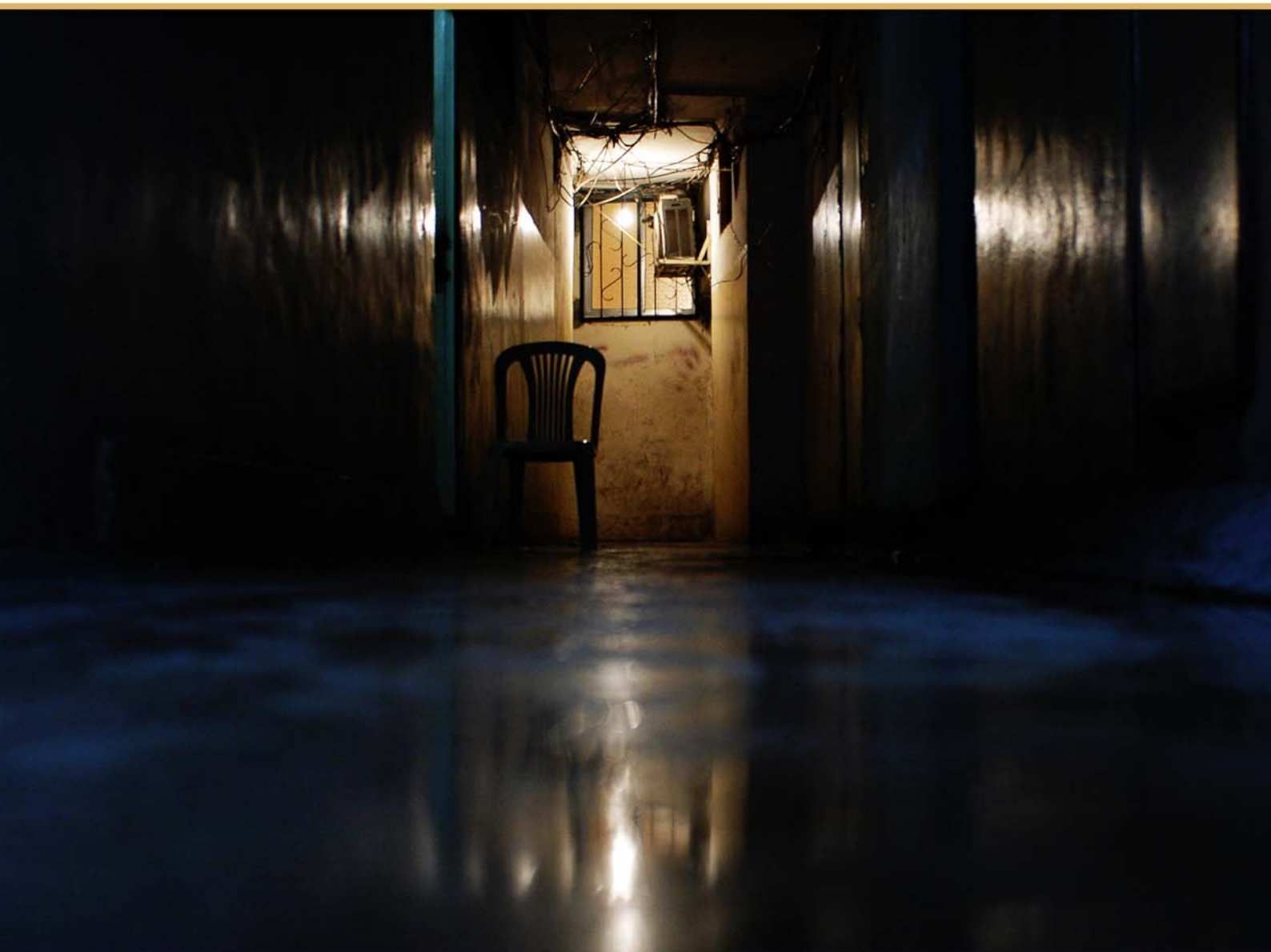


# Legal Assessment of Housing, Land and Property Ownership, Rights and Property Law related to Palestinian Refugees in Lebanon

October 2008



# **Legal Assessment of Housing, Land and Property Ownership, Rights, Transfers, and Property Law related to Palestinian Refugees in Lebanon**

October 2008

*Prepared for*  
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## Preface

This report examines housing, land and property ownership, as well as rights, transfers, and law related to Palestinian refugees living in the Gaza Compound in Sabra, Nahr el-Bared Refugee Camp in North Lebanon and the adjacent area to Nahr el- Bared (hereafter the Adjacent Area) in order to better understand their situation. The report proposes a series of recommendations to assist the Norwegian Refugee Council and the broader humanitarian community to improve the housing, land and property ownership rights of Palestinian refugees in Lebanon.

The Gaza Compound, a former hospital complex near the Shatila Refugee Camp in Beirut was constructed by the Palestinian Liberation Organisation (PLO), on land owned by third parties during the Lebanese civil war. The four-building compound, never intended for accommodation purposes, currently houses a total of 293 predominately Palestinian families.

A full description of the Gaza Compound, legal status and the practices and perceptions of inhabitants is provided in the Background and Chapter III of this report.

Nahr el-Bared Refugee Camp (referred to as the “Old Camp” after the 2007 conflict) <sup>1</sup> was established in the late 1940’s to host Palestinian refugees. The camp falls under the patronage of the United Nations Relief and Works Agency (UNRWA) and, until its near total destruction as a result of the 2007 conflict<sup>2</sup> was home to 31 000 Palestinian refugees<sup>3</sup>.

The Adjacent Area (referred to as the “New Camp”<sup>4</sup> after the 2007 conflict) developed as Palestinian refugees from Nahr-el Bared purchased bare land, constructed houses and settled in the surrounding areas to accommodate the natural population increase. Inter-dependent and familial relations have turned the Adjacent Area into an informal extension of Nahr-el Bared. The Adjacent Area sustained direct and indirect damage during the 2007 conflict.

A full description and assessment of the legal status and the practices and perceptions of the inhabitants of Nahr-el Bared and the Adjacent Area can be found in the Background and Chapters II, III, IV and V of this report.

A review and analysis of all relevant laws is included in the report in order to provide a thorough assessment of the legal situation. Particular consideration is given to the 2001 amendment to Presidential Decree of 1969 on Foreign Acquisition of Property which prohibits Palestinians from property acquisition and has had a significant impact on their common practices.

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<sup>1</sup> Refer to the glossary for a definition of the 2007 conflict.

<sup>2</sup> Refer to the glossary for a definition of the 2007 conflict.

<sup>3</sup> UNRWA - [www.un.org/unrwa/refugees/lebanon.html](http://www.un.org/unrwa/refugees/lebanon.html)

<sup>4</sup> This report uses the term “Adjacent Area” instead of “New Camp” as this area is not an official camp.

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This report endeavours to provide a credible and comprehensive analysis of the legal situation in the Gaza Compound, Nahr el-Bared and the Adjacent Area. It includes a briefing on the plans for the reconstruction of Nahr el-Bared and the Adjacent Area and an assessment of the related legal problems.

From this report comes a series of recommendations to strengthen land and property security on two levels - one level that does not require intervention by the State and a second that focuses on efforts to lobby for the amendment of certain legal provisions and official procedures.

It remains to express our gratitude to the Norwegian Refugee Council (NRC) in Lebanon, namely Country Director, Ms Ulla Backlund; Program Director, Mr Michael Copland; Shelter Program Manager, Mr Richard Evans and Mr Robert Beer for their trust, encouragement and close cooperation. Special thanks must go to the NRC field staff, namely Ms Samira Quaiss and Mr Rabih Taha, who spared no effort to facilitate and assist the field work and enlighten us about the many delicate issues related to the situation in Sabra and Nahr el-Bared; without this contribution it would have been impossible to compile the report. We also acknowledge the Advisory Committee, namely Ms Barbara Mc Callin, Adviser on Housing, Land and Property Issues and Mr Karim Khalil, Country Analyst covering Lebanon representing the Internal Displacement Monitoring Centre, Geneva; Mr Gregory Norton, Information, Counselling and Legal Advice Manager for the Norwegian Refugee Council in Afghanistan; Mr Fernando de Medina Rosales, Adviser-Information, Counselling and Legal Assistance at the International Programme Department in Oslo, Souhail al-Natour, Director of the Palestinian Human Development Centre, Beirut; and Mr Alain Robyns for their careful reading of the draft report and their valuable comments which tremendously enrich it. We also extend our warmest gratitude to the people who agreed to be interviewed for this report. Their willingness to share their experiences made this report possible. Finally, warmest appreciation and thanks must go to Cassandra Mathie who edited the report, for her efforts and deep commitment.

Whilst every effort has been made to present a fully comprehensive report, time constraints made it impossible to include background information for all aspects of the report.

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## Executive Summary

This report examines the housing, land and property ownership, as well as rights, transfers, and law related to Palestinian refugees in Lebanon in order to better understand their situation and propose a series of recommendations to assist the Norwegian Refugee Council (NRC) and the broader humanitarian community to improve the rights and the current situation of Palestinian refugees.

The report presents a study of the land and property rights in two distinct Palestinian communities, the Gaza Compound and Nahr el-Bared, including an assessment of the prevailing practices and perceptions of inhabitants in relation to the Lebanese legal framework. It should be noted that the Gaza Compound and parts of Nahr el-Bared are classed as “Palestinian gatherings” and therefore fall outside the mandate of the United Nations Relief and Works Agency (UNRWA).

NRC is currently implementing several shelter focused projects in the aforementioned communities and provided introductions and assistance for the field work of this present report.

The report initially examines the Gaza Compound: the case of displaced Palestinian refugees with a long history of occupation without legal title, but within a system of enforced social practices.

The four-building former hospital complex near the Shatila Refugee Camp in Beirut was constructed by the Palestinian Liberation Organisation (PLO) on land owned by third parties during the Lebanese civil war (1975- 1990). In 1982, the PLO handed control of the compound over to the Palestinian Red Crescent Society (PRCS) who administered it as a hospital until 1985.

