings to enforce his rights”.
  - Decision No. 135/1997, 5 September 1997: “Law No. 5 of 1960 applies to all those who violate government land, charitable *Waqf* land and properties. However, the Attorney General cannot stop them if they justify their action on a legal relationship or if they have a sound legal reason”.
  - Decision No. 12/1998, 19 June 1996: “It is proven in the documents that Gaza Municipality is not the owner of the land and has no powers to demand the removal of encroachments on a plot of land allocated to open a road. Since the road was canceled by the Municipality, the Municipality failed to abide by the law and the decision of the Municipality must be annulled”.
  - Decision No. 104/1999, 14 November 1999: “The decision of the Housing Ministry to remove the violation on government property using administrative means is a sound decision in line with the provisions of Law No. 5 of 1960, although the violator claims that he had occupied the land for many years. Such claims are not acceptable because rights claimed by statute are not admissible on government land”.
  - Decision No. 127/2000, 6 July 2003: “It is the duty of the Housing Minister to safeguard government land and not designate any rights to use it as per the provisions of Law No. 5 of 1960”.
  - Decision No. 68/2001, 8 June 2003: “The decision of the Land Authority to allocate a plot of land that has been under the control of an individual for many years, and who paid its due taxes, and the land is registered in the name of the Governor. This decision entails a violation of the legal relationship that exists between the Land Authority and the person who seized the land. The Land Authority must approach the competent authority if it wants to end this legal relationship”.

- Encroachment for agricultural purposes:  
The occupants of the land are farmers who reside on and cultivate the land unlawfully, thereby reaping its fruits without authorisation from the competent authorities.

According to the PLA's statistics, 12,000 *dunams* out of a total of 112,000 *dunams* of State land are encroached on in the Gaza Strip. This constitutes 11 per cent of the total area of State land in the Gaza Strip.<sup>59</sup>

The problem of encroachment on State land and how to address it remains a sensitive issue. Under international human rights law, everyone has the right to housing or shelter.<sup>60</sup> Thus, ending encroachment on State land by forcibly evicting unlawful occupants without providing alternative housing solutions may in fact violate international standards. The authorities might have to carry the financial and logistical burden. Article 23 of the Palestinian Basic Law stipulates: "*Adequate housing is the right of every citizen, and the Palestinian National Authority seeks to secure housing for those who have no shelter.*" At the same time, it is in the general interest of good governance and equality for all that encroachment perpetrated by individuals over State land is opposed in order to protect public assets and ensure they are invested in a sustainable manner.

To address this delicate issue and while relying on Law No. 5 of 1960, the PLA started a campaign against encroachment in different areas around the Gaza Strip. The PLA provided several procedures to ensure that the removal of encroachers on State land is conducted in the least harmful way. However, there is a risk that the government's procedure does not meet international standards.<sup>61</sup> For example, in past instances, the authorities failed to give sufficient notice to residents. Moreover, in some cases, eviction resulted in relocation to distant areas, and, in other cases, in breaking up of families.<sup>62</sup>

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<sup>59</sup> Palestinian Land Authority, *Statistics Regarding State land in the Gaza Strip*, available at <<http://www.pla.gov.ps/ar/?action=pages&id=247>> (last visited 28 May 2015).

<sup>60</sup> For example, Universal Declaration of Human Rights (1948), Article 25; International Covenant on Economic, Social, and Cultural Rights (1966), Article 11.

<sup>61</sup> For example, Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 1992, and *General Comment No. 7 on the Right to Adequate Housing (Art. 11 (1) of the Covenant): Forced Evictions*, 1997; OHCHR, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the "Pinheiro Principles"*, March 2007 (hereinafter the 'Pinheiro Principles'), available online at [http://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf) (last visited 23 August 2015).

<sup>62</sup> See Palestinian Land Authority, *Encroachment on State Land in the Gaza Strip*, 9 December 2010, available at: <<http://www.pla.gov.ps/ar/?action=pages&id=243>>(last visited 28 May 2013). For international standards see, UN Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, A/HRC/7/16, 13 February 2008, available at: <<http://www.refworld.org/docid/47ce73f32.html>> (last visited 31 May 2015).

## 4 *Waqf* Land

The *Waqf* system, an Islamic practice common to many societies that were formerly part of the Ottoman Empire, is of special importance in Palestine. This importance stems not only from the religious status of the *Waqf*, but also from the social, economic, cultural and political role it plays in the local society.

The role of the *Waqf* grew in Islamic societies and reached its peak during the Ottoman period, which witnessed major prosperity throughout the empire. The *Waqf* played a primarily religious role in establishing and funding mosques and the running of cemeteries, and also other functions in education by establishing various types of schools, in health with hospitals and clinics, in agriculture by building irrigation systems and mills, and in the commercial field through the construction of caravanserais (*khans*) and markets. Moreover, the *Waqf* played a major role in the emergence and development of cities and villages through charitable work.

### 4.1 Historical Basis of *Waqf* in Islam

The origins of the *Waqf* system can be traced back to Islam.

1. Prophet Mohammed stated that if a human being dies, his memory and trace are lost except for ongoing charity, a useful science, or a son who prays for you. The ongoing charity mentioned in the *Hadith* (the second source of *Sharia* after Quran) is achieved through the *Waqf*.<sup>63</sup>
2. The second Muslim Caliph Omar Ben Al-Khattab came to the Prophet and said: “My Prophet; I possess land and I do not care for money. Our religion is the most precious. What do you order me to do?” The Prophet said: “If you like, you can donate it on condition that it cannot be sold or endowed or inherited. You can offer it to the poor and needy and let them eat from its produce”. Omar Ben Al-Khattab subsequently endowed it.
3. The third origin of the *Waqf* derives from the actions of the companions of Prophet Mohammed, who followed the example of Omar Ben Al-Khattab, Ali Ben Abi Taleb and Othman Ben Affan’s *Waqf* contributions until this day. This took place during the rule of the Rashidun Caliphs.<sup>64</sup>

### 4.2 The Nature of *Waqf* Land

The *Waqf* is defined as “a religious endowment i.e., a voluntary and irrevocable dedication of one’s wealth or a portion of it – in cash or in kind (such as a house or a garden) – and its disbursement for *Sharia*-compliant projects (such as mosques or religious schools).”<sup>65</sup>

In another definition, the *Waqf* is described as “holding the fund from consumption to benefit from it repeatedly in one of the forms of charity. It is an ongoing charity as long as its capital remains, whether this is natural through the lifetime of the *Waqf* fund or upon the desire of the founder of the *Waqf*”. This definition includes permanent *Waqf* of a property and a lifetime *Waqf* of a fund, as agreed upon by all four sects (*Shafei*, *Maliki*, *Hanafi* and *Hanbali*).<sup>66</sup>

The system of *Waqf* is subject to the provisions of Islamic *Sharia* law. According to Article 52 of the Palestine Order in Council of 1922, the Islamic *Sharia* courts exercise their jurisdiction in relation to the *Waqf* of Muslims. Articles 53 and 54 of the Order state that the religious courts have powers in relation to the *Waqf* of Jews and Christians.

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<sup>63</sup> Hadith is every saying or action made by Prophet Mohammed.

<sup>64</sup> Mohammed Obeid al-Kubeisi, *Provisions of Waqf in Islamic Sharia*, Irshad Printing House, Baghdad, 1977, p. 34.

<sup>65</sup> *Ibid.* p. 60.

<sup>66</sup> *Ibid.* p. 62. See also Qahaf Munther, “*Waqf* in Contemporary Islamic Society”, the World *Waqf* Commission, available at: <<http://www.kantakja.org>> (last visited 15 November 2013).

*Waqf* land is divided into two types according to Article 4 of the Ottoman Land Code:

1. Land founded as *Waqf* 'in a real manner':  
If the founder of the *Waqf* owns the land, i.e., the land is privately owned, his/her total possession of the land and all related rights are transferred as *Waqf* land.
2. Land founded as *Waqf* 'not in a real manner':  
This is *miri* land labelled as *Waqf* land by the Sultans and transferred to charitable parties. This type of *Waqf* land cannot be sold, but is transferred to another person with the permission of the Sultan. It is subject to all the provisions of *miri* land, but the fees due to the State go to the party to whom the land is transferred as *Waqf*. This type of *Waqf* was established for a specific class of allocations, meaning that the land was allocated as *Waqf* for a specific purpose.

### 4.3 Geographical Distribution of *Waqf* Land in the Gaza Strip

The total area of *Waqf* land in the Gaza Strip is 6,777.515 *dunams* and distributed as follows:<sup>67</sup>

Table 2: Gaza Strip *Waqf* land distribution

	Region	Area in <i>dunams</i>
1	Gaza District	2840
2	Northern District	800
3	Khan Yunis District	285
4	Central District	285

The remaining area is made up of small plots of land distributed all over the Gaza Strip where there are residential buildings, mosques and buildings allocated for the benefit of the *Waqf* Ministry.

### 4.4 Parties Responsible for Management of *Waqf* Land and Assets in Gaza

Prior to the Ottoman rule, the founders of the *Waqf* managed *Waqf* property themselves. As the number of *Waqf* properties grew, the responsibility of the revenues was transferred to the judiciary. The *Waqf* had an independent office (*Diwan*), supervised by a judge working in the area in which the *Waqf* property was located. Under the Ottoman rule, the *Waqf* expanded even further, and it became necessary to issue laws and regulations to regulate *Waqf* affairs.

