



Integrating Land Governance into the Post-2015 Agenda
Harnessing Synergies for Implementation and Monitoring Impact

Annual World Bank Conference on Land and Poverty Washington DC, March 24–27, 2014

**UNSETTLED LAND: THE ROLE OF HUMANITARIAN ORGANIZATIONS IN
FOSTERING TRANSPARENCY AND ACCOUNTABILITY IN GAZA STRIP LAND
ADMINISTRATION**

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**Paper prepared for presentation at the
“2014 WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, March 24-27, 2014**

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Abstract

With more than 1.7 million people inhabiting less than 365 square kilometers, the Gaza Strip is one of the most densely populated places in the world. The seven-year Israeli-imposed blockade has resulted in rapid de-development of the economy and infrastructure. Yet within the broader Israeli-Palestinian context, insufficient attention has been paid to land administration practices in the Gaza Strip. The specific manner in which conflict has impacted the Gaza Strip over more than six decades has imposed a particular burden upon humanitarian organisations with regard to land and property issues. Recent evictions of long term occupants from state land and large scale land expropriation for road construction by *de facto* authorities in Gaza Strip have caused the displacement of hundreds of families. Such practices underscore the urgent need for humanitarian organisations to foster transparency and accountability in land administration in the Gaza Strip and promote compliance with international standards and practices. Humanitarian organisations are well placed to play a key role in promoting good land administration in the Gaza Strip by monitoring the impact of government policies, coordinating shelter and protection responses for displaced persons and promoting community empowerment through greater awareness of housing, land and property rights.

Key Words:

Evictions, Gaza, Humanitarian Organisations, International Standards, Land Administration

Biographical notes

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Introduction

With more than 1.7 million people inhabiting less than 365 square kilometers, the Gaza Strip is one of the most densely populated places in the world. The seven-year Israeli-imposed blockade has resulted in rapid de-development of the economy and infrastructure. More than half of the Gaza Strip's population is food insecure and cannot afford to buy sufficient food. Nearly 80 percent are dependent on international aid. . The UN predicts that if conditions do not improve, the Gaza Strip may be unsustainable for the local population by 2020. Yet within the broader Israeli-Palestinian context, in which territorial and related resource and human rights issues underscore much of the protracted conflict, insufficient attention has been paid to the administration and status of land in the Gaza Strip.

In an area where land scarcity is exacerbated by the blockade and other practices of occupation and conflict, land usage is further complicated by a frail and non-transparent system of land administration that has further complicated development, humanitarian assistance and overall conflict resolution. The relevant Hamas *de facto* authorities in the Gaza Strip often rely on antiquated Ottoman, British Mandate and Egyptian administration-era laws, which add confusion and fail to meet international standards for security of tenure and compensation for loss of land.

Recent urban planning and land administration initiatives in the Gaza Strip reveal a host of problems. As part of a drive to reclaim state land and expand road networks, local authorities have resorted to employing two types of land administration actions: (1) eviction, and resettlement elsewhere, of unauthorized users of state land, and (2) construction of roads that were previously planned but never implemented. The eviction and land expropriation practices have had a serious negative impact on affected Gaza Strip residents. In many cases, these practices have exacerbated displacement caused by conflict and poverty in the Gaza Strip.

In the context of the volatile Gaza Strip conflict environment and its multiple historical waves of displacement, eviction of a large group of community members who have lived on state land for decades raises humanitarian and protection considerations, even if carried out for legitimate land administration and urban planning purposes. Expropriation of private community members' land for the purpose of road construction strips an already impoverished community of a critical asset – namely land – and further increases humanitarian needs.

In general, any humanitarian and development efforts to assist greater security of tenure or transparency in land administration in the Gaza Strip are hindered by, among other issues, the Israeli occupation and blockade, the imposition of the Access Restricted Area at land and sea by Israel, ongoing military conflict, internal Palestinian political division, a convoluted legacy of antiquated and often contradictory land legislation, construction material shortages, and measures that limit engagement with Hamas, the *de facto* authority in the Gaza Strip. The severe restrictions at the Rafah border crossing imposed by Egypt, significantly magnify the present humanitarian crisis in the Gaza Strip.

Despite these challenges, intervention by humanitarian organizations to support and foster transparency and accountability in land administration in the Gaza Strip is needed. This paper will set out the contextual factors in Gaza, including the humanitarian context, the complex land law regime, and the key actors. It will then elaborate on current trends in land administration that have resulted in evictions, displacement and expropriation of land. The paper will then set out relevant international law standards regarding housing, land and property rights before concluding with an analysis of the role that humanitarian organizations can play in promoting good governance in Gaza Strip land administration. It is contended that humanitarian organizations can play a critical and positive role in: (1) empowering community members to understand and realize their housing, land and property rights; (2) monitoring and analyzing policies and practices that result in displacement; (3) facilitating and coordinating effective joint action amongst stakeholders, and (4) promoting adherence to internationally recognized standards and development guidelines.