During the civil war, Palestinian families, displaced during the ‘War of the Camps’<sup>5</sup> took shelter in vacant units in the compound. After having settled they began to invite their relatives and friends to occupy the remaining vacant units. The compound, never intended for accommodation purposes, currently houses a total of 293 families. Although most inhabitants are Palestinian, a recent building survey revealed an increasing number of non-Palestinians, mainly Syrians, Iraqis and Lebanese. Moral authority in the compound is held by a Buildings Committee.

The legal status of the Gaza Compound can be summarised as follows:

- According to the Real Estate Registry<sup>6</sup> neither the PLO nor the PRCS own the land. The landowners are Lebanese public institutions and private natural persons.

Some interviewees reported the existence of agreements between the landowners and the PLO authorising the latter to build on the land. There was no access to any of these

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<sup>5</sup> Refer to the glossary for a definition of War of the Camps.

<sup>6</sup> Refer to the glossary for a definition of the Real Estate Registry.

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- agreements; however, the silence of the landowners, since construction began, may be considered grounds to presume the existence of some form of agreement.
- The compound was constructed without a legal permit and consequently the buildings were never registered with the Real Estate Registry.
  - In the absence of written agreements between the PLO and the Lebanese landowners, the buildings are considered to be owned by the landowners who will not be liable to pay compensation if the construction is proven to have been undertaken in bad faith (i.e. with prior knowledge of the non-ownership of the land).
  - None of the inhabitants of the buildings (according to the field work interviews) hold a legal document, issued by the real landowner, which would grant them the right to occupy a unit or store in the building. Hence, no inhabitant has a legal right to reside in the building.

The inhabitants of the Gaza Compound, for the most part, consider their occupation as legitimate. They define themselves and act as “owners”- buying, selling and leasing units within an established system of practices including contracts that are administered, registered and increasingly enforced by *rapport de force* and the Buildings Committee. Prolonged occupation, the need for shelter and the rule of ‘first come, first served’ are issues that endorse the commonly held perceptions of legitimacy of occupation and property transactions. However, there are no legal provisions in the Lebanese Law, which would grant real rights<sup>7</sup> to inhabitants, regardless of the length of occupation.

Parallels can be drawn between the experiences and status of the Gaza Compound inhabitants and those of displaced Lebanese persons during the civil war. It should be considered if the inhabitants of the Gaza Compound could be treated similarly to Lebanese displaced. It is recognised that the legal pursuit of this theory would not be easy.

In all cases, inhabitants perceive they are entitled to compensation.

In summary, the practices relating to housing, land and property ownership in the Gaza compound can be understood to constitute and meet the definition of a paralegal (*para legum*) and in most cases a contra legal system.

The second community studied, Nahr el-Bared, presents a more complex case.

Although commonly perceived to be a single contained region, Nahr el-Bared is in fact two distinct areas (hereafter Nahr el-Bared and the Adjacent Area) which, whilst they have the same land classification and population, are distinct in terms of land ownership.

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<sup>7</sup> Refer to the glossary for a definition of real rights



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Nahr el-Bared (pop. 31 000)<sup>8</sup> comprises a case of Palestinian refugees who constructed and occupied homes, built on private land in the late 1940s. Nahr el-Bared is an UNRWA mandated refugee camp. The camp suffered near total destruction as a result of the 2007 conflict

The majority of inhabitants of Nahr el-Bared recognise their lack of legal right to land but, as in the case of the Gaza Compound, have claims of ownership to their houses based on the principle of long term occupation. Over time, the inhabitants have developed a well embedded, albeit legally invalid, practice of buying, selling or leasing their houses for a price (compensation). The practices are, in most cases, facilitated by the Popular Committee.

The destruction of Nahr el-Bared in the 2007 conflict and the subsequent displacement of inhabitants further revealed their perceptions regarding land and property. Above all, they believe their right of asylum implies the reconstruction of the camp as well as their right to return to the same places they were forced to flee. This belief is connected to the common perception that long term occupation grants certain rights over the land.

In review, the occupation and practices related to the acquisition and transfer of land and property rights in Nahr el-Bared constitute, as is the case for the Gaza Compound, a system of both paralegal and contra legal practices, which whilst being based on the Lebanese Law, has no legal legitimacy.

By far the most complicated in terms of property ownership is the Adjacent Area, with the exclusion of the “Neighbourhood of the Displaced” (*Muhajareen*) - a section of land, donated by the PLO to the Islamic Waqf in the early 1980s that has never been sold to individual landowners.

Adjacent Area: a case of Palestinian refugees who, in the 1980s, in response to a natural increase in population, started to purchase land and construct houses in the areas surrounding the UNRWA mandated camp – effectively creating an informal extension of Nahr-el Bared. The Adjacent Area sustained direct and indirect damage during the 2007 conflict.

Until the 2007 conflict, and the subsequent need to examine the legality of land ownership in the Adjacent Area, few distinctions were made between the area and neighbouring Nahr el-Bared. The inhabitants’ practices and perceptions were similar to those of Nahr el-Bared. The foremost difference was the inhabitants’ ability to acquire property; an option that was highly regarded by inhabitants.

An examination of property acquisition practices and the associated legal framework in the Adjacent Area have revealed a complex legal situation, affected by the following key points:

- “Non-classification”<sup>9</sup> of the land: which has created a situation whereby (1) saleable plots are large (The practice is to purchase shares of a large plot, such that an inhabitant will not own a specific and well-defined area of the plot, but rather, a relative number of

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<sup>8</sup> UNRWA - [www.un.org/unrwa/refugees/lebanon.html](http://www.un.org/unrwa/refugees/lebanon.html)

<sup>9</sup> Refer to the glossary for a definition of non-classified land.

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shares. This has led to a high number of co-owners of each plot<sup>10</sup>), and (2) the total and ground exploitation coefficients<sup>11</sup> are low and by consequence there are a high number of construction infringements.

- Non-registration of purchased shares: the demanding conditions of registration, including high costs (taxes) and a total absence of construction infringements over the entire plot have resulted in low levels of registration of purchased shares with the Real Estate Registry. The low registration rate has created a situation whereby the owners as listed in the Real Estate Registry are, in many cases, not the current owners. The most commonly used practice was to buy shares through an irrevocable<sup>12</sup> power of attorney.
- Non-registration of buildings: the non-registration of purchased shares and the presence of construction infringements as a result of failing to respect the exploitation coefficients have made it impossible to obtain construction permits. Hence there is a low rate of building registration and therefore almost all buildings are illegal.
- The prohibition of acquisition of property by Palestinians, namely the 2001 amendment to the 1969 Presidential Decree on Foreign Acquisition of Property which stipulates that,

*No real right of any kind may be acquired by a person who does not carry a citizenship issued by a recognised state or by a person if such acquisition contradicts with the provisions of the Constitution relating to the prohibition of permanent settlement (tawteen)<sup>13</sup> of Palestinians.*

has transformed an established, paralegal system, based on irrevocable powers of attorney serving as a sales contracts (prohibited under the 2001 Law), into a contra legal system, based on the signing and registering of sales contracts with the Popular Committee, and the community values of solidarity and trust.

- The 2007 destruction and pending reconstruction have (1) contributed to a rise in the number of lease contracts in the area, (2) led to the rise in the number of apartment purchases, and (3) revealed that construction permits, required for reconstruction, cannot be obtained due to the high number of co-owners and the uncertainty about the identity of owners due to non registration. This has also highlighted the need for a re-classification of the land in order to increase the total and ground exploitation coefficients and to reduce the minimum surface of plots (to less than 1200 square meters).

The legality of the situation and practices in the Adjacent Area have deteriorated significantly in recent years - a situation that has been exacerbated by the 2001 Law and the 2007 conflict. The impact of these changes has created a new, socially accepted, yet illegal system of practices.

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<sup>10</sup> Refer to the glossary for a definition of plot.

<sup>11</sup> Refer to the glossary for a definition of total and ground exploitation coefficient.

<sup>12</sup> Refer to the glossary for a definition of irrevocable power of attorney.

<sup>13</sup> Refer to the glossary for a definition of tawteen.

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What becomes apparent and raises utmost concern in both communities is the clear gap between the perception of validity of the prevailing practices and the actual validity of these practices within the Lebanese Law. It is generally perceived that the paralegal systems, which in the case of the Adjacent Area include eight common methods of land acquisition, provide some level of legal protection. In reality, these systems operate completely outside of the Lebanese Law and provide buyers, sellers and tenants with no form of legal protection.

The housing, land and property ownership laws relating to Palestinian refugees in Lebanon will bear influence on the pending plan for the reconstruction of both Nahr el-Bared and the Adjacent Area.

Examination of the officially declared plan for the reconstruction of Nahr el-Bared has identified a number of legal challenges and the report highlights the following concerns:

1. Expropriation of plots in Nahr el-Bared: requires investigation of (1) plots that infringe on adjoining public properties, and (2) plots on the borders that fall outside the original 1940s demarcation.
2. Design of a special area plan<sup>14</sup> that allows for increased construction ratios (total and ground exploitation coefficients)
3. Reconstruction: dependent of the availability of financial resources.
4. Transfer of Nahr el-Bared, after reconstruction, back to UNRWA which will be responsible for handing the houses over to their “owners”.

The reconstruction of the Adjacent Area has also raised serious legal concerns. It is possible, however to lay down the following recommendations for the reconstruction process:

1. Set up a special area plan for the Adjacent Area taking into consideration the existing urban development.
2. Determine the means to obtain permits for the reconstruction of damaged buildings: Several solutions have been proposed; the key one, issued by the Commission for Consultation and Legislation at the Ministry of Justice, suggests a theory which allows for the running of the affairs of a third party without obtaining prior consent.

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<sup>14</sup> Refer to the glossary for a definition of area planning.