The *Waqf* system was maintained until the end of the Ottoman era in Palestine. The Islamic High *Sharia* Council was established in Jerusalem during the British Mandate and assumed the administration of the *Waqf* in the whole of Palestine. By 1957, the Egyptian Administration established the Islamic *Waqf* Administration by Order No. 564 of 1957, which assumed *Waqf* responsibility in the Gaza Strip. After the establishment of the PNA, the Ministry of *Waqf*, Sacred, and Religious Affairs became the body responsible for the administration of *Waqf* land in Gaza through ministerial departments that supervise *Waqf* assets. The most important department in this context is the *Waqf* Property Directorate.<sup>68</sup> This is the body authorised to issue decisions on the administration of *Waqf* properties, starting from the establishment of a *Waqf* property, and the subsequent investment and/or lease of *Waqf* property.<sup>69</sup> The returns from *Waqf* property are a major contribution to the budget of the Ministry.<sup>70</sup>

<sup>67</sup> NRC interview with Mr. Ramez Al Shafei, Director of the Legal Department of the Ministry of *Waqf*, Sacred, and Religious Affairs, Gaza Strip, 12 October and 23 October 2011.

<sup>68</sup> *Ibid.* More information about the role of the *Waqf* Property Directorate is available at:

<[http://www.palwakf.ps/ar/?comp=n&action=dep\\_details&nid=3972](http://www.palwakf.ps/ar/?comp=n&action=dep_details&nid=3972)> (last visited 28 May 2015).

<sup>69</sup> Another role of the Directorate is to facilitate the investment of the private sector over *Waqf* land to ensure that both parties accomplish their interests.

<sup>70</sup> NRC interview with Mr. Ramez Al Shafei, Director of the Legal Department of the Ministry of *Waqf*, Sacred, and Religious Affairs, Gaza Strip, 12 and 23 October 2011.

## 4.5 Encroachments on *Waqf* Land

A review of the legal texts that deal with *Waqf* land shows that the use and transfer of *Waqf* land was not prohibited under the laws issued during the Ottoman era. The Ottoman Legislator regulated *Waqf* revenues differently from other types of land, but did not prohibit the use of *Waqf* land and the transfer of ownership. Thus, *Waqf* land could be transferred into private land by contract or through inheritance, and registered accordingly at the *Tabu* department. The Ottoman Legislator defined the ‘*Khaqani* Register Department’ (derived from Turkish, meaning the ‘mandate to allow the use of land’) as the body responsible for “all transactions related to the use of *miri* and *Waqf* land,” according to Article 1 of the Law on the Use of Immovable Funds of 1331 *Hijri*. *Waqf* properties were also regulated in the Ottoman Civil Code which, for instance, included the annulment of sales of *Waqf* assets if the transaction was unjust. Under the Ottoman Civil Code, a lease was deemed invalid if the *Waqf* asset was leased for an amount less than its value.<sup>71</sup>

According to Article 1661 of the Ottoman Civil Code, the statute of limitations on the “origin and right of *Waqf*” is defined as 36 years. This means that if a person occupied *Waqf* land, the guardian of the *Waqf* had the right to file a court case demanding its return within a period of up to 36 years. After this period had elapsed, the court would consider such a case inadmissible.

However, it is important to remember that Law No. 5 of 1960, issued by the Egyptian Governor, rendered the adverse possession of State and *Waqf* land null and void, thereby protecting State and *Waqf* land against transfer to private ownership through adverse possession. As stipulated in Article 1 of the Law No. 5 of 1960: “*It is forbidden to own property owned by the government or public legal persons, and the same applies to charitable Waqf assets through adverse possession, and it is forbidden to obtain any right in kind to them by statute. It is also forbidden to encroach on these lands, and if any encroachment occurs, the concerned party has the right to remove the encroacher through all administrative measures as deemed necessary to preserve public interest.*”<sup>72</sup> Based on this law, the statute of limitations for *Waqf* property ceased to exist as a means to obtain ownership over *Waqf* land.

As noted earlier with regard to State land, new legislation does not apply retroactively to events that took place prior to the issuance of the new law, unless the law explicitly stipulates so. The provisions of Law No. 5 of 1960 imply that the law applies to events that will take place after its issuance. Therefore, adverse possession and statute of limitations as stipulated in the Ottoman Civil Code and the Ottoman Land Code remain applicable in relation to cases concerning State and *Waqf* land prior to the issuance of Law on Order No. 5 of 1960. Individuals claiming ownership of State or *Waqf* land through adverse possession have to prove that they have acquired a legal status by having seized and used this land. Sufficient proof must be provided to show that the individual was present on and in control of the land for a period of at least ten years if State land, and 36 years if *Waqf* land, prior to 1960. In the case of *Waqf* land, this would require the individual to prove his/her presence on *Waqf* land dating back to at least 1924. Presence must be established without interruption, which in itself would be sufficient to deny acquisition of ownership through adverse possession. At the time of writing, not a single case was reported in which claimants have been able to prove uninterrupted presence on *Waqf* land since 1924.

Moreover, even if any of the residents were able to provide sufficient evidence of uninterrupted presence on the land, the official position of the PLA in the Gaza Strip is to abide by Order No. 575 of 1957.<sup>73</sup> This Order stipulates that people who claim land rights under lost records prior to the formation of the Land Administration during the Egyptian era, must present to the new Land Registration Administration sufficient proof of ownership rights within 30 days from the publication of the Order, which dates back to 1957. Any person who fails to present sufficient evidence within the period defined in Order No. 575

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<sup>71</sup> Ottoman Civil Code of 1293 *Hijri*, Articles 336, 441.

<sup>72</sup> Law No. 5 of 1960, Article 1 “[...] on the impermissibility of obtaining the ownership of funds owned by the government or public legal persons and *Waqf* funds through adverse possession or obtaining any right in-kind to them.”

<sup>73</sup> Order to Commencement of Operations of the Land Administration No. 575 of 1957, Article 15.

of 1957 loses the right to claim ownership. Thus, it is the PLA's position that individuals who failed to register ownership rights within this period have permanently lost their legal claim.

Finally, as set out in the section on State land in the preceding chapter, it should be added that in 1966, the Egyptian Authority amended Law No. 5 of 1960 (Amendment No. 8 of 1966) making it impossible to raise title claims over State and *Waqf* lands as they considered any title claims on State or *Waqf* land based on Articles 20 and 78 of the Ottoman Land Code– the adverse possession of the land – to be inadmissible.<sup>74</sup>

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<sup>74</sup> See also the discussion regarding ownership disputes over State land in section 3.2 of this Guide.

## 5 Land with Special Legal Status or Use

The previous three chapters cover the different laws that regulate land in Palestine with a particular focus on the Gaza Strip. The current situation is the result of the Ottoman Land Code, which is still in effect in the Gaza Strip, and of the legislation relating to land introduced by the various authorities that have governed the Gaza Strip since the Ottoman rule.

The wars that have taken place in the region and the ensuing humanitarian disasters continue to have a significant impact on the lives of the civilian population in the Gaza Strip. The Israeli occupation also affected land issues in Gaza through the establishment of settlements and the allocation of buffer zones around them, or through the establishment of access restricted areas (ARA) along the borders inside the Gaza Strip. These factors have created challenges and complications that give rise to a variety of legal claims to land rights.

In this chapter, land with special status or use as a result of political events on the ground is analysed. Such land includes land in refugee camps, land in the former settlements and land located in the ARA.

### 5.1 Refugee Camps Land

Palestine refugees number 1.33 million people and make up almost 75 per cent of the total population of the Gaza Strip. More than half a million people live in eight refugee camps located throughout the Gaza Strip. Land allocated to these refugee camps was intended to be part of a temporary arrangement for a limited period of time pending a just and durable solution for Palestine refugees. This just and durable solution has not yet been achieved and Palestine refugees have been living in refugee camps in the Gaza Strip for more than six decades.<sup>75</sup>

With the passage of time, the number of refugees has more than doubled itself as a result of natural population growth. Land has been passed down the generations from the first generation of Palestine refugee to their heirs. Many disputes over land have arisen and solutions to these disputes have varied between the regular judiciary and the informal justice system, including customary dispute resolution mechanisms. From time to time, courts have ruled differently in identical cases, raising serious concerns as to due process of law and legal certainty.

Both State and private land was made available to UNRWA in order to facilitate UNRWA's provision of services, shelter and assistance for the benefit of Palestine refugees. Land within a refugee camp was formally designated as such. When it is not State land, or has not been expropriated from private owners, the exercise of ownership rights in private land was limited. In some instances, land was made available on the basis of lease agreements between UNRWA and private landowners, and it was understood by both parties that UNRWA would use this land and build shelter units for Palestine refugees.

While UNRWA did not exercise any formal functions of governance with regard to land rights in the refugee camps (nor had such function been delegated to UNRWA by the authorities), the Agency was in effect 'organising' such relations by virtue of providing shelter and relief assistance. Initially, the Agency was able to keep track of the persons occupying and using certain plots within refugee camps. However, over time it could no longer keep track of the location of Palestine refugees and/or of each and every transaction entered into by Palestine refugees with regard to these plots. Many camp residents started selling their *de facto* 'right of usage', although they had no legal right to do so. Over time, refugees treated the land as their private property, as opposed to land made available to their usage on a temporary basis. In practice, the difference between land usage and land ownership has blurred.