1 Gaza Strip Land Law

1.1 Developing Land Governance in the Humanitarian Context

Development and humanitarian actors often face the dilemma of prioritizing traditional development activities, such as land governance, in the context of ongoing conflict or more immediately-pressing humanitarian, protection and access concerns. In the Gaza Strip context, ongoing humanitarian protection and access concerns are driven most notably by:

- *Military Activity* – Military actions, mainly by Israeli forces, but also by armed Palestinians, have posed the most direct and ongoing security, human rights and humanitarian threat to Gaza Strip civilians and their land and property. Two large-scale Israeli military operations conducted against the Gaza Strip within the past five years have had an especially devastating impact and

resulted in the destruction of thousands of homes, the leveling of huge areas of land, and the displacement of thousands of Gaza Strip residents, in addition to thousands of civilian deaths and injuries. During Israel's 2008-2009 "Operation Cast Lead" military operations in the Gaza Strip 3,481 houses were totally destroyed, 2,755 suffered major damage and 55,000 more sustained minor damage. Likewise, the November 2012 military escalation and Israel's "Operation Pillar of Defense" caused total destruction or major damage to 382 housing units and minor damage to 8,000 additional housing units.

- *Restrictions on Access to Land* – The Israeli military imposes a buffer zone, known as the Access Restricted Area (ARA), on Gaza Strip territory. This zone reaches up to 1,500 meters inside the Israeli boundary fence that separates Israel from the Gaza Strip. The ARA comprises 62.6 square kilometers, or roughly 17 percent of the Gaza Strip's territory and 35 percent of its agricultural land. An estimated 24.4 square kilometers of this land has been completely leveled by frequent Israeli incursions and will require significant investment to be re-developed or made suitable for farming. Israeli forces have demolished nearly all structures in ARA areas up to 300 meters inside the Gaza Strip and approximately 70 percent of structures located between 300 and 600 meters.
- *Hamas Takeover of the Gaza Strip* - Following their parliamentary election victory in 2006, the Islamic Resistance Movement, Hamas, executed a military takeover of the Gaza Strip in mid-2007 and since then has functioned as the *de facto* Gaza Strip government. Because Hamas is designated as a terrorist organization by many Western countries, foreign aid to the Gaza Strip and the PLC, Hamas or Hamas affiliated entities as well as international agencies working in the Gaza Strip is restricted.
- *Blockade, Overcrowding and Chronic Shortages of Shelter materials* – Following Hamas' seizure of control in 2007, Israel closed down the main Gaza Strip entry and exit point for the movement of goods and imposed a comprehensive land and sea blockade on the Gaza Strip. Since 2007, and as part of its wider blockade, Israel has restricted the import of materials deemed to have "dual use" purposes, including concrete, steel and effectively all essential construction materials.¹ Growing housing demands, driven by rapid natural population growth, as well as destruction of shelters due to military activity, cannot be met due to these import restrictions. Since 2013 Egypt

¹ For example European Council regulation no. 428/2009, Article 2 paragraph 1 identifies dual use items as "... items, including software and technology, which can be used for both civil and military purposes...". (EC, 2009)

has severely limited the opening of the Rafah crossing and closed the Gaza tunnel trade, massively restricting the import of goods into the Gaza Strip.

The choice between humanitarian and development responses, however, may be misleading. Factors related to the use and administration of land, often viewed as development issues, cannot be divorced from broader humanitarian and conflict issues. Although land disputes frequently play a critical role in conflict, humanitarian agencies traditionally have “avoided land-related issues, believing them to be too complex, politically sensitive and outside their mandate”. Humanitarian actors often lack an understanding of the technical issues related to land and property, while, conversely, land tenure experts may lack humanitarian background and experience. Such shortcomings have been acknowledged and increasingly have been addressed by aid agencies, including through initiatives such as the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, known as the “Pinheiro Principles”.

1.2 Past Administrators and the Absence of a Unified Legal Framework

As with nearly all Palestinian legislation, the legal framework governing housing, land and property (HLP) in the Gaza Strip derives from a contradictory patchwork of 30 distinct laws originating from the Ottoman, British, Egyptian, Israeli, and Palestinian legal systems. Gaza Strip land law continues to reflect disparate influences from this convoluted succession of sovereign and administrative authorities and the area’s turbulent history.

During the Ottoman era, which concluded in 1917, legislators introduced two of the most important laws still in force today. The Ottoman Land Code of 1858 classified land into 5 different categories (*mulk*, *miri*, *mawat*, *metruk*, and *waqf*).² The Ottoman Civil Code of 1861 remains the guiding law governing land and property rights, describing, *inter alia*, acquisition of land and the statute of limitation for claims over each type of land. The subsequent British Mandate, from 1917-1949, maintained the applicability of existing Ottoman laws, but supplemented them with numerous ordinances and regulations for land administration. From 1949 to 1967 the legal regimes in the West Bank and Gaza Strip evolved separately as a result of Jordanian administration in the West Bank and Egyptian administration in the Gaza Strip. In the Gaza Strip Egyptian administrators upheld laws from both the Ottoman and British eras, but added new laws in response to developments on the ground. In particular, the Egyptians passed laws ending the statute of limitations for the governing authority to reclaim state and *waqf* land, and legitimised the

² The definition of these categories will be presented in the coming section

presence and boundaries of the eight refugee camps in the Gaza Strip for displaced Palestinians. The camps continue to operate within the same boundaries today. The Israeli occupation from 1967 until unilateral military withdrawal in 2005 was marked by the establishment of several settlements over state and private land, which occupied up to 13 percent of the total area of the Gaza Strip.

