

**AREA C AND PALESTINIAN STATE BUILDING**

**JULY 2011**

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### **SUMMARY**

In accordance with the Oslo Agreement the West Bank excluding East Jerusalem consists of three areas:

- Area A (18% of territory, 55% of population) under Palestinian civil and security control.
- Area B (20% of territory, 41% of population) under Palestinian civil and shared Israeli-Palestinian civil and security control.
- Area C (62% of territory, 5.8% of population) under full Israeli security control and almost full Israeli civilian control.

In 1972 the number of Israeli settlers in Area C were 1,200, in 1993 110,000 and in 2010 310,000 (excl. East Jerusalem). The number of settlers in Area C today is more than double the estimated number of Palestinians (150,000). The settlers live in 124 formal settlements and approximately 100 informal settlements (so-called outposts and illegal under Israeli law).

The Palestinian presence in Area C has continuously been undermined through different administrative measures, planning regulations and other means adopted by Israel as occupying power. Prior to 1967 there were between 200,000 and 320,000 Palestinians in the Jordan Valley. Today the number is 56,000 (of which 70% live in Area A in Jericho). The increasing integration of Area C into Israel proper has left Palestinian communities in the same area ever more isolated. During the past year there has been a further deterioration of the overall situation in Area C. If current trends are not stopped and reversed, the establishment of a viable Palestinian state within the pre-1967 borders seems more remote than ever.

The window for a two-state solution is rapidly closing with the continued expansion of Israeli settlements and access restrictions for Palestinians in Area C, the only contiguous area in the West Bank surrounding Area A and B. Area C compromises crucial natural resources and land for the future demographic and economic growth of a viable Palestinian State. State building efforts in Area C of the Palestinian Authority (PA) and the EU are therefore of utmost importance in order to support the creation of a contiguous and viable Palestinian state. Full and effective Palestinian development of Area C will require the re-designation of Area C to Areas A and B. This objective has to be pursued at the political level. Enabling measures should, however, be pursued in the interim to support Palestinian presence in and development of this area.

Implementation of the following would improve the situation in Area C (see also Annex 1):

- A. Encourage Israel to change its policy and planning system for Area C and engage the Palestinian communities in access and development.**
- B. Reduce land and population vulnerability and facilitate better coordination of basic needs deliveries in Area C.**
- C. Promote economic development in Area C.**
- D. Increase visibility and accountability for the delivery of aid in Area C.**

## 1. Introduction

Following the Oslo Agreements of 1995, the West Bank except for East Jerusalem has been administratively divided into three zones or areas: Area A under Palestinian civil and security control<sup>1</sup>; Area B under Palestinian civil and shared Israeli-Palestinian security control; and Area C under full Israeli security control and almost full Israeli civilian control. Area C composes the largest portion of the West Bank territory (62%)<sup>2</sup>. It is the only contiguous area in the West Bank, effectively engulfing and separating the fragmented areas A and B. Also, Area C constitutes most of the fertile and resource-rich land in the West Bank. As a result, protecting the rights of Palestinians in Area C is of paramount importance for the realization of a viable two-state solution to the Israeli-Palestinian conflict.<sup>3</sup>

Ever since the Israeli military occupation of the West Bank beyond the pre-1967 borders large Jewish populations have settled into the occupied territory, in violation of the Fourth Geneva Convention and international humanitarian law. In 1972 there were 1,200 settlers which have grown to 310,000 settlers today in 124 settlements and 100 so called outposts in Area C (excluding East Jerusalem).

## 2. International law

As an occupying power, Israel is responsible, under International Humanitarian Law (IHL), for ensuring that the basic needs of the occupied population are always met. Israel is obliged to administer its occupation in a manner that benefits all the local Palestinian population and not transfer its own population into the territory under occupation. IHL presumes any military occupation to be temporary, based on the prohibition on the acquisition of land by threat or use of force set in article 2(4) of the UN Charter. These would undermine the right of people to self-determination (art. 1 ICCPR, art. 1 CESCPR). The occupying power can never obtain sovereignty over the occupied territory based on its prolonged control over the territory (reg. 43, 55 Hague Regulations, art. 47, 54, 64 IVGC). It is only an administrator of the territory with civil obligations towards the civilian population. Those should be balanced with military necessities resulting from the military control.

The occupying power is under the obligation to respect and protect objects and facilities used for humanitarian relief operations and to facilitate the work of these operations. This includes refraining from impeding delivery of aid<sup>4</sup> including facilities constructed for the benefit of basic service delivery. Israel as a party to the conflict has the right to provide or prevent its consent to the delivery of aid. It has the right to prescribe the aid delivery conditions for reasons of security and control (art. 70 First Additional Protocol). However, those rights should be done in *good faith* (not arbitrarily and not followed by retaliation against civilians or aid personnel).

International Human Rights Law (IHRL) is also applicable to the oPt and to Area C, being under the direct effective control and jurisdiction of Israel. The administrative division of authorities and responsibilities of the West Bank following the Oslo Agreements did not alter the application of IHRL to the whole of the West Bank, including Area C. Articles 7 and 47 of the Fourth Geneva Convention (IVGC) protect the civilian population of consequences on their rights and safeguards under IHRL due to any change of government including political division of administrative powers based on any international agreement. Israel's position has been that the Geneva Convention does not apply to the territories it occupied in 1967. However, Israel has decided that in practice it would act in accordance with the humanitarian provisions of the fourth Geneva Convention<sup>5</sup>.

## 3. Israeli military administration

The Israeli military administration or the so called Civil Administration (CA) was established by the Israeli government in 1982 pursuant to military order no. 947 with the mandate to "administer the civil affairs in the area [West Bank]... for the welfare and benefit of the population and for provision and operation of public services, considering

the need to maintain proper administration and public order in the area". Its mandate includes serving both Israeli settlers and Palestinians. However, because of this dual role the civil administration does not administer the civil affairs for the genuine welfare of the local Palestinian population.

