



# UNDERSTANDING THE STATUS OF LAND RIGHTS FOR SUSTAINABLE RECONSTRUCTION OF THE GAZA STRIP AND THE WEST BANK

## Briefing note on the Occupied Palestinian Territory

### INTRODUCTION

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The recent resurgence of hostilities between Hamas and Israel has led to the widespread destruction of the agrarian economy in the Occupied Palestinian Territory (OPT), with long-term implications for Palestinian land and agrifood systems in both the Gaza Strip and the West Bank.

The conflict has affected mainly the Gaza Strip. As of 27 May 2024, approximately 1 200 Israelis and 36 050 Palestinians have been killed, with many more injured.<sup>1</sup> Up to 1.7 million people have been displaced, many multiple times,<sup>2</sup> and an estimated 54 percent of all buildings and housing have been damaged or destroyed.<sup>3</sup> With regards to land and agriculture, as of May 2024, 57.3 percent of all cropland has been damaged<sup>4</sup> (60 percent of this orchards and other trees),<sup>5</sup> 32.7 percent of the area in greenhouses was damaged (covering over 84 percent of the area in greenhouses in the northern governorates)<sup>6</sup> and 1 049 agricultural wells have been impaired.<sup>7</sup> In addition, as of 15 February 2024,<sup>8</sup> more than 300 home barns, 100 agricultural warehouses, 46 farm storage facilities, seven agricultural suppliers 119 animal shelters, and over 500 farms related to different forms of livestock production, have been damaged. The entire population of the Gaza Strip is now food insecure. Famine is imminent. One in three people faced catastrophic food insecurity around mid-March; this is expected to increase to 1.1 million people, half of the population of the Gaza Strip, by July 2024.<sup>i</sup>

According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), between 7 October 2023 and 15 May 2024, 489 Palestinians, including at least 117 children, have been killed in the West Bank and East Jerusalem and 1 964 Palestinians have been displaced after their homes were demolished or destroyed.<sup>9</sup> The year 2023 was the deadliest year for Palestinians in the West Bank since the United Nations Relief and Work Agency for Palestine Refugees in the Near East (UNRWA) began systematically recording casualties in 2005.<sup>10</sup> In addition, since 7 October 2023, OCHA has recorded 896 Israeli settler attacks against Palestinians that resulted in casualties and/or damage to Palestinian property.<sup>9</sup>

Land rights are central to addressing this conflict and post-war reconstruction. Israeli policies over land use and promotion of settlements have restricted access to land and land rights for Palestinians for decades prior to the current war, with negative implications for land-tenure security and agrarian livelihoods. When Palestinians are allowed and able to return to their homes and lands, steps towards restitution and documenting, registering and securing housing, land and property rights will be necessary to restore Palestinian rights, secure livelihoods and rebuild the economy.

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<sup>i</sup> According to the Integrated Food Security Phase Classification (IPC), as of 18 March, all but 96 000 of the entire population in the Gaza Strip (2.2 million) faces high levels of acute food insecurity (IPC Phase 3 or above: Crisis or worse), with over 40 percent (876 000) in Emergency (IPC Phase 4) conditions. Almost one in three people (677 000) face catastrophic conditions (IPC Phase 5), experiencing extreme lack of food, starvation and exhaustion of coping capacities.<sup>3</sup>

# THE LEGACY OF THE ISRAELI-PALESTINIAN CONFLICT ON LAND OCCUPATION AND LAND RIGHTS

Land ownership has been the key issue underpinning the Israeli–Palestinian conflict, with both Palestinians and Israelis claiming historic ties to the land.