To address these overlapping laws, in 1994, following the establishment of the Palestinian Authority, Palestinian President Yasser Arafat issued Presidential Decree No. 1 of 1994. This Decree, known as the “Continuation of Laws and Regulations” keeps in effect all laws in place before 5 June 1967 until such time as all Palestinian laws are harmonized. This marked the beginning of a unification process that introduced legislative changes with the objective of harmonizing existing legislation across both the West Bank and the Gaza Strip. This unification process ceased, however, following Hamas’ 2006 parliamentary election victory and the subsequent suspension of the Palestinian Legislative Council following Hamas’s mid-2007 military takeover of the Gaza Strip. The ongoing suspension of the Palestinian Legislative Council since 2007, the continuing Palestinian political division, and the passage of separate new laws in both the West Bank and the Gaza Strip by Hamas and Fatah authorities, have further exacerbated uncertainties about applicable laws, including with respect to land administration, in addition to increasing the overall economic, social and cultural schisms between the West Bank and Gaza Strip.

1.3. National legal framework

The current complexities in Gaza Strip land administration must be viewed in light of the historical development of Gaza Strip land law and the primary historical laws and concepts that continue to dictate the classification and legal status of land in the Gaza Strip.

Ottoman Land Code of 1858: The majority of land in the Gaza Strip today continues to be classified according to the Ottoman Land Code of 1858. While this 1858 code underwent changes as a result of Ottoman era amendments and subsequent legislation, its basic land classification definitions remain intact:

- Private Land (*mulk*) – This is the only category of land in which full ownership belongs to an individual, enabling owners to dispose of property and perform all legal transactions in accordance with law. Private land constitutes approximately 50 percent of the Gaza Strip’s area,

or 182,173 dunams³. Land registration procedures typically are complicated, lengthy, and expensive, with registration fees assessed at one percent of a parcel's value.

- State Land (*miri*) – Approximately 31 percent of the Gaza Strip's area, or 112,000 dunams, is designated as land owned by the "state" or "sovereign." Such land can be converted to private land if disposed of by the state. *Miri* land may be subject to other legal transactions by the state's relevant authorities. However Law No. 5 of 1960 makes it clear that neither state land nor *waqf* land can be acquired by private owners merely on account of long term usage, or adverse possession⁴, of the land. Individuals occupying state land without any formal usage right or lease from the State may be subject to eviction by the government at any time.
- *Waqf* Land – This refers to religious endowment land which cannot be inherited, sold or transferred either by legal transaction or acquisition through long term usage and may only be used for charitable purposes. *Waqf* land is administered separately by the Ministry of Religious and Sacred Affairs and constitutes less than two percent of the Gaza Strip's area, or 6,777 dunams.

Other land classifications according to the Ottoman Land code include *mewat*, or dead land, and *metruk* land designated for public use, such as roads. Both of these land classifications have ceased to exist in the Gaza Strip. However, two new land classifications have emerged as a result of the Israeli-Palestinian conflict, introducing additional challenges and complexities to Gaza Strip land administration:

- Former Settlement Land – In August 2005, as part of Israel's unilateral disengagement, Israel dismantled all Israeli military installations including 17 Israeli settlements in the Gaza Strip. These settlements were established in the late-1970s and early-1980s and comprised up to 13 percent of the Gaza Strip's area. Following Israel's unilateral disengagement, the Palestinian Authority designated nearly all former settlement lands as state land. Numerous private claims asserted that some private land confiscated by Israel after the 1967 occupation was wrongly included in the former settlement land that the Palestinian Authority designated as state land following the disengagement.
- Refugee Camp Land – In the aftermath of the 1948 Arab-Israeli war, Egyptian administrators of the Gaza Strip established eight refugee camps to accommodate the influx of refugees (Decree

³ A dunam is a unit of land from Ottoman times, now equivalent to 1000m².

⁴ Also known as 'acquisitive prescription' in some civil law jurisdictions.

No. 24 of 1960 and Decree 22 of 1961). In August 1964, Egyptian authorities offered private owners of land in the eight refugee camps alternative parcels of land elsewhere in the Gaza Strip. Exclusive management and administration of the refugee camps was assigned to the United Nations Relief and Works Agency (UNRWA), which does not sell or provide ownership to properties within the camps, but instead grants “right of usage.” Over time, UNRWA ceased tracking “right of usage” to camp lands. Residents now regularly buy and sell these usufruct rights as private property rights. Furthermore, the boundaries of the Gaza Strip’s refugee camps have not changed in over 60 years, despite significant population growth. For example, Jabaliya refugee camp, the largest Palestinian refugee camp in the Gaza Strip, occupies a 1.4 square kilometers and was built to accommodate 35,000 people in 1948. Today it houses 108,000 refugees. Of the total UNRWA refugee population in the Gaza Strip, 38 percent, or 446,000 individuals, currently live in these eight camps.