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Recommendations:

From this report comes a series of recommendations to strengthen land and property security on two levels - one level that does not require intervention by the State and a second that focuses on efforts to lobby for the amendment of certain legal provisions and official procedures.

Level One Recommendations:

Whilst it is clear that there is at present no feasible permanent solution to legalise the situation of the Gaza Compound or its inhabitants, there is nonetheless a range of practical steps that can be taken to improve the present situation.

An increased focus on strengthening and promoting the existing practices and institutions (namely the Buildings Committee) is considered important for the purpose of organisation and conflict prevention. In this light, seven recommendations are made and summarised below:

1. Assist the committees to form an archive of the purchases, sales and leasing of units.
2. Create maps of every floor and set up provisions for amendment of these maps as well as notices of map amendments.
3. Provide the Buildings Committee with simplified standard contracts.
4. Formalise a response in the case of the death of a resident that differentiates between the situation of the heir being a co-resident or not.
5. Create a mechanism to register contracts not signed in the presence of the Buildings Committee.
6. Assist the Buildings Committee to automate the archives and introduce amendments as deemed necessary.
7. Assist the Building Committee of Gaza IV to equip and manage a room in the common area of the ground floor for public events in the compound.

Similarly, it is important to support the Nahr el-Bared Popular Committee whose role is growing with the increasing number of paralegal and contra legal practices. In this respect, nine recommendations are made and are summarised below:

1. Organise a database/archive for all transactions registered by the Popular Committee.
2. Automate the database.
3. In consultation with government counterparts provide guidelines for safe construction in the absence of government control and for the construction of buildings without

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permits. Compliance with existing or planned area planning guidelines is crucial for the sustainability of the area, securing a durable solution.

4. Set up a template for the management of apartments and floors.
5. Set up three standard sale contracts.
6. Automate incoming transactions.
7. Integrate in all contracts an arbitration clause to be executed in case of disputes.
8. Create a practice to prove the right of the heirs by virtue of an inheritance partition issued by the Religious court<sup>15</sup> and provide inhabitants with legal counselling in this respect.
9. Promote legal awareness and/or provide legal advice on a case-by-case basis.

Recommendations for the Adjacent Area focus on the provision of legal assistance to improve the legal status of the inhabitants. Such counselling should concentrate on the following areas.

1. Legal guarantees that aim to minimise the impact of prohibiting Palestinians from ownership.
2. Legal guarantees that aim to prevent the loss of real rights due to prescription<sup>16</sup> arising out of the 2001 Law.
3. Legal guarantees that aim to manage and/or prevent disputes over the use of co-owned real rights.

#### Level Two Recommendations:

A number of recommendations to lobby for the amendment to legal provisions and official procedures by reason of conflict with the internationally recognised principles of non-discrimination and proportionality are summarised below.

- I. File lawsuits to challenge the execution of the 2001 law to specifically:
  - The prohibition of transfer of real rights to Palestinians.
  - The transfer of the property of a deceased person to the Islamic Waqf instead of their Palestinian heirs.
  - The inability to obtain a construction permit by using an irrevocable power of attorney.

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<sup>15</sup> Refer to the glossary for a definition of religious court.

<sup>16</sup> Refer to the glossary for a definition of prescription

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2. Create a special area plan for Nahr el-Bared Camp and the Adjacent Area in order to increase the ratios of construction (the total and ground exploitation coefficients) and to take into consideration the natural population growth in this area.
  3. Endorse the proposal of the Advisory Commission at the Ministry of Justice (see Chapter VI) as it appears to be the most practical and realistic way to guarantee the reconstruction of destroyed buildings.
  4. Amend the 2001 Law by reason of conflict with the Universal Declaration for Human Rights and other international treaties. It is important to consider a series of conferences and movements that could revitalise the subject and highlight the contradiction between the said law and the principles and values that are internationally prescribed and ratified by Lebanon.
  5. Lobby for the right for Lebanese women to grant their nationality to their husbands and children, on the basis of prohibiting gender discrimination. Although Lebanon has adopted the Convention on the Elimination of All Forms of Discrimination Against Women, the legislator made a reservation on a women's equal right to grant nationality. Recognising this right may allow many families in the Adjacent Area to escape the adversity of the law against Palestinians.

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## Background

Palestinian refugees are one of the world's oldest refugee populations and, despite a well-established right under international law to return to their homeland – there is little prospect of this in the foreseeable future.

More than half of the Palestinian population is displaced, either living as refugees in other countries or internally displaced and remaining in the occupied West Bank and Gaza Strip.

Excluded from the international legal norms regarding refugee rights, Palestinian refugees live subject to the restrictions of their host country.

Over 400 000<sup>17</sup> Palestinian refugees are registered in Lebanon, representing nearly ten percent of the country's population.

Unlike neighbouring Syria and Jordan, the discrimination exercised by the Lebanese authorities denies Palestinian refugees equal rights with both the Lebanese population and other residing foreigners. As such, Palestinians in Lebanon are segregated; subjected to not only a legal void but also to a state of exception.

In the 1950s, Palestinians in Lebanon were considered to be an administrative artifact governed by the Prime Minister office's Central Committee for Refugee Affairs. Nine years later they became a security artifact administered by the Department of Palestinian Refugee Affairs (DPRA), created as an office within the Ministry of Interior. In 1962, Palestinian refugees were classified as foreigners and from the early 1990's, the political, social and civil rights of Palestinians in Lebanon have diminished significantly. Their status is largely defined by their absence of rights.

The majority of Palestinians in Lebanon reside in the 12 refugee camps mandated by the United Nations Relief and Works Agency (UNRWA) and governed by Popular Committees – a body consisting of representatives of political factions responsible for maintaining a moral authority and historically responsible for the provision of services and utilities. The officially demarcated, poverty-stricken camps are overcrowded and suffer from inadequate basic infrastructure. A restriction on horizontal expansion and four-fold increase in the original refugee population has had a severe impact on their situation.

A sizeable number of Palestinian refugees also live in informal gatherings (settlements), predominately in rural areas, that fall outside the UNRWA mandate.

The discrimination faced by Palestinian refugees in Lebanon is clearly evidenced by their lack of rights to housing, land and property ownership.

A Law published in 2001 amended the Presidential Decree of 1969 on Foreign Acquisition of Property (hereafter the 2001 Law). The amended Law prohibits people who do "not carry a citizenship issued by a recognised state" from securing legal title to housing and land (real rights) in Lebanon.

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<sup>17</sup> UNRWA – [www.un.org/unrwa/refugees/lebanon.html](http://www.un.org/unrwa/refugees/lebanon.html)

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Whilst not specifically named, this modification clearly targets Palestinian refugees in Lebanon as effectively all stateless people in Lebanon are Palestinian.

Overnight, this decree prohibited Palestinians from the right to the ownership of land and property and precludes them from transferring already purchased property and their ability to inherit.

The 2007 conflict which resulted in the near total destruction the Nahr el-Bared Refugee Camp and surrounding areas currently presents a new challenge for the Lebanese Government relating to Palestinians' land and property rights. Whilst having expressed a commitment to rebuild the camp, they face a delicate predicament; to rebuild whilst avoiding the creation of a new legal precedent.

The discriminatory stance of the Lebanese Government towards Palestinian refugees is born from an intricate political and social national and regional context. The fragile sectarian balance, the fear of naturalisation of Palestinians and the right of return of Palestinians are commonly used to validate new and existing policies, laws and attitudes.

### **Norwegian Refugee Council**

The Norwegian Refugee Council (NRC) is an independent, humanitarian non-governmental organisation which provides assistance, protection and durable solutions to refugees and internally displaced persons (IDPs) in more than 20 countries in Africa, Asia, the Americas and Europe.

Shelter is one of five NRC core activities, and the organisation has a long standing experience in providing shelter solutions to IDPs, returnees and refugees in post conflict situations. Shelter is currently the largest of NRC's activities in Lebanon.

NRC is currently implementing several shelter focused projects in Palestinian communities in Lebanon which are used as case studies for the report. These projects have highlighted the issue of housing, land and property ownership rights for Palestinian refugees in Lebanon as a major concern and in direct response NRC, supported by the Humanitarian Aid department of the European Commission, commissioned this report.

A detailed description of the two communities studied in this report is below:

### **Gaza Compound**

The Gaza Compound, a former hospital complex near the Shatila Refugee Camp in Beirut, was constructed by the Palestinian Liberation Organisation (PLO) on land owned by third parties during the Lebanese civil war. In 1982, the PLO handed control of the compound over to the Palestinian Red Crescent Society (PRCS) who administered it as a hospital until 1985.

During the civil war, a number of Palestinian families, who escaped the 'War of the Camps' took shelter in the vacant units in the compound and as they settled began to invite their relatives and friends to occupy the remaining vacant units. The four-building compound, never intended for accommodation purposes, currently houses a total of 293, families. Although most inhabitants



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are Palestinians, a recent building survey revealed an increasing number of non-Palestinians, mainly Syrians, Iraqis and Lebanese.

A committee for each of the four buildings collectively referred to as the Buildings Committee—(similar to the Popular Committees in the camps) acts as a moral authority in the compound and ensures the provision of certain services (water, electricity, etc).

The legal status of the Gaza Compound can be summarised as follows:

- According to the Real Estate Registry neither the PLO nor the PRCS own the land. The landowners are Lebanese public institutions and private natural persons.

Some interviewees reported the existence of agreements between the landowners and the PLO authorising the latter to build on the land. There was no access to any of these agreements; however, the silence of the landowners, since construction began, may be considered grounds to presume the existence of some form of agreement.

- The compound was constructed without a legal permit and consequently the buildings were never registered with the Real Estate Registry.
- In the absence of written agreements between the PLO and the Lebanese landowners, the buildings are considered to be owned by the landowners who will not be liable to pay compensation if the construction is proven to have been undertaken in bad faith (i.e. with prior knowledge of the non-ownership of the land).
- None of the inhabitants of the buildings (according to the field work interviews) hold a legal document, issued by the real landowner, which would grant them the right to occupy a unit or store in the building. Hence, no inhabitant has a legal right to reside in the building.