In 1945, under the British Mandate, Palestinians still owned around 90 percent of the territory, despite several waves of land acquisition by Jewish settlers from the end of the nineteenth century.<sup>11</sup> The UN–approved partition plan, Resolution 181 of November 1947, allocated 56 percent of the territory to a new Jewish state and 44 percent to an Arab State, with special considerations for the City of Jerusalem.<sup>12</sup> After the Arab–Israeli war (1948–49), the newly founded State of Israel took control of 77 percent of the territory of Palestine,<sup>13</sup> with the remainder divided between the Gaza Strip (administered by Egypt) and the West Bank (administered by Jordan), where most of the 700 000–plus Palestinians displaced by the war became refugees.<sup>14</sup> Jerusalem was divided into East (held by Jordan) and West (held by Israel).<sup>15</sup>

Subsequent events further eroded the extent and nature of Palestinian control over land. The Six-Day War in 1967 ended with Israel capturing the Sinai Peninsula from Egypt and the Golan Heights from the Syrian Arab Republic and occupying the West Bank, East Jerusalem and the Gaza Strip<sup>ii</sup> – hence the United Nations use of the term Occupied Palestinian Territory (OPT).<sup>16</sup> In addition, in contravention of international law,<sup>17</sup> Israel over time established Israeli-controlled military zones and Jewish settlements throughout the West Bank and the Gaza Strip.<sup>18, 19</sup> The settlements in the Gaza Strip were unilaterally withdrawn in 2005, following the Disengagement Plan Implementation Law; they persist today and significantly shape landholding patterns in the West Bank.

Additionally, in 1995, the Oslo II Accord established the administrative division of the Palestinian West Bank into three areas (A, B and C), with various degrees of shared control.<sup>iii</sup> Designed as a 5-year interim agreement, negotiations were envisioned to reach a final agreement on permanent status and resolve major issues in the Palestinian–Israeli conflict, including water and settlements. Oslo II intended for the territorial divisions of the West Bank to be temporary, with full jurisdiction of all three areas gradually transferred to the Palestinian National Authority (PA). Instead, the divisions persist, with control over this land a continuing source of conflict.

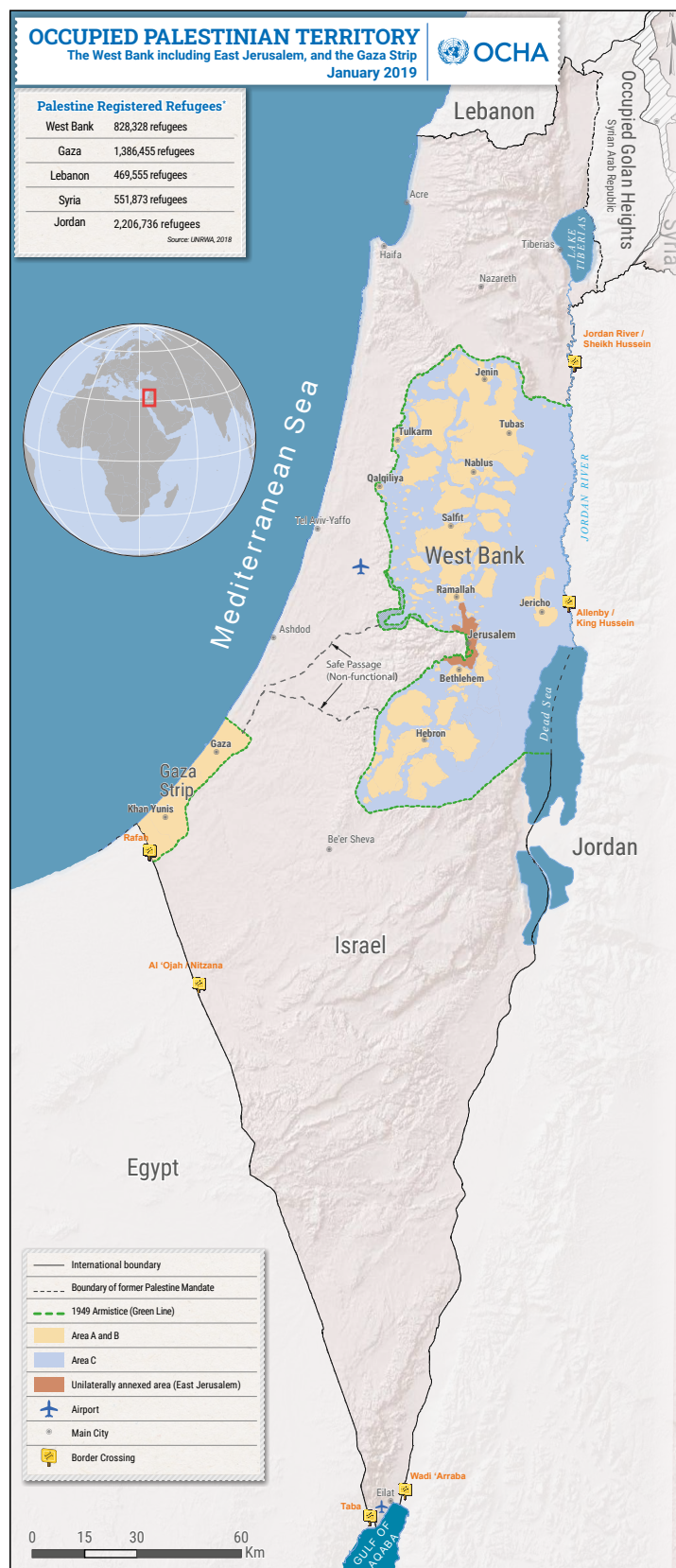
Towards the end of 2023, before the present conflict, the OPT land area consisted of two areas: the West Bank and the Gaza Strip.