The Civil Administration is sub-ordinate to COGAT (Coordinator of Government Activities in the Territories) and is composed of IDF soldiers and Israeli citizens and has no formal Palestinian representation. Local and District Planning Committees were abolished in 1971 with military order no. 418 and ever since, the planning process - which impacts on every aspect of civilian life of individual Palestinians as well as on villages and small towns - is exclusively controlled by non-Palestinians. The CA is therefore operating as de-facto sovereign in civilian affairs in Area C. The restrictions on the normal life of the local Palestinian population in Area C impact directly and indirectly on the security, humanitarian, developmental and psychological conditions of the Palestinians in the entire area of the West Bank. Furthermore, Israeli control of planning laws and institutions limit severely the possibility for state building of a future Palestinian state in Area C.

#### **4. The Palestinian Authority**

Since its establishment the Palestinian Authority (PA) does not have any municipal or planning authorities in Area C (despite that planning is encouraged among the local communities by the PA through Ministry of Local Government). PA has some authorities concerning the delivery of services in Area C, such as health and education, excluding those that require infrastructure and construction, which Israel has exclusive control of. According to the Oslo Agreements, some civil authorities in Area C such as zoning and planning, were intended to gradually (within five years) pass from the control of the Israelis to the Palestinians; however, such transfer did not take place and therefore Israel has almost full responsibility and authority for the Palestinian civilian population in Area C.

In August 2009 Palestinian Prime Minister Salam Fayyad introduced his two-year statehood plan: "*Ending the occupation, establishing the state*". With regard to infrastructure, one of the objectives is to develop large infrastructure projects in Area C, which consists of vast and uninhabited areas located outside the major population centers. These areas are natural locations for large infrastructure projects, such as wastewater treatment plants, landfills, water pipelines, and main roads. However, PA has been prevented from (despite efforts by the Quartet, EUMS and others) implementing many of these essential projects. Consequently, several donor-funded projects are today indefinitely suspended. The Palestinian government has been working with the international community to convince Israel to change those obstructive practices, rules and regulations leading to delays or lack of implementation.<sup>6</sup> In the words of Fayyad: "Area C is not disputed territory, it is occupied territory, and the Israelis have to relinquish control," he says. "It's an integral part of where the Palestinian state is going to emerge."<sup>7</sup>

On the other hand, Area C did not have much attention in Palestinian national plans. The Palestinian Reform and Development Plan (PRDP) 2008-2010 did not take Area C into full consideration, nor gave recommendations on how to deal with the needs of its residents. Similarly, the new Palestinian National Development Plan (NDP) 2011-2013 does not give clear guidance on how the Palestinians would like to deal with Area C, seam-zones and East Jerusalem. However, recently a separate Area C strategy is being prepared by the PA with input from the UN - to complement the NDP.

Palestinian development of the land and resources in Area C has been recognised by members of the Ad Hoc Liaison Committee and the Quartet as fundamental to sustainable economic growth and Palestinian state-building.

#### **5. The Palestinian population and demographic development**

A recent survey conducted by UNOCHA indicates that over 520 Palestinian communities are located in Area C of which over 230 are entirely located in Area C. While the survey

states that it is difficult to ascertain the exact Palestinian population residing in Area C due to the high number of cross-boundary (areas A, B, C) communities, it is estimated that as many as 150,000 Palestinians live there, with some 18,500 in villages and 27,500 in small Bedouin and other herding communities located entirely in Area C. Although Area C composes of 62% of the West Bank only 5.8% of the West Bank Palestinians remains there. Service provision to populations in areas A and B has increased over recent years while communities in remote parts of Area C are struggling to adequately access basic social services and assistance such as water/sanitation, primary education and basic safe shelter.<sup>8</sup>

According to the CA, the annual natural growth of the Palestinian population in 2008 stood on 2.9% and has since been declining. The CA is expecting the natural growth rate to decrease to 1.8% in light of negative migration in the West Bank. The negative migration reaches up to 50% of the natural growth rate.<sup>9</sup>

According to Save the Children UK (SCUK) Fact Sheet on the Jordan Valley of October 2009 more than 90% of the Jordan Valley is designated as Area C. Prior to the Israeli occupation in 1967 the Palestinian population of the Jordan Valley was estimated at between 200,000 and 320,000. As of 2009 the population is approximately 56,000 with roughly 70% of residents concentrated in the City of Jericho (located in Area A). According to SCUK survey 31% of the surveyed households in high risk areas in the West Bank, including the Jordan Valley, have been either temporarily or permanently displaced at least once since the year 2000, primarily as a result of Israeli military orders (31%) and house demolitions (23%).<sup>10</sup>

#### Box 1: Jordan Valley

*According to the 2010 World Bank report, "in spite of its vast agricultural potential, limitations on access and water scarcity have turned the Jordan Valley into the least-cultivated governorate by Palestinians: Only 4% of the area of Jericho and Al-Aghwar governorate (corresponding to the Jordan Valley) was cultivated in 2006, compared to the overall Palestinian average of 25%. Although Jericho and Al Aghwar Governorate constitutes 10% of the total Palestinian territory, its share in total Palestinian cultivated land is only 2%. On the other hand, settlers' agriculture in the Jordan Valley is today flourishing. Thousands of Palestinians residing in Areas A and B own lands in Area C, if they could use and develop their land the economic possibilities for the Palestinian economy would be immense."*

*Jordan Valley settlements also benefit from a per capita daily allocation of 487 liters for their household needs. OCHA note, this compares to an average of 70 liters per capita per day for West Bank Palestinian communities; this latter figure reaches as low as 20 liters per day in some of the remote communities of Area C. (B'Tselem, "Dispossession and Exploitation: Israel's Policy in the Jordan Valley and Northern Dead Sea, page 37 - 40" May 2011).*