Clearly, serious questions have arisen regarding the rights and interests of Palestine refugees residing inside the camps vis-à-vis UNRWA, the government and private owners.

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<sup>75</sup> For more information, see the official UNRWA site: <<http://www.unrwa.org/ar/where-we-work>> (last accessed 4 July 2015).

### 5.1.1 Historical background of the emergence of refugee camps in Gaza Strip

During the 1948 Arab-Israeli war, many Palestinians were displaced from their homes and lands in historical Palestine. Palestinians sought refuge and shelter in the region, both inside and outside of historical Palestine, including in the Gaza Strip which fell under Egyptian Administration.<sup>76</sup> UNRWA was established by a resolution of the UN General Assembly No. 302 (IV) on 8 December 1949. Its mandate included direct relief and employment programmes for Palestine refugees. UNRWA started its field operations on 1 May 1950, including the provision of shelter assistance to refugees in the Gaza Strip.

The successive political systems that governed the Gaza Strip and changes introduced by them to the existing legal environment have had a significant impact on the conditions in refugee camps. These developments include:

1. The Egyptian Administration of the Gaza Strip (1948-1967):

Following the 1948 Arab-Israeli war, the Egyptian Administration governed all public affairs in the Gaza Strip. It established refugee camps by allocating areas of land owned by the State and other areas that belonged to individuals for this purpose. Pursuant to Order No. 24/1960, issued on 7 December 1960, the borders of the camps and the parcels and blocks of land within the camps were determined. In August 1964 the Egyptian Administrative Governor General issued an Order that gave owners of land within refugee camps the opportunity to exchange their land for vacant plots of State land. The Order further noted that those owners who decided not to swap land would not be able to claim any compensation or rental fees from the Egyptian Administration.

2. The Israeli Administration of the Gaza Strip (1967-1994):

The Israeli army occupied the Gaza Strip and the West Bank on 5 June 1967, following the Six-Day War of June 1967. A military administration was created in both the West Bank and the Gaza Strip. This administration issued several military orders in the Gaza Strip, including orders relating to the organisational structure and zoning of refugee camps. For example, the roads inside the camps were widened to decrease attacks against Israeli forces.

As a result of the implementation of the military orders relating to house demolitions and road widening, thousands of refugees were left homeless. In the absence of alternative housing solutions, refugees took shelter in other dwellings in the same camp, in other camps or outside of the established camps. During this period, several housing projects were built for refugees, including the Sheikh Radwan quarter in Gaza and the Tal al-Sultan quarter in Rafah, designated to provide shelter to families who had lost their homes in camps due to the expansion and re-organisation of roads. In these cases, usage rights over State land through long-term leases of up to 99 years were granted to Palestinian refugees in exchange for their housing units inside the camp that were demolished in order to build roads.<sup>77</sup>

3. The PNA (1994-present):

The signing of the Oslo Accords between Israel and the PLO in 1993 led to the establishment of the PNA in 1994. The President of the PNA, Yasser Arafat, and the first elected Palestinian Legislative Council (PLC) issued Decision No. 1 on 20 May 1994, stipulating that the laws and regulations in existence prior to 5 June 1967 shall remain in effect until unification of the laws of the West Bank and the Gaza Strip. In December 1996, the elected Legislative Council enacted several laws to unify the laws of the West Bank and Gaza Strip, but this process has not been completed to date. Notably, the PLC remained silent on the issue of land in refugee camps. The

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<sup>76</sup> Mahmoud Karim, *Conditions of Palestinian Refugees and Displaced People and the Right of Return and UNRWA and International Handling of the Problem*, 2010, p. 69.

<sup>77</sup> Order concerning Granting and Registration of Land Titles (Approval of Plan) (Gaza Strip Region) (5743/1), 1983

PNA was careful not to interfere in the affairs of the camps and the municipalities did not perform any activities in these areas. Particular care was taken to maintain the *status quo* inside the camps, trying to avoid activities that may be seen as a permanent solution for the refugees that would jeopardise their right of return. However the Palestinian judiciary has dealt with some disputes arising in the camps, as set out below.

### 5.1.2 Geographical distribution of refugee camps in Gaza Strip



*Refugee Camps in the Gaza Strip, 2015 (copyright: UNRWA).*

According to UNRWA's statistics, there are eight refugee camps in the Gaza Strip with more than 1,330,000 registered refugees.<sup>78</sup> The camps are as follows: Jabalia in the northern district; Beach, locally known as Shati, in the Gaza district; four camps in the central district: Al-Bureij, Nuseirat, Al-Maghazi and Deir Al-Balah; Khan Yunis camp in Khan Yunis; and Rafah camp in Rafah.

<sup>78</sup> This information is taken from UNRWA's website, available at: [http://www.unrwa.org/sites/default/files/in\\_figures\\_july\\_2014\\_en\\_06jan2015\\_1.pdf](http://www.unrwa.org/sites/default/files/in_figures_july_2014_en_06jan2015_1.pdf) (last visited 28 May 2015).

- **Jabalia camp** is located to the northeast of Jabalia village in the north of Gaza and was named after the village. The camp borders were delineated on an area of 1403.631 *dunams* following the decision of the Egyptian Governor No. 24 of 1960. A further 156 meters were added to the camp by Decision No. 22 of 1961, bringing the total area of the camp to 1403.787 *dunams*.<sup>79</sup> Initially, the total population of the camp was 35,000 refugees and this has increased to 110,000 registered refugees today. Jabalia is the largest refugee camp in the Gaza Strip with the highest population density.
- **Beach camp, locally known as Shati**, is located on the shores of the Mediterranean to the northwest of Gaza City and to the north of the pier in Gaza. This camp was established in 1949 in only 519.153 *dunams*, four km from the centre of Gaza city. Back in 1949, Al-Shati camp hosted 23,000 refugees. The population of the camp increased to more than 87,000 refugees, but dropped when thousands of residents moved to resettlement projects built by the Israeli occupation authorities, such as the Sheikh Radwan project. The main pre-requisite to obtaining a house in such projects was to give up the house in the camp.<sup>80</sup> Today Al-Shati camp is the third largest of the eight camps in terms of population.
- **Al-Nuseirat camp** was established in 1948 in the centre of the Gaza Strip near Al-Bureij and Al-Maghazi camps. It is one of the largest camps in the Gaza Strip in terms of population and area, located to the south of Gaza valley. The camp was established back in 1948 on an area of 558.898 *dunams* but its borders were delineated later on by the Egyptian Authorities in accordance with Decision No. 24 of 1960 that defined the borders of the refugee camps in the Gaza Strip. In the early days of its establishment, the population consisted of 16,000 refugees. Today the population has increased to more than 66,000 registered refugees.<sup>81</sup>
- **Al-Bureij camp** was established in 1949 on an area of 528.285 *dunams*. It is located to the south of Gaza City, near the eastern borders of the Gaza Strip (the Armistice Line). Initially, the number of refugees in the camp was 13,000, but this has increased to 34,000.<sup>82</sup>
- **Al-Maghazi camp** was established in 1949 and is one of the smallest camps with very narrow alleys and streets. Located in the centre of the Gaza Strip, the camp boundaries were delineated by Decision No. 24 of 1960 on 598.891 *dunams* of land. The camp was inhabited by refugees from villages located in the southern and central regions of historical Palestine. At present, there are some 24,000 refugees in the camp.<sup>83</sup>
- **Deir Al-Balah camp** is the smallest refugee camp in the Gaza Strip. Tents were provided for the original 9,000 refugees in the camp, who fled their villages in central and southern historical Palestine. With the passage of time, the tents were replaced with cement houses. Currently, more than 21,000 refugees live in the camp.<sup>84</sup>
- **Khan Yunis camp** sheltered 35,000 refugees in 1949. Its boundaries were delineated on an area of 548.63 *dunams* in accordance with Decision No. 24 of 1960 during the Egyptian Administration of the Gaza Strip. In 1981, the Al-Amal quarter was founded close to the camp to resettle the refugees in housing projects and many refugees were relocated. The total population of the camp today is about 72,000 refugees.
- **Rafah camp** is one of the larger camps in the Gaza Strip in terms of population. The camp is located in the heart of the city of Rafah and was built by UNRWA to provide shelter to refugees

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<sup>79</sup> The information is available at: <[http://www.unrwa.org/where-we-work/gaza-strip/camp-profiles?field=1&qt-view\\_camps\\_camp\\_profiles\\_block=4#qt-view\\_camps\\_camp\\_profiles\\_block](http://www.unrwa.org/where-we-work/gaza-strip/camp-profiles?field=1&qt-view_camps_camp_profiles_block=4#qt-view_camps_camp_profiles_block)> (last visited 28 May 2015).