#### **Nahr el-Bared** - The Camp and the Adjacent Area:

Nahr el-Bared Refugee Camp, 16 kilometres from Tripoli in Northern Lebanon is one of the 12 official refugee camps established in the late 1940s to host Palestinian refugees. The camp's territory is officially defined by the original 1940s demarcation, and falls under the patronage of UNRWA.

The 2007 conflict led to a near total destruction of the camp. The majority of the 31 000 residents who evacuated the camp in the initial phase of the fighting are still displaced.

Some families who have returned to Nahr el-Bared currently live in pre-fabricated houses. Others have been able to rehabilitate their houses with the assistance of non-government organisations (NGOs), whilst a large number are renting houses outside the camp until they can secure access to return.

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The Adjacent Area developed in the 1980s as Palestinian refugees from Nahr el-Bared started to purchase bare land, constructed houses and settled in the surrounding areas to accommodate the natural population increase. Inter-dependent and familial relations have turned the Adjacent Area into an informal extension of Nahr-el Bared.

The 2001 Law had a significant impact on the practices related to the purchase and sale of real right in the Adjacent Area. Specifically, the revocation of the right to purchase land using an irrevocable power of attorney executed before a Public Notary<sup>18</sup> and the right to register property with the Real Estate Registry initiated the development of new practices and as a direct consequence increased the functions and role of the Popular Committee in the purchase of land or units.

The Adjacent Area sustained direct and indirect damage during the 2007 conflict. A part of the Adjacent Area remains inaccessible to the inhabitants.

This complex situation raises several legal concerns related to the status of land acquired prior to the promulgation of the 2001 Law, the status of contracts signed after that date and the repercussions of the 2007 conflict on the land property.

The “Neighbourhood of the Displaced” (*Muhajareen*) is a section of land in the Adjacent Area. It is differentiated from other areas because the said land has never been sold to individual landowners. Most inhabitants are Palestinian families, displaced from the destroyed Tel al-Zaatar Camp in 1976 and were hosted in the neighbourhood by the PLO. In the early 1980s, the PLO made an agreement whereby they donated a large part of the land to the Islamic Waqf<sup>19</sup>. A 2005 European funded initiative renovated the area donated to the Waqf. During the 2007 conflict, the neighbourhood was totally destroyed. Displaced inhabitants, currently live in pre-fabricated houses.

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<sup>18</sup> Refer to the glossary for a definition of Public Notary.

<sup>19</sup> The Islamic Waqf received land and property from the PLO when they were ousted from Lebanon in 1982. Refer to the glossary for a definition of Islamic Waqf.

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# **I: Methodology**

## **Section I: Data Collection**

### **§ 1. FIELD VISITS**

NRC staff facilitated the meetings between the consultants, inhabitants and stakeholders in Nahr el-Bared, the Adjacent Area and the Gaza Compound.

Social Field Officer Rabih Taha was selected for this task in Nahr el-Bared due to his connections and good relations with the inhabitants (he is a resident of Nahr el-Bared), and the experience he has gained in the field of data collection through his position with NRC.

Samira Quaiss, Social Field Assistant, was chosen for her knowledge of the Gaza Compound, the inhabitants and her strong social relations with the families residing in the buildings. (Ms. Quaiss is a Palestinian who lives in close proximity to the Gaza Compound).

NRC staff were tasked with the following missions:

- To introduce the consultants to the interviewees, given the delicate nature of the research, especially after the 2007 conflict in Nahr el-Bared.
- To encourage interviewees to provide the consultants with a photocopy of their legal documents.
- To assist the consultants in the selection of interviewees according to the criteria below.
- To provide the consultants with advice and relevant information regarding the general background situation and interviewees.

### **§ 2. MEETINGS WITH OFFICIALS**

The consultants met with official and key persons from Nahr el-Bared, the Adjacent Area and the Gaza Compound in order to understand the common practices, the official response towards these practices and the official policies relating to Palestinian housing, land and property rights.

The consultants conducted interviews with the following officials/ key persons:

1. Mr Nadim Shehadeh and Mr Ziad Sayegh, Consultants for Ambassador Makkawi, President of the Lebanese Palestinian Dialogue Committee (LPDC)
2. Mr Sateh Arnaout, the Lebanese Government's Chief Technical Advisor for the reconstruction of Nahr el-Bared Camp

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3. Mr Nadim Tallawi, Head of Muhammara Municipality<sup>20</sup>
  4. Dr Lutfi Hajj Ahmad and Mr Ali Miaari, members of the Nahr el-Bared Refugee Camp Popular Committee
  5. Members of the Gaza Compound Building's Committees: During our field visits, nine members of the Committees were interviewed
  6. Mr J. Y., a non-working Palestinian lawyer
  7. Mr Ismael Sheikh Hassan, Nahr el-Bared Reconstruction Commission for Civil Action and Studies

### **§ 3. MEETINGS WITH INHABITANTS**

The consultants conducted questionnaires with 20 interviewees in Nahr el-Bared Camp on 7, 8, 15 and 19 August 2008 in order to gain a solid understanding of the current perceptions and practices. At least one interview was conducted with an interviewee who met each of the individual criteria listed below. Some interviewees may be categorised under more than one criterion:

- Palestinian families living in the Adjacent Area.
- Lebanese families living in the Adjacent Area.
- Mixed families (namely a Palestinian man married to a Lebanese woman) living in the Adjacent Area.
- Families who purchased shares of land by 'irrevocable power of attorney' executed at a Public Notary prior to the introduction of Law 296 of 2001.
- Families who purchased shares of land using the name of a Lebanese friend or relative prior to Law 2001.
- Families who purchased shares of land and registered it with the Real Estate Registry prior to Law 2001.
- Families who purchased shares of land, but failed to register it with the Real Estate Registry prior to 2001.
- Families who built upon land owned by the local municipality (Masha')<sup>21</sup>.
- Families who signed a sale contract before the Popular Committee after the 2001 Law.
- Families who signed a leasing contract before the Popular Committee after the introduction of the 2001 Law.
- Families who purchased shares of land in the name of a Lebanese friend or relative after the 2001 Law.
- Families who purchased units after the 2001 Law.
- Families who failed to inherit real rights after the 2001 Law.
- Families who rented a house after the end of 2007 conflict.
- Families who got copies of documents lost during the conflict in 2007.

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<sup>20</sup> Muhammara is one of two municipalities that the Adjacent Area falls under.

<sup>21</sup> Refer to the glossary for a definition of masha'.

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- Families lived in Nahr El Bared prior to the 2007 conflict.
  - Families who lived in the 'Neighbourhood of Displaced' section of the Adjacent Area donated to the Islamic Waqf prior to the 2007 conflict.
  - Families who lived in the 'Neighbourhood of Displaced' (a section of the Adjacent Area occupied by the PRCS) prior to the 2007 conflict.
  - Families currently living in temporary shelter units in the Adjacent Area.
  - Palestinian landowners who purchase and sell land in the Adjacent Area.
  - Families who construct buildings and on sell individual apartments inside the Adjacent Area.

The consultants made seven field visits to the Gaza Compound on 14, 15, 28, and 30 August and, 4, 5 and 6 September 2008. Interviews were conducted with 20 individuals/families living in the compound which included the following cases:

- Families who occupied vacant units during the 1980s.
- Families who have sold a unit.
- Families who have bought a unit.
- Families who have rented a unit.
- Families who have constructed new units.
- Individuals whose occupation of common space is tolerated.

## **Section 2: Assessment of Legal Status**

This section presents a comprehensive assessment of the legal status of real rights in Nahr el-Bared, the Adjacent Area and the Gaza Compound. The consultants undertook the following tasks:

### **§ 1. PROVIDE AN ASSESSMENT OF THE RELATED LAWS**

It was important to review all related laws in order to provide a thorough assessment of the legal situation. The following is a list of scrutinised laws:

1. Law on Foreign Acquisition of Property (initial presidential decree of 1969 and amendment of 2001).
2. Laws related to displacement during the Lebanese civil war (feasibility of application on Palestinian refugees who were displaced during the civil war).
3. Law on Expropriation (Decree of expropriation in Nahr el-Bared, if any).
4. Real Property Law.
5. Law on Organisation of Co-ownership of Buildings.
6. Law of Obligations and Contracts (power of attorney, running the affairs of a third party, lease contracts, sale contracts, etc.).
7. Consultation issued by the Commission of Consultation and Legislation at the Ministry of Justice.
8. Penal Law.
9. Construction Law.

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10. Law on Settlement of Illegal Construction.
  11. Urban Law.
  12. Law of Public Notary.
  13. Decree on Non-Classified Lands.

An overview of the main legal provisions is presented in Chapter II.

## **§ 2. PROVIDE AN ASSESSMENT OF THE ACTUAL PRACTICES AND PERCEPTIONS**

The report presents the following:

1. An assessment of the level of understanding and the need for further information, legal counselling and advice on property/ land issues.
2. An assessment of the legal issues arising out the actual practices.

Chapter III describes in detail the practices and perceptions of Palestinian refugees living in the Gaza Compound (section 1), then presents the existing rules of social organisation (section 2), in order to provide a comprehensive assessment of the practices and perceptions (section 3).

Chapter IV describes in detail the practices and perceptions of Palestinian refugees living in the Adjacent Area (section 1) and then provides a comprehensive assessment of these practices and perceptions, with special focus on the repercussions of the 2007 conflict (section 2).

Chapter V briefly describes the practices and perceptions of Palestinian refugees living in Nahr el-Bared (section 1) and then provides a comprehensive assessment of these practices and perceptions, with emphasis on the repercussions of the 2007 conflict (section 2).

It was perceived to be important to analyse the reconstruction plans for Nahr el-Bared and the Adjacent Area in the aftermath of the 2007 conflict. In this respect, Chapter VI presents and assesses these plans.

