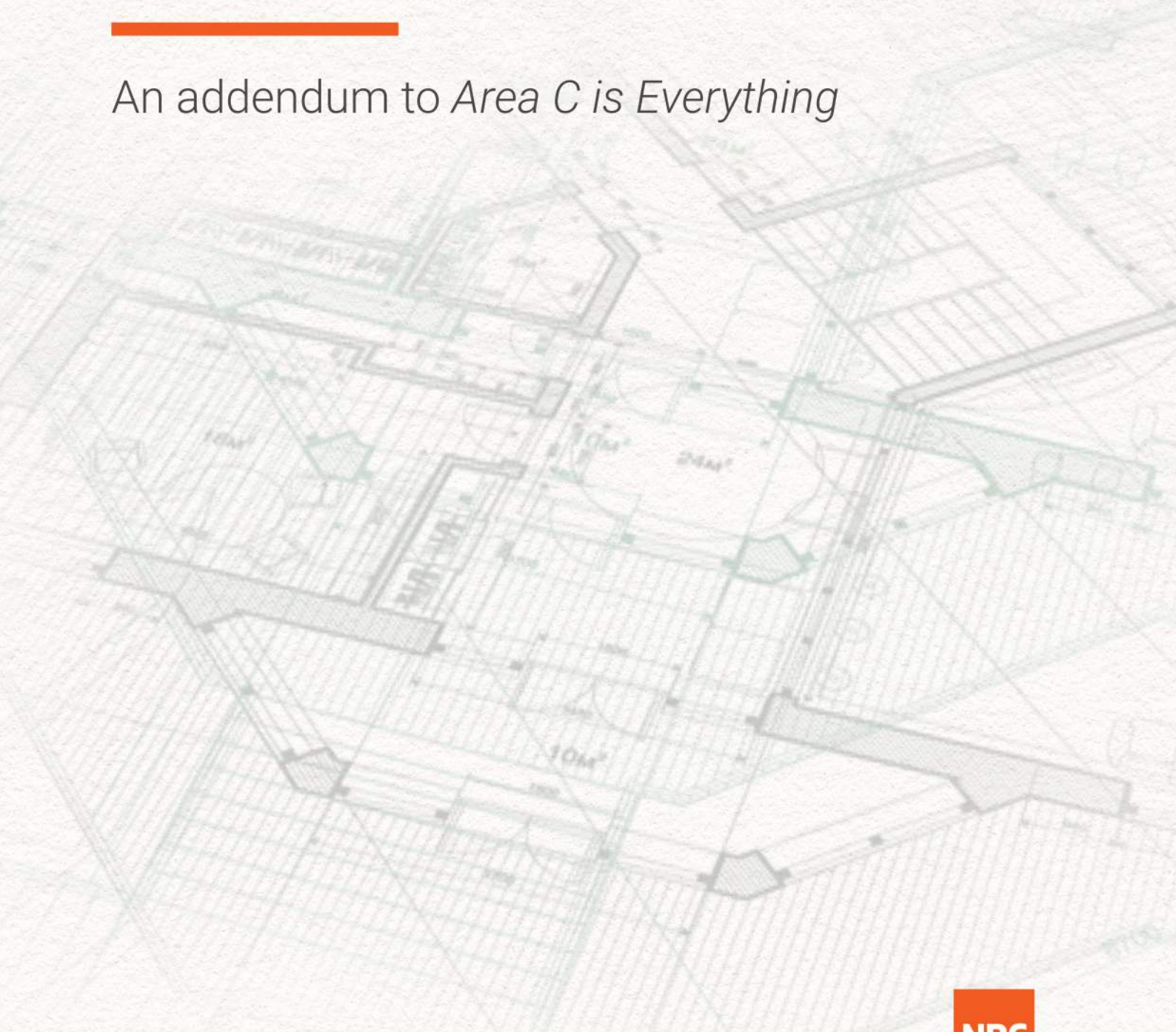




# Area C is Palestine

An addendum to *Area C is Everything*



NORWEGIAN  
REFUGEE COUNCIL

Planning for the future of Palestine



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## **Acknowledgements:**

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# Area C is Palestine

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## Executive Summary

Since the publication of *Area C is Everything* in March 2023, significant developments on the ground and in the legal sphere have reshaped the landscape of the Israeli-Palestinian conflict. This Addendum to the original report addresses these new realities, highlighting the accelerated annexation of Palestinian territory, the legal consequences for Israel and third states, and the urgent need for a coordinated international response.

### Major changes since publication of *Area C is Everything*

The Israeli government, particularly under Finance Minister Bezalel Smotrich, has escalated efforts to annex Area C of the West Bank, which constitutes approximately 60 per cent of the territory. These efforts are primarily administrative but have profound implications for the future of a Palestinian state. Since the beginning of 2023, Israeli administrative authority over settlements in Area C has shifted from military oversight to civilian authorities aligned with the settler movement.

In formalising its control over vast swathes of the West Bank, Israel is removing any remaining façade of a temporary occupation. Smotrich's stated goal is clear: to integrate the West Bank into Israel, thereby making a future Palestinian state unviable. Israel's government has openly claimed "exclusive and indisputable right" to the West Bank, dismissing any Palestinian claims to sovereignty in the area. Smotrich's control over planning and development in Area C has led to an expedited approval process for settlements, dramatically reducing political oversight and oversight by the Ministry of Defence. Meanwhile, an environment of almost complete legal impunity has contributed to record levels of settler violence against Palestinians and the forced displacement of entire Palestinian communities.