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

in housing units constructed of brick and tin. The camp was established over 889.986 *dunams*, which were increased by an additional 100 *dunams* in Decision No. 22 of 1961. Originally, the camp population was 41,000 refugees. With the passage of time the number increased to at least 104,000 refugees according to UNRWA statistics, which amounts to two-thirds of the population of Rafah. The Israeli authorities implemented several resettlement projects outside the camp such as the residential quarter in Tal al-Sultan in 1979 that included 1,050 housing units on an area of 1,000 *dunams*. These housing units were distributed to Palestinian refugees on condition that the old homes in the camp were demolished.<sup>85</sup>

### 5.1.3 Legal framework regulating refugee camps land

Only more than a decade after the emergency creation of the refugee camps in the aftermath of the 1948 conflict, did the delineation of the camps become possible by formal allocation of State and private land by the Egyptian Administration to absorb the refugees. Pursuant to Order No. 24 of 1960, the Egyptian Administrative Governor General defined the borders of the camps, the numbers of the plots of land, and the area to be occupied by each camp in *dunams*. Decision No. 22 of 1961 added additional areas used by Jabalia and Rafah camps.

A third Decree was issued in 1964, acknowledging the rights of the original owners of camp lands, and granting alternative land for those who agreed to this arrangement. Initially, the Egyptian Administration was not looking to remove the right of ownership from the original owners who refused to give up their land in the camps, but focused on defining the boundaries of land occupied by the camps. The Decree was issued after it had become clear to the Egyptian Administration that the refugee issue could continue indefinitely. The Egyptian Administration, through the Administration for Municipal and Village Affairs, allowed owners who wanted to exchange their land for State land the opportunity to express their intent within a period of one month. In doing so, the owners would waive their ownership rights and any subsequent rights in favour of the Administration of Municipal and Village Affairs. As for those who refused the exchange, the Decree stipulates that the *status quo* will be maintained. In legal terms, the original owners who refused the exchange remained the rightful owners of the land, but their ability to use the land was restricted pending a solution to the refugee issue.

### 5.1.4 Land usage rights in refugee camps

In general, under Palestinian land law, the right to use land and benefit from it is a personal right that cannot be passed to others by inheritance or any other means. The right to benefit is of a temporary nature and it is limited to the duration of the benefit as stated in the agreement or the lifetime of the beneficiary, whichever of these two conditions occurs first.<sup>86</sup>

This is the general norm for the right of usage and benefit. However, in practice, the right to benefit the homes in the camps has been *de facto* extended in terms of duration and in terms of the beneficiary, to include also the heirs of the original refugees. This exception is understandable given that the Palestine refugee problem has not been resolved and become more of a permanent issue. The camps are still inhabited mainly by Palestinian refugees whose right to use and benefit the land there was transferred to them through inheritance.

Due to overcrowding inside the camps, an unregulated and unlawful situation emerged in which residents of the camps sold their right to use and benefit from the land (which they do not own) to other refugees, and moved outside the camps. Some non-refugees purchased homes in the camps and moved

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<sup>85</sup> *Ibid.*

<sup>86</sup> Palestinian Civil Law No. 4 of 2012, Articles 1116-1129 published in Palestinian Official Gazette (Special Edition) on 5 August 2012. This law is applied in Gaza Strip *de facto* and was issued by the Reform and Change Bloc in the Legislative Council in Gaza.

in, effectively having purchased usage rights rather than a legal title to the housing unit. However, new non-refugee residents do not benefit from the services offered by UNRWA to the refugees in the camps.<sup>87</sup>

### **5.1.5 Disputes over houses built on refugee camp land**

A typical dispute over usage rights in land in the camps may include a demand to end land encroachment or for a share in the profits following the sale of a house. In the event of a dispute – in which the heirs of the beneficiary or persons who purchased the usage rights are involved – the Palestinian judiciary has the authority to decide these disputes in accordance with the Law on Standards of Civil and Commercial Trials No. 2 of 2001. This is on the condition that the case concerns the right to use and benefit from the land, and not ownership rights. If a resident of a refugee camp claims ownership rights in the land, the court may consider the case inadmissible on the ground that the claimant has no standing, or will request the claimant to adjust the claim to be more compatible with the right of usage.<sup>88</sup>

A Gaza Appellate Court judge explained that the number of cases submitted to Palestinian courts regarding land ownership and usage rights inside camps increased during two phases: the first phase occurred following the establishment of the PNA when refugees (from outside) returned to the Gaza Strip and claimed their benefit rights like other heirs. The second phase occurred following the Israeli military operation in the Gaza Strip when some heirs living in camps demanded that heirs who benefited from homes in the camps share with them the value of the reconstruction grant offered by UNRWA for the damage caused to their homes. In some cases, the courts transferred the dispute for resolution by customary dispute resolution or mediation to end the litigation between the parties through reconciliation and mutual agreement.

### **5.1.6 Devolution of land in camps in the event of a solution for Palestine refugees**

Based on the Orders referred to above, if the refugees were to return to their homes, the land in camps would return to the Ministry for Local Government, which replaced the Administration for Municipal and Village Affairs under Law No. 1 of 1994. Based on the land exchange Decree of 1964, the land in the camps is government property, with the exception of land whose original owners refused to accept alternative land and remained the owners of private land. Although their right to use their land was restricted pending the resolution of the refugee issue, as stated in the 1964 Decree, they cannot retrospectively demand any compensation or rent from the government for the period when their ownership rights were constrained.

### **5.1.7 Legal status of housing projects established by UNRWA outside the refugee camps**

Due to the increasing population density in the refugee camps, UNRWA reached an agreement with the PNA, particularly the Ministry for Housing and Public Works, to establish housing projects for refugees on land owned by the PNA (State land) provided that the implementing party is UNRWA and that the beneficiaries are refugees. The agreement is concluded between the Ministry of Public Works and

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<sup>87</sup> The services offered by UNRWA in refugee camps in the Gaza Strip are limited to health and education services (up to preparatory stage), relief services, street lighting, and water and sewerage services. The burden of maintaining security and order lies with the existing Palestinian authorities.

<sup>88</sup> Jabalia Magistrate's Court ruling on case No. 145/2008. In this case Magistrate's Court considered the case inadmissible as it found that the petitioner had no standing. The claim was for seized land invoking an alleged right to ownership. This Court held that this could not be accepted because beneficiaries in camp lands only have the right of benefit and usage but not of ownership. In conclusion the court determined that the case should have been submitted in the correct manner focusing on the right to benefit from the land. In an interview with a judge in Gaza, NRC learned that such cases are often not rejected, but judges will rather order an amendment of the legal argument in order to enable the case to pass the admissibility test. NRC Interview with a Gaza Appellate Judge, Gaza Strip, 21 January 2013.

UNRWA as one party and the beneficiary (the refugee) as the second party.<sup>89</sup> This arrangement recognises the PNA's ownership of the land where the housing projects are built outside the camps, while the refugee enjoys the right to use and occupy the housing unit.

The responsibility to offer services to the residents of these housing projects, such as education, health, and sewage and refuse collection, is assumed by the Palestinian government and the municipality where the project is established. The role of UNRWA is limited to the construction of the housing units and it does not perform other tasks as it does in the camps.<sup>90</sup>

## 5.2 Former Settlement Land

After occupying the Gaza Strip in 1967, the Israeli authorities started to build a number of settlements in Gaza. *Kfar Darom* was the first settlement built in the Gaza Strip in 1970. The Israeli occupation authorities issued several military orders to confiscate large areas of land for settlements and settlement roads. The settlements became barriers that prevented the Gaza Strip from being an integrated body. The distribution of the settlements reveals a clear policy to dissect the unity of the northern and southern areas of the Strip. For example, *Netzarim* settlement divided Gaza Strip into two, while other settlements were located between the centre and the southern region.

In 2004, Israeli Prime Minister Ariel Sharon declared the unilateral withdrawal and the dismantling of the settlements in the Gaza Strip ("Disengagement Plan"). The Israeli army started the implementation of the Disengagement Plan in August and September of 2005 and the withdrawal from the Gaza Strip was completed on 12 December 2005, after 38 years of direct Israeli presence.

In light of Israel's unilateral disengagement, the Palestinian Cabinet agreed on 15 March 2005 on the formation of a special ministerial committee to manage issues related to the Israeli withdrawal from the Gaza Strip and the northern West Bank.<sup>91</sup> Later, the President of the PNA issued Presidential Decree No. 20 of 2005 "regarding the regions from which the Israeli occupation would withdraw", affirming the PNA's control over all properties and movable assets in the former settlements, and stating that the government would take control of these properties on a temporary basis pending a legal decision. The same Decree detailed the tasks of the ministerial committee, in addition to the formation of a special committee to examine claims by members of the public regarding their rights to property in the areas from which Israel has withdrawn.<sup>92</sup>

These developments created complications in these areas and disputes arose. Many citizens claimed ownership of land in the former settlements. Others – in their capacity as owners with the right to freely use the land as they see fit – established housing projects and investment projects, or even sold large areas of land, without taking into account the Presidential Decree. However, the PNA did not recognise their ownership right and viewed them as illegally occupying State land. The PLA conducted campaigns to evict people from this land and, in some cases, reached settlements with people there.

### 5.2.1 Nature of former settlement land

The land in former settlements in the Gaza Strip is defined as the land that was previously under Israeli control, including the former settlements and their surrounding security zones in all areas of the Gaza

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<sup>89</sup> The beneficiary of the housing unit in the housing projects must sign an undertaking form with UNRWA recognising that the land upon which the housing unit was built is owned by the PNA, and that the beneficiary and his heirs understand this as a commitment on him and his heirs, and that the beneficiary has the right to occupy the housing unit as long as UNRWA exists, or any other organization succeeding it and performing the same tasks.