## 6. Planning system

The Israeli planning policies hinder socio-economic incentive for Palestinian development in Area C and discourage residents of PA controlled areas from building in Area C. Frequent destructions of houses; public buildings and livelihood-related constructions result in forced transfer of the native population. According to UNOCHA under the current CA planning regime, Palestinian construction is effectively prohibited in some 70% of Area C or approximately 44% of the West Bank, in areas that have been largely designated for the use of Israeli settlements of Israeli military. In practice, the Israeli authorities allow Palestinian construction only within the boundaries of an Israeli-approved plan and these cover less than 1% of Area C, most of which is already built up.<sup>11</sup>

The Israeli initiated plans were introduced by the CA as a practical and quick solution to the planning needs of the Palestinian villages.<sup>12</sup> However, de-facto those plans proved to be unsustainable and an impediment for Palestinian development, as they are characterized by lack of transparency, representation and participation in the planning process; lack of necessary population figures and familiarity of its needs; high density ratios<sup>13</sup>; and not considering at all land ownership. Therefore Palestinians build without permits outside the designated area, where chances of getting one are very small. However, in recent years the PA through the Ministry of Local Government (MoLG) has

embarked on a process, mainly with the support of IPCC, to develop a Palestinian master plan (as an alternative to the lack of Israeli planning regimes for Palestinians) in Area C.

## **7. Closed military areas and nature reserves**

Palestinians' access to farming and grazing locations is becoming increasingly difficult in Area C. The 2010 Consolidated Appeal Process (CAP) noted that approximately 23% of the West Bank – all within Area C – mostly in the Jordan Valley and eastern Bethlehem, – are still designated by the Israeli authorities as either "fire zones" or "nature reserves", where Palestinian access is severely restricted, and any development of the land by Palestinians is prohibited (approximately 10% of the West Bank is an Israeli-designated nature reserve, of which 48% overlaps with the closed military training zones<sup>14</sup>).

Although nature reserves and closed military areas including fire zones are not prohibited by IHL *per se*, the use of public lands should only be done in good faith under a trusteeship regime. Closed military areas should only be taken in the case of imperative military necessity. The occupying power is under an obligation to re-visit the necessity of impeding access to private lands periodically. If such examination culminates in lack of such absolute military necessity, the declaration of areas as closed military areas should be withdrawn. Destructions of civilian buildings are prohibited in occupied territory unless rendered absolutely necessary by military operations (art. 53 IVGC). The occupying power has to examine the adequacy of destruction as a means to achieve the military goal, minimize the harm caused to civilians and ensure that the damage to civilian objects and harm to civilians is proportional to the direct military advantage sought.

## **8. Access to natural resources**

Land control and movement and access problems directly impact the ability of Palestinians to use their natural resources in Area C. A recent World Bank report (2010) notes the lack of access to water for the Palestinian population and highlights Israel's over-extraction of water resources in the West Bank as an impediment to the possibilities for Palestinian economic development and employment. On a per capita basis, water withdrawals for Palestinians in the West Bank are about 25% of those available to Israelis and have declined over the last decade, making Palestinians the population with the lowest access to fresh water resources. "Hand-in-hand with access to land, access to water is a key ingredient for all sectors of the economy and agriculture in particular (...) Though the potential exists for expansion of irrigated areas, the dwindling water availability, with almost no new or replacement water sources receiving permits, has meant that this potential simply cannot be realized."

Predictably, economic activity in Area C is limited primarily to low intensity agriculture. High intensity agricultural, industrial, housing, tourism, and other investments are hindered by the inability to obtain construction permits from the Israeli authorities and the limited amount of titled land available. Israeli settlements in the Jordan Valley however have developed a specialized agricultural production, primarily for export, using most of the water resources in the area.<sup>15</sup> Furthermore, it is worth noting that the over-extraction of water resources in the Jordan Valley (by both Jordan and Israel) negatively contributes to the shrinking of the Dead Sea as well.

The natural environment, including natural resources is considered a civilian object<sup>16</sup> and should be protected and preserved with due regard<sup>17</sup>. Therefore, the principle of protection applies to the natural environment and resources as any civilian property. Vigilant<sup>18</sup> care shall be taken in conflicts to protect the natural environment against widespread, long-term and severe damage that would jeopardize the health or survival of the population.<sup>19</sup> It is therefore of great concern that a total of 45 cisterns and rainwater structures in Area C of the West Bank have been demolished by the Israeli Authorities since January 2010 (UN OCHA).

### Box 2: Natural resources

*In Area C, settlers receive discounts from the Israeli water company of up to 75% while Palestinians connected to the Israeli water network are charged significantly higher prices (Badil Resource Center for Palestinian Residency and Refugee Rights, al Majdal, Double Issue no. 39/40 Autumn 2008/Winter 2009).*

*The daily per capita water consumption of Israelis is about 4 times as high as Palestinian per capita water consumption. In the marginalized Palestinian communities, residents survive on barely 20 liters of water per day, well below the World Health Organization's daily recommended 100 liters per capita (Amnesty International, Troubled Waters - Palestinians Denied Fair Access to Water, 2009).*

*According to a recent report from the Israeli human rights organization B'Tselem, the water allocation to the Jordan Valley and Northern Dead Sea settlements (with less than 10,000 settlers) is almost one-third the quantity of water that is accessible to the 2.5 million Palestinians living in the West Bank. The monthly outlay for water by a Palestinian family is 3 times higher than for a family in the settlements. (B'Tselem, "Dispossession and Exploitation: Israel's Policy in the Jordan Valley and Northern Dead Sea, page 37 - 40" May 2011).*

## 9. Israeli settlements

According to the Israeli human rights organization B'Tselem there are 124 formally settlements in the West Bank (not including East-Jerusalem) recognized by the Government of Israel and about 100 informal settlements (so-called outposts and illegal under Israeli law). The municipal area of settlements encompasses 9.3% of the West Bank territory. However, due to the extensive network of settler roads and restrictions on Palestinians accessing their own land, the whole structure of the Israeli settlements dominate more than 40% of the West Bank.<sup>20</sup> According to B'Tselem, there are today about 310,000 settlers living in Area C, which is two times the estimated number of Palestinians living there.