In July 2024, the International Court of Justice (ICJ) issued an advisory opinion concluding that Israel's actions in Area C violate both international humanitarian law (IHL) and international human rights law (IHRL), as they contribute to the forcible transfer of Palestinians, prevent their access to vital resources, and fragment Palestinian territory. The advisory opinion determined that Israel's planning policies—particularly its refusal to grant building permits to Palestinians while facilitating settlement growth—are not only discriminatory but also form part of a broader annexation agenda.

The Court's findings leave no room for ambiguity: Israel's occupation of the West Bank is unlawful, being in breach of key norms of international law including the prohibition against acquiring territory by force, and the right of peoples to self-determination. As a result, the Court concluded that third-party states are legally obligated not to recognise or assist in maintaining this unlawful situation, and to take collective efforts to bring the occupation to an end.

### A reset is required

These developments, and the ongoing horror in Gaza, make it clear that now is the time for bold, unified and effective action. The international community's reliance on direct bilateral negotiations to solve the Israel-Palestinian 'question', to the exclusion of other avenues, has enabled repeated violations of international law, grievously undermined Palestinian rights and deepened human suffering on both sides of the 1949 Armistice Line. A reset is required.



The international community must now utilise all available lawful avenues and tools to correct the course of the situation in Israel and the oPt, establishing a viable path toward the restoration of human security and peace through the ending of the occupation. Priorities must include ending hostilities, preventing further violations of international law (particularly the mass forced displacement of Palestinians and Israel's acquisition of Palestinian territory), the withdrawal of Israeli presence from the oPt, ensuring reparations for affected individuals, pursuing accountability for perpetrators of international crimes, and, critically, establishing an independent and sovereign Palestinian state.

Full Palestinian control over Area C is critical to the latter. To this end, this Addendum and the preceding *Area C is Everything* report provide a practical, human rights-based and Palestinian-led framework to preserve and develop Palestinian presence in Area C.

Under this framework, the role of the Palestinian Authority—channelled through the Palestinian National Planning Committee—will be fully extended into Area C, utilising modernised and equitable planning law, a National Spatial Plan that unites the West Bank, including East Jerusalem, and Gaza, and a participatory approach courtesy of a coordinated Palestinian Planning Hub. Comprehensive mapping and documentation of Palestinian land ownership and community needs will be undertaken in Area C, while Israeli land expropriation will be ceased and reversed through collective action taken by third states and organisations.

This alternative planning landscape lays a solid foundation upon which Palestinian statehood can be constructed, sitting in stark contrast to the current approach which has led only to unimaginable human suffering and widespread violations of international law. Moreover, it is a deliverable alternative, should the international community choose to make it so.

## Why an addendum?

*Area C is Everything: Planning for the Future of Palestine* was published in March 2023. The report was presented to representatives of the Palestinian Authority (PA) in the West Bank and several donor countries both on the ground in Jerusalem and in Brussels, Oslo, Berlin, and Copenhagen. The report was received with interest, especially for its new thinking on how best to support Palestinian self-determination, autonomy, and a continued and real presence in Area C of the occupied Palestinian territory (oPt) through a new approach to planning and development aid.

NRC intended to resume distribution and presentation of the report through bi-lateral meetings at the UNGA in New York in the fall of 2023, as well as in London and Ottawa. The events of 7 October necessarily caused NRC to pause those activities. The ongoing and escalation of hostilities and aggressions in Gaza and the West Bank, and new political realities that have resulted, necessitate an update to and re-thinking of the Area C report and some of its recommendations.

It is now unquestionable that Israel's intention is to accelerate its annexation of the West Bank.<sup>1</sup> Settlements and outposts are expanding at an alarming rate across the territory, including in Area C and East Jerusalem. After months of aggression in Gaza, it is now also undeniably clear that only the most bold and unified action by third states, deploying all diplomatic strategies and tools permitted under international law, has any prospect of ensuring Area C is retained by Palestinians as part of a future Palestinian state. In other words, restrained diplomacy and appeasement as a response to Israel's failure to uphold its obligations under the Oslo Accords and as an occupying power, are almost guaranteed to be in vain.

In July 2024, the International Court of Justice delivered a landmark advisory opinion on Israeli presence in the oPt, finding Israel to be in breach of several peremptory norms of international law, including the basic rules of International Humanitarian Law (IHL), the prohibition of aggression (namely, the acquisition of territory by force), and the right of peoples to self-determination. On these bases, the Court determined the occupation to be unlawful. The advisory opinion calls on Israel to end its presence in the oPt, and on third parties to induce Israel to do so as rapidly as possible.<sup>1</sup>

One of the Court's keystone determinations is that Israel's planning policy in the West Bank violates Palestinian rights. The Court considers that this policy, in relation to the issuance of building permits, and in particular its practice of property demolition for lack of a building permit, treats Palestinians differently from settlers without justification. In the Court's view, this amounts to a serious breach of international law and must be reversed and redressed. The duties of third states of non-recognition and cooperation in ending this internationally wrongful behaviour dictate an overhaul in the approach to Area C and the rest of the oPt.