<sup>90</sup> NRC interview with Mohammed Al Shayyah, legal advisor of the Ministry of Public Works and Housing, Gaza Strip, 14, November 2011.

<sup>91</sup> Decision of the Palestinian Cabinet No. 01/04/09/R.M.W/A.Q of 2005.

<sup>92</sup> Presidential Decree No. 20 of 2005 Regarding the Regions from which Israeli Occupation Troops will Withdraw, Article 4.

Strip.<sup>93</sup> Some researchers define former settlement land as ‘the land located in the yellow zone and under Israeli control’. Land was demarcated as yellow zones on the basis of agreements signed between the PLO and Israel. The jurisdiction of the PNA in these zones was incomplete or restricted.<sup>94</sup>

According to the PLA in the Gaza Strip, the majority of the land in former settlements, namely some 95 per cent, is State land.<sup>95</sup> However, some individuals have claimed ownership of large areas through the judicial process, for example in the former settlements of *Netzarim* and *Morag*. Similarly, in some cases a community has settled on former settlement land, which was subsequently classified as unregistered privately owned land. This occurred, for example, in the Al-Mawasi coastal region which extends between Khan Younis and Rafah, and in Samiri Al-Sabe to the east of Kfar Darom. This conflicts with official statements declaring the evacuated land as State land, but it appears that the PLA has no accurate statistics or detailed survey maps of this land to corroborate the official statements.

### 5.2.2 Area of land of the former settlements in the Gaza Strip

Estimates of the size of former settlement land in the Gaza Strip ranges in size between 22,307 *dunams* (6.1 per cent of the total area of the Gaza Strip)<sup>96</sup> and 46,000 *dunams* (12.6 per cent of the total area of the Gaza Strip: 365,000 *dunams*).<sup>97</sup> The Department of Liberated Land in the Gaza Strip believes that the different definitions attached to the land are one of the reasons behind the discrepancies in the figures. For example, some official organisations state that the former settlement land covers the area of land on which buildings had been constructed, while others include the built up areas inside the settlements and the security zone that surrounded all the settlements, comprising an area of 23,000 *dunams*.<sup>98</sup> It is vital to define this land accurately, and it is clear that the PLA needs to survey all land and produce accurate figures.

The following table shows the size of the built up areas inside the former settlements in the Gaza Strip by district:<sup>99</sup>

Table 3: Gaza Strip former settlements built up area

Region / district	Area of the district (square km)	Number of Israeli settlements	Built up area in the Israeli settlements (square km)	Percentage of built up area in the Israeli settlement from the area of the district (square km)
Northern Gaza	61	3	3.056	5.1%
Gaza	74	1	1.566	2.2%

<sup>93</sup> Huda Al-Liwa, *State Land and State Responsibility*, working paper on the official website of the Palestinian Legislative Council, 21 February 2011, available at: <[http://www.plc.gov.ps/ar/Research\\_details.aspx?id=49](http://www.plc.gov.ps/ar/Research_details.aspx?id=49)> (last visited 27 May 2015).

<sup>94</sup> Gaza Jericho Agreement- Annex I, Article 6, para 4, available at <<http://www.nad-plo.org/userfiles/file/Document/annex1.pdf>> (last visited 27 May 2015).

<sup>95</sup> All former settlement land is considered to be State land according to the PLA in the Gaza Strip. This was confirmed during several media interviews with PLA representatives, in addition to their official reports. See, for example, PLA, *Government Land: A Strategic Reserve for Implementation of Development Plans and Services Projects*, available at: <<http://www.pla.gov.ps/ar/?action=news&id=600>> (last visited 28 May 2015).

<sup>96</sup> ICHR, *One Year After the Israeli Evacuation from the Gaza Strip: Legal Implication for the Evacuation, Land Administration, Rural Areas*, July 2006, p. 23, available at: <<http://www.ichr.ps/pdfs/sp45.pdf>> (last visited 28 May 2015).

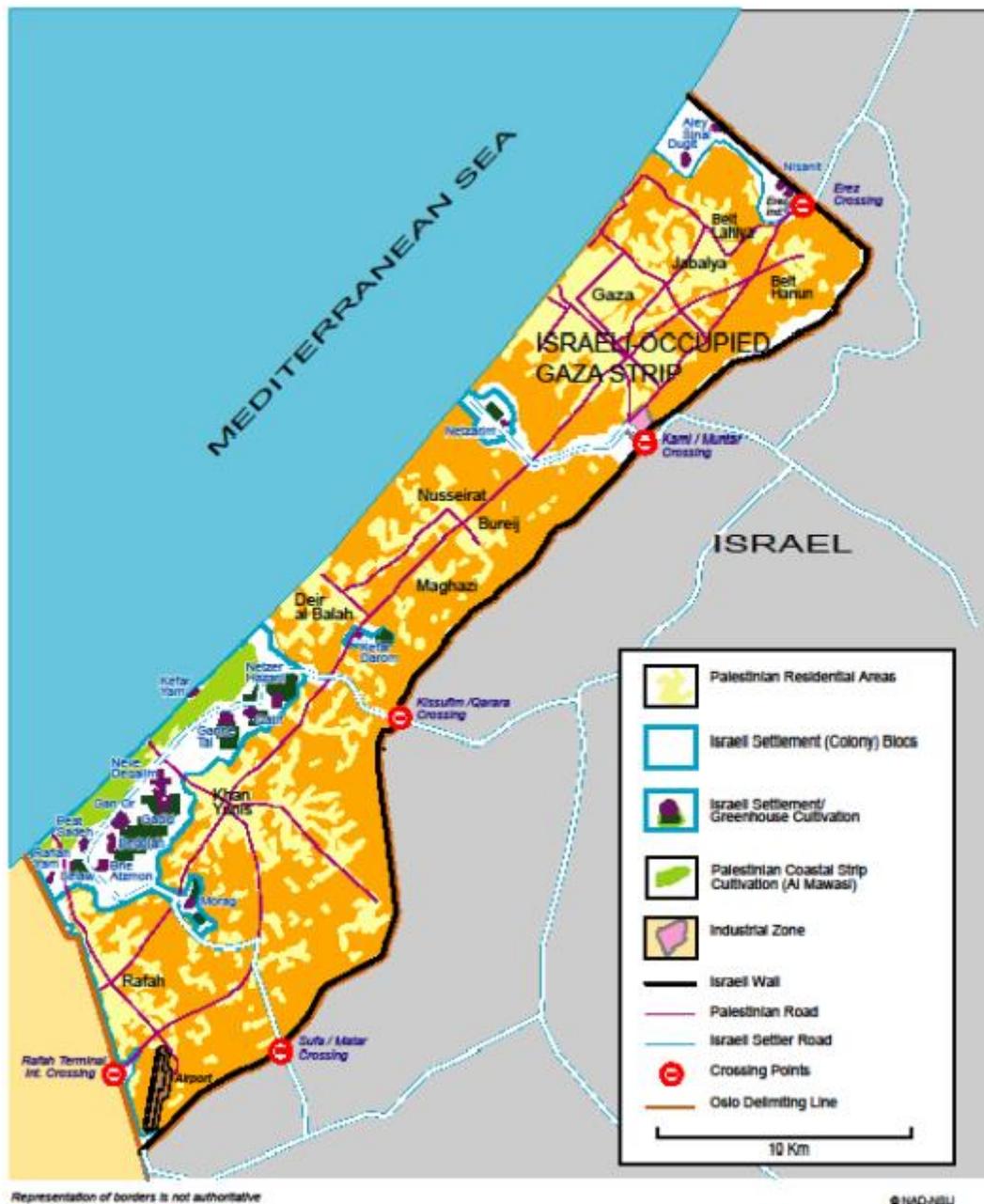
<sup>97</sup> NRC interview with Mohammed Al-Sha’er, former Director of the General Administration for Liberated Land, Gaza Strip, 28 August 2013. Al Sha’er also confirmed that most settlement land is State land with the exception of the land in *Lamirage* settlement south of Khan Younis. There are some discrepancies between official sources on the exact size of the former settlement land. The sources are inconsistent on the names and numbers of former settlements and there is an absence of statistics or an accurate land survey by the relevant authorities (PLA). There are, therefore, no definitive figures regarding the total area of land.

<sup>98</sup> *Ibid.*

<sup>99</sup> The Palestinian Central Bureau of Statistics, *Israeli Settlements on Palestinian Land*, Annual Statistical Report, 2006, p. 46.

Deir Al-Balah	58	1	0.461	0.9%
Khan Yunis	108	8	16.634	15.4%
Rafah	64	4	6.029	9.4%
<b>Gaza Strip</b>	<b>365</b>	<b>17</b>	<b>27.746</b>	<b>7.6%</b>

The following map shows the geographical location of the former settlements in the Gaza Strip.



Map of former settlements in the Gaza Strip, Palestinian Liberation Organization, Negotiations Affairs Department, 2005

### 5.2.3 Bodies responsible for the administration of former settlement land

The General Administration for Liberated Land was established by the Palestinian Cabinet in 2007 as the body responsible for former settlements land.<sup>100</sup> Although it answers directly to the Palestinian

<sup>100</sup> Palestinian Cabinet Decision No. 1 of 2007 regarding the Establishment of the General Administration for Liberated Land (3/40/10/M.W/A.H) of 2007.