1.4 Key Actors and Structure

Land administration responsibility in the Gaza Strip rests primarily with the Palestinian Land Authority (PLA), as established by Presidential Decree No. 10 of 2002. The specific powers and authorities of the PLA were to be specified in subsequent legislation that has never been passed. Currently, only approximately 10 percent of all land transactions are recorded with the PLA. High land registration fees and property taxes have contributed to the growth of an unregistered land market and increase in informal land transactions. The PLA’s mandate is to protect and preserve land, property titles and the property rights of citizens, government and civic and official institutions, through land surveying and registration of lands in the land registry. The PLA’s role also includes land demarcation dispute resolution and the preservation and proper disposal of public land and property.

Additional key governmental actors in the administration of land include the Ministry of Housing and Public Works, the Ministry of Finance, the Income and Property Tax department, the Ministry of Local Government, and the Gaza Strip’s twenty-five local municipalities. Precise areas of responsibility for each of these actors are unclear, however, and at times appear to overlap.

Diverse national and international actors also influence or are involved in development and humanitarian aid projects that directly and indirectly impact land administration in the Gaza Strip. These actors include local charities and civil society groups, donors such as the State of Qatar, the Islamic Development Bank, and the Gulf Cooperation Council, as well as humanitarian organizations like UNRWA and other nongovernmental shelter-focused agencies implementing projects.

2 Gaza Strip Land Administration Trends

Since its 2007 takeover, Hamas has consolidated control over land administration functions in the Gaza Strip. Hamas inherited a system beset with problems that include inconsistent and overlapping land laws, severely overcrowded refugee camps, long-term private squatting 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 humanitarian and shelter materials.

Over the last two years, the Hamas land administration authorities in the Gaza Strip have prioritized reclamation of state land and an ambitious road expansion programme. To some degree, these priorities were inherited from previous governing authorities. Negotiations for the relocation of occupants of state land have continued for over a decade, years before Hamas assumed governance in the Gaza Strip. Plans for road expansion similarly pre-date Hamas's rule.

Land administration and public works programmes are the inherent prerogative of a government when undertaken in furtherance of a legitimate public purpose. However, implementation of any such policies must be carried out in accordance with national legislation as well as international standards that prohibit arbitrary evictions, protect private property rights and ensure an adequate standard of living for the population, including the right to housing. In practice, many current land administration plans risk displacing numerous families and communities and affect not only state land, but also private and refugee camp lands. Between July 2012 and February 2013, evictions from state land have impacted 1,221 individuals, 163 houses and 207 families. It is estimated that the current road expansion programme will affect over 300 families. These impacts present serious concerns for the Gaza Strip and its residents, as well as humanitarian organisations with an interest in addressing humanitarian needs, alleviating poverty and ensuring that authorities respect international standards.

Current practices can be classified into two categories:

2.1 Clearing 'Encroachments' from State (*Miri*) Land

Up to 31 percent, or 112,000 dunams, of the Gaza Strip's 356,000 dunams, is classified as state land. According to the government, 11 percent, or 12,000 dunams, of this state land is encroached upon by way

of unlawful occupation and being built upon, or cannot otherwise presently be used for public purposes. Encroachments on this state land include farms, businesses, and houses. Some such encroachments have occurred in recent years, but other areas that the government counts as encroachments are state lands that have been handed down through generations within the same families since the 19th century.

The July 2012 eviction of a large Gaza City community illustrates an eviction that, although legally grounded, was problematic for the lack of due process protection afforded to the evicted parties and the overall manner in which the evictions were conducted.⁵ In a widely publicized incident, Gaza Strip police forces raided and bulldozed approximately 102 houses in the Abu Amra Gaza City neighborhood on 8 July 2012. Community members had been residing on the land for decades although it was acknowledged to be state land for which community members had never been granted any formal use permission. The eviction was preceded by almost a decade of unsuccessful negotiations between the community and prior local authorities to resettle community members elsewhere in the Gaza Strip. Police surrounded the neighborhood and blocked all routes into and out of the area, and residents were told to evacuate their houses immediately. Police then forcibly removed families and residents that failed to comply with the evacuation, though no physical injuries were reported to have resulted from the operation.

A subsequent eviction of remaining members of the same community demonstrated greater compliance with international standards. On 7 February 2013, the remaining residents of the Abu Amra neighbourhood received a second and final eviction notice from the PLA warning that eviction operations would take place on 13 of February 2013. The eviction process started on the designated date, during daytime and with the presence of representatives of both the PLA and different local organizations after an agreement had been reached with neighbourhood residents. The remaining Abu Amra residents were evicted promptly and Gaza City municipality bulldozers levelled the remaining houses. The eviction process was not associated with inappropriate coercive measures as no force was used and the PLA provided trucks to remove the belongings of the evicted families.