In turn, the following Addendum is intended to re-direct and hone the suggested approach for the PA, third states and other actors with respect to Area C. It is presented in two sections:

1. Updated facts on the ground relevant to Area C;
2. A new paradigm: planning for Palestinian statehood

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<sup>1</sup> See Annex II for a detailed assessment of the Advisory Opinion and its relevance to the question of spatial planning in Area C.

## 1. Updated facts on the ground relevant to Area C

### a. Legal and administrative developments facilitating Israel's annexation of Area C

Since the publication of *Area C is Everything*, Israel has fundamentally altered the administrative status of settlements in the West Bank.

On 27 December 2022, the Knesset amended the Basic Law: The Government, enabling the creation of the post of “Additional Minister” within the Ministry of Defence. Bezalel Smotrich, leader of the far-right Religious Zionism party, who resides in the Kedumim settlement and founded the settler organisation Regavim, was appointed as Additional Minister. While the Minister of Defence retains security powers, the Additional Minister assumed governing powers in the West Bank, including Area C, and is now responsible for land designations, planning, and coordination of demolitions.

The Additional Minister also supervises a newly created and staffed Settlement Administration unit, responsible for: (a) managing and directing the Coordination of Government Activities in the Territories (COGAT) unit and the Israeli Civil Administration (ICA); (b) regularising settlements; (c) implementing an “equal citizenship reform” in the West Bank aimed at improving services and infrastructure for settlers only; and (d) updating “security legislation”, which involves implementing reforms through military orders.

In June 2023, the Government of Israel delegated the authority of the Minister of Defence to approve interim settlement planning stages to the Additional Minister, enabling the Additional Minister to expedite the approval process for new settlements. These measures, including the transfer of wide administrative powers relating to settlements and land administration from the military authorities to Israeli civilian officials, who are elected and accountable to the population of Israel, facilitate the annexation of the West Bank in violation of international law.

Israel has also modified the planning approval process for Israeli settlements, reducing the number of political oversight stages from five to just one in most instances, and absolving the Ministry of Defence of any role, thus diminishing transparency and expediting approvals.

These changes have enabled a marked increase in resource allocation to settlements and outposts and with it a rise in settler violence and forced displacement of Palestinians that seriously threaten Palestinian retention of Area C.

As a result, the policies of the current Israel government are now aligned to an unprecedented extent with the goals of the Israeli settler movement to secure long-term control over the West Bank, including East Jerusalem, and to integrate this occupied territory into the State of Israel.

### b. Rapid expansion of illegal settlements, outposts and roads

Settlement expansion, advanced by past and present Israeli governments, serves as a method to transfer Israel's population into the territories it occupies, which is strictly prohibited under IHL.<sup>ii</sup> It is also a means of permanent territorial acquisition and annexation, which is also prohibited.

Israel has accelerated the expansion of its illegal settlements and outposts in Area C at a record pace, particularly since 7 October 2023, posing a significant threat to the future of Palestinian autonomy and statehood.

Israeli government funding for settlement expansion in the 2024 budget year skyrocketed by 147 per cent, from 134 million ILS to 331 million ILS.<sup>iii</sup>

The UN High Commissioner for Human Rights reported that that 24,300 new Israeli housing units in the occupied West Bank were advanced or approved during a one-year period through the end of October 2023.<sup>iv</sup> This is the highest number recorded since monitoring began in 2017. This aggressive expansion of settlements and outposts has continued into 2024.

In the first half of 2024, Israel designated 23,700 dunams (23.7 km<sup>2</sup>) in the West Bank as ‘state land’, the largest land grab since the Oslo Accords.<sup>v</sup> The intention is to turn this land into Israeli settlements. Between December 2023 and March 2024, 4,780 housing units were advanced or approved for settlements in the West Bank, including East Jerusalem.<sup>vi</sup>

Israeli settlers are rapidly establishing new outposts,<sup>vii</sup> with 28 established in 2023, and at least 16 in 2024, increasing their overall number to 191.<sup>viii</sup>

Beyond housing for Israeli settlers, it has been reported that new roads linking outposts, settlements and agricultural areas are appearing throughout the occupied West Bank.<sup>ix</sup> These roads often cut across private Palestinian land and create geographic divisions or “no-go” zones for Palestinians, severing them from water supplies and farmland and exposing Palestinian villagers to increased threats of violence and displacement. This activity has been surging since 7 October. In 2023, the Israeli government allocated seven billion NIS for West Bank roads and transportation improvement over the next five years.

### **c. Intensification of settler violence**

Armed Israeli settlers, with government support, have intensified violence against Palestinian civilians, leading to forced displacement and creating a highly coercive environment. Since the beginning of 2023, sixteen Palestinian communities in Area C have been forced to flee in their entirety; another 20 were partially displaced, the vast majority after 7 October 2023. Violent settlers, particularly those occupying outposts, now constitute a primary means of displacing Palestinians, alongside Israeli practices and policies such as unlawful demolitions or acts of violence or harassment perpetrated by Israeli forces.

The UN has reported that throughout 2023 there were, on average, three recorded settler attacks against Palestinians per day. Since 7 October 2023, that number has increased to four attacks per day. In 2023, settler-related incidents caused 23 Palestinian deaths (a 77 per cent increase from the previous year) and 2,968 injuries (a 23 per cent increase) in the West Bank.<sup>x</sup> Between 7 October 2023 and 31 July 2024, 583 Palestinians were killed in the West Bank (at least 12 by Israeli settlers) and 5,199 were injured (at least 236 by Israeli settlers).<sup>xi</sup>

In some cases, settlers have entered communities and told them they must leave or face future violence. For example, on 12 October 2023, the Bedouin community of Wadi as-Seeq was attacked by settlers wearing military uniforms. They entered threatening with violence if the community didn’t leave. Three Palestinian men present in the community were stripped, bound, and threatened with execution by Israeli settlers and others in military uniform.