Cabinet, this administration enjoys a legal personality and financial and administrative independence to perform its tasks.

Article 2 of the decision of the Palestinian Cabinet stipulates the authority and responsibilities of this administration. The article states that “[t]he General Administration for Liberated Land shall perform all tasks necessary to manage the evacuated settlements, protect invest, and supervise them and guarantee that they are used and invested in the best possible manner”. This administration has the right to establish a natural resources office to perform the following tasks:

1. To protect the assets of the evacuated settlements, such as greenhouses, wells, and networks.
2. To protect the forests and dunes and administer them according to regulations.
3. To end encroachments on State land and coordinate with the Ministry of Interior to remove offenders.
4. To perform all tasks necessary to manage the former settlements, protect them and administer them in all ways possible.<sup>101</sup>

The Ministry for National Economy manages and collects the fees on the sand and stone quarries on the liberated land. As all liberated land has been designated as State land, the PLA, through the General Administration for Government Properties, is obliged to ensure that encroachment on former settlement land is prevented, as well as nominate appropriate land for government projects. The Head of the PLA and the Head of the Administrative Board for Liberated Land are required to work together to sign special contracts on greenhouses on condition that 80 per cent of the rent payments will go to the General Administration and 20 per cent go to the PLA.<sup>102</sup>

#### **5.2.4 Making use of land in the evacuated settlements**

Official statistics from the PLA show that an area of 7,658 *dunams* of former settlement land was classified as State land and is used primarily for agricultural projects. An area of 2,110 *dunams* was further designated for housing projects, in addition to the establishment of health institutions, schools and universities. One of the most important housing projects is the Bisan neighbourhood project on 606 *dunams* of former settlement land in northern Gaza. There are also housing projects on former settlement land in the Khan Yunis district; Al-Buraq Quarter project on an area of 864.4 *dunams*; Al-Isra’ Quarter project to be implemented on 517 *dunams*; and the Sheikh Hamad Ben Khalifah city housing project on an area of 400 *dunams*. The allocation of former settlement land to these projects is through a ministerial committee based on the premise that it is State land.<sup>103</sup>

#### **5.2.5 Legal status of former settlement land and legal disputes**

The legal arrangements and procedures established by the Palestinian Authority with regard to the Israeli disengagement plan and withdrawal were limited to the formation of a ministerial committee to oversee the development of former settlement land. The committee was also required to define the procedures for filing legal claims with respect to this land.<sup>104</sup>

As discussed above, the Presidential Decree No. 20 of 2005 “regarding the regions from which the Israeli occupation would withdraw” affirmed the PNA’s control over all properties and movable assets

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<sup>101</sup> *Ibid.*

<sup>102</sup> The Palestinian Land Authority, *Liberated Land*, available at: <<http://www.pla.gov.ps/ar/?action=pages&id=246>> (last visited 28 May 2015).

<sup>103</sup> Decision of the Palestinian Cabinet in the Gaza Strip No. 3/27/11/M.W/A.H of 2007, 27 August 2007.

<sup>104</sup> ICHR, *One Year after the Israeli Evacuation from the Gaza Strip: Legal Implication for the Evacuation, Land Administration, Rural Areas*, July 2006, pp. 17-25, available at: <<http://www.ichr.ps/pdfs/sp45.pdf>> (last visited 28 May 2015).

in the former settlements and stated that the government would take control of these properties on a temporary basis pending a legal decision.<sup>105</sup>

Article 4 of the Decree permitted any person to submit an application claiming ownership of assets. The application was to be submitted to a committee of the following members: Head of the PLA, Minister of Interior and Security, the Finance Minister, Minister of Public Works, and the Governor in the area where the application was submitted. The Article also granted the right to appeal to the Palestinian courts if the individual was affected by the decision of the committee. As the Decree did not set a time limit for the submission of claims to the competent committee, applications may be submitted at any time.<sup>106</sup>

Article 2 of the same Decree banned all encroachments on former settlement land in order to preserve public property and State assets. However, the Decree does not establish clear procedures to counter encroachment and it is unclear whether the ordinary procedure in case of encroaching State land elsewhere in the Gaza Strip will apply. Residents who took over government and other land have not been penalised at the time of writing. Residents have also continued to sell former settlement land without taking this presidential Decree into account.

It should be noted that the PLA still applies the law in effect in the Gaza Strip, which is Order No. 575 of 1957 issued by the Egyptian Governor. Article 6 of this Order stipulated that: “[c]laims and petitions are to be submitted to the Land Registration Administration in Gaza [...] within 30 days of the date of publishing the registers for those residing in Gaza and within 3 months for those not residing in the Gaza Strip. Any claim or petition submitted after the deadline shall not be considered and a judicial order is required to reconsider such claims.” Article 14 covers the new registrations and states that the documents necessary under this law are the original documents to prove a registered right. Article 15 allows any person who claims a registered right in the lost register to submit a petition to the *Tabu* department at the PLA that includes the official documents and the fees due within 30 days from the date of publication of the Order. In light of this, the PLA takes the position that any person who has a claim to former settlement land, but failed to register it with the relevant authorities during the Egyptian Administration, has lost his/her rights and ownership of the land. As a result, the land has reverted to the government.

For example, individuals who claimed ownership of land in the Al-Mawasi area, which they call Al-Mandoub land, did not register it within the time limit declared by the Egyptian Governor back in 1957. As such, in the view of the PLA, this land is not private land but registered in the name of the Egyptian Governor as State land.<sup>107</sup> In this context, it is recalled that Law No. 5 of 1960 prohibits the acquisition of State land and of *Waqf* land through adverse possession.<sup>108</sup> Therefore, the PLA in Gaza contends that an individual who has not registered ownership of the land according to Order 575 of 1957 must be regarded as a trespasser. Law No. 5 of 1960 authorises the government to end the trespass in the public interest.

In reality, the PLA classifies encroachment on land into two categories: the first relates to individuals who lived in the geographical surroundings of this land while the Israeli settlements were present. The second category relates to persons who resided within the area of former settlements.

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<sup>105</sup> Presidential Decree No. 20 of 2005 Regarding the Regions from which Israeli Occupation Troops will Withdraw.

<sup>106</sup> This is the reason why some cases concerning land ownership in the former settlements are still pending in the Gaza courts. For example, the 2011 claim of the Odeh family to the Gaza Court of First Instance asking the Court to recognise their right to a plot of land of about 2000 *dunams* in the former *Netzarim* settlement. (This information is based on a telephone conversation between an NRC lawyer and the attorney of the Odeh family, Jamil Sarhan, on Wednesday, 4 September 2013.)

<sup>107</sup> NRC interview with Hasib al-Rai, former Director of Ministry of Finance of Property Tax Directorate, 5 February 2013.

<sup>108</sup> See, *supra*, section 3.2 and section 4.5 of this Practitioner’s Guide for an in depth discussion of Law No. 5 of 1960.

An example of the first category concerns many people who lived in the area surrounding *Netzarim* settlement and in the Al-Mawasi area near to the *Gush Kateef* settlement bloc. The Israeli authorities warned the residents that they must evacuate the area as it was State land, but the residents refused in order to protect the land from any expansion of the settlements. PNA institutions offered support to the residents in those areas to keep them inside the buffer zones of the settlements.<sup>109</sup> Following the Israeli withdrawal, the PLA informed the families claiming ownership of former settlement land, that this was State land registered at the *Tabu* department in the name of the Egyptian Governor. As such, the land is State property belonging to the PNA. The residents were further informed that any person who encroaches on or sells this land would be held accountable by law.<sup>110</sup> Whilst the PLA started a campaign to end encroachment on former settlement land, some consideration was given to those who resided and remained on the land over the years, protecting it from settlement expansion. On the whole, the residents of such areas contested the government plans and resisted the evacuation orders.

To address this situation, the PLA proposed to treat this land as *mahlul* (State) land, which means that it would reach a settlement with anyone who occupied this land prior to 2005. The government issued Decision No. 13/232/11/M.H/A.H of 2012 to deal with what is considered to be encroachment on land deemed by the PLA as *mahlul* land. A special committee was formed to conduct a field survey of the land in order to determine its size and identify the original people who occupied and resided in the land in order to reach a settlement with them. This process introduced an arrangement that involves registering about 45 per cent of the land in the name of the occupiers, while they pay an amount equal to 20 per cent of the estimated value of the land as an advance payment, receive a 20 per cent discount of the value of the land, and commit to pay the remaining amount (60 per cent) within a period of ten years before registering the land in their names at the PLA. This land purchase arrangement adds certainty to the legal status of unregistered land.<sup>111</sup>

The second type of violation covers individuals who encroached on former settlement land following the Israeli withdrawal and the evacuation of the settlements and sold the land. The PLA continues to apply Law No. 5 of 1960, Article 1, which treats this behaviour as a legal violation against the State which the relevant administrative body has the right to correct in order to safeguard State assets. The PLA does not consider that these individuals enjoy any rights in this land, nor will these individuals be included in any settlement offered by the PLA.