By the conclusion of the Abu Amra eviction process, authorities destroyed 163 houses, evicted 207 families and a total of 1,221 Palestinian individuals, including at least 400 children were displaced and relocated to designated areas of Deir Al Balah in the middle of the Gaza Strip and Rafah to the south. Many of these displaced families continue to lack adequate housing and security of tenure to date.

⁵ While there are cases involving the PLA clearing encroachments over state land such as the eviction of Azbet Abdrabo in Beit Hanoun, Azbet Al Hamamieh in Gaza city and Al Barahma neighbourhood in Rafah city, the paper will use the eviction of the Abu Amra family neighbourhood in Gaza city as an illustrative example.

2.2 Expropriation and Demolitions for Public Works Including Road Expansion

In addition to clearing ‘encroachments’ from government land, local authorities have embarked upon a major road development and expansion project. Construction focuses on two main roads that travel the length of the Gaza Strip: Al-Rashid Road, which runs along the coast, and Salah el-Din Road, which runs parallel but further inland. The total amount of private land to be expropriated is estimated to be 600 dunams for Al-Rashid Road and 250 dunams for Salah el Din Road. According to statistics provided by the Ministry of Transportation, a total of 80 to 90 houses will be partially or totally demolished to make way for Al-Rashid Road. Land expropriation for Salah el Din Road is expected to affect 250 families.

As construction on these two major north-south regional roads continues, municipalities also are expanding and improving internal connecting roads, such as Road 8 in Gaza City. Many of these road projects are based on plans developed decades ago and have been modified only slightly. In order to constitute a legitimate and valid exercise of state power, such projects must be carried out in accordance with the law, due process standards and must assess the probable impact on the affected population. This population has nearly doubled in the intervening decades since the road project plans were originally formed, yet there is no indication that this has been taken into account or that the plans have been modified to address this new reality.

Displacement in the context of road construction and expansion occurs when homes or businesses have been built, with or without building licenses, in the path of the roads, and where these structures must be demolished to make way for the planned road work. The procedures concerning the announcement, planning, and implementation of these road development projects are unclear to the general public and the lack of transparency has contributed to widespread concerns among residents that they may be evicted and their homes demolished without compensation. Critically, the law and procedures pertaining to compensation for persons and entities at risk of displacement remain unclear.

Ministries and municipalities in the Gaza Strip appear to be taking advantage of antiquated legislation and an existing vacuum in land regulation to seize property. Relying on a 1936 British Mandate ordinance, authorities claim to have the right to confiscate up to 25 percent of any private land holding without providing compensation to the owner. However such an interpretation appears to run contrary to Article 21(3) of the Palestinian Basic Law which functions as a bill of rights setting out the fundamental legal principles and protections owed to Palestinians throughout the West Bank and Gaza Strip. The Basic Law has primacy over other applicable laws and regulations inconsistent with it and provides constitutional

protection from arbitrary confiscation of property that appears to modify and supersede these British Mandate era ordinances.

Arguably, the protections of the Palestinian Basic Law should prevail, thereby requiring land confiscations to be undertaken in accordance with judicial rulings and providing that private owners receive fair compensation for their expropriated land. The potential loss of up to 25 percent of a landholding without financial compensation has the potential to deal a very serious and potentially unjust economic blow to affected landowners. Moreover, these land confiscations also risk significantly exacerbating hardship for affected families, thereby increasing humanitarian needs.

There are additional problems with land administration in the Gaza Strip. These issues include: small percentage of officially-registered private property titles; prohibitive land registration costs; complex, lengthy and expensive judicial processes for resolving ownership disputes; lack of regulation for the sale and purchase of ‘use rights’ in refugee camp land and, more broadly, the overall lack of urban and development planning and related overcrowding and inadequate infrastructure issues. Many of these are common, world-wide land administration problems and frequently are viewed as more development-related issues. The humanitarian aspects of the crisis in the Gaza Strip, involving both short and long-term displaced persons and ongoing political and military conflict positions humanitarian agencies well in playing a constructive role in promoting compliance with international land administration standards by all duty bearers.

3. Relevant International Standards Governing Evictions, Displacement and Land Administration

The *de facto* authority in the Gaza Strip is not a direct signatory to any international conventions or treaties. However, the UN Human Rights Council, in its 2009 statement on the Human Rights Situation in Palestine and other Occupied Arab Territories, resolved that non-state actors with government-like control over a territory are obligated to respect human rights norms. Other UN bodies also have confirmed the obligation for non-state actors to respect human rights. Hamas, in fact, has agreed to follow “international law and international humanitarian law insofar as they [sic] conform to our character, customs and original traditions”.

As the relevant duty bearers in the Gaza Strip, Hamas is obliged to discharge governance functions in the interest of the population and in accordance with basic human rights. The international community is

entitled to measure Hamas's actions as the local governing authority in the Gaza Strip against international standards, including the right to adequate housing and the protection of displaced persons.