**The West Bank** has a land area of about 5 640 km<sup>2</sup> and an estimated population of 3 176 000 Palestinians and just under 700 000 Israeli settlers.<sup>20</sup> There are 279 Israeli settlements spread across the West Bank and the Golan Heights, including 14 in East Jerusalem (with a population of 229 000 people). Of those settlements, at least 147 are outposts, which are illegal even under Israeli domestic law.<sup>21</sup>

- ▶ Area A, about 18 percent of the West Bank, is administered by the PA. Of the three areas, Area A is the most densely populated. Although under Palestinian control, the limited amount of land available for building and agricultural activities lies on the borders with Area C and is not easily accessible.
- ▶ Area B, covering 22 percent of the West Bank, is administered by the PA, with shared security control. Palestinian administrative control includes the education, economic and health sectors. Despite land being under the PA’s civil control, Area B is often subject to the expansion of Israeli settlements and encroachments.<sup>22</sup>
- ▶ Area C, representing 60 percent of the West Bank, is fully administered by Israeli occupation authorities. An estimated 300 000 Palestinians live in 532 residential areas located partly or fully in Area C. Most of the Israeli settlements are found in

ii Israel returned the Sinai Peninsula to Egypt in 1982 when the two countries signed a peace agreement. In December 1981 the Golan Heights passed under Israeli Law through the ratification of the Golan Heights Law by the Knesset. The law was declared “null and void and without international legal effect” by United Nations Security Council Resolution 497, which reiterated the application of the Fourth Geneva Convention to the Golan Heights as an occupied territory.

iii The Oslo II Accord in 1995 provided limited self-rule for Palestinians in parts of the West Bank and the Gaza Strip through the Palestinian National Authority, which was established in May in 1994 after the signing of the Israel/PLO “Agreement on the Gaza Strip and the Jericho Area”. This agreement was then superseded by the Oslo II Accord.