An additional problem arises given that the Ministry for Local Government has confiscated land owned by the residents of the area, especially those on land of the former settlements, in order to open and widen roads or to implement zoning plans for cities and villages based on the Cities Planning Ordinance of 1936. The local authorities have confiscated the land based on this Ordinance without offering any compensation. If individuals fall within the first category, the authorities must refrain from implementing the Ordinance because it conflicts with the requirements in Article 21(3) of the Palestinian Basic Law for a judicial process and fair compensation.<sup>112</sup> If the confiscated land falls in the second category, these individuals do not have any legal claim towards the land. The competent authorities must, however, make sure that when evacuating them, these people will not become homeless. In such instances where this may occur, the authorities will need to develop arrangements to provide the persons evicted from the land with adequate housing in accordance with Article 23 of the Palestinian Basic Law.

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<sup>109</sup> As part of the work of the NRC's mobile legal clinic in the Al-Mawasi region on 29 April 2013, an NRC lawyer examined the notices and warnings sent by the Israeli army to individuals who had taken over land. These notices included evacuation orders.

<sup>110</sup> Palestinian Land Authority, *Press Release Concerning the Land of the Former Settlement of Nitzarim and Mahloul Land*, 2 February 2012, available at: <<http://www.pla.gov.ps/ar/?action=news&id=516>> (last visited 31 May 2015).

<sup>111</sup> Palestinian Cabinet Decision No. 13/232/11/M.H/A/H of 2012.

<sup>112</sup> This provision of the Palestinian Basic Law stipulates that private property can only be confiscated for the public benefit, in accordance with the law, and in return for fair compensation. Clause 4 prohibits confiscation without a judicial ruling. See also, *supra*, section 2.1.6 on the main challenges related to private land.

## Conclusion

Land law in Gaza remains complex and confusing for a range of historical, political and legal reasons. In order to navigate one's way through the maze of laws, ordinances, orders and regulations one must be a legal historian and scholar as well as a skilled and meticulous lawyer. Unfortunately neither the Gaza Strip nor Palestine as a whole has yet enjoyed a period of political stability sufficient to allow for the passage of a unified land law. Despite and because of this situation, security of tenure remains of critical importance for many Palestinian refugees and other residents of Gaza.

As a result of the Palestinian–Israeli conflict, a massive influx of refugees sought refuge in the Gaza Strip since 1948. UNRWA was established with the mandate to provide relief for Palestine refugees. The Egyptian Administration allocated the land already occupied by refugees in camps and demarcated the camp boundaries in order to legitimise refugee presence on such land, giving them a right of usage but not of ownership.

After more than 50 years, Palestine refugees still live in camps. Their right of usage in camp land – a personal right which is not supposed to be transferred through inheritance –has in fact been passed from generation to generation. After 1967, several Israeli settlements were established in different locations in the Gaza Strip. Following the 2005 Israeli withdrawal, the legal status of former settlement land is somewhat unclear, as different claims have been made regarding the ownership rights, and disputes have arisen between alleged landlords, unlawful occupants, and the government.

The 'no statute of limitations over State and *Waqf* land' Decree of 1960 also creates security of tenure issues for thousands of people who have resided on these land types for decades with no ownership rights. While protecting State and *Waqf* land and putting those lands to good use is important, it is equally important to provide shelter solutions for the people residing on State and *Waqf* land.

Several other challenges have arisen over time that need to be addressed to ensure proper land administration. Much of the land in the Gaza Strip has remained unregistered and uncertainty over the appropriate procedures for land registration continues to plague landowners and those who inherit land. Adding to the confusion is the fact that different names and classifications are often applied to unregistered land. These factors jeopardise legal safeguards for owners of unregistered land, who are estimated to own approximately 30 per cent of the total area of the Gaza Strip; indeed, over 70 per cent of the privately-owned land in Gaza is unregistered. The fact that large swathes of land in the Gaza Strip remains unregistered is problematic in and of itself, raising issues of security of tenure and possible land disputes.

It should be noted that an important percentage of such unregistered land has records at the Ministry of Finance – Property Tax Directorate due to the settlement project implemented later on by the Egyptian Administration in 1957. Clearly, this registration is different from the official land registry, the *Tabu*, and is not a conclusive evidence of ownership rights.

Another complicating factor is the PLA's interpretation of Decree 575 of 1957 and the broad classification of State land. Apparently, many of those who claim to have a legal title to the land did not come forward during the one month window of opportunity created during the Egyptian Administration to raise their title claims and thus the land was declared to be State land. This, in turn, has triggered disputes between individuals and the government.

Finally, some elements of legislation by the different governing authorities nowadays contradict the Palestinian Basic Law. For example, the Urban Planning Ordinance of 1936 allows the transfer of private land for public benefit without compensation.

However the current bleak context following the destruction of much of the Gaza Strip in the July/August 2014 conflict may in fact present an opportunity for Gaza to promote security of tenure, facilitate the resolution of land disputes, and improve good governance. This would depend on a high

level of engagement by international stakeholders in ongoing reconstruction efforts, combined with meaningful political progress at the domestic level. Such an approach would use the housing and shelter needs of refugees and IDPs as a platform for action. The first step would be to finalise the process of surveying the approximately 30 per cent of 'unsurveyed' land in Gaza. A second step would be to mainstream HLP rights and international protection standards across all decision-making process in relation to transitional and longer-term shelter options. A third step would be to develop efficient mechanisms for resolving land disputes and identifying durable solutions for persons with irregular or insecure land tenure. A fourth step would be to utilise the existing political opportunity to unify land law in the Gaza Strip. A fifth step would be to facilitate registration of unregistered land by removing the financial obstacles to the registration of privately owned land. The combination of these steps would constitute a major land reform initiative in the Gaza Strip which would not only provide security of tenure for many thousands of persons, but would streamline land administration in the Gaza Strip and contribute significantly to the economic development of Gaza by ensuring a secure and reliable system of land title registration.

## Annex I: Legislation Relevant to Land and Property Administration in the Gaza Strip

No.	Legislative Period	Legislation or Regulation	Year
1	The Ottoman Period (1517 – 1917)	The Ottoman Land Code 1858	1274 <i>Hijri</i>
2		The provisions of the Majallah (Civil Code Gazette) of 1285 Hijri	1285 <i>Hijri</i>
3		Law granting title deeds for State land ( <i>Tabu</i> Law)	1275 <i>Hijri</i>
4		Regulations for title deeds	1276 <i>Hijri</i>
5		Law issuing title deeds for the benefit of <i>Waqf</i> funds	1293 <i>Hijri</i>
6		Law extending inheritance rights to <i>Miri</i> (State) land users	1284 <i>Hijri</i>
7		Law on the right of foreigners to possess non-transferable assets in the Ottoman Empire	1284 <i>Hijri</i>
8		Law on selling non-transferable funds to pay debts	1288 <i>Hijri</i>
9		Law expanding the transfer of buildings and holdings dated 2 of Al-Qeda (unofficial translation of title)	1285 <i>Hijri</i>
10		System of rental of non-transferable assets	1299 <i>Hijri</i>
11		Law on transfer of non-transferable assets by inheritance	1331 <i>Hijri</i>
12		Law on rights of some companies to possess non-transferable assets	1331 <i>Hijri</i>
13		Law on defining non-transferable assets in the form of insurance	1331 <i>Hijri</i>
14		Law on regulating the right to use non-transferable assets	1331 <i>Hijri</i>
15		Law on division of non-transferable joint assets	1332 <i>Hijri</i>
16	British Mandate Period (1917 – 1948)	Law on land transfer	1920
17		Law on dead land	1921
19		Law on land courts	1921
20		Regulations on establishment of the Islamic Higher <i>Shariah</i> Council	1921
21		Palestine Order in Council	1922
22		Inheritance Law	1923
23		Charitable <i>Waqf</i> Law	1924
24		Arbitration Law	1926
25		<i>Waqf</i> Law (General Mutawalli)	1925
26		Law on settlement of land title deeds	1928
27		Law on area of land	1929
28		Law on disputes resulting from seizure of land	1932

29		Amendment to the Palestine Order in Council	1933
30		Amended Land (amending the Ottoman Land Code)	1933
31		Law on dividing non-transferable joint assets	1933
32		Law on the protection of farmers	1933
33		Law on City Planning	1936
34		Rules of Arbitration of 1937	1937
35		Regulations on Land Transfer Fees	1939
36		Regulations on Land Transfers	1940
37		Law on Public Land	1942
38		Law on Land Registers	1944
39		Regulations for the Charitable <i>Waqf</i> (General <i>Mutawalli</i> )	1947
40		Law on land valuation (appraisal)	1947
41	Egyptian Administration of the Gaza Strip  (1948 – 1967)	Law annulling <i>Waqf</i> to non-benefits of 1954 issued upon Order No. 297 and amended by Order No. 317	1954
42		Order No. 364 of 1955 establishing a committee to supervise the affairs of the Greek Orthodox Church and administer its donations and <i>Waqf</i> properties.	1955
43		Order No. 564 of 1957 establishing the Islamic <i>Waqf</i> Administration.	1957
44		Order No. 575 of 1957 on the Administration of the Land Registration Authority.	1957
45		Law No. 5 of 1960 prohibiting the possession of privately owned by the State or public figures, including <i>Waqf</i> assets, or any rights in kind to them.	1960
46		Law No. 13 of 1962 regarding obligatory bequests.	1962
47		Decision of the General Governor No. 10 of 1964 on exempting charitable <i>Waqf</i> land from registration fees.	1964
48		Decision of the General Governor No. 47 of 1964 establishing a committee to appraise the value of land.	1964
49		Law No. 1 of 1965 on the application of inheritance provisions in Islamic <i>Sharia</i> to all <i>Miri</i> land.	1965
50		Amendment to Law No. 8 of 1966 (by adding a second Article 1 on a statute of limitations to deny claims of any right in kind for a previous period in non-transferable properties and assets).	
51	Amendment to Law No. 5 of 1965 (by adding a second Article 1 on a statute of limitations to deny claims of any right in kind for a previous period in non-transferable properties and assets).	1966	
52	The Palestinian Authority  (1994 – present)	The Environment Law No. 7	1999
53		The Arbitration Law No. 3	2000
54		The Standards of Civil and Commercial Trials No. 2	2001
55		The Evidence Law No. 4	2001
56		The Palestinian Amended Basic Law	2003
57		The Palestinian Civil Law No. 4	2012
58		The Palestinian Rental Law No. 5	2013