According to Human Rights Watch recent report "*Separate and Unequal*" settlements have expanded in size - growing from approximately 241,000 inhabitants in 1992 to 510,000<sup>21</sup> inhabitants in 2010 (including East Jerusalem). The annual rate of growth of the settler population for 2008 (excluding East Jerusalem) is 4.7%, far higher than the 1.6% growth rate inside the Green Line<sup>22</sup>. The Israeli government subsidizes and provides incentives including funding for housing, education and infrastructure as special roads and water connection.<sup>23</sup> Settlement expansion on private Palestinian lands prevents Palestinian development in those areas within Area C.

According to Peace Now report from 2006 Palestinians privately own nearly 40% of the land in Area C on which the settlements have been built. More than 3,400 buildings in settlements are constructed on land that is privately owned by Palestinians.<sup>24</sup>

Since 1996, settlements are closed by a military order for Palestinian entry without a prior obtained permit. Buffer zones surrounding settlements, composed at times of Palestinian agricultural lands, are closed to Palestinians as they are declared closed military areas. In addition, settler harassment and attacks on civilian Palestinians, especially escalating since 2000, prevent the latter from accessing their grazing zones and agricultural lands, sometimes for prolonged periods over many years. Some attacks result in fatal injuries. According to UNOCHA during 2010, 79 incidents were recorded leading to Palestinian casualties and 219 incidents leading to Palestinian property/land damages<sup>25</sup> (see also EU HoMs report of Mach 2011 on settler violence). Between 1 January 2011 and 5 July 2011, 69 incidents leading to Palestinian casualties and 157 to property/land damages were recorded by UNOCHA.

### Box 3: Settlements

*Settlements of all kinds - formal or informal outposts - are illegal under international law. They violate the prohibition against transfer of population of the occupying power to the occupied territory (art. 49 IVGC), the prohibition against appropriation of private civilian property without military necessity (regulation 46 Hague Regulations, art. 52 IVGC), the obligation to ensure public order, safety and public life in the occupied territory (regulation 43 Hague Regulations 1907), family life and respect of protected persons (art. 27 IVGC), and the prohibition of maintaining public land as a trustee (regulation 55 Hague Regulations). Article 147 of the Fourth Geneva Convention names deportations and transfers under article 49 as grave breaches of IHL.*

## 10. Movement and Access

In June 2010 UNOCHA reported a decrease in the number of *closure obstacles* along the main roads in the southern and northern West Bank, which blocked vehicular access to dirt roads leading to farming lands, mostly in Area C. "These removals have had a positive, albeit limited, impact on the livelihoods of previously affected farmers".<sup>26</sup> Overall, UNOCHA reported a total of 516 obstacles in May 2011 including over 60 staffed checkpoints, down from a monthly average of 611 obstacles in 2010. According to B'tselem (2004) the West Bank road system is divided into three categories - roads on which Palestinian travel is completely prohibited; roads on which Palestinian travel is partially prohibited; and roads on which Palestinian travel is restricted (also for pedestrian movement). An updated B'tselem survey of 31 January 2011 showed that 72.6 km are forbidden - either totally or partially - for Palestinian vehicular access, while additional 155.2km are restricted.<sup>27</sup>

UN monitoring in the northern West Bank has revealed that the combination of the restricted allocation of visitor permits and the limited number and opening hours of the Wall gates have severely curtailed agricultural practice and undermined rural livelihoods. Data submitted by the Israeli State Attorney to the Israeli High Court of Justice indicated that the number of permits issued to Palestinians farmers to access the seam zone in the northern West Bank between 2006 and mid-2009 has sharply decreased. In January 2009 the closed area designation was extended to Ramallah, Hebron and parts of the Salfit, Bethlehem and Jerusalem governorates; subsequently, Palestinians wishing to access these areas have gradually been required to apply for so called visitors' permits.<sup>28</sup>

The route of the Israeli *Separation Barrier* does not follow the Green Line, and approximately 85% of the current route runs inside the West Bank (mainly in Area C), leaving some 9.5% of the West Bank territory on the western Israeli side. The International court of Justice (ICJ) in its advisory opinion of 2004 stated that "...the construction of the wall being built by Israel, the occupying power in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law" (section 163 ICJ advisory opinion 9 July 2004).

Article 49 IVGC prohibits any interference in the demographic composition of the occupied territory. The ICJ in its advisory opinion already in 2004 has noted that: "[t]here is also a risk of further alterations to the demographic composition of the Occupied Palestinian Territory resulting from the construction of the wall in as much as it is contributing, as will be further explained in paragraph 133, to the departure of Palestinian populations from certain areas. That construction, along with measures taken previously, thus severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right."<sup>29</sup>

### Box 4: Forced displacement

*According to the Israeli NGO Bimkom, more than 11% of all Palestinians in Area C have had to move their place of residency at least once since 2000. Forcible transfers are prohibited under art. 49 IVGC. The occupying power also has the responsibility to preserve and maintain the demographic and social configuration of the occupied territory. Jurisprudence has expanded the notion of forced transfer to also include indirectly forcing the population to displace through an abuse of power or creating a coercive environment that basically leave the local residents with no choice other than to leave<sup>30</sup>.*

*Visits carried out by UNOCHA to 13 communities in Area C in spring 2011 revealed that residents of both villages and Bedouin or herding communities are being displaced from these communities due to restrictive policies applied by the Israeli authorities in Area C, with thousands of others at-risk of displacement. Policies affecting these communities include planning policies that facilitate Israeli settlement expansion, but make it virtually impossible for Palestinian residents to build legally and develop their communities. As a result, many build "illegally" and face demolition. Policies also include restrictions on movement, land use and access to water resources, which undermine livelihoods and access to basic services. These are coupled with settler violence and general harassment from the Israeli military. Of the 13 communities visited, ten reported that families are moving out and eleven reported that their sources of livelihood have eroded in the past 10 years. Ten reported that nearby Israeli settlements are central to the daily hardships they endure. Given the small size of many of the most vulnerable communities, there are real concerns that, in the absence of concrete policy*

*changes or the significant influx of support, some of these communities may disintegrate and disappear altogether over the course of the next generation, or sooner.*

## 11. Destruction of civilian property

Destruction of civilian property in Area C (and East Jerusalem) for reasons of enforcement of planning and construction laws has been taking place for several decades but only gained international focus in recent years, while severely increasing.