Several states have recently imposed sanctions and travel restrictions on settlers who violently attack Palestinians in the occupied West Bank.<sup>xii</sup> While holding individuals accountable for such wrongful acts is essential, most if not all of the sanctioned settlers remain in their settlements or outposts and continue to attack Palestinians with impunity. Individualised sanctions, even if properly implemented, are unlikely to quell settler violence and certainly will not address settlement expansion which is state policy.

#### **d. Forcible transfer and displacement of Palestinians**

Forcible transfer of a civilian population under occupation is a violation of the Fourth Geneva Convention. Direct violence and threats by Israeli settlers against Palestinians, particularly since 7 October, along with heightened access and movement restrictions, search and arrest activities, destruction of property (homes, schools and other structures) and military trainings (particularly in Masafer Yatta) by Israeli forces, have been the main factors causing the forced displacement of Palestinians from Area C.

According to OCHA, in 2023, at least 1,539 Palestinians, including 756 children, were forcibly displaced from their homes or communities in Area C of the West Bank due to Israeli settler violence and access restrictions.<sup>xiii</sup> At least fourteen of these communities were completely displaced during 2023 and now stand empty. Of the displaced, 1,208 (81 per cent) were displaced in the aftermath of 7 October and many are Bedouin herders. Those displaced have moved to towns or other rural areas that they consider safer. A further 302 Palestinians were displaced due to settler violence and access restrictions between 1 January and 31 July 2024.<sup>xiv</sup>

#### **e. Demolitions**

In 2023, 1,175 structures were demolished (106 of which were donor-funded) affecting nearly 440,000 Palestinians—marking the highest number since UN record-keeping began in 2009. At least 681 of those structures were in Area C, with the demolitions displacing 572 Palestinians and affecting over 23,000.

The 2023 record setting figure has already been surpassed in 2024, with 1,227 structures destroyed, (52 of which were donor-funded), affecting over 161,000 Palestinians, as of 13 September.<sup>xv</sup> At least 721 of those structures were in Area C, with the demolitions displacing 675 Palestinians and affecting nearly 37,000 others.

#### **f. Denial of permits for Palestinians in Area C**

While Israel's High Planning Council has approved this vast expansion of settlements and outposts, it has not approved a single permit for Palestinians wishing to build on their properties since 7 October 2023.<sup>xvi</sup> This is a further reduction from the previous—and extremely low—rate of 0.9 per cent. Meanwhile nearly 30 per cent of lands in Area C remain designated by Israel for military purposes and thus off limits for Palestinian development.<sup>xvii</sup>

#### **g. Restrictions on freedom of movement**

Israel has increasingly restricted Palestinian freedom of movement since 7 October with the establishment of many new checkpoints and barriers throughout the West Bank, including in Area C.<sup>xviii</sup> These new restrictions cut off Palestinians from basic services and their livelihoods, prevent humanitarian actors from accessing communities and providing aid, and lengthen travel times to nearby towns and villages, therefore seriously damaging the fabric of life of affected communities.

## 2. A new paradigm: planning for Palestinian statehood

*Area C is Everything* proposed The Humanitarian-Human Rights Planning and Accountability Framework. This included the development of a new planning process and regime for Palestinians in Area C using international humanitarian law as the entry point, and an international human rights law framework to guarantee human rights outcomes. The impetus for this was to lay a better foundation for a permanently sovereign and politically independent Palestinian state.

The possibility of Palestinian statehood has never been nearer nor, perhaps, further away. What happens in the short term may be determinative. Events since 7 October, including the ICJ Advisory Opinion, have confirmed that a Palestinian-led planning process, based in humanitarian and human rights law, that creates a fortified nexus between humanitarian aid, development and political initiatives is essential for the establishment of any viable future Palestinian state.

In light of the rapidly changing facts on the ground, new political and legal realities, and the many lessons learned since 7 October, the proposed Humanitarian-Human Rights Planning and Accountability Framework, needs to be re-visioned to meet the moment.

As such, the PA and the international community must shift the paradigm, recognise that Area C is Palestinian, and undertake more robust actions to breathe life into this legal fact. The following are immediate steps that should be taken to protect Area C as Palestinian.

### a. Extend the Palestinian planning system to Area C

The PA must undertake measures to extend the ambit of the Palestine National Planning Committee to integrate Area C into its work in Areas A and B, with a view to streamlining planning approvals into Area C. As an immediate first step, the Committee must modernise the Jordanian Planning Law that was in place historically in Area C. An *ad hoc* international Advisory Board could be re-established with the assistance of UN-Habitat, to work with the PA where useful and appropriate.

At the same time, third states must take steps to achieve the dismantling of Israel's High Planning Council, which is currently responsible for approving the establishment of outposts and settlement expansion. As a starting point, all third states must cease any engagement with Israel's High Planning Council and establish a unified position of non-recognition of Israel's settlements project in its entirety within the occupied West Bank, including East Jerusalem.