A significant body of treaty law, principles, standards and jurisprudence in international human rights law has developed to protect against arbitrary eviction and forced displacement. Standards also protect the right to private property, subject to certain exceptions, and enshrine the right to an adequate standard of living, including the right to adequate housing. States and other non-State duty bearers have both the negative obligation to prevent interference with these rights, and the positive obligation to take measures to protect and progressively realize these rights in the interests of the population. These standards provide invaluable guidance to humanitarian organizations for measuring their own standards of conduct, and those of relevant duty bearers.

3.1 International Human Rights Law Protections

The right to housing, enshrined in Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), protects individuals and communities from forced displacement, arbitrary eviction and displacement, regardless of their ownership status and without discrimination. Article 11 of the ICESCR recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions.” States parties to the ICESCR are obliged to take “appropriate steps to ensure the realization of this right.”

In General Comment No. 4 “On the Right to Adequate Housing”, the UN Committee on Economic, Social and Cultural Rights sets out the components of the right to adequate housing, which include legal security of tenure, namely protection against forced eviction, harassment and other threats regardless of time of tenure, availability of sufficient services and infrastructure, affordability, habitability, accessibility, location and cultural adequacy. Whilst the Committee notes the prohibition on “forced eviction” in General Comment No. 7, evictions that do not result in homelessness or violate other rights of affected persons and that meet certain procedural standards are justifiable and permissible. The relevant standards, which are incumbent upon duty bearers to meet, include substantive justification, consultation on alternatives, provision of due process to affected persons, the right to alternative accommodation and non-discrimination.

The body of human rights law and jurisprudence is less developed with regard to the right to property than it is with regard to the rights to housing and land. The right to property is expressly protected only in

the UDHR, rather than in any binding treaty. Nevertheless, Article 17, paragraph 2 of the UDHR confirms that no one shall be arbitrarily deprived of his or her property.

3.2 Related Principles and Standards for Displaced Persons

The OHCHR Principles on Housing and Property Restitution for Refugees and Displaced Persons, commonly referred to as the “Pinheiro Principles,” stress that “everyone has the right to peaceful enjoyment of his or her possession... [unless seized for]...the public interest and subject to the conditions provided for by law and by general principles of international law” in a manner that restrictively define the interest of the society.

The former Special Rapporteur on Adequate Housing also has described the standards that development-based evictions must satisfy to avoid constituting forced evictions and displacement and thus to avoid violating international law. These standards include the exploration of alternative strategies that do not create displacement, prohibiting the infliction of homelessness and the provision of adequate notice for pending evictions. Additionally, following an eviction, fully serviced and livable alternative housing comparable or superior to the original housing must be provided immediately.

The World Bank, in its Operational Manual OP/BP 4.12 - Involuntary Resettlement, also has provided guidance on involuntary resettlement policies to be followed for World Bank funded projects. These guidelines are notable for recognizing the interests of persons lacking formal legal claims to property on which they reside. Pursuant to the World Bank’s guidelines, such persons are ineligible for compensation, but are eligible for resettlement, housing and livelihood assistance to ensure that their standard of living is not adversely affected.

3.3. Gaza Strip Eviction and Land Expropriation Practices

When measured against international human rights standards relevant to HLP rights and the rights of displaced persons, the practices of the *de facto* Hamas authorities in the Gaza Strip fall short in several respects. Protecting these particular rights is particularly important in a protracted conflict where many community members may already have suffered displacement, face serious humanitarian needs and live under severe economic hardship. While the recent practices of the *de facto* Hamas authorities highlight policy dilemmas similar to those faced by other governing authorities worldwide in relation to urban planning and competing priorities for land usage, improvements by the *de facto* Hamas government in current practices are called for in several areas, including:

- Increased transparency in PLA processes and procedures, most notably by publishing accessible information about the criteria applied by the PLA to determine which areas of state land will be evicted for public use, to what uses such land will be put, how alternative land and compensation arrangements are determined and secured by affected persons and a description of procedures that are to be followed by government personnel when undertaking evictions.
- Adequacy of alternative land offered to persons displaced from state land must be assessed in light of the humanitarian needs of the affected population.
- Plans and procedures for road expansion projects must be transparent and publicly available.
- Financial compensation or packages that otherwise adequately compensate families affected by land loss must be made publicly available.

Notwithstanding the foregoing criticisms of some past practices, the *de facto* authorities have made noticeable improvements in eviction policies since the initial forcible eviction of the extended Abu Amra family in July 2012. The improved practices of the *de facto* Hamas authorities suggests that they appear to have identified an interest in improving the implementation of evictions from state land to bring such practices more closely in line with international law and humanitarian principles. However, this willingness appears also to be closely related to the availability of financing to support better practices. Government authorities have repeatedly asserted that they lack sufficient funding to provide appropriate compensation, better public or alternative housing, or a more sophisticated planning and land registration system and administration.