In specific, destructions due to lack of building permits have been criticized by numerous UN treaty-bodies and officials as being a deliberate<sup>31</sup> and discriminatory<sup>32</sup> large-scale<sup>33</sup> practice<sup>34</sup> and phenomenon<sup>35</sup>, contrary to international law<sup>36</sup>. The UN Committee on the Rights of the Child recommended in 2002 that Israel ceases the demolitions and provides the victims of such demolitions with support for the rebuilding of their homes and with adequate compensation.<sup>37</sup> In its latest oPt report to the Human Rights Council (March 2011), the UN High Commissioner also repeated that Israel should cease demolitions and reiterated that: "The destruction of civilian homes also violates the right to adequate housing, including as a violation of the International Covenant on Economic, Social and Cultural Rights (article 11, para.1)."<sup>38</sup>

The UN has noted that the destructions result in increasing humanitarian dependency,<sup>39</sup> forced displacement<sup>40</sup> and de-development<sup>41</sup> of the civilian population in Area C, and other parts of oPt including East Jerusalem. This is done through destructions of shelters, infrastructure such as water wells, cisterns, latrines, as well as other constructions that serve basic needs as schools and clinics, or generate livelihoods such as animal shacks.

### Box 5: Destruction of civilian property

*From 2000 onwards more than 4,800 Palestinian houses and structures have been demolished for lack of a building permit in Area C.<sup>42</sup> According to figures obtained from the UNOCHA Displacement Working Group, between 2009 and 5 July 2011 1,072 structures were demolished (directly or as a side-affect of the main demolition) in the West Bank (275 in 2009 and 439 in 2010 and 358 from January to 5 July 2011). Structures included houses, schools, animal shelter, storage / kitchens and rest room, water related, commercial, playgrounds, and mosques. Alongside the main destruction due to lack of permit, the Israeli security forces also destroyed fruit stalls and uprooted olive trees. These destructions lead to the displacement of nearly 2,000 people (643 in 2009, 606 in 2010 and 703 between January and 5 July 2011) and further affected more than 16,000 persons in the reported period.*

*There is no concept of administrative destruction in IHL. Any application of regulation 43 should not undermine the specific prohibition against destruction under art. 53 IVGC, unless absolutely necessary by military operations (basic needs and other objects). Destruction of objects essential for the survival of the civilian population is absolutely prohibited under any circumstances. Extensive destruction not justified by military necessity and done unlawfully and unwontedly is a war crime under article 147IVGC.*

## 12. Economic development

According to the World Bank the economic growth in the West Bank was 9% in 2010. As has been the case in the previous years, economic growth in the oPt is primarily driven by the considerable inflow of official development assistance (ODA) in the shape of budget support and capital investments. Still, the overall economic situation in the oPt remains below what was experienced prior to the start of the second intifada in 2000. The decade-long downturn has largely been the result of the Israeli military occupation and the ensuing Israeli policies of closure and separation. Accordingly, the biggest impediments to growth are lack of access to land and resources (mainly in Area C), import and export restrictions, and a high-cost capital structure. With private sector-driven growth being absent, the PA will continue to rely on donor aid for its budgetary needs.

The Palestinian economy has recently showed continued signs of improvements, with reduced deficits, positive growth and stable inflation, as a result of on-going reforms and significant external assistance. However, the restrictions placed on movement of goods and persons in /out of and within the oPt including Area C and East Jerusalem has also affected Palestinians' ability to contribute more significantly to their economy. Reducing

the number of obstacles put by the Israeli authorities, along with Palestinian reforms and economic aid, has contributed to increased economic activity and the losses experienced since 1999 slowly being reversed. There was no improvement however, in East Jerusalem and Area C, including seam zones and the Jordan Valley.<sup>43</sup>

A recent report by the World Bank (2010) states that the physical access restrictions are the most visible, but perhaps not the most important ones. The land use and planning regulations in effect in Area C tend to limit development even more by confining existing villages with too little suitable space for demographic growth, causing irrational land use and unsound environmental management. According to the report economic activity in Area C is limited primarily to low intensity agriculture. High intensity agricultural, industrial, housing, tourism, and other investments are hindered by the inability to obtain construction permits from the Israeli authorities and the limited amount of titled land available.

According to the World Bank, Israel's continued control over planning and zoning in Area C has become an increasingly severe constraint to Palestinian economic activity. The division of the West Bank into Areas A, B and C distorts land markets by creating artificial land shortages. As a result, land prices in Areas A and B are shooting up (World Bank, "The Economic Effects of Restricted Access to Land in the West Bank," October 2008, p. iv.)