### Section 3: Recommendations

The report presents the following:

Different options to strengthen land and property security at a practical level, including clarification of the legal ownership, identification of the types of tenure security and formalisation of informal property rights.

1. Recommendations for best practice concerning NGO operations in Lebanon vis-à-vis the State and other authorities.

Chapter VII provides two sets of recommendations. The first set is describes measures that can be carried out without the intervention of the State (Section I), while the second set describes lobbying actions against certain laws and official procedures (Section 2).

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Finally, it is necessary to draw the attention of the reader to the following issues:

1. The sections on perceptions consist of a faithful translation of people's thoughts and opinions and do not necessarily reflect the opinions of the author. The perceptions are by definition subjective, and sometimes, erroneous.
2. The practices described are not necessarily legal. It must be taken into consideration that the report aims to describe and analyse the illegal and paralegal practices prevailing in the Gaza Compound, Nahr el-Bared and the Adjacent Area.
3. The assessment section includes a summary of the practices and perceptions in order to highlight the most important and critical practices and perceptions and to provide the reader with the option to skip the lengthy sections of practices and perceptions. It is a concise and comprehensive summary that focuses exclusively on the most pertinent issues.
4. The recommendations are intended to be practical and provide a foundation for an advocacy strategy. The design of advocacy strategies and tools remains the responsibility of NRC and other NGOs working in this field.

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## **II: Brief Description of Laws Falling in the Scope of the Present Report**

This chapter presents the legal framework for the common practices in Nahr el-Bared, the Adjacent Area and the Gaza Compound.

### **§ I. LAW ON FOREIGN ACQUISITION OF PROPERTY**

The Presidential Decree 11614 of 1969 as amended by Law No. 296 issued in April 2001 stipulates the following provisions:

*No real right<sup>22</sup> of any kind may be acquired by a person who does not carry a citizenship issued by a recognised state or by a person if such acquisition contradicts with the provisions of the Constitution relating to the prohibition of permanent settlement (tawteen)<sup>23</sup> of Palestinians<sup>24</sup>.*

- Even though the provision includes all people who do not carry a citizenship issued by a recognised state, it is quite clear from the interpretation of the Law that the amendment is directly aimed at prohibiting Palestinians from property ownership. The rights of Palestinians were affected greatly by the new Law; previous to the amendment, Palestinians were able to own a maximum area of 5 000 square meters without a prior permit<sup>25</sup>.
- The Law imparted a wide range of new prohibited legal actions. It prohibits Palestinians from the acquisition of all real rights, including the transfer of real rights by inheritance, donation, testament, etc., any lease contract for a period of 10 years and above is subject to a prior license<sup>26</sup> and the real rights of a deceased Palestinian cannot be transferred to the Palestinian heirs<sup>27</sup> but become the property of the Islamic Waqf.
- The Law defines a “Lebanese company” as follows: a company established in Lebanon is considered Lebanese only in the case that its bylaws provide that all its shares are owned by Lebanese persons and explicitly prohibit shareholders from transferring shares to non-Lebanese natural or legal persons.<sup>28</sup> Any company which does not fulfil the abovementioned conditions is considered non-Lebanese. The question thus arises: What is the status of a company whose shares are wholly or partly owned by Palestinians? Should this company be considered a Palestinian company, and thus subject to the abovementioned prohibition, or should it be considered a foreign company,

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<sup>22</sup> Refer to the glossary for a definition of real rights.

<sup>23</sup> Refer to the glossary for a definition of permanent settlement (*tawteen*).

<sup>24</sup> Article 1 of the amended decree.

<sup>25</sup> According to the 1969 decree, foreign acquisition of an area of more than 5000 square meters requires a permit from the Council of Ministers.

<sup>26</sup> Articles 3 and 4 of the amended decree.

<sup>27</sup> In practice, the Real Estate Registry is forbidden to register transfer of property to Palestinian heirs. Hence, heirs are forbidden to dispose (sell, lease, etc) of the real property, although the Waqf is currently abstaining from taking legal measures against occupation of the property by Palestinian heirs.

<sup>28</sup> Refer to the glossary for a definition of legal person.



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subject to the same restrictions? Although the Law does not provide a clear answer, the risk that a company would be considered Palestinian, and thus subject to prohibitions is high, especially if the shares owned by Palestinians represent the majority (50% and above). In such a case, and on the basis of private international law, it would be considered that Palestinians have acquired the majority control of the company.

- The 2001 Law explicitly states that “Lebanese companies” which acquired real rights may change their bylaws without a prior license in order to permit transfer of shares to non-Lebanese persons in the case of inheritance<sup>29</sup>. Accordingly, in the case of the death of a shareholder, it is possible to amend the bylaws and allow Palestinian heirs to inherit shares in a company owning real rights. As such, it is perfectly legal to establish a company whose shareholders are Lebanese in order to register real rights in the name of the company. Upon death of a shareholder, the remaining shareholders can amend the bylaws to allow the inheritance of shares by Palestinian heirs. However, attention must be paid to the abovementioned risk - it is prudent to ensure that the shares owned by Palestinians do not, at any time, constitute the majority of the shares.
- The use of a figurehead (prête-nom)<sup>30</sup> in order to sign a contract or a legal action to evade the provisions of the 2001 Law is considered a felony and subject to penalty by forced labour and a fine.
- The Constitutional Council<sup>31</sup> rejected a challenge submitted by 10 Members of Parliament against the said Law on two grounds: (1) that preventing permanent settlement (tawteen) is of high national interest and (2) that laws discriminating against some foreigners do not breach the international conventions, especially when the discrimination is related to economic rights.

However, it remains possible to restrict the occurrences of prohibition, through a judicial/administrative interpretation of the Law or through the elimination of certain provisions by reason of a breach of the principle of non-discrimination, strongly advocated in international treaties ratified by Lebanon<sup>32</sup>. The Law may be challenged on the following grounds:

- The Law does not refer in any way to the rights acquired before its promulgation. It is accepted that the acquisition of real rights by Palestinians was valid prior to the promulgation of the 2001 Law. Does the Law imply that a sale contract, signed prior to 2001, but not registered with the Real Estate Registry, becomes obsolete after the promulgation of the 2001 Law (as is current practice in Public Institutions)? Or, does the Judiciary have to respect real rights acquired prior to 2001 and therefore allow registration with the Real Estate Registry? The claim against the validity of the sale contract is based on the fact that a sale contract, according to the Lebanese Law, does not conclude the acquisition of the real rights until registration with the Real Estate

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<sup>29</sup> Articles 2 and 12 of the amended decree.

<sup>30</sup> Refer to the glossary for a definition of figurehead.

<sup>31</sup> Refer to the glossary for a definition of the Constitutional Council.

<sup>32</sup> See Chapter VII for more information.

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Registry is completed (see below). Therefore the acquisition of property takes effect from the date of registration.

- The Law blatantly discriminates against those who do not hold a nationality given by a recognised state, in other words against stateless people and Palestinian refugees. Such discrimination breaches international practices and guidelines<sup>33</sup> which encourage provisions concerning the acquisition of movable and immovable property, property rights and interest to be as favourable as possible and in, any event, not less favourable than those afforded to aliens in general.
- The claim that the Law aims to prevent permanent settlement (tawteen) of Palestinian refugees is irrelevant for several reasons. (1) the Law violates the principle of proportionality; the enforced action far exceeds that which is necessary to achieve the objective of the Government, and (2) permanent settlement (tawteen) is enforced exclusively by naturalisation and not by the acquisition of real rights, hence, there is no link between the Law and the desired objective.
- Decisions of the Constitutional Council are final and have *res judicata vis-à-vis* over any judicial or public authority<sup>34</sup>. Therefore, the decision based on constitutionality of the Law could present an obstacle for the restriction of prohibition. However, it can be argued that the decisions of the Constitutional Council can prohibit the Judiciary from enforcing an annulled law or discarding a valid law but, cannot prohibit the Judiciary from discarding a law by reason of contradiction with the ratified international treaties which supersede national laws according to the hierarchy of laws enunciated in the Lebanese Law<sup>35</sup>.
- The Convention on Elimination of All Forms of Racial Discrimination, namely articles 1 and 5, state that: the legal provisions of States Parties concerning nationality, citizenship or naturalisation are not affected by this Convention, provided that such provisions do not discriminate against any particular nationality, and that everyone shall enjoy basic rights, including the right to own property alone as well as in association with others and to inherit.

Moreover, the International Covenant on Civil and Political Rights, Article 26, states: all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status.

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<sup>33</sup> Convention on Refugees

<sup>34</sup> Article 13 of the Law on Establishment of the Constitutional Court

<sup>35</sup> Article 2 of the Civil Law Procedure.

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## **§ 2. THE LEGAL RULES APPLICABLE TO UNREGISTERED SALE CONTRACTS IN THE ADJACENT AREA**

This issue is crucial because the majority of sale contracts exchanged by Palestinians in the Adjacent Area are not registered with the Real Estate Registry. Therefore, in most cases inhabitants purchased the real rights, but the title deeds registered with the Real Estate Registry do not reflect this transfer in ownership. Following the 2001 Law, registration in the name of Palestinians was impossible. What is the status of a sale contract that was not registered with the Real Estate Registry? What is the legal status of these real rights and the consequences of occupation according to the Lebanese Law?

### **I. General rules for transfer of real rights in Lebanon:**

The following are the most relevant legal provisions for the transfer of real rights in Lebanon:

- A sale contract grants the buyer the rights to register the transfer with the Real Estate Registry and to undertake all necessary measures in order to safeguard the real rights (e.g. filing a complaint against any violation of his property rights by the seller or a third party).
- All real rights must be registered with the Real Estate Registry in order to be enforceable against third parties.
- The transfer of a real right takes effect from the date of registration with the Real Estate Registry<sup>36</sup>.
- The buyer may request a temporary registration of the contract with the Real Estate Registry in the case that additional formalities or documents are required for registration. The temporary registration legally expires after a lapse of six months.
- Non-registration may lead to the loss of the real right by prescription<sup>37</sup>.
- In the case of non-registration and the landowner (seller) sells the same real right to a second person who registers the real right, the latter becomes the legal owner. The first buyers' only recourse is to sue the seller for fraud. The first buyer cannot regain the real right unless he proves that the second buyer acted in bad faith.
- In the case of non-registration with the Real Estate Registry, the creditors of the landowner (seller) may request the sale by auction of the real right in order to satisfy debt.

