

# **The Implications for Public Land Management on Building and Developing the Palestinian State**

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## **Abstract:**

Over the years, secure land tenure and property rights have taken on greater historical and cultural significance for Palestinians. With Israel occupying most of the Palestinian private and public lands, the daily confiscation and destruction of Palestinian fertile land, the increase in population growth and the need to use public land in future development, all of these factors have made land titling, registration and efficient administration of public land a matter of paramount importance.

In 2005, the Palestinian Liberation Organization received a “Learning and Innovation Grant” from the World Bank and the Finish Government to reform the land sector in Palestine. The grant funded the implementation of the Land Administration Project in West Bank and Gaza for the benefit of the Palestinian Authority. The Public Land Management Study (PLMS) was a subcomponent of the project, which reviewed the context within which public land policy must operate and identified the challenges to be faced.

A number of principles for effective public land management were developed based on a review of best practice elsewhere and with input from extensive

consultations. The study concluded with findings and recommendations as required by the terms of reference. However, in this paper, I will summarize and elaborate the research conducted on the PLMS and present the main activities and findings.

**Definitions:**

In this paper, all land that is not private land or Waqf (endowment) Land is referred to as *Public Land*. Such land is then described as being either *State Land* (in the custodianship of the Government) or *Municipal Land* (in the custodianship of a Municipality or local authority).

**I. Introduction:**

The PLMS examined the Palestinian experience with the management of State and Municipal lands to date in selected municipalities in West Bank and Gaza (with a focus on areas A and B in West Bank). The study assessed the competing needs for public and municipal lands in reference to existing land use plans, identified critical decisions that need to be made, examined the processes for making those decisions, and assessed the adequacy of the legal framework and institutions for managing public and municipal lands. In particular, it assessed the land classification process and the circumstances in which public and municipal lands are/should be alienated.

Building on the findings of the PLMS, The key issues that will be addressed in this paper include:

- Shortcomings with the administration of State and Municipal lands including disposal and allocation procedures.
- The adequacy of laws and regulations to achieve efficiency and transparency in land dealings and dispute resolutions.

- The state of information systems and their availability for public information and scrutiny.
- The role of public land administration in achieving national social and economic development objectives.

This paper will also review the context within which land policy must operate and identify the challenges to be faced. A number of principles for effective public land management will be analyzed based on a review of practice elsewhere and with input from extensive consultations carried out during the PLMS. Policy recommendations will also be developed and presented around the following topics:

- Public land classification system.
- Public land inventory.
- Delegation of custodianship.
- Dealing in the public estate.
- Creation of public land when private land is developed.

**A. Research Objectives:**

The objectives of the PLMS are clearly stated as follows:

- Examining the Palestinian experience with the management of public land and identifying shortcomings with the administration of state and municipal lands including disposal and allocation procedures.
- Examining the adequacy of laws and regulations to achieve efficiency and transparency in land dealings and resolve disputes.

- Assessing the legal framework in place for the management of public land and the state of information systems and their availability for public information and scrutiny.
- Examining the role of public land administration in achieving national social and economic development objectives.

## **B. Methodology:**

A qualitative research method was used in the PLMS and the following tasks were completed:

- A questionnaire survey of a sample of 17 municipalities in West Bank and Gaza.
- A series of stakeholder interviews.
- A series of focus groups and stakeholder workshops.
- Review of best practice in public land administration.
- Analysis of findings and preparation of recommendations.

The implications for public land management are extremely important for a small country like Palestine, which has very limited resources. The importance comes with expectations that there may be a potential for informal settlement on State and Municipal Lands. Anecdotal evidence suggests that this may occur in some isolated instances, but generally this is not the case to date in Areas A and B where there is little public land.

## **II. The Context for Public Land Management in Palestine:**

### **A. Social Economic Context:**

Palestine is densely populated by world standards, particularly in the Gaza Strip. This population is very young and is growing rapidly. There are major infrastructure backlogs and housing shortages and this will be exacerbated in the event of a potential 600,000 refugees and others returning to the land. The Israeli occupation and the system of “closure” have all but destroyed the Palestinian economy. Over half of the population lives in poverty and many live at or below a subsistence level. Unemployment is rife and the international aid is likely to remain conditional and uncertain, which will have major implications for the stability of the country.