### b. Establish a strong, coordinated Palestinian Planning Hub

Palestinians must be encouraged and supported to spatialise their aspirations, their identity, and their indigeneity.<sup>xix</sup>

The PA, the Palestine National Planning Committee, relevant line ministries, along with local councils and residents, must be at the centre of all planning. Given the many constraints on these entities in terms of both capacity and resources, consideration should be given to capacity building and, in this regard, the forming of an interim coordinated Palestinian Planning Hub.

The Hub would be comprised of the PA, the Palestine National Planning Committee, relevant line ministries (e.g., the Ministry of Local Government), local planning committees and local council representatives. Membership would also include international entities and groups already working in Area C directly with Palestinians in their own organisations and on the ground (e.g., UN-Habitat,

the West Bank Protection Consortium (WBPC), the EU Interest Group on Area C, WBPC), as well as relevant NGOs working with Palestinians. It could also include representatives from communities in Area C who might not otherwise be represented (e.g., youth, women, persons with disabilities).

The Hub would use a humanitarian/human rights law framework as developed in the original iteration of this paper. It would focus on capacity building of all members. It would also develop a highly coordinated, bold action plan for Area C, incorporating strategies and tools to drive forward planning and development in Area C and to centralise and secure more resources.

### **c. Develop a National Spatial Plan uniting the oPt**

As a priority and in consideration of the ICJ advisory opinion and new political realities, it is essential that the PA, appropriate line ministries and the Palestine National Planning Committee concretise a National Spatial Plan that complies with international law and that connects and unites all of the oPt – the West Bank, including East Jerusalem, and the Gaza Strip. This National Spatial Plan shall represent a proposal for Palestinian statehood.

### **d. Mapping and documentation of Palestinian lands in Area C**

The PA should work with the Palestine National Planning Committee, appropriate line ministries, UN-Habitat, OCHA and civil society organisations with the requisite mapping technology and expertise to create a centralised database with the following information:

- Lands owned by Palestinians in Area C.
- All land transactions – purchase/sale of private lands.
- Properties that have been seized/occupied by Israel/settlers.
- Lands that have been vacated by Palestinians and the reasons (e.g., forced relocation due to settler/IDF violence, harassment and intimidation).
- Housing need throughout Area C – what structures are needed and what needs do existing properties have?
- Information about land tenure and ownership, including as it pertains to women across the oPt.
- Socio-economic needs for communities in Area C – schools, health clinics, water and electricity infrastructure, fodder, farming/grazing structures.

### **e. Reclamation of Area C**

If Palestinians are to maintain a presence in Area C—to stay or to return—it is essential that the PA, with the assistance of the proposed coordinated Planning Hub and third states, significantly enhances conditions on the ground, including security and protection provisions. The following are recommended as priority areas of focus:

#### **i. Humanitarian access**

Humanitarian access must be prioritised to ensure unimpeded access for humanitarian aid to meet immediate needs and support recovery for displaced and remaining Area C communities. Humanitarian access negotiations should not be seen—in conformity with the ICJ Advisory Opinion—as recognition of the lawfulness of Israel’s presence in the oPt.



## ii. Transition of aid

There must be a transition from emergency aid to long-term development support to build self-sustaining and resilient communities across the West Bank. The triple nexus approach promoting interlinkages between humanitarian, development and peace efforts would be at the core of the transition.

## iii. Facilitating repatriation through infrastructure rehabilitation and socio-economic rights protections

Displaced communities must have unimpeded access to return to their lands. They must have access to basic rights including: housing, water, electricity, education, and healthcare. These are the requirements of adequate living conditions and dignity, and to support economic recovery.

Creative and bold actions need to be undertaken, particularly with respect to the provision of housing. There is precedent, for example, in Gaza (prior to October 7) where transitional housing units in the form of caravans were provided to those in need. Repatriated and existing communities must also enjoy access to quality education and healthcare by reconstructing damaged schools and clinics and providing necessary supplies and personnel.

## iv. Access to natural resources

The ICJ indicated that Israel's exploitation of the natural resources in Area C is a violation of international law. Palestinian access to natural resources in Area C of the West Bank is essential for the economic sustainability of a future Palestinian state. Control over these resources, including land, water, and minerals, directly impacts the agricultural, industrial, and developmental potential of Palestinian communities. Without full access, efforts toward statehood and self-determination are severely hindered.

## v. Economic development

Economic development in Area C, particularly for Palestinian agricultural communities, is crucial for building a self-sufficient and resilient Palestinian state. Agriculture forms the backbone of the local economy, providing livelihoods and food security, while access to land and resources in this area is vital for sustainable growth. Palestinian farmers must therefore be supported, for example, through access to fodder for their animals as well as resources, training, and market access to revive the agricultural sector for herding communities and pastoralists.

## vi. Environmental sustainability

Environmentally sustainable practices should be incorporated into reconstruction efforts in Area C to protect natural resources and ensure long-term viability. These efforts should include climate change mitigation measures in support of herding and pastoralist communities, such as water conservation and renewable energy projects to enhance community resilience.

## vii. Community engagement and participation

As outlined in *Area C is Everything*, inclusive planning and local community stewardship of planning and implementing development projects to ensure their needs and perspectives are critical. The PA needs to have a greater presence in Area C to build trust with the communities living there and so that they do not feel abandoned. To strengthen community resilience and promote inclusive growth, the PA and the Planning Hub must encourage the meaningful participation of women and youth in spatial planning and economic and social activities.

viii. Mechanisms for Protection of Palestinians in Area C

UN member states should use available mechanisms within the UN system to establish international protection forces in the oPt.