Area C, with 400 000 Israeli settlers residing in approximately 230 settlements.<sup>23</sup> Approximately 60 percent of Area C is made up of firing and military training zones (with 38 Palestinian communities located within them), other military land or state land and nature reserves. Although the remaining 40 percent of Area C contains most of the West Bank’s agricultural land and natural resources, Palestinian residents struggle to obtain land permits for housing and farming. According to OCHA, between 2009 and 2016 only three percent of all requests submitted by Palestinians for building permits in Area C were granted (98 out of 4 422).<sup>23</sup> In addition, Israel occupation authorities have planned for Palestinian development in less than 1 percent of Area C, with the rest of the area off-limits or heavily restricted for Palestinian construction. More than 70 percent of the Palestinian communities in Area C are not connected to the water supply network, with water consumption in several communities dropping below 20 percent of the minimum recommended standard (20 out of 100 litres per day per capita).<sup>23</sup>

**The Gaza Strip** has a population of 2.2 million inhabitants on approximately 365 km<sup>2</sup> of land, making it one of the most densely populated regions in the world. The Gaza Strip has been ruled by Hamas since 2007. More than 70 percent of the population of the Gaza Strip are refugees or descendants of refugees. The nine refugee camps in the territory are administered by UNRWA. Despite its official withdrawal and closure of settlements in 2005, Israel has retained strong authority over the Gaza Strip through its military control over land, sea and air and by preventing people and goods from freely entering or leaving the territory.<sup>24</sup> The Israeli army has also maintained a presence by establishing a buffer zone known as the Access Restricted Area (ARA), which ranges in width from 300 to 1 500 metres along the eastern border of the Gaza Strip. The ARA comprises 17 percent of the total area of the Gaza Strip and 35 percent of all its agricultural land.<sup>19, 25</sup> Since 2007, Israel has severely restricted the movement of goods and people to and from the Gaza Strip by air, land and sea.<sup>26</sup>

**Figure 1.** The scattered lands of the Occupied Palestinian Territory (2019)

Source:

**United Nations Office for the Coordination of Humanitarian Affairs. 2019.**

*The West Bank including East Jerusalem and the Gaza Strip | January 2019.* East Jerusalem.

<https://www.ochaopt.org/content/west-bank-including-east-jerusalem-and-gaza-strip-january-2019>, country names modified by author.

## LAND STRUCTURE AND AGRICULTURE

Despite the struggles around land in both the Gaza Strip and the West Bank, agriculture continues to play a vital role with its direct effect on the economy, in building resilience and, more broadly, in forming the roots of Palestinian society, culture and identity. The agrifood sector accounts for approximately 6.4 percent of gross domestic product, of which agriculture accounts for 3.6 percent.<sup>27</sup> Livestock accounts for 45 percent of total agricultural value, followed by fruits, vegetables and olive oil.<sup>27</sup> While the OPT is heavily dependent on imports to meet domestic demand for agricultural products, particularly of cereals and animal feed, it is largely self-sufficient in vegetables, grapes, figs, olive oil, meat, eggs and honey, supporting dietary diversification in the territory.<sup>25</sup> Fish production is also important in the Gaza Strip and serves as a major source of nutritional diversity.<sup>29</sup>

According to the results of the Agriculture Census 2021, 18.9 percent of the total land area in the OPT is cultivated (18.5 percent in the West Bank and 24.6 percent in the Gaza Strip).<sup>29</sup> The Census identified 140 600 agricultural holdings, 82.4 percent in the West Bank and 17.6 percent in the Gaza Strip. This represents a significant increase from the 110 104 holdings identified during the agricultural year 2009/2010. Agricultural holders are 92.3 percent male and 7.7 percent female. Size-wise, 51 percent of holdings are classified as small (less than 3 dunums or 0.3 hectares). The most common type of agricultural holding was plant holdings (73.4 percent), while 14.2 percent are animal holdings and 12.4 percent mixed holdings.

Agricultural producers are primarily small-scale farmers, herders and fisherfolk.<sup>27</sup> It should be noted that micro-holdings (home gardens or farms with a few head of cattle) are not included in the agricultural census and agricultural statistics. However, such holdings meet part of the household's consumption needs and are key to improving consumption levels and food security. Statistics from 2015 show that an

average of 27.4 percent of Palestinian households own a home garden (33 percent in West Bank, 16.8 percent in the Gaza Strip) and 91.9 percent of households with a home garden use these for agricultural activities.<sup>30</sup> Olive trees are a case in point. Concentrated primarily in the West Bank, olive trees cover more than 50 percent of cropland in the OPT. Olive production supports the livelihoods of over 75 000 families, contributing 15 percent of agricultural gross domestic product.<sup>31</sup>