## Annex II: Encroachments on State Land in the Gaza Strip

No.	Plot number	Type of violation	Area in square meters	Region	Number of houses	Year of violation
1	1746	Agricultural + housing	293684	Bet Lahia	30	Prior to 1994
2	1748	Agricultural + housing	74478	Bet Lahia – Dawwas Manor	50	Prior to 1994
3	1749	Agricultural + housing	78585	Bet Lahia – Dawwas Manor	62	Prior to 1994
4	1759	Agricultural	34000	Bet Lahia – Al-Shaima'		Prior to 1994
5	1742	Agricultural + housing	429887	Al-Salateen – Al-Atatra	85	Prior to 1995
6	1745	Agricultural	119703	Bet Lahia – south of liberated Dougeet settlement		Prior to 1995
7	1777	Agricultural	102000	Bet Lahia		After 2006
8	1767	Agricultural + housing	18000	Bet Lahia	4	Prior to 1994
9	966	Agricultural + housing	26406	Bet Lahia – Al-Na'jeh Well	60	Prior to 2006
10	962	Housing	55570	Jabalia – Al-Na'jeh Well	80	Prior to 2006
11	978	Housing	92000	Bet Lahia – Al-Sudanieh – Intelligence HQ – Gaza Al-Mashtal	203	Prior to 2006
12	719	Housing	6500	Gaza Al-Tuffah – Al-Mahatta	38	Prior to 1994
13	683	Agricultural	194471	Gaza – Al-Zaytoun – Al-Maslakh		Prior to 1994
14	684	Agricultural	62366	Al-Zaytoun – north of Qureish site		Prior to 1994
15	682	Agricultural	814865	Gaza – north of liberated Netzarim settlement		Prior to 1994
16	675	Agricultural	20000	Gaza – west of liberated Netzarim settlement		Prior to 1994
17	974	Agricultural + housing	45668	Bet Lahia Al-Isra' Quarter	34	Prior to 2006
18	707	Housing	2500	Gaza – west of Energy Authority	13	Prior to 1994
19	642	Agricultural + housing	10000	Gaza – West of Al-Maslakh	5	Prior to 2006
20	916	Agricultural + housing	5000	Jabalia Abed Rabbo Mansion	12	Prior to 1994
21	916	Agricultural	6000	Jabalia Abed Rabbo Mansion		Prior to 1994
22	34	Agricultural	155209	Rafah		After 2006

23	2360	Agricultural + housing	864544	Rafah	15	Prior to 1994
24	2362	Agricultural	60279	Rafah		2006
25	2363	Agricultural + housing	162238	Rafah	22	After 2006
26	2364	Agricultural + housing	425284	Rafah	72	Prior to 1994
27	2365	Agricultural	666045	Rafah	55	After 2006
28	2366	Housing	401226	Rafah	40	After 2006
29	2374	Agricultural + housing	631666	Rafah	10	Prior to 1994
30	2375	Agricultural	436447	Rafah		After 2006
31	2376	Agricultural + housing	186581	Rafah	12	Prior to 1994
32	66	Agricultural + housing	63358	Khan Yunis	4	After 2006
33	80-88	Agricultural + housing	688599	Khan Yunis	423	After 2006
34	90	Agricultural + housing	378622	Khan Yunis	3	Prior to 1994
35	92-93	Agricultural + housing	761579	Khan Yunis	48	Prior to 2006
36	95-96	Agricultural + housing	667025	Khan Yunis	4	Prior and after 1994
37	97	Agricultural + housing	79704	Khan Yunis	8	After 2006
38	127	Housing	52998	Deir Al-Balah	45	1998
39	2351	Agricultural + housing	287665	Deir Al-Balah	62	1995

## Annex III: Geographical Location of Former Main Settlements in the Gaza Strip

- **Nisanit (1) and (2):** currently named Nahawand Liberated Land. This was one of the largest settlements in the northern Gaza Strip. It covered an area of 1610 *dunams* and is located five km to the east of the coast and around 1.5 km to the south of the northern borders. This settlement does not fall under the responsibilities of the General Administration for Liberated Land.
- **Dugit:** currently named Badr Liberated Land. This settlement occupied about 600 *dunams* of land in the northern Gaza Strip. It is located about one km away from the coast and two km south of the northern border of the Gaza Strip. This settlement is also outside the jurisdiction of the General Administration for Liberated Land.
- **Elei Sinai:** now named Akka Liberated Land. It occupied 500 *dunams* of land in the northern part of the Gaza Strip. It is located one km from the coast and is very close to the borders of the northern Gaza Strip. It is also outside the jurisdiction of the General Administration for Liberated Land.
- **Netzarim:** currently called Taibeh Liberated Land. This settlement occupied around 1760 *dunams* to the south of Gaza City. It was a significant settlement due to its location in the centre of the Gaza Strip. Netzarim was isolated from the other settlements and was established in the midst of a crowded Palestinian community for strategic purposes to control the Gaza Strip, its coast and seaport. It was also strategic as it allowed Israeli troops to divide the Gaza Strip into two halves and exert control over them. Several areas of the land have been allocated for public and private sector projects, including the Turkish Hospital project.
- **Kfar Darom:** currently named al-Qastal Liberated Land. It occupied around 700 *dunams* to the east of Salah Eddin Street, 500 meters from Deir Al-Balah and 3 km from the sea to the east. It lies 3 km to the west of the borders of 4 June 1967. Several agricultural projects were implemented on the land in cooperation with the Palestinian Agriculture Ministry and the General Administration for Liberated Land. Recently, land in the settlement was allocated to start a housing project.
- **Netzer Hazani:** currently named Hittin Liberated Land. It is located 2 km to the east of the coast and lies between Deir Al-Balah and Khan Yunis. It is about 2038 *dunams* in size.
- **Ganei Tal:** Now named Tal Jinan Liberated Land. It occupied about 2450 *dunams* of land in the Khan Yunis district. It is located 1.5 km to the south of Katif settlement and 2 km to the northwest of the Khan Yunis area. It lies about 1.5 km to the east of the sea in the southern part of the Gaza Strip.
- **Katif and Tal Katif:** currently named Ya'bad Liberated Land. The two settlements occupied about 1993 *dunams* located 2 km to the east of the coastline. There is currently a security post in Tal Katif settlement, now named Ajnadeen Liberated Land. An area of 400 *dunams* has been allocated to build the Hamad housing complex with Qatari funding.
- **Neve Dekalim:** This settlement was built on the sand dunes and was the largest of the Gush Katif settlement bloc with an area of 1711 *dunams*. It is 1.5 km from the sea and one km from the southern borders of the Gaza Strip. Currently, most of the land has been used to construct the buildings for Al-Aqsa University in Khan Yunis, but part of the land was used to serve the Interior Ministry.
- **Gadid:** currently called Yarmouk Liberated Land. This settlement occupied 1487 *dunams* from the Khan Yunis district in the south of the Gaza Strip. It is located to the east of the sea and south of Khan Yunis camp.
- **Gan Or:** currently named Hamra' Al-Asad Liberated Land. It is located 2 km to the east of the sea and 4 km from the southern borders of the Gaza Strip. It occupied around 1692 *dunams* of land in the Khan Yunis district.
- **Bedolah:** currently named Ein Jalout Liberated Land. It is located 2.5 km to the east of the sea and about 3.5 km from the southern borders. It occupied 1456 *dunams* of land in Rafah.

- **Bnei Atzmon:** currently named Safad Liberated Land. It is located 3 km from the sea and 3 km from the Egyptian border. It is an area of about 882 *dunams* and has been joined to land from Bedolah settlement.
- **Peat Sadeh (1) and (2):** currently named That Al-Sawari Liberated Land. This settlement was 2 km from the sea and 2 km from the Egyptian border. Its size is about 574 *dunams*.
- **Morag:** This settlement is located to the east of the western road that connects Khan Yunis and Rafah. It is located 6 km from the sea and 5 km to the west of the eastern border of the Gaza Strip. It covers about 1400 *dunams* of land in Rafah. Currently, residents returned to their land following the Israeli withdrawal because they hold valid and sound titles to the land registered at the Land Registration Department that prove that they have owned this land for a long period of time.
- **Rafiah Yam:** This settlement occupied around 574 *dunams*. It is located 1.5 km from the sea close to the border with Egypt.
- **Kfar Yam:** It is located on the coast on an area of 100 *dunams*. Although the area of this settlement is small compared with the other settlements, it had strategic importance due to its location overlooking the main road along the sea and the Al-Mawasi region.







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