**f. Addressing settlement expansion and settler violence**

Israel's settlement project and its associated violence against Palestinian constitute the primary threat towards Palestinian presence in, and control over, Area C.

To this end, several third states have recognised the need to be more proactive with respect to settler violence by adopting accountability measures against individual perpetrators of violence – imposing travel bans and financial sanctions against the most extreme settlers. While these proactive measures are an important step signalling a new relationship between third states and Israeli settlements, they have not proven particularly effective. Sanctioned settlers have few assets against which sanctions can be imposed and have little inclination to travel outside of the West Bank or Israel. Moreover, much of the settler violence is being perpetrated by clusters of outposts, the members of which have not yet been subject to sanctions. In turn, settler violence continues uninterrupted.

It is essential that third states adopt a unified plan for concrete and urgent measures. They must tackle Israel's settlement policy itself and not just the settlers and soldiers charged with implementing it on the ground. These measures may include:

**i. Domestic initiatives to deny any direct or indirect engagement with or assistance to Israeli settlements including through:**

- Prohibiting business enterprises from operating in Israeli settlements in the oPt.
- Prohibiting the purchase or sale of settlement real estate located in the oPt, including Area C.
- Prohibiting charitable tax receipting for donations made to domestic or international settler organisations or organisations that support settlements and settlement expansion in the oPt, including Area C.

**ii. Initiatives at the international level:**

- Support a UN General Assembly resolution calling for the end of occupation with a strict timeline, including for the dismantling of settlements and outposts deemed unlawful by the ICJ.
- In the clearest terms, indicate to the State of Israel that it will be deemed to have breached peremptory norms of international law to which they will be held accountable should they not cease, prevent and reverse all settlement construction and expansion, including the creation of outposts and related infrastructure, such as roads. This includes the cessation by Israel of providing state finances, directly or indirectly, to settlements or outposts in the oPt including Area C.
- Demand of Israel meaningful accountability for perpetrators of violence towards Palestinian communities, and designate a reasonable time limit for implementation. Such accountability must include prompt, effective and independent investigations, arrests, and prosecutions. Where Israel does not comply, impose economic sanctions including through the suspension of free-trade agreements.
- Support the PA and State of Palestine to actively participate in all local and international initiatives—including political, diplomatic, and legal—on settlements and affecting the displacement of Palestinian communities in Area C due to settler violence.



## Annex I: Glossary of Acronyms

COGAT	Coordination of Government Activities in the Territories
EU	European Union
HPC	High Planning Council
ICA	Israeli Civil Administration
ICJ	International Court of Justice
IDF	Israeli Defence Force
IHL	International Humanitarian Law
IHRL	International Human Rights Law
NIS	New Israeli Shekel
NRC	Norwegian Refugee Council
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
oPt	occupied Palestinian territory
PA	Palestinian Authority
UNGA	United Nations General Assembly
UN-Habitat	United Nations Human Settlements Programme
WBPC	West Bank Protection Consortium

## Annex II: International Court of Justice Proceedings Relevant to Area C

### i. The questions before the ICJ

In late 2022 the UN General Assembly asked the ICJ to provide an opinion on the following questions:

(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to [.. ] above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?<sup>1</sup>

These questions are critical as international law norms clearly distinguish between military occupation of territory—which international law does not prohibit but rather regulates—and annexation (or the acquisition of territory by force), which is forbidden and considered to be in violation of peremptory norms of international law. Such violation leads to legal consequences, chief amongst which are the duties incumbent on all states of non-recognition of the unlawful conduct and to cooperate to bring an end to Israel's presence in the oPt. For humanitarian actors, the legal findings are no less consequential, providing the legal basis on which assistance is provided to populations affected by violence and displacement. This includes humanitarian access negotiations and the legal frameworks against which humanitarian diplomacy takes place.

International law regulates the conduct of occupation, providing the occupying power and the inhabitants of occupied territory with rights and obligations. Moreover, the law of occupation does not set a specific timeline or even clearly provide an obligation to bring the occupation to an end. That said, the law of occupation is a legal regime that is founded on a presumption of temporariness.

Annexing or otherwise altering the legal status of an occupied territory is explicitly prohibited not only by the prohibition of acquisition of territory by force, but also by the law of occupation. In short, when an occupation becomes permanent, it also becomes unlawful.

The prohibition on annexation does not only cover an annexation declared in legal form, but also measures that have an equivalent effect, such as the construction of residential settlements in occupied territory. An annexation achieved by exploiting a situation of occupation and institutional changes imposed by the occupying power can also fall under the same prohibition. Accordingly, even where certain measures are carried out under the claim of lawful measures of an occupying power, they could nevertheless be prohibited if they have the effect of annexation.

In February 2024, the ICJ held public hearings, and issued its opinion in July 2024.

<sup>1</sup> International Court of Justice. 9 February 2024 No. 2024/15 . Available at: <https://www.un.org/unispal/document/legal-consequences-arising-from-the-policies-and-practices-of-israel-in-the-occupied-palestinian-territory-9feb-2024/>



## ii. The ICJ public hearings and the position of third states

During the public hearings 49 Member States of the United Nations, and three international organisations presented oral statements. The public hearings complemented the written submissions of July 2023.