Agriculture is thus a significant employer. Some 70 700 people are employed formally in the section, half of them as employees and half self-employed. This represents 6.4 percent of the working-age population.<sup>32</sup> However, if micro-holdings are taken into account, it is estimated that an additional 40 percent of the population are engaged informally in the sector on a part-time and ad hoc basis, mostly rural Palestinian women of working age carrying out unpaid work.<sup>33, 34</sup>

The fragmentation of land, movement restrictions and fear of settler attacks limit Palestinians' access to land and water,<sup>iv</sup> with clear impact on agricultural and livestock activities.<sup>35</sup> A 2017 study by FAO calculated that mobility restrictions render an estimated 50 percent of agricultural land inaccessible.<sup>36</sup> In addition, difficulties in obtaining land permits for housing and farming resulted in a total of 953 structures being demolished or seized in the West Bank in 2022, including in East Jerusalem – the highest number since 2016. More than 80 percent of the structures affected were located in Area C.<sup>37</sup> This situation has worsened since 7 October 2023 as a result of the ensuing tensions and the increase in settler violence and destruction.<sup>21, 38</sup> The worst impact has been the loss of horticultural trees, especially olive trees. Also, many families in the Gaza Strip have lost their livelihood from fish production because of the destruction of fishing boats and ports.<sup>39</sup> For the Gaza Strip alone, the Palestinian Bureau of Central Statistics estimates about USD 2 million direct daily losses in agricultural production as a result of cessation of agricultural activities.<sup>39</sup>

iv Though aquifers ought to be a shared resource according to international law, the Israeli Water Company (Mekorot), uses at least 80 percent of these groundwater resources and sells back the remaining 15 to 20 percent to the Palestinian Water Authority. The Oslo Accords (1995, Annex 3, Article 40), which give Israel control of approximately 80 percent of the water reserves in the West Bank, was intended as an interim arrangement; however, the allocation largely still stands despite the demographic, socioeconomic and natural changes affecting the supply and demand for water since its signature.<sup>36</sup>

## LAND RIGHTS, LAND ADMINISTRATION AND TENURE (IN)SECURITY

Land rights in the West Bank and the Gaza Strip are still regulated by the Ottoman Land Code of 1858. The Code, however, has been repeatedly amended by legislation passed during the British Mandate, by the Jordanian regime (West Bank), by the Egyptian administration (the Gaza Strip) and by military orders issued since the Israeli occupation.<sup>40</sup>

During the British Mandate (1920–1948), land registration was carried out systematically. By the end of 1948, around 70 percent of the land in the Gaza Strip had been registered. Following the 1948 war, the Egyptian administration (1949–1967) continued land registration although the amount of land involved could not be verified.<sup>19, 41</sup> In the West Bank, land registration under Jordanian Administration (1949–1967) covered approximately 30 percent of the total area. In 1968, Israeli occupation authorities froze most land settlement procedures in the area: both systematic and sporadic land registrations were decelerated or delayed until the establishment of the Land and Water Settlement Commission in 2016.<sup>42</sup>

Under Israeli occupation (1967–1994), the lack of registration was a decisive factor that allowed Israel to declare tens of thousands of hectares of land in both the Gaza Strip and the West Bank as State land, which was destined for establishment of official Israeli settlements.<sup>19, 42, 43</sup> Even when lands were registered and kushans acquired, tenure rights were not secured. Methods by which Israeli occupation authorities have taken over land since 1967 include:<sup>19</sup>