4. Humanitarian Organization Roles in Land Administration

The role humanitarian organisations can play in facilitating sound land administration may not always be self-evident because it has frequently been viewed as the exclusive domain of development actors. However, restricting humanitarian actors that possess relevant land administration expertise to addressing humanitarian *needs* for persons affected by displacement without dealing with the land administration related *causes* of that displacement simply perpetuates humanitarian needs. Recognition is growing that land issues are critical to social cohesion and economic empowerment of people affected by conflict. Not only are many conflicts resulting in humanitarian crises directly or indirectly about land, but many of the people most severely impacted by such humanitarian crises are pushed further into economic dependency on humanitarian aid through displacement or the loss of land.

The specific manner in which conflict has impacted the Gaza Strip and its predominantly refugee population over more than six decades has imposed a particular burden upon humanitarian organisations with regard to land and property issues. Humanitarian organisations have provided direct shelter assistance to persons, very often refugees, whose homes have been destroyed or otherwise affected by Israeli military actions. Access to land remains a pressing issue, especially in the Access Restricted Area, as does the inability to import shelter materials into the Gaza Strip. These factors, driven by ongoing conflict, Israel's blockade, chronic overcrowding and lack of adequate water and sanitation infrastructure continue to perpetuate significant humanitarian needs in the Gaza Strip. The political context and refusal of many countries to recognize or interact with Hamas further widens the gaps that humanitarian organisations seek to fill in their provision of relief to the Gaza Strip and its residents. A key role for these humanitarian organisations is to share expertise that aims to promote best practices, including with respect to land administration.

4.1 The Impact of Counter-terrorism Legislation

Because of Hamas's designation as a terrorist organization by many Western countries, foreign aid to international agencies working in the Gaza Strip faces significant constraints. Despite identified needs for greater intervention and coordination to develop coherent land use and planning strategies in the Gaza Strip, existing counter-terrorism legislation hinders engagement with, and funding to, government ministries affiliated with Hamas. This thorny political context poses significant challenges to humanitarian actors, especially where abiding by humanitarian principles may risk violating domestic anti-terrorism legislation in some jurisdictions, thereby exposing individual aid workers to criminal prosecution.

While an objective of counter-terrorism regulation is to prevent the diversion of foreign aid to terrorist organizations and activities, practical guidance defining the specific parameters of these restrictions is sorely lacking. In a notable 2010 ruling that has created further uncertainty for humanitarian actors, the United States Supreme Court ruled that illegal "material support" to terrorist activities could potentially be interpreted to include trainings provided to military groups on protection of civilians or war crimes under the Fourth Geneva Convention on the rationale that such assistance could legitimize terrorist organizations.

4.2 A Principled and Practical Role for Humanitarian Organizations in the Gaza Strip

As in many conflict situations around the world, humanitarian organizations operating in the Gaza Strip must walk a fine line in maintaining a principled position on providing humanitarian assistance to the

most vulnerable while simultaneously dealing with daunting realities on the ground. A typical quagmire of practicalities involves logistical challenges, security threats, factionalism and the intricacies of dealing with the political agendas of local, national and international stakeholders. To steer themselves through this minefield, humanitarian organizations have recourse to a range of tools including their own internal mandates and procedures, as well as other internationally accepted guiding principles on the provision of humanitarian aid, such as the Sphere Project Humanitarian Charter, adopted by many international NGOs and the International Red Cross and Red Crescent movements. The related Protection Principles, also compiled by the Sphere Project, stress the role of humanitarian organizations in assisting people to claim their rights and access remedies through a variety of means such as the provision of information and counseling services. Measures aimed at protecting rights to housing, land and property are to be given special attention under the Sphere Protection Principles.

In practice too, humanitarian organizations operating in the Gaza Strip promote compliance with international standards and design programs in a way that aims to enhance transparency and good practice. Key players include members of the UN mandated Shelter Sector, which is tasked with responding to urgent shelter needs in both the Gaza Strip as well as other areas of the occupied Palestinian territory. Acute shelter needs have often arisen because of military action that has caused home destruction and displacement, climatic and environmental challenges, and other manifestations of ongoing conflict and humanitarian crisis, such as chronic overcrowding, lack of adequate infrastructure and restrictions on the import of building materials.

Members of the Protection Cluster, also mandated by the UN, play an important part in identifying protection concerns and formulating and coordinating responses that are in step with international humanitarian and human rights law. Some members of the Protection Cluster, including the Norwegian Refugee Council, have developed specialist expertise in the area of housing, land and property rights through its Information, Counseling and Legal Assistance (ICLA) programs in many countries around the world.

4.3 Overcoming the Challenge in Practice

While the complicated political and security context in the Gaza Strip and challenges in working with local authorities presents a significant obstacle, humanitarian actors can play a practical role in promoting good land administration by implementing key strategies and activities that empower communities and promote good practice. Humanitarian actors also can play an important role in supporting good governance as civil society organizations and through their work supporting civil society organizations.