The State of Palestine highlighted Israel's prolonged occupation, annexation efforts, and racial discrimination and argued for the immediate end of occupation and the recognition of Palestinian self-determination. Israel rejected the advisory opinion request, arguing it distorts historical and legal realities and undermines negotiation-based conflict resolution.

The position of third states was mostly in support of the ICJ's jurisdiction, viewing an advisory opinion as a means of clarifying legal questions and support a negotiated solution based on international law.

The majority of submitting states consider Israel's actions in the oPt to constitute annexation. According to the analysis of 48 submissions, 30 states (62 per cent) upheld the view that there is a violation of the right to self-determination, addressed Israel's annexation of oPt, and considered Israeli policies and practices in breach of international humanitarian law and the prohibition on racial discrimination. Only three states (Canada, UK, and USA) rejected these claims, while 15 states (31 per cent) did not address the substance of the questions.

## iii. The ICJ's findings

While it is beyond the scope of the Addendum to provide a full review of the International Court of Justice's July 2024 opinion regarding the legality of Israel's occupation, certain determinations from the decision have significant implications for Area C and activities of third states in Area C.

The overarching finding by the ICJ was that Israel's presence in the occupied Palestinian territory is unlawful. This means that everything Israel does in the oPt is tainted with illegality, and Israel is obligated to end the occupation.

Much of the decision was concerned with Area C and what follows are some specific findings of relevance to this report:

**Forcible transfer:** Israel's policies and practices including its forcible evictions, extensive home demolitions and restrictions on residence and movement, often leave little choice to members of the Palestinian population living in Area C but to leave their area of residence. The nature of Israel's acts, including the fact that Israel frequently confiscates land following the demolition of Palestinian property for reallocation to Israeli settlements, is not temporary and the Court concludes that Israel's policies and practices are contrary to the prohibition of forcible transfer of the protected population under the first paragraph of Article 49 of the Fourth Geneva Convention.

**Acquisition of territory through settlement expansion and territorial fragmentation:** The continued expansion of settlements in Area C increases Israel's civilian and military presence in the territory and pushes the Palestinian population to other areas of the West Bank. This, together with the infrastructure regime associated with the settlements, advances the integration of large areas of the West Bank into the territory of Israel. The Court concludes that these policies and practices are designed to create irreversible effects on the ground and amount to annexation of large parts of the oPt contrary to international law. They also determine that Israel's settlement policy results in the fragmentation of Palestinian territory contrary to its sovereignty and self-determination rights.



**Settler violence and the right to life:** Settler violence against Palestinians and Israel's failure to prevent or punish it effectively is a breach of Article 46 of the Hague Regulations – the protection of the right to life for persons living under occupation, and Article 27 of the Fourth Geneva Convention, which provides that protected persons shall be humanely treated and protected against all threats or acts of violence. The Court also notes that such violence breaches the rights to life and to protection against violence as guaranteed by Article 6, paragraph 1, and Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

**Planning policy:** Israel's planning policy in relation to the issuance of building permits, and its practice of property demolition for lack of a building permit, which treats Palestinians differently from settlers without justification, amounts to prohibited discrimination, in violation of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and Article 2 of Convention on the Elimination of All Forms of Racial Discrimination (CERD). The Court further concludes that the separation between settler and Palestinian communities is both physical and juridical, and amounts to racial segregation under CERD Article 3.

**Exploitation of oPt natural resources undermines sovereignty and right to self-determination:** The Court concludes that Israel has been exploiting the natural resources in the oPt for its own benefit and for the benefit of settlements, in breach of its obligation to respect the Palestinian people's permanent sovereignty over natural resources and their right to self-determination.

**Third party states:** All states have obligations to not recognise Israel's continued presence in the oPt, and to not aid or assist in the maintenance of its presence there. The international community must take action to end Israel's regime of racial segregation. The implications of this are broad. States must collectively, through the UN system and other multilateral mechanisms, dismantle Israel's illegal occupation. Each state must also re-examine, re-assess and adjust all their bi-lateral relations with Israel to ensure they are in no way contributing to the maintenance of its illegal occupation.

There is consensus amongst international legal experts and scholars that the ICJ advisory opinion is an authoritative statement of law. As the principal legal organ of the United Nations, its findings are binding upon the Secretariat and, as clearly elucidated by the Court in numerous instances, create an obligation of the requesting UN organ—in this instance, the UN General Assembly—to elaborate the exact modalities for its implementation. There is no doubt that the legal duties of non-recognition, aid, or assistance in the continuation of internationally wrongful acts in breach of peremptory norms, are legally binding as obligations applicable to all states.