### **B. Institutional and Legal Context:**

The Palestinian National Authority (PNA) has 22 ministries and 10 agencies covering all of the functions one would expect in a developed system of governance. While many suffer resource constraints and capacity issues these institutions provide a solid foundation for good governance in the future.

A significant threat to this system is the confusion that exists between the mandates and works of all these institutions, including the President’s Office and the Cabinet. From a land management point of view this situation is highly counter productive and should be changed immediately.

On the other hand, land laws in Palestine have evolved in the course of four historical periods, during which Palestine was ruled by foreign powers. As a result, the laws are fraught with inconsistencies and shortcomings. However, current draft land laws have no policy basis and do little to improve the situation. The Basic Law is a very good starting point for new land laws, as it has enshrined all of the necessary

principles, including: *Safeguarding private property, fair compensation, all executive powers with the Cabinet, accountable system of government, and transparency in land dealings.*

### **C. Environmental Context:**

Palestine is beset by environmental problems which include:

- Deficiencies in environmental infrastructure such as wastewater collection systems, treatment plants and sanitary landfills.
- De-forestation due in large part to the establishment of Israeli colonies, industrial zones and by-pass roads.
- Desertification from over-grazing due to shortages of land.
- Poor water quality in the lower Jordan River due to diversion of flows into Israel and waste emissions.
- Lack of planning and environmental laws and institutions.

The National Policies for Physical Development document adopted in 1998 identifies a need for 237 km<sup>2</sup> for new urban development and a need for 50 km<sup>2</sup> of industrial land. A further 1,300 km<sup>2</sup> is allocated for new agricultural uses and 1,336 km<sup>2</sup> for protection of water sources, sensitive landscapes, ecologically significant areas and site of cultural heritage.

Taken together, the above contextual issues highlight the fact that public land in Palestine is an asset of strategic importance for nation building and hence for economic development and social welfare in the future. Alienation (i.e. disposal) of public land is essentially a one-way process. Short-term financial gains to the State may in many instances be overshadowed by ongoing costs, including the opportunity costs of missed superior solutions. The planning frameworks that should be in place at both the

national and municipal level appear to be underdeveloped; therefore decisions on public land are likely to be ill-informed.

Currently, planning instruments do not consider public land management as an important topic. Fully developed planning frameworks are essential to guide planning at all levels from the national Plan to local master plans. Effective management of public land requires such frameworks.

In the absence of appropriate planning frameworks the “precautionary principle” should be applied to any public land alienation proposal. With high population growth and possibly hundreds of thousand of returnees in dire economic conditions, high levels of poverty and unemployment, and with infrastructure and services down to the minimum, the public land could be the only source of development left for Palestinians.

### **III. Discussion and analysis:**

In many ways, public land is the key to the economic, social and environmental future of Palestine. The challenges of rapid population growth and the scarcity of land make public land one of the most valuable resources available and its effective management is essential for the future well being of the country.

The public land portfolio will be a very important asset in achieving Government objectives in many areas including economic development projects, social housing provision and the conservation of natural and cultural heritage. New cities could be needed and these will necessarily require public land.

The livability of urban areas is very much a function of public land availability, particularly Municipal land for open space and community facilities. The logical approach to resolving the optimal application of the public land resource is to utilize



the planning system. Planning at the national level should identify all state and municipal lands and utilize this resource for maximum community benefit. Sites for strategic infrastructure should be identified and public land opportunities for achieving planning objectives should also be incorporated.

A review of best practice on the question of public land management identifies the following principles:

- Public land is a valuable strategic asset which must be managed for the long-term benefit of the community.
- Governments are custodians of public land in behalf of the people.
- Decisions on public land must be consistent with land-use plans and with the full range of government policies: economic, social and environmental.
- There must be full transparency and accountability in the processes of dealing with public land including freedom of information and public consultation.
- The Government and Municipalities are both custodians of public land at different levels and they must co-operate with each other as if they are one agency.