#### Box 6: Economic development

*Several industrial estates have been designed for the West Bank and Area C, which could become a cornerstone in a future Palestinian State. The first planned housing development, Rawabi, located in Area A north of Ramallah which is planned for some 40,000 Palestinians has a planned access road going through Area C. The tourist sector is also a critical part of the Palestinian economy, however, Palestinians have very limited, and in most cases no access, to develop and maintain tourism sites in Area C.*

*Agriculture and fishing represents only 3.3% of the Palestinian GDP, which could be increased with increased access to land and water. As described in this report much of the rich agricultural land in the Jordan Valley is totally inaccessible for Palestinians. The stone and marble sector accounts for 25% of overall Palestinian industrial production and provides 15,000 jobs plus thousands of jobs in related industries. Most quarries are located in Area C. The Israeli government requires that the companies obtain permits for extraction, without permits quarries are subject to raids and confiscation. The difficulties in obtaining permits discourage investment in the sector.*

### 13. International aid efforts

The international community, and in particular the EU and its individual Member States shoulder a large proportion of the burden of ensuring that the civilian population in Area C is provided for in terms of basic service delivery. Nevertheless, aid provided by the international community does not relieve Israel of its obligations under IHL (art. 60IVGC). In 2009, ODA to the oPt (both Gaza and the West Bank) stood at more than USD 700 pr. capita. At the same time, the PA's continued implementation of political and financial reforms pared with a limited easing of the Israeli movement and access restrictions has to a lesser degree helped stimulate economic growth.

Since 2007, the PA has implemented a largely successful campaign of institutional reforms and economic development that has contributed to increased economic performance. However, this campaign has mainly been limited to Area A under PA civil and security control, since Area C is largely off limits to the PA and thus to the reform agenda itself. Consequently, the Palestinian state-building project is in effect partly limited to the fragmented and isolated "islands" of areas A and B in the "ocean" of the contiguous area C. As a result, EU and individual Member State interventions in the oPt have mainly focused on Area A and much less on Area C. Against this backdrop, the EU will have to address in a more consistent manner the disconnection between qualitative state-building (massive aid input), quantitative territorial fragmentation (*obstacles* to goal orientation) and the expected output of an independent, democratic, contiguous, sovereign and viable State of Palestine (the overarching goal).

Due to the restrictions outlined above, and the difficulties faced with the implementation of projects, the EU MS and EUREP should strive for a harmonised approach, building on past experience and best practices in cooperation with the PA, COGAT and international stakeholders.

In August 2010 a fact sheet on an UNOCHA Response Plan specified a number of essential measures urgently required of the Israeli authorities to improve the humanitarian situation, including ceasing demolitions and ensuring that Palestinian planning needs are met; opening up areas currently off-limit to Palestinian development, including closed military zones and nature reserves; and the complete and permanent freezing of all settlement activity. In advance of the above mentioned steps the government of Israel was called to reinstitute a moratorium on all demolitions in Area C; expedite rehabilitation of existing infrastructure, issuing permits to teachers to allow easy passage to work places in Area C, and ensure that they are not delayed at checkpoints; protect students from attacks and harassment by settlers; authorizing unconditional weather proofing and structural repairs to existing shelter units within Area C, without the requirement to obtain permits.<sup>44</sup>

## **Annex 1**

### **Implementation of the following would improve the situation in Area C.**

#### **A. Encourage Israel to change its policy and planning system for Area C and engage the Palestinian communities in access and development by:**

- Calling for an immediately cease in Israeli demolitions of Palestinian-owned structures in Area C, until Palestinians have access to fair and non-discriminatory zoning and planning.
- Supporting a PLO/PA dialogue with relevant Israeli authorities to transfer planning authority and empower local government units including by reinstalling local/district planning committees in Area C.
- Supporting PLO/PA in the development of Palestinian master plans and local plans for the entire West Bank - including Area C, seam-zones and East Jerusalem.
- Supporting work to improve Palestinian statistics on population movements and a Palestinian land ownership survey in Area C.

#### **B. Reduce land and population vulnerability and facilitate better coordination of basic needs deliveries in Area C by:**

- Supporting the Palestinian people to sustain their presence by for example support to tanked water, fodder, psycho-social support etc.
- Monitoring Palestinian planning applications and Israeli destructions and more systematically voice objections to involuntary population movements, displacements, evictions, demolitions and internal migration in coordination with other international actors.
- Mapping of EU interventions in Area C with the view to better coordinate support to civil society and UN organizations and to discuss future interventions with the PLO/PA.
- Supporting development projects in Area C including by for example building new schools, community centers, clinics, municipal buildings, roads, irrigation, water and other infrastructural projects.

#### **C. Promote economic development in Area C by:**

- Supporting Palestinian private sector development in Area C in areas such as tourism, site protection, industrial parks, wastewater treatment, solid waste, landfills, water pipelines, electricity infrastructures etc.
- Enabling the PLO/PA to plan and develop programs in Area C.
- Facilitating access to currently closed areas for Palestinian agricultural development in the Jordan Valley and in obtaining necessary permissions to establish greenhouses, irrigation systems and management of livestock.
- Encouraging Israel to open the gates to the seam zone on a more regular basis without prior coordination and allowing agricultural vehicles and tools to be brought into the closed areas.

**D. Increase visibility and accountability for the delivery of aid in Area C by:**

- Regular follow up on the situation in Area C in accordance with the EU IHL guidelines and report on obstacles and impediments for development of Area C to the relevant Israeli authorities.
- Raising public awareness about the humanitarian and development needs through information briefings, films, tours etc. about Area C.
- IHL to be adequately reflected in programming, planning, implementation, monitoring and evaluation of funded activities in Area C and support provision of IHL training for field staff in Area C.