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<sup>36</sup> Article 393 of the Code of Contracts and Obligations.

<sup>37</sup> Refer to the glossary for a definition of prescription.

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## **2. The impact of prohibition on unregistered real properties:**

Since the 2001 Law prohibits the acquisition of real rights by Palestinians, existing unregistered sale contracts are obsolete and in conflict with public policy<sup>38</sup>. Consequently, the Palestinian buyer loses his right to dispose of the real right. Either party (buyer or seller) may file a request to the Court to declare the obsolescence of the contract. In the case that the contract is declared obsolete, the buyer may request compensation for any construction and land improvements made prior to 2001, in view of the fact that the work was conducted in good faith<sup>39</sup>. The compensation is calculated on the economic impact of the construction on the bare land value.

## **3. The impact of the lapse of 10 years from the date of the contract on the non-registered sale contracts:**

As stated previously, a sale contract grants the buyer the right to register the real right in their name with the Real Estate Registry. According to the Lebanese Law, the buyer loses this right, if they fail to register the real right within 10 years.

This prescription of time can be interrupted and subsequently a sale contract can become valid for another 10 year period in the following circumstances:

- A buyer files a lawsuit or sends a notice via registered post, requesting the presence of the seller at the Real Estate Registry to finalise the transfer of property.
- The seller waives his right to request the annulment of contract after the lapse of 10 years.
- The seller implicitly or explicitly recognises the buyer's rights. Courts have considered in many instances<sup>40</sup> that sale contracts are not subject to prescription of 10 years if the buyer is peacefully exploiting the purchased land (i.e. construction, occupation) since the ongoing exploitation proves that the seller is implicitly recognising the buyer's rights.
- The seller renews the sale contract.

It is important to note that the prescription of time may be suspended in the case of *Force Majeure*<sup>41</sup>. If the prohibition of acquisition of real rights by Palestinians is considered a *Force Majeure*, the prescription of 10 years may be considered suspended from the date of the promulgation of the 2001 Law until the date of removal of prohibition.

Refer to Section 3 concerning irrevocable powers of attorney serving as sale contracts (a very frequent practice in the Adjacent Area).

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<sup>38</sup> Refer to the glossary for a definition of public policy.

<sup>39</sup> Article 216 of the Real Property Law issued on November 12, 1930

<sup>40</sup> Civil Court of cassation, Second Chamber, no. 30/98, April 14, 1998

<sup>41</sup> Refer to the glossary for a definition of Force Majeure

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### **§ 3. LEGAL RULES APPLICABLE TO IRREVOCABLE POWERS OF ATTORNEY**

The power of attorney is irrevocable when it is granted for the benefit of the attorney-in-fact (the one authorised to act) or a third party<sup>42</sup>. The type of a power of attorney, be it irrevocable or revocable, is dependent on its rationale (*raison d'être*). In the case of conflict, a court has the right to determine the type of the power of attorney, based on the status of the attorney-in-fact.

In some cases, an irrevocable power of attorney serves as a sale contract, whereby the attorney-in-fact is the buyer and the principal (the one authorising the attorney-in-fact to act) is the seller. This process allows the attorney-in-fact to freely dispose of the real right and undertake all necessary formalities, including the right to request a construction permit. Such powers of attorney must be certified by a Public Notary. Since the promulgation of the 2001 Law, this practice has been suspended because the Public Notary refuses to notarise any document which allows for the acquisition of real rights by Palestinians, citing a conflict with public policy.

In the event that an irrevocable power of attorney serves as a sale contract, the legal status of the attorney-in-fact will be equivalent to the legal status of a person who purchased land in the Adjacent Area (see §2 above). The irrevocable power of attorney granted to a Palestinian has become obsolete since the promulgation of the 2001 Law. Furthermore, the sales contract may be subject to the prescription of time after 10 years unless the prescription has been interrupted (i.e. the buyer is peacefully exploiting the purchased land as stated earlier). However, the death of the attorney-in-fact or the grantor will not affect per se its validity.

### **§ 4. LEGAL RULES APPLICABLE TO REVOCABLE POWER OF ATTORNEY**

The refusal of the Public Notary to notarise irrevocable powers of attorney on the basis of the 2001 Law, restricts Palestinian buyers to using an ordinary (revocable) power of attorney<sup>43</sup>. The main characteristics of such power of attorney are the following:

- It is not subject to prescription. Nonetheless, the power to register real rights is subject to prescription after the lapse of 5 years from the date of power of attorney.
- It may be revoked at any time by the principal.
- It is considered void and null upon the death of the attorney-in-fact or the principal.

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<sup>42</sup> Article 816 of the Code of Contracts and Obligations.

<sup>43</sup> Refer to the glossary for a definition of power of attorney.

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## **§ 5. THE ACQUISITION OF SHARES ON BASIS OF AMICABLE OR JUDICIAL PARTITION**

Nahr el-Bared and the Adjacent Area are categorised as “non-classified” land, characterised by large plot sizes (a minimum of 1200 square meters per plot). Common practice in “non-classified areas” is for an individual buyer to purchase a limited area of a plot for the construction of a private house. The purchased area is determined by a relative number of shares of the plot (over a total of 2400 shares for each plot as defined by Lebanese Laws). As such, it is important to clarify the legal status arising from the co-ownership of the plot:

- A co-owner does not legally own a specific and well-defined area of the plot, but rather, is considered as the owner of a certain number of shares in a co-owned property. The Law allows the co-owner to use and benefit from the plot in proportion to the number of shares they own and to take all measures in order to safeguard it.
- A co-owner does not have the right to dispose of the real right (such as filing a request for a construction permit), unless he has the unanimous approval of all other co-owners.
- It is possible to resort to amicable or judicial partition of the plot. However, such partition requires division of the plot into several plots (this is difficult in “non-classified” land, often full of construction infringements and requiring a minimum of 1200 square meters per plot) and registration of the individual plots with the Real Estate Registry.
- Every owner has the right to independently sell his own shares. However, the other co-owners have a pre-emptive right to purchase his shares.

## **§ 6. THE LEGAL PLAN FOR NAHR EL BARED AND THE ADJACENT AREA**

Lebanese Law<sup>44</sup> regulates the planning of cities, villages and populated areas, the total and ground exploitation coefficients and other mandatory rules to which construction is subject to. In the case of “non-classified” lands, the Law defines the surface area of a plot shall not be less than 1200 square meters, the ground exploitation coefficient is 25%<sup>45</sup>, and the total exploitation coefficient<sup>46</sup> is 50% of the surface area<sup>47</sup>.

In order to legalise the buildings in Nahr el-Bared and Adjacent Area, a special plan for the area is currently under study in order to increase the two abovementioned ratios.

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<sup>44</sup> Decree-Law no. 69/83, issued on September 9, 1983

<sup>45</sup> Refer to the glossary for a definition of ground exploitation coefficient

<sup>46</sup> Refer to the glossary for a definition of total exploitation coefficient

<sup>47</sup> Decision 28-2-2005, published in the Official Gazette no. 37 on July 27, 2006

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## § 7. CONSTRUCTION PERMITS

The report was unable to study the status of all plots in the Adjacent Area. However, it is understood that the majority of the construction was undertaken without legal construction permits. The conditions of construction permits are the following<sup>48</sup>:

- The permit request must be signed by an engineer registered with the Association of Engineers.
- Payment of the associated fee.
- Respect the total and ground exploitation coefficients of “non-classified” land. The existing coefficients are very low in the Adjacent Area (see above), and therefore the legalisation of buildings will require the adoption of a special plan for the area.
- The owner of the plot or a person holding a valid power of attorney authorising construction, in accordance with the provisions of the Real Estate Registry, must submit the permit request, signed by all co-owners (this condition is particularly difficult under the current circumstances, knowing that most co-owners have actually sold their shares by virtue of unregistered sale contracts). Due to the difficulty in identifying the address of the co-owners or their heirs, the Advisory Commission at the Ministry of Justice has proposed that the State will rebuild the damaged buildings in the Adjacent Area on the basis of a well-embedded legal theory of administering the affairs of a third party - this means authorising a person or persons the right to safeguard others’ lives, properties or assets (*gestion d’affaires*) without having the prior consent of the beneficiary. To act on this theory, two conditions need to be met: (1) the State is unable to identify the address of the co-owners, and (2) the State is not aware of any objection from co-owners. It is worth noting that the Commission issued a similar proposal during the 1990s in order to facilitate reconstruction of the damaged areas during the Lebanese civil war. The Government currently seems reluctant to adopt this recommendation.
- Ensure the absence of construction infringements on the entire plot. This requirement is difficult to fulfil considering that the purchased land in the Adjacent Area is part of a plot which generally comprises of a large number of infringing buildings.

## § 8. THE LEGALISATION OF BUILDINGS

In the past decades the Lebanese legislator promulgated several laws concerning the settlement of illegal buildings. The existing law issued on March 24 1994, sets up the requirements for legalisation as follows: (1) payment of large fee and a fine amounting to double the fee, (2) submission of the request by a certified engineer, (3) approval of all owners of the plot and compliance with the planning law.

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<sup>48</sup> Decree-Law no. 148/1983 issued on September 16, 1983

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In order to legalise existing buildings, a special plan for the Adjacent Area, taking into consideration the existing constructions, should be issued. A special law is required to reduce the fine.