In Palestine today, there are a number of policy areas that need further development to address the challenges of the future, many of which have public land management implications. Included amongst these are:

- The circumstances under which land may be made available for large investment projects (and potentially sold on a “sole tender” basis).
- Promoting Public Private Partnerships (PPP’s) on Public Land – under what circumstances and according to what criteria?
- The provision of social housing (housing the poor) – to whom is it allocated and by what means?



- Relationship with Municipalities – whether or not State Land will be ceded to them and if so under what circumstances?
- Municipal policies on land parcelation and public reserves and development contributions to public reserves.

In adopting new public land management policies, there will be implications for a wide range of current institutions. Therefore it is important to consider:

- Who will be responsible for each of the three major databases that comprise the proposed Land Information System: *property taxation, land registration and public land inventory*?
- Where will a proposed new Public Land Management Agency sit - Will it be within an existing Ministry, the PLA or a separate agency? Should it be a separate commercialized entity?
- How can Local Government be configured to apply the more complex policies and procedures and the new tasks that are necessary to plan and manage public land effectively?

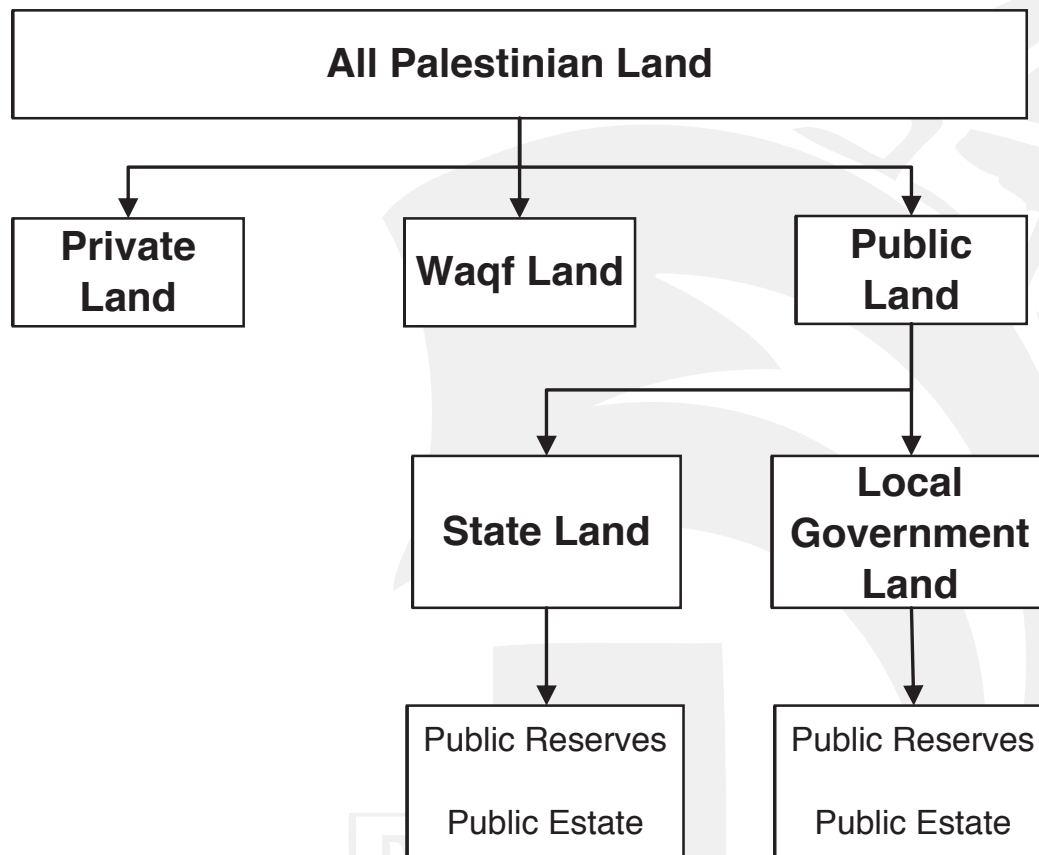
#### **IV. Findings and Recommendations:**

##### **A. Public Land Classification System:**

After conducting the PLMS on public land management in Palestine, it is, therefore, recommended that a universal public land classification system be used by all Government and Local Government bodies and be included in land inventories and planning schemes. The system is recommended to divide Public Land into *State Land* and *Local Government Units Land*, which is then classified as either:

- *Public Reserves* (required for public use). Managed by line agencies to facilitate their “core business”.
- *Public Estate* (not required for a public use). Managed as a “property asset portfolio”.