## Notes

- <sup>1</sup> Since the signing of the Oslo Agreements Palestinian control over areas A and B has been systematically interrupted by military incursions and other policies relating to land control.
- <sup>2</sup> OCHA humanitarian response plan 2010 09 30.
- <sup>3</sup> World Bank WBG strategy FY08-FY10.
- <sup>4</sup> Rule 32 ICRC, art. 70 IAP, Rule 55 ICRC, art. 59 IVGC.
- <sup>5</sup> *International Law and the Administration of Occupied Territories*, USA Oxford University Press, 1992, p. 104.
- <sup>6</sup> Mi'rah, ending the occupation 2009.
- <sup>7</sup> <http://www.middle-east-online.com/english/?id=35434>
- <sup>8</sup> UNOCHA response plan fact sheet, 3 September 2010
- <sup>9</sup> [http://www.ochaopt.org/documents/ocha\\_opt\\_area\\_c\\_humanitarian\\_response\\_plan\\_fact\\_sheet\\_2010\\_09\\_03\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_area_c_humanitarian_response_plan_fact_sheet_2010_09_03_english.pdf)
- <sup>10</sup> *Ibid*, section 19.
- <sup>11</sup> [http://www.savethechildren.org.uk/en/docs/English\\_Jordan\\_Valley\\_Fact\\_Sheet\\_and\\_Citations.pdf](http://www.savethechildren.org.uk/en/docs/English_Jordan_Valley_Fact_Sheet_and_Citations.pdf)
- <sup>12</sup> [http://www.ochaopt.org/documents/special\\_focus\\_area\\_c\\_demolitions\\_december\\_2009.pdf](http://www.ochaopt.org/documents/special_focus_area_c_demolitions_december_2009.pdf)
- <sup>13</sup> Being aware of the gaps between the regional plans of the 1940s and today's needs, the CA considers the outline plans that changed the regional mandatory plan, legal as the Jordanian law allows a mixture of plans from different levels Zif 25. It is seen as the best option for planning for the following advantages that were not possible under regional mandatory plans:
1. There is no land settlement and registration and therefore ownership survey is impossible.
  2. It answers the need to cover as maximum built up area in a relatively short period of time.
  3. Permit applications are simpler.
- <sup>14</sup> Population density ratios were based on current densities and the planning authorities make their calculations based on "real" density ratios. Zif 47.
- <sup>15</sup> Restricting space, p.6.
- <sup>16</sup> The Underpinnings of the Future Palestinian State: Sustainable Growth and Institutions, Economic Monitoring Report to the Ad Hoc Liaison Committee, World Bank, September 21, 2010
- <sup>17</sup> <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WorldBankSep2010AHLReport.pdf>
- <sup>18</sup> ICRC customary law study Vol. I, p. 17
- <sup>19</sup> ICRC rule 44
- <sup>20</sup> Commentaries to additional protocols, C. Pilloud, p. 663.
- <sup>21</sup> Article 55 IAP. See also art. 35(3) IAP relating specifically to employing the environment as means and methods of warfare.
- <sup>22</sup> B'tselem: le Israeli Information Center for Human Rights. Access Denied: Israeli Measures to Prevent Palestinian Access to Land Around Settlements. Available Online at: [http://www.btselem.org/english/publications/summaries/200809\\_access\\_denied.asp](http://www.btselem.org/english/publications/summaries/200809_access_denied.asp)
- <sup>23</sup> <http://www.hrw.org/en/reports/2010/12/19/separate-and-unequal-0> p. 4
- <sup>24</sup> <http://peacenow.org/images/112108PNReport.pdf>
- <sup>25</sup> [http://www.ochaopt.org/documents/ocha\\_opt\\_the\\_monthly\\_humanitarian\\_monitor\\_2011\\_02\\_11\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_the_monthly_humanitarian_monitor_2011_02_11_english.pdf)
- <sup>26</sup> [http://www.ochaopt.org/documents/ocha\\_opt\\_movement\\_access\\_2010\\_06\\_16\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_movement_access_2010_06_16_english.pdf)
- <sup>27</sup> [http://www.btselem.org/english/freedom\\_of\\_movement/Forbidden\\_Roads\\_Table.pdf](http://www.btselem.org/english/freedom_of_movement/Forbidden_Roads_Table.pdf)
- <sup>28</sup> [http://www.ochaopt.org/documents/ocha\\_opt\\_movement\\_access\\_2010\\_06\\_16\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_movement_access_2010_06_16_english.pdf)
- <sup>29</sup> <http://www.icrc.org/web/eng/siteeng0.nsf/html/57jcgj>
- <sup>30</sup> "Forced" is not to be interpreted in a restrictive manner, such as being limited to physical force. It may include the "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment" from Prosecutor v. Radislav Krstic (Trial Judgement), ICTY (2 August 2001).
- <sup>31</sup> The UN Resident and Humanitarian Coordinator for the occupied Palestinian territory on 1 February 2011 condemned "the continuing demolition of water cisterns in areas of the West Bank of the oPt... which are under the full control of the Government of Israel... the removal of such critical infrastructure places serious strains on the resilience and coping mechanisms for these [marginalized rural and herder communities- NAs], who will become increasingly dependent on economically unsustainable sources such as tinkered water. Such deliberate demolitions in occupied territory are also in contravention of Israel's obligations under international law." Any URL?
- <sup>32</sup> The Commissioner-General of UNRWA condemned on 14 January 2011 "the demolition of homes, and partial demolition of a school, by the Israel Defence Forces (IDF) on 12 January in the Bedouin herding community of Dkaika, in the West Bank. Instead of sitting down to their exam, the children faced the traumatic scene of watching their homes and classroom be demolished. This is unacceptable. This community of refugees was originally displaced in 1948 from their ancestral land in the Negev. Now, they face the devastating consequences of another forced displacement. Demolitions of the kind we have seen in Dkaika this week affect a growing number of Palestinians, and reflect a policy of discrimination. I call on Israel to immediately cease demolitions of Palestinian properties in the occupied Palestinian territory and to respect and ensure the rights of Palestine refugees in accordance with its obligations under international law, as repeatedly called for by the international community." URL?
- <sup>33</sup> Concluding Observations of the Committee on the Rights of the Child: Israel. CRC/C/15/Add.195m October 9, 2002 \*50. The Committee is deeply concerned at the large-scale demolition of houses and infrastructure in the occupied Palestinian territories, which constitutes a serious violation of the right to an adequate standard of living for children in those territories. 51. The Committee recommends... that the State party... refrain from the demolition of civilian infrastructure, including homes, water supplies and other utilities. It further recommends that the State party provide the victims of such demolitions with support for the rebuilding of their homes and with adequate compensation." [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.195.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.195.En?OpenDocument)
- <sup>34</sup> Concluding Observations/Comments: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. E/C.12/1/Add.90 May 23, 2003 \*26. The Committee reiterates its grave concern about the continuing practices by the State party of home demolitions, land confiscations and restrictions on residency rights, and its adoption of policies resulting in substandard housing and living conditions, including extreme overcrowding and lack of services, of Palestinians in East Jerusalem, in particular in the old city. 42. ...the Committee urges the State party to cease the practices of facilitating the building of Israeli settlements, expropriating land, water and resources, demolishing houses and carrying out arbitrary evictions." [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.90.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.90.En?OpenDocument)
- <sup>35</sup> The High Commissioner for Human Rights in the occupied Palestinian territory on 1 May 2009 "called for an immediate halt to the recent wave of eviction orders and demolitions of Palestinian houses in the occupied territory, adding that the demolitions and forced evictions, as practiced in Jerusalem, where hundreds of people are threatened with forcible eviction, house demolition and displacement" original URL...
- <sup>36</sup> The UN Special Coordinator for the Middle East Peace Process noted in March 2009 that the demolitions in East Jerusalem "harm ordinary Palestinians, heighten tensions in the city, undermine efforts to build trust and promote negotiations, and are contrary to international law and Israel's commitments". Better URL
- <sup>37</sup> <http://www.un.org/News/Press/docs/2009/09/09051341.html>
- <sup>38</sup> Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1
- <sup>39</sup> *Ibid* fn. 1
- <sup>40</sup> *Ibid* fn. 2, 4, 5.
- <sup>41</sup> *Ibid*, fn. 3, 4.
- <sup>42</sup> BINKOM, May 2010
- <sup>43</sup> CAP 2011, P. 6, 9.
- <sup>44</sup> [http://www.ochaopt.org/documents/ocha\\_opt\\_area\\_c\\_humanitarian\\_response\\_plan\\_fact\\_sheet\\_2010\\_09\\_03\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_area_c_humanitarian_response_plan_fact_sheet_2010_09_03_english.pdf)