## **§ 9. THE LEGAL ORGANISATION OF CO-OWNERSHIP IN BUILDINGS**

Law No. 88/83 defines the co-ownership in buildings. This Law stipulates the division of the building into private units, each holding a separate number. It allows the owner of each unit to manage it independently, knowing that other unit owners have no pre-emptive rights in the case of sale. This Law also provides for a system of collective management consisting of three elements: (1) the rights and duties of unit owners as prescribed by the Law, specifically in regard to common areas of the building, (2) the establishment of a committee comprising of the owners of all units, and (3) bylaws set up and agreed upon by the owners.

The organisation of buildings and floors was established in 1962, in order to manage urban development (as well as the development of practices and customs) in Lebanon. The practice prior to the promulgation of this Law consisted of owning land and building for personal use. However, urban development led to the development of a practice to build units intended for sale; this development makes legal organisation indispensable.

It appears that Adjacent Area followed a similar path of development, not only because of economic prosperity and evolution of the social organisation, but also due to a higher level of pragmatism after the promulgation of the 2001 Law (in other words, after making the purchase of land illegal).

## **§ 10. LEGAL RULES APPLICABLE TO LEASE CONTRACTS**

Lebanese Law distinguishes between “old lease contracts”<sup>49</sup> (signed prior to 13<sup>th</sup> July 1992) and “new lease contracts”<sup>50</sup> (signed after 13<sup>th</sup> July 1992). Old lease contracts are renewed annually by the Parliament - the authorised body to increase rental fees. New lease contracts are subject to free agreement within the constraints of public policy. It can be interpreted that the Law guarantees the right of the tenant to stay for a minimum of three years under the same conditions<sup>51</sup>. The contract will be then renewed every year according to the will of both parties.

## **§ 11. LEGAL STATUS OF OCCUPATION OF REGISTERED REAL RIGHT**

It is important to note that the occupation of a plot registered with the Real Estate Registry, regardless of the length of occupation does not grant per se any real right to the occupant. Therefore, the inhabitants of Gaza Compound are not legally entitled to claim for any right.

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<sup>49</sup> Refer to the glossary for a definition of old lease contract.

<sup>50</sup> Refer to the glossary for a definition of new lease contract.

<sup>51</sup> Article 543 of the Code of Contracts and Obligations



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## **III: Description and Assessment of Practices and Perceptions in the Gaza Compound**

### **Section I: Description of practices and perceptions**

#### **§ I. OCCUPATION OF VACANT UNITS**

**1. Frequency:** 54% of total number of units in the Gaza Compound.

#### **2. Practices:**

- a. In most cases, occupation occurred between 1985 and 1991 (linked to the events of the War of the Camps). In most cases, inhabitants occupied vacant units for personal use. In some cases, people occupied a larger space, and subsequently called on their relatives or friends to share the space. For this reason, it is common to find a concentration of families on the same floor or in the same building. Some newer inhabitants have sold space that exceeds their needs.
- b. The majority of inhabitants independently built walls and defined the boundaries of the units. In most cases, inhabitants also repaired damages caused by the civil war.
- c. A number of inhabitants took advantage of their favourable connections with the Authorities and paid (mainly Syrian officers or secret services agents) to gain access to the buildings.
- d. There is no indication of occupation of units previously inhabited by others. However, an abandoned unit may provoke controversies and tension. It is understood that there is currently litigation over a vacant unit on the 10th floor of Gaza IV, which was abandoned three years ago. The President of the Buildings Committee stated that he warned the unit's "owner" that he must either occupy or sell the unit as it is very hard to protect rights over abandoned units.
- e. The Gaza III Building Committee recognises the discrimination between Palestinians and non-Palestinians inhabitants. In the event that a unit is abandoned for a long period (e.g. more than 6 months) by a Syrian, they may allow someone to occupy it, after guaranteeing the Syrian's right to get a fair (but, in fact reduced) price.

#### **3. Perceptions:**

- a. Basis of occupation: Interviewees believe that their right to occupation is legitimate on basis of the following considerations:
  - The rule of "first come, first served": several interviewees (namely inhabitants of Gaza I) claim that they have the right to continue

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exploitation of a common area, based on the fact that they were the first to exploit it.

- Prolonged occupation: upon learning that the Public Prosecutor<sup>52</sup> may not be legally empowered to protect the inhabitants' rights to occupation, one female inhabitant strongly disapproved on the basis of 30 years occupation.
- Payment of money to influential political factions.
- Participation in the finalisation of the construction (mainly Gaza II) and/or restoration of the buildings.
- Ownership of the building by the PLO/PRCS who are aware of the Palestinians' needs and thus their right to remain in the buildings, at least for the present time.
- The need for accommodation: For most interviewees, this is the justification for their first entry to the buildings. However, no-one agreed that an inhabitant should be deprived of their rights in the case of abandonment or prolonged leave. In these cases, inhabitants will exert a strong pressure on the "owner" to sell the unit, based on the increasing difficulty in preventing access to abandoned units. However, inhabitants declare that they will not allow free occupation of an abandoned unit.

b. Nature of right:

- Interviewees defined themselves as owners. However, they behave as tenants leasing for an unlimited period of time. This explains the low purchase price (between USD 3,000 and 4,500 per unit) which is 10 times less than market prices in neighbouring buildings.
- Interviewees believe that in the case of litigation over their "property rights", Lebanese Laws may protect them.

c. Fears and expectations:

- Interviewees believe that their rights, albeit contestable, reflect a collective "problem" for all Palestinian refugees living in the buildings and, hence, any settlement or regularisation of the situation will be dealt with collectively.

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<sup>52</sup> Refer to the glossary for a definition of public prosecutor.

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- Interviewees believe they are entitled to compensation in the event that they are asked to vacate. In buildings with a high turn over rate (predominately Gaza IV), inhabitants consider that they have less proof of their rights than those who bought their units upon a written document.
  - In parallel, none of the interviewees ever mentioned the right of the Lebanese landowners.

## **§ 2. INHERITANCE**

### **I. Practices:**

- a. Generally, after the death of an inhabitant, the unit remains occupied by the heirs who used to cohabit.
- b. Respect to the right to inheritance is more obvious when the heirs live outside the buildings. Recently, after the death of a woman, her brother living elsewhere “inherited” the rented unit. No legal formalities are required in such cases in order to identify heirs.

### **2. Perceptions:**

- a. The right to inherit is well respected. Details related to determination of heirs and allocated shares are defined by the family of the deceased.

## **§ 3. CONSTRUCTION**

### **I. Practices:**

- a. In the past inhabitants have constructed a significant number of units.
- b. Currently, the prohibition of constructing new units appears to be enforced by the Lebanese Gendarmerie. However, this restriction is periodically violated due to the natural extension of families and/or the solidarity with members of large families.

### **2. Perceptions:**

- a. The prohibition to construct new units is generally accepted as an obligatory rule. Breaching this rule may lead to disputes with the Buildings Committee or between inhabitants.
- b. The Gendarmerie recently called the members of the Buildings Committee to inform them that they will no longer tolerate additional constructions. The PLO appears to have adopted a similar position. However, this rule may be violated in

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the case of necessity (humanitarian need) to be assessed by the inhabitants and after gaining the implicit support, and thus the protection of the Buildings Committee.

#### **§ 4. SALE AND PURCHASE OF UNITS**

##### **I. Frequency:**

- a. Sold units: 37 % of the total units.
- b. Written and registered contracts with the Building Committee: Very frequent (if not unanimous) in Gaza IV since 2005.
- c. Verbal contracts: widely used in all buildings prior to 2005, in order to avoid payment of “taxation”.
- d. Uncertified contracts: widely used at present in Gaza I.
- e. Use of contracts recommended by NRC: 3 cases reported.

##### **2. Practices:**

- a. In general, inhabitants who wish to move out of the buildings may either sell or rent their units. The selling price may vary between USD 1 300 and USD 5 000, whilst the rent is around USD 66-100 per month. The annual rent may thus amount to 33% of the selling price, which is considered a very high percentage in the Lebanese context (which usually falls between 5 and 7% of the selling price).
- b. Despite the high rental fees, most inhabitants prefer to sell in order to avoid problems related to non-payment of rent or fear of a change of the status of the buildings.
- c. Declaration of the intention to sell: in some cases, announcements are placed on the unit’s external door<sup>53</sup>.
- d. Sale of units occupied by tenants: in some cases, units occupied by tenants were sold to a third person. In such cases, the buyer assumes responsibility to compel the tenant vacate the unit and for any associated damages arising out of the situation<sup>54</sup>.
- e. Restrictions related to the identity of buyers: In Gaza II and Gaza III (and to a less extent in the other buildings), inhabitants seem to agree on maintaining a conservative (familial and, if possible, Palestinian) environment inside the buildings. In

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<sup>53</sup> Interview with inhabitant Gaza IV: “I bought this unit from my ex-neighbour. She was fed up with renting the unit and mainly with the difficulty to collect money, so she put a notice on her outside door that the unit is for sale...”

<sup>54</sup> Interview with inhabitant Gaza IV: “When I bought the unit, it was occupied by Syrians. I managed to free it... I kindly asked them to leave. I had to be patient for a while but they couldn’t ignore my request for a long time”.

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other terms, selling or renting units to single men or non-Palestinians is somehow implicitly prohibited<sup>55</sup>.

- f. Form of the sale contracts:
- Written agreement signed by parties and certified by the Buildings Committee. Prior to 2005, such contracts were subject to payment of USD 100-200. Many reported payment of fees to the Building Committee in Gaza IV after 2005.
  - Written agreement in presence of witnesses.
  - Verbal agreement witnessed by the Buildings Committee.
- g. Registration: In Gaza IV, the Head of the Building Committee retains a copy of all signed contracts certified by the Committee.
- h. Terms of payment: Payment in cash upon signature of the contract.