This classification system is illustrated in the figure below.



Public Reserves are further classified as follows:

| Nature Reserves                       | Public Use Reserves    |
|---------------------------------------|------------------------|
| Natural Spring and Wadi Reserves      | Services and Utilities |
| Cultural Heritage Reserves            | Education              |
| Recreation Reserves                   | Health                 |
| Traditional Rights of Access Reserves | Community              |
| Public Use Reserves                   | Cemetery               |
| Road Reserves                         | Municipal Services     |
| Transport Reserves                    | Other Public Uses      |

Consistency in terminology creates efficiencies in public administration. There needs to be a clear distinction between public land that is required for public uses and land that may be available for other uses such as economic development projects. By designating the Public Reserves classes in planning schemes the community should have full information about their assets.

### **B. Public Land Inventory:**

It is recommended that State Land should be registered in the name of the “State of Palestine” and Municipal Land in the name of the Municipality of Local Authority. In addition to formal registration it is important to have an official government “*public land inventory*” in which the classification of all public land is to be documented. Municipalities and Village Councils must also maintain a compatible inventory. Land law regulations must refer to these inventories. Planning schemes coming into existence after the recording of public land in an official inventory must identify the public land parcels using the official classification system.

The ultimate goal is that all public land should be registered and appeared in the public land inventories which should be a compatible database in a comprehensive Land Information System. All areas should be covered by up-to-date planning schemes which should allow public access to information on public land and the purpose for which it is reserved.

The system of planning scheme amendment will be used to facilitate consultation on proposals to change the status of public land. The public land inventory is an essential management tool to achieve coordination between all parties with an interest in public land and to ensure transparency in the land administration processes.

### **C. Delegation of Custodianship:**

#### ***Public Land Management Agency (PLMA):***

It is recommended that a *PLMA* be established to carry out the following functions:

- Maintenance of the Public Land Inventory based on the official land classification system.
- Assign land from the public estate to line agencies (and to Local Government by negotiation) to enable them to carry out their core functions.
- Resume land from State line agencies (and from Local Government by negotiation) that is surplus to needs for inclusion in the public estate.
- Undertake dealings in land on behalf of State line agencies including acquisitions, long-term leases and disposals
- Custodian of the Public Estate (public land that is not required for a public use).
- Develop and apply protocols within the land laws in the areas of land acquisition, land management and land disposal. Protocols will also be developed for the

processes of classifying land, compiling the public land inventory and for re-classifying land – including from Public Reserve to Public Estate land.

***Management of Public Reserve Land:***

Public land dedicated to a public use is designated as a public reserve in the public land inventory and in the planning scheme – with the classification noted. Such land is in the ownership of either the Government or a Municipality/Village Council. The custodian of a given site will be a Government agency or a Municipality/Village Council.

Custodians are mandated and obliged to manage the land in accordance with their core functions – delivering a public service, making the land available for public use or simply protecting the natural or cultural values of the land.

The value of the public land portfolio is enhanced by ensuring that the allocation of land is closely matched to the public purposes for which it is intended. Custodians of land must constantly review the achievement of the purposes for which the land is designated. Surplus land must be culled for possible re-allocation. Alternative sites which allow services to be delivered more effectively are to be evaluated.

The planning scheme preparation and amendment process is to be used to determine public land classifications and reclassifications. Custodianship (which entails responsibility for care and management) of public land shall be delegated to responsible authorities (ministries, agencies, municipalities, trusts, etc.) to carry out their functions. Such delegates shall be restricted to deal in land only in pursuit of their core functions and may not dispose of public land.