## **Area C and Palestinian State Building:**

### **A sequenced prioritization of activities listed in Annex 1**

Upon request from the MaMa Working Group in Brussels this note contains a sequenced prioritization of the activities listed in Annex 1 of the EU paper "Area C and Palestinian State building". All the activities are regarded as important to implement according to the following sequenced prioritization (examples on ongoing implementation are given in brackets):

- Short term:** Activities which are or can be immediately implemented.
- Medium term:** Activities which are next in line expected to be initiated in 2012 and some requiring involvement of the PA.
- Challenging:** Activities which requires involvement of the PA and a change in Israeli policy.

Further discussion on programming and implementation of activities in Area C will take place locally involving EUREP, EU Member States, PA and other relevant actors.

### **A. Encourage Israel to change its policy and planning system for Area C and engage the Palestinian communities in access and development by**

#### **Short term**

- Calling for an immediately cease in Israeli demolitions of Palestinian-owned structures in Area C, until Palestinians have access to fair and non-discriminatory zoning and planning (e.g. EU Area C report and coming demarches).
- Supporting PLO/PA in the development of Palestinian master plans and local plans for the entire West Bank - including Area C, seam-zones and East Jerusalem. \*

#### **Medium term**

- Supporting work to improve Palestinian statistics on population movements and a Palestinian land ownership survey in Area C.

#### **Challenging**

- Supporting a PLO/PA dialogue with relevant Israeli authorities to transfer planning authority and empower local government units including by reinstalling local/district planning committees in Area C.

### **B. Reduce land and population vulnerability and facilitate better coordination of basic needs deliveries in Area C by**

#### **Short term**

- Supporting the Palestinian people to sustain their presence by for example support to tanked water, fodder, psycho-social support etc. (e.g. humanitarian interventions by the UN, ECHO and other donors).
- Monitoring Palestinian planning applications and Israeli destructions and more systematically voice objections to involuntary population movements, displacements, evictions, demolitions and internal migration in coordination with other international actors (e.g. EU local inventory of demolished projects and local EU statements on demolitions). \*

- Supporting development projects in Area C including by for example building new schools, community centers, clinics, municipal buildings, roads, irrigation, water and other infrastructural projects. (e.g. development activities in smaller scale by the UN, EC, ECHO and other donors).

**Medium term**

- Mapping of EU interventions in Area C with the view to better coordinate support to civil society and UN organizations and to discuss future interventions with the PLO/PA (e.g. some Member States have begun mapping of interventions in Area C).

**C. Promote economic development in Area C by**

**Short term**

- Encouraging Israel to open the gates to the seam zone on a more regular basis without prior coordination and allowing agricultural vehicles and tools to be brought into the closed areas. (e.g. advocacy activities by the UN and humanitarian actors).
- Facilitating access to currently closed areas for Palestinian agricultural development in the Jordan Valley and in obtaining necessary permissions to establish greenhouses, irrigation systems and management of livestock.

**Medium term**

- Supporting Palestinian private sector development in Area C in areas such as agro businesses, tourism, site protection, land reclamation, industrial parks, wastewater treatment, solid waste, landfills, water pipelines, electricity infrastructures etc. (e.g. EC Assistance to Agriculture West Bank and individual projects by EU Member States).
- Enabling the PLO/PA to plan and develop programs in Area C.

**D. Increase visibility and accountability for the delivery of aid in Area C by**

**Short term**

- Raising public awareness about the humanitarian and development needs through information briefings, films, tours etc. about Area C. (e.g. field visits to Area C by EU Heads of Development Cooperation and EU Heads of Mission).

**Medium term**

- Regular follow up on the situation in Area C in accordance with the EU IHL guidelines and report on obstacles and impediments for development of Area C to the relevant Israeli authorities.
- IHL to be adequately reflected in programming, planning, implementation, monitoring and evaluation of funded activities in Area C and support provision of IHL training for field staff in Area C.

\* Suggestions for changes in the wording of two activities and inclusion of settler violence have not been included since this was not a part of the mandate from MaMa.