- ▶ **Requisition or Land Seizure Orders:** the Israeli Military Commander issued requisition orders to allow the establishment of settlements and military facilities. Requisition orders are forced leasing of the land to the Government, whereby the private owners give over possession for a term as stipulated in the order (but the term can be extended). The Government offers the landowners payment for its use, similar to rent, but in most cases, Palestinians refuse to take it.
- ▶ **Expropriation:** this is forced purchase of the land from its owners and permanent transfer of all land rights to the State.
- ▶ **Absentee land capture:** this applies mainly to land owned by Palestinians who fled their homes during the 1967 war. Administration of absentees' land is under the responsibility of the Custodian

### Box 1: The Ottoman Land Code

The Ottoman Land Code distinguishes between land ownership (*raqaba*) and land-use rights (*tessaruf*), and identifies three main types of land:

- ▶ **Mulk land** is the only category of land where full ownership – both *raqaba* and *tessaruf* – belongs to the individual. Mulk land is private property, over which the state has no right. In the Ottoman Land Code, possession of land by an individual must be by direct government allocation through a title deed (*kushan* or *kushan tabu*).
- ▶ **State land** is land used for public purposes, such as government offices, hospitals, schools, roads, parks and, in some cases, refugee camps. However, much state land is occupied by private individuals, either legally with a government lease or unlawfully without any form of contractual agreement. Several subdivisions exist: *Miri* land is state land designated for agricultural cultivation. In *miri* land, the ownership of the *raqaba* is held by the sovereign, but the right of use is given to the individual. Cultivation for 10 years with no objection by the state confers the status of a *kushan*, i.e. title deed. Most of Area C is *miri* land. *Mewat* land (“dead land”) is state land that is not allotted nor cultivated by anyone and is 2.5 kilometres or more away from the built-up area of the nearest village; ownership is held by the state. An individual can acquire rights to *mewat* land and convert it to *miri* land only if he/she turns it to cultivation. Lastly, *Metruke* land is land left for public use, such as abandoned land or common land. No building can be erected nor trees planted by private individuals; the land cannot be bought, sold or cultivated by individuals.
- ▶ **Waqf land** refers to religious endowment land, only to be used for charitable purposes.

Source:

**Norwegian Refugee Council. 2015.** *Types of land ownership in Gaza.* Oslo.

<https://www.nrc.no/globalassets/pdf/fact-sheets/types-of-land-ownership-in-gaza-icla-hlp-fact-sheet.pdf>;

**Howlett, S. 2000.** *Palestinian private property rights in Israel and the Occupied Territories.* *Vanderbilt Journal of Transnational Law*, 34(1): 119–166.

of Government and Abandoned Property at the occupation Civil Administration, who is allowed to rent and lease it.

► **Closure of areas by the Israeli Military**

**Commander:** these forbid the entrance of people who were not present in it before the time of its closure and their presence therein.

In May 1994, the PA was created as part of the Israel/Palestine Liberation Organization “agreement on the Gaza Strip and the Jericho Area”. Article V of the agreement gave the PA territorial jurisdiction over land, subsoil and territorial waters. Over time, the PA has created the necessary institutions for land governance, but legislative frameworks and capacity remain weak.<sup>44</sup> The Palestinian Land Authority, responsible for registration and administration of all types of land in the OPT, does not have the necessary resources and capacity to undertake its mandate.<sup>45, 46</sup> Progress with regards land registration remained sporadic.<sup>41</sup> In addition, land registration was further hampered in the West Bank, where, under the Oslo II Accord (September 1995), the Israeli Government retained land registration authority in Area C and does not recognize any registration or sale

transactions made by the PA.<sup>41</sup> An inventory of public lands in Areas A and B, which are under PA authority, is not yet available. According to the World Bank, systematic registration is expected to take decades to complete unless significantly more resources are provided.<sup>44</sup>

As a result, in 2018, according to the World Bank, 90 percent of all land in the Gaza Strip is registered, whereas only about 46 percent of land in the West Bank is registered.<sup>44, v</sup> **Table 1** provides a breakdown of registered land in the West Bank by zone.