Local Government is comprised of legal entities with delegated powers from the central government. As such Municipalities and Village Councils have a degree of autonomy and are enabled to register public land in their own right. Local Government

shall be responsible for classifying all its land and entering it on the public land inventory (where Municipal or Village Council ownership shall be acknowledged) and for insuring that all planning schemes are consistent with the classifications.

The principal reason for creating a separate entity to manage public land is to reduce the possibility of conflicts of interest for the purpose of achieving greater transparency and accountability in the system. Hence land allocations to ministries may be made on an objective basis and dealings in land will be handled within one agency which can be held accountable.

#### **D. Dealing in the Public Estate:**

##### ***Acquisition of Land – Planning Scheme Initiation:***

Where private land is required for a public purpose the land shall be identified in the planning scheme with a “Public Acquisition Overlay”. The acquiring authority is identified in the overlay. This designation shall be the subject of due process including consultation, hearing of objections and independent adjudication. Acquisition shall proceed in accordance with the law with fair compensation being paid.

##### ***Disposition of Public Land from the Public Estate:***

Lease and sale of land from the public estate shall be according to guidelines prepared by the PLMA and approved by the Government. The guidelines should give effect to the principles of:

- Open and transparent process.
- Application of a clear priorities policy.
- Proper evaluation of proposals to deal in land and testing of options.
- Appropriate level of consultation within and outside Government.
- Achievement of maximum return on assets.

Protocols for the disposition of public land shall be enshrined in laws and regulations to ensure an openly contestable process (e.g. auction, public tender, etc.) with the upset price being market value. Market value will be assessed by an independent and competent valuer who is accountable under the law. The general principles should be based on making the processes transparent and all involved accountable for their actions.

#### **E. Creation of Public Land When Private Land is Developed:**

##### ***Development Contributions:***

When land is being developed, a need for additional public land is directly created, which should be fulfilled through private contribution. This could be done through providing suitable land directly or through a cash-in-lieu payment. Such payment shall be sufficient to purchase land to fulfill the need in the area.

This requirement should be applied to all forms of development including parcelation of land and residential, commercial and industrial buildings. When land is subdivided a contribution of 30% of the land or cash-in-lieu should be made towards public land needs in the area including for roads, open space, sites for community facilities and sites for public utilities.

When private land is developed, needs are created for public facilities and services - which in turn generate land requirements. For example, there can be a need for roads or road widening, sites for utilities and sites for parks. The principle is that the owner of the land being developed shall make an equitable contribution to these public land needs through contributing land directly or through “cash-in-lieu”. Generally the value added through the granting of development permission will be well above the value of the ceded land.



Planning schemes should be key instruments in implementing public land policies. Planning schemes should identify areas where development contributions are to apply and should specify the basis upon which such contributions should be made and the public land that should be provided to meet the needs created by the development.

## **V. Conclusion:**

The existence of laws to correct what appears to have been some inappropriate land deals in the past is testimony to a lack of transparency and accountability in the land management system. However, no evidence of systemic corruption has been found during the PLMS. The major shortcoming appears to be that the system still lacks an appropriate level of transparency and the various agencies are insular.

There is a high level of agreement to the principles espoused and the policies that have been developed during the PLMS. This provides a sound foundation for adoption of modern system and practices provided adequate resources can be made available. In many ways public land is the key to the economic, social and environmental future of Palestine. The challenges of rapid population growth and the scarcity of land make public land one of the most valuable resources available and its effective management is essential for the future well being of the country.

The public land portfolio is a very important asset in achieving Government objectives in many areas, including economic development projects, social housing provision and the conservation of natural and cultural heritage. Most likely a need for new cities will arise, and these will require public land.

The livability of urban areas is very much a function of public land availability, particularly Municipal land for open space and community facilities. The logical

approach to resolving the optimal application of the public land resource is to utilize the planning system. Planning at the national level should identify all public and municipal land and utilize this resource for maximum community benefit. Sites for strategic infrastructure should be identified and public land opportunities for achieving planning objectives incorporated.

The PLMS was concluded last year (May 2007) and incorporated in the National Land Policy Framework which was presented to and approved by the Cabinet on April 2008. The process of reforming and developing the land sector in Palestine is underway and will require resources and cooperation to help contribute in building and developing the future Palestinian state.

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