The following activities highlight the practical role humanitarian actors currently play in the Gaza Strip:

- **Monitoring trends and impact.** Humanitarian organizations foster good governance by monitoring and documenting local authority policies and practices that result in displacement. Monitoring of the Abu Amra evictions appears to have resulted in positive change in practice.
- **Policy analysis and advocacy.** To be able to understand and advocate for improved transparency, administration, and use of land in the Gaza Strip humanitarian actors can provide policy analysis and highlight the range of outcomes that may result from such policies for the targeted population.
- **Coordinated action:** Beneficiary outcomes are vastly improved where there is coordinated action between humanitarian agencies and other civil society organisations. Israeli Operation ‘Pillars of Defence’ in November 2012 highlighted the importance of coordinating emergency shelter assistance in Gaza, which contributed to securing durable shelter solutions for the 382 vulnerable families in Gaza affected in this military operation. A more recent example is the December 2013 winter storm, in Gaza, in which over 10,000 families were temporarily displaced to emergency shelters or relatives’ homes and around 3,000 houses suffered different degrees of damage.
- **Building social capital and empowering concerned individuals as to their rights and entitlements.** Building social capital requires that individuals understand and identify their rights and are ready to participate in democratic practices. In the experience of the NRC ICLA program in the Gaza Strip, this process has been facilitated by providing:
 - **Legal counseling:** In the aftermath of two major Israeli military operations in 2008-09 and 2012 in the Gaza Strip, the NRC Legal Aid Centre provided legal counseling to 3,628 households and assisted over 1,749 Palestinians in successfully obtaining ownership documentation, often a prerequisite to access reconstruction grants.
 - **Awareness-raising sessions on HLP laws in Gaza:** The confusing mix of land law in the Gaza Strip has contributed to a large number of HLP disputes, which are only exacerbated by land scarcity and very high population density. To counteract the lack of adequate understanding of the legal landscape, NRC lawyers in the Gaza Strip conduct regular HLP information sessions for local communities, staff of local and international organizations, Shelter Sector members, *mukhtars* (traditional community leaders) and law students with the aim of assisting beneficiaries to better understand and access their HLP rights, entitlements and remedies.

- **Increased knowledge of HLP rights amongst legal practitioners:** Limited knowledge and expertise on HLP rights also has been identified among Gaza Strip legal practitioners and no Gaza Strip law faculty includes HLP in its legal curriculum. To date, nearly 1,117 Gaza Strip lawyers and humanitarian workers have received HLP training from NRC staff, including students of three law faculties, many of whom undertake training placements at the NRC Legal Aid Centre

Conclusions and Recommendation

Despite what appears to be a daunting contextual backdrop, fostering transparency in land ownership, usage and administration in the Gaza Strip is not an impossible mission. By improving governmental, local and humanitarian and development actor coordination and by enhancing advocacy efforts, including community involvement and awareness raising, land practices in the Gaza Strip gradually can become better aligned with internationally recognized standards. The following measures will hasten these outcomes and greatly benefit the Gaza Strip and its residents:

- *Adopt Internationally Recognized Development Guidelines* – Humanitarian and shelter agencies should advocate for the adoption and dissemination of land guidelines consistent with international and national legal standards. Such guidelines could be drafted and promoted under the Shelter Sector in Gaza. Even where evictions may be necessary for development projects, these should be carried out in accordance with international standards such as the “Basic Principles and Guidelines on Development-Based Evictions and Displacement”. Where possible, alternatives to eviction must be explored and special consideration should be accorded to the impact on women, marginalized groups and persons with disabilities.
- *Coordination with Local Partners and Involvement of Local Communities* – Strategic partnerships with local partners can help to build local capacities and empower local actors to participate and foster transparency in land ownership, usage and administration. Due to a long legacy of colonization and occupation, Gaza Strip communities have not been consulted or otherwise adequately involved in development and planning initiatives. Such involvement must be encouraged and built and should include consultative processes that are founded on principles of appropriate notice, effective dissemination of information, process timeliness and adequate opportunities for legal challenge and appeal. Inclusion at the local level will encourage ownership

and acceptance of processes that are adopted and will ensure that the projects are suitable for, and tailored to, the needs of specific communities.

- *Awareness raising and Community Education* – An overall lack of knowledge about existing land laws exists in the Gaza Strip, even among legal practitioners and property law is not taught in any Gaza Strip law faculty. The very concept of land ownership itself is often confusing given the lack of a unified legal code and because of the land classification categories and history. The resulting and understandable confusion and misinterpretation of existing law can best be countered through broad awareness campaigns regarding international standards and the best comparative practices. More analytical and comparative research about land categories and their legal statuses should be completed and communicated to relevant stakeholders to ensure common understanding of key principles and to hasten clarifying legislative reform.
- *Legal Accountability and Transparency* – The sheer number of different land laws and the delegated number of responsible institutions have coalesced to create an environment in which legal accountability has become nearly impossible. Building from thorough analytical and comparative legal research, formation of a land law and administration legal reform task force should be formed and charged with comprehensively re-vamping the current land administration system.

For the first time in the modern history of the Gaza Strip, an opportunity exists to bring communities and civil society into the discussion regarding all aspects of land usage and planning. Regardless of potential developments in the broader Israeli-Palestinian peace process or negotiations, clear and inclusive guidelines regarding the obligations of duty bearers in land administration will help prevent displacement and alleviate the alienation of affected populations.

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