Amid the escalating hostilities since 7 October 2023, the question of tenure security in the OPT has once again become pressing. The impact of the extensive displacements and destruction in the Gaza Strip on the tenure rights previously established is yet to be seen. There is no information on the current status of farm registries or cadastres in the Gaza Strip. In the West Bank, given the insufficient capacity and weak legislative frameworks, it remains uncertain whether land registration and tenure security can be improved in light of heightened damage to Palestinian property and increased tensions over land.

Area type/ registration status	(Finished) Land settlement in square metres	Settled land as percentage of all land in the West Bank	Unfinished land settlement (financial) in square metres	Unregistered/unsettled land as percentage of all land in the West Bank
Area A	590 632 698	10	413 864 425	7
Area B	463 346 698	8	571 337 648	10
Area C	1 498 176 703	27	1 932 651 429	34
Natural reserves	29 986 017	1	135 024 344	2
<b>Total</b>	<b>2 582 142 115</b>	<b>46</b>	<b>3 052 877 846</b>	<b>54</b>

**Table 1:** Land registration status in the West Bank

Source:

**World Bank. 2018.** *The socio-economic effects of weak land registration and administration system in the West Bank.* Washington, DC.

v Other estimates exist and, although slightly different, reflect the same trends. Based on data provided by the Land and Water Settlement Commission and cited in UN Habitat’s latest report on Palestine, 62 percent of the land in the West Bank is currently registered, whereas 98 percent of land is registered in the Gaza Strip.<sup>47</sup> The Norwegian Refugee Council, however, reported that in 2015 over 30 percent of privately owned land in the Gaza Strip was estimated still to be unregistered.<sup>48</sup>

## RECOMMENDED ACTIONS

Both the legal land framework and effective land rights are volatile in the OPT. The recent escalation of hostilities, displacements and destruction of property are likely to increase this volatility.

**Securing land rights will be crucial for establishing peace, stability and resilience in the context of reconstruction.** When reconstruction efforts in the Gaza Strip and the West Bank commence and the hundreds of thousands of displaced persons return to their land, it will be critical to establish ownership over the land prior to rebuilding on the land or allocating reconstruction grants. The sheer scale of the devastation and displacement in the Gaza Strip, and the complex land-tenure context in the West Bank, call for a special focus on land tenure in the reconstruction process with the following steps.

- ▶ Monitor and document changes in Israeli land regulation practices related to the West Bank and the Gaza Strip in order to understand the evolution of land rights in the aftermath of the conflict.
- ▶ Compile and corroborate evidence from witnesses and inventories and quantification of land, housing and property-rights losses in both the Gaza Strip and the West Bank as the basis for potential future claims. More precisely, there is a need to quantify and value those losses and consolidate evidence by leveraging available technologies to ensure quick, cost-effective and just resettlement, restitution and/or compensation of land, housing and property rights for returning/displaced populations.

- ▶ Support land-use and cadastral mapping, combined with land registration and the establishment of authoritative land registry and cadastre records. Fit-for-purpose and broadly accessible mobile applications that support data collection for both individual and community-based cadastre mapping, land adjudication and land registration activities foster participatory corroboration, facilitating the capturing of details of land parcels, geospatial evidence, information about land rights holders and their rights to those parcels, as verified by communities themselves.
- ▶ Provide legal representation for local litigation against competing claims in (post) conflict situations or in the case of contesting and redressing action against Israeli occupation authorities. This includes collecting and compiling evidence for these cases as well as reinforcing the formal court system and alternative (often local and community-led) conflict-resolution processes. This could be achieved through support to special local (field) land courts in the aftermath of the conflict or, alternatively, through a special field-adjudication institution and procedure. Both would require special legislation and significant capacity building and monitoring of the adjudication practices.

None of the above can be deployed in isolation, but should be part of an integrated territorial approach to the recovery, (re-)construction and land (re-)development of the OPT. This should combine land rights with the provision of basic welfare and social services and security systems, as well as the reinforcement of traditional forms of cooperation, the rebuilding of infrastructure and the fostering of economic development in harmony with environmental sustainability.

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