In a press release issued after the opinion was made public, a group of UN Special Rapporteurs noted that the Court reaffirmed that “[f]reedom from foreign military occupation, racial segregation and apartheid is absolutely non-negotiable”. They asserted that the decision should be seen as “declaratory in nature and binding on Israel and all States supporting the occupation” and that “States must immediately review all diplomatic, political, and economic ties with Israel, inclusive of business and finance, pension funds, academia and charities”. They further called for “an arms embargo, an end to all other commercial activities that may damage the Palestinians, and targeted sanctions, including asset freezes, on Israeli individuals and entities involved in illegal occupation and racial segregation and apartheid policies”. They also stated that “laws and policies that penalise opposition to or impede advocacy against Israel's occupation and apartheid must be rescinded.”<sup>2</sup>

<sup>2</sup> OHCHR. 30 July 2024. Experts hail ICJ declaration on illegality of Israel's presence in the occupied Palestinian territory as “historic” for Palestinians and international law. Available at: <https://www.ohchr.org/en/press-releases/2024/07/experts-hail-icj-declaration-illegality-israels-presence-occupied>



## Endnotes

- <sup>i</sup> See for example, UN High Commissioner for Human Rights report: <https://www.ohchr.org/en/documents/reports/ahrc5572-israeli-settlements-occupied-palestinian-territory-including-east>; FMEP's Weekly Settlement Report, 26 April 2024 [onfile with author] which indicates that Smotrich from within his position in the Ministry of Defence has greenlighted ministries to prepare services for 68 outposts, even though the process to legalise these outposts has not begun.
- <sup>ii</sup> United Nations Human Rights Council. 2023. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. Available at: <https://www.ohchr.org/en/documents/reports/ahrc5572-israeli-settlements-occupied-palestinian-territory-including-east>.
- <sup>iii</sup> The Knesset. 2024. Budget of the State of Israel. Available at: <https://main.knesset.gov.il/About/Pages/Budget/BudgetInfo8.aspx#content>.
- <sup>iv</sup> United Nations. 2023. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. Available at: <https://www.un.org/unispal/document/israeli-settlements-in-the-occupied-palestinian-territory-including-east-jerusalem-and-in-the-occupied-syrian-golan>.
- <sup>v</sup> Peace Now. 2023. State Land Declaration of 12,000 Dunams. Available at: <https://peacenow.org.il/en/state-land-declaration-12000-dunams>.
- <sup>vi</sup> Wennesland, T. 2024. UN Special Coordinator for the Middle East Peace Process briefing to the Security Council on the situation in the Middle East (26 March 2024). Available at: <https://reliefweb.int/report/occupied-palestinian-territory/tor-wennesland-un-special-coordinator-middle-east-peace-process-briefing-security-council-situation-middle-east-26-march-2024>.
- <sup>vii</sup> Outposts are used to take over large swaths of land for agricultural purposes, with a long-term view of turning them into settlements. They are supported by the government of Israel through, for example, grazing permits and financial grants, and received armed protection.
- <sup>viii</sup> Peace Now. 2023. Settlements Population. Available at: <https://peacenow.org.il/en/settlements-watch/settlements-data/population>.
- <sup>ix</sup> Wall Street Journal. 2024. Illegal Israeli Settler Roads Are Surging Across West Bank Since Oct. 7. Available at: <https://www.youtube.com/watch?v=RYgwKhzHeGc>.
- <sup>x</sup> United Nations Human Rights Council. 2023. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. Available at: <https://www.ohchr.org/en/documents/reports/ahrc5572-israeli-settlements-occupied-palestinian-territory-including-east>.
- <sup>xi</sup> United Nations Office for the Coordination of Humanitarian Affairs. 2023. Data on Casualties. Available at: <https://www.ochaopt.org/data/casualties>.
- <sup>xiii</sup> Al Jazeera. 2024. Which countries have sanctioned Israeli settlers, and what does it mean? Available at: <https://www.aljazeera.com/news/2024/7/29/which-countries-have-sanctioned-israeli-settlers-and-does-it-mean>.

- <sup>xiii</sup> United Nations Office for the Coordination of Humanitarian Affairs. 2024. About 4,000 Palestinians displaced in the West Bank in 2023. Available at: <https://www.unocha.org/publications/report/occupied-palestinian-territory/about-4000-palestinians-displaced-west-bank-2023>
- <sup>xiv</sup> United Nations Office for the Coordination of Humanitarian Affairs. 2024. West Bank Infographic (10 September 2024). Available at: [https://www.ochaopt.org/sites/default/files/West%20Bank\\_infographic\\_10\\_September\\_2024-1.pdf](https://www.ochaopt.org/sites/default/files/West%20Bank_infographic_10_September_2024-1.pdf).
- <sup>xv</sup> United Nations Office for the Coordination of Humanitarian Affairs. Data on demolition and displacement in the West Bank. Available at: <https://www.ochaopt.org/data/demolition>.
- <sup>xvi</sup> Israel Planning Administration. 2024. Planning Information - Mavat System. Available at: <https://mavat.iplan.gov.il/SV7/30/700>.
- <sup>xvii</sup> United Nations Human Rights Council. 2023. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. Available at: <https://www.ohchr.org/en/documents/reports/ahrc5572-israeli-settlements-occupied-palestinian-territory-including-east>.
- <sup>xviii</sup> United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). 2024. Situation Report #95 on the situation in the Gaza Strip and West Bank, including East Jerusalem (24-25 March 2024). Available at: <https://reliefweb.int/report/occupied-palestinian-territory/unrwa-situation-report-95-situation-gaza-strip-and-west-bank-including-east-jerusalem-all-information-24-25-march-2024-valid-25-march-2024-2230-enar>.
- <sup>xix</sup> Porter, Matunga, Viswanathan, Patrick, Walker, Sandercock, Moraes, Frantz, Thompson-Fawcett, Riddle & Jojola. 2017. Indigenous Planning. Available at: <https://www.tandfonline.com/doi/pdf/10.1080/14649357.2017.1380961>.