### **3. Perceptions:**

- a. Inhabitant's willingness to sell, despite the high rental fees, is a clear indication of their awareness of the precariousness of their rights.
- b. Generally, the buyer requires a written document proving the payment of the unit's price. The written document may protect the buyer against any abuse from the seller (or their heirs). It can also provide the buyer with a title proving that they paid an amount of money, enables them to have complete control over the unit and possibly to claim for compensation in case they are compelled to leave.
- c. From the Buildings Committee perspective, the witnessing and registration of written contracts guarantees the validity of transactions. Mr Ahmad Audi - Gaza IV Building Committee cited a number of precedents to justify the importance of registration.

## **§ 5. LEASE AGREEMENTS**

### **I. Frequency:**

- a. Units rented in Gaza Compound: (8.3% of the total units).
- b. Only three units in Gaza II, 0 units in Gaza III.

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<sup>55</sup> Interviews with members of the Building Committees in Gaza II (August 14 2008), Gaza III (August 28 2008), Gaza IV (September 4 2008), Gaza I (September 5 2007).

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- c. According to Mr Ahmad Audi, 10 out of 15 lease contracts that were signed during the last year in Gaza IV were registered with the Building Committee.
  - d. In the other buildings, verbal contracts have until now been more popular.

## 2. Practices:

- a. Intention to rent: see Section 4 on sale above.
- b. Duration of the lease contract: Generally, the duration is unlimited. Either party may terminate the contract by informing the other of their intention one month (or in some contracts three months) prior to the desired date of termination.
- c. Claim for an increase in rental charges: Following the NRC rehabilitation initiative, there were reports of intentions to increase rental charges; however no increases have been documented to date. It should be noted that only 8.3% (20 units) of the Gaza Compound are rental units.
- d. Restrictions on tenant's identity: The abovementioned restrictions on the identity of inhabitants are applied equally on lease transactions, mainly in Gaza II and III. To the contrary, it appears that owners, in other buildings prefer to lease to non-Lebanese and non-Palestinians, in order to strengthen their position in the case of a dispute<sup>56</sup>.
- e. Form of the lease contract:
  - Written agreement certified by the Buildings Committee. In some cases, a written document is necessary for the tenant in order to receive reimbursement (e.g.: a displaced person from Nahr el-Bared, if leasing a house, is entitled to receive a rent support from UNRWA of USD 200 per month).
  - Verbal agreement. This form is generally used among relatives or if the tenant is single or non-Palestinian.
- f. Terms of payment: monthly instalments.
- g. Some contracts include a penalty clause<sup>57</sup> in case the tenant breaches the contract.

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<sup>56</sup> Interview with inhabitant (Gaza IV): "I prefer to rent my unit to a Syrian rather than to a Lebanese or a Palestinian. The Syrians' stay is temporary and they have no support inside the buildings in case of litigation".

<sup>57</sup> A penalty clause is a clause applicable in case of breach of the contractual obligations. We had the chance to look at a contract inclusive of a penalty clause to pay USD 10 000.

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### 3. Perceptions:

- a. Lease contracts are generally perceived as valid. However, in the event that an “owner” starts to request a significant increase of the rental fee, as has been speculated may occur after the NRC rehabilitation works, it is considered appropriate for the tenant to contest the “owner’s” right and in some cases the validity of the contract.
- b. Differing perceptions, and sometimes conflict of interests, about the form or even the validity of the contract, were witnessed.
- c. From the “owner’s” perspective, signing a contract implies two repercussions:
  - Attaining recognition of their right from the tenant.
  - Granting the tenant a title, and the possibility to challenge his already precarious right and the right to stay for an unlimited period of time.

Thus, the willingness of the “owner” to formalise their relationship with the tenant depends on the personal assessment of these two aforementioned repercussions. Do they really need the tenant’s recognition? Is the contract enforceable in the case of litigation? If yes, by whom - the inhabitants or Lebanese Law and institutions?

The more that the rights of the “owner” can be protected by the inhabitants and the Buildings Committee; it follows that the “owner” would be reluctant to formalise their relationship with the tenant. The situation would change significantly in the event that the Buildings Committee start to impose the written form.

- d. From the tenant’s perspective, signing a contract infers that they officially recognises the right of the “owner”. In contrast, a verbal agreement allows the tenant to contest the “owner’s” right and the validity of their claims at any time.
- e. In practice, both parties perceive the contract as obligatory. The tenant feels compelled to leave in the case they fail to pay the rent or if the “owner” terminates the contract. The Lebanese Law that authorises tenants to stay at least 3 years under the same conditions is wholly ignored by both parties.
- f. However, the enforcement of a contract seems to take two factors into consideration:
  - Humanitarian grounds (the tenant pleads for compassionate treatment, as is the case of an elderly Egyptian inhabitant in Gaza IV).
  - Equity (the legitimacy of claiming an important increase of rent is contested. The importance given to the last consideration depends on

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the social context, specifically on the balance of powers (rapport de force) between the involved parties).

## **§ 6. TOLERATION OF OCCUPATION**

### **I. Frequency: two cases**

- a. A shelter in the basement of the Gaza IV is used as a gymnasium.
- b. The occupation of parts of the Gaza IV roof.

## **§ 7. LITIGATION**

### **I. Practices:**

Several cases were reported:

- a. A complaint from an “owner” against a tenant (Gaza IV). The Public Prosecutor refused to intervene. No proof of ownership was provided. (Gaza IV)
- b. A complaint from an inhabitant against another who built in the common area that was previously used by her. The Gendarmerie, managed to elicit a commitment from the accused inhabitant to free the litigated unit. (Gaza I)
- c. A complaint from an “owner” against a person who, in her absence, bought and occupied her unit. The “owner” annexed to the complaint a certificate signed by the members of the Buildings Committee attesting her right. At present, she is preparing a similar attestation from her neighbours. The case remains unsettled (Gaza I).

### **2. Perceptions:**

Although the inhabitants appear to be aware of the tenuous nature of their actual legal protection, they consider that their rights to their units should be fully protected. This is evidenced by their protection of each others rights. They consistently demonstrate a willingness to witness in favour of fellow inhabitants who are victims of aggression and to intervene, when necessary, to halt the aggression.



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## Section 2: Practices of Social Organisation

During the field visits, nine members of the Buildings Committee, representing the four buildings were interviewed. This section highlights the results related to the practices of social organisation.

1. Until 2005 (withdrawal of the Syrian Army), the buildings were subject to the hegemony of the Syrian military or pro-Syrian secret service agents. The creation of new units and sale transactions were tied to a minimum payment of USD 100 to Syrian secret service agents. In order to avoid such “taxation”, most people used secret signed agreements or conducted verbal transactions.
2. Following a governmental decision in 2002 to re-assign the Gaza Compound’s water source for the exclusive use of the Sports City, the first Building Committee was elected in Gaza IV. Before this time, non-elected inhabitants used to control the compound’s services. Assisted by their political connections, they were able to provide a number of services to the inhabitants. In 2002, the Gaza IV Building Committee was created and tasked to provide the compound with water, standardise the sale and lease contracts and consequently, ensure the security of transactions in the compound. The President of the Building Committee of Gaza IV was then solicited by other inhabitants from other Gaza buildings to provide written and stamped contracts.

During this period, the Building Committee of Gaza IV committed a space in the basement, renovated through a European donation, for public use (meetings, Ramadan dinners, or celebrations and condolences). However, this space was badly managed; it currently serves as a depot.

3. At this time, the Building Committee members of Gaza II and III appear to be consensually accepted, either for their family relations or due to their sufficient provision of services. In Gaza IV, elections took place in two stages: first, male inhabitants were invited to meet in a neighbourhood centre to nominate 15 candidates, and then a small, unofficial committee visited all units to ascertain the preferred candidates. In Gaza I, two Building Committee members imposed themselves as representatives during the 1990s (one being Abu Samir, who is also the Head of Buildings Committee, and gained status and power by facilitating water supply to the compound before 2002). The third member (Abu Samir’s daughter) was recently appointed during a Buildings Committee meeting. NRC succeeded to ensure the selection of one woman in each of the Building Committees of Gaza II, III and IV. Again, the appointment was a matter of consensus rather than election.
4. The Building Committee members (mainly in Gaza II and III) appear to be better organised which can be attributed to NRC intervention. They intend to use the contracts recommended by NRC, to register sales and leases, and to build an archive.

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5. Members of the Buildings Committee were recently called by the Lebanese Gendarmerie in order to order a halt to construction of additional floors or units in the Buildings. The Committee consider this action as recognition of their role and authority in the buildings.

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### Section 3: Assessment of the Practices in Gaza Compound

#### §I. LEGAL STATUS OF THE GAZA COMPOUND

The table below clearly shows that the four buildings, known as the Gaza Compound, are constructed on land owned by Lebanese natural/ individual or legal persons.

Building	Plot	Owner of the plot
1	5802 <i>Mazraa</i>	Ministry of Interior
2	5812 <i>Mazraa</i>	Lebanese citizens (mainly Ghannaji family)
3	4215 <i>Mazraa</i>	Lebanese citizens (mainly Chami family)
4	5807 & 5808 <i>Mazraa</i>	Lebanese citizens (mainly Ghannaji family)

Accordingly, the legal status of the buildings may be defined as follows:

1. According to the Real Estate Registry, neither the PLO nor the PRCS own the land. Some interviewees reported the existence of agreements between the landowners and the PLO authorising the latter to build on the land. There was no access to any of these agreements; however the silence of the landowner, for the entire previous period, may be considered grounds to presume the existence of some form of agreement.
2. The existing buildings were constructed without legal permit and were never registered with the Real Estate Registry.
3. In the absence of clear, written agreements between the PLO and the Lebanese landowner, the buildings are considered to be owned by the landowners who will not be liable to pay compensation if the construction is proven to have been undertaken in bad faith (i.e. with prior knowledge of the non-ownership of the land).
4. None of the inhabitants of the buildings (according to the questionnaires) hold a legal document issued by the real owner that grants them the right to occupy a unit or store in the building, and hence, no inhabitant has the legal right to remain resident in the building.
5. Most inhabitants were displaced from other refugee camps that were destroyed during the Lebanese civil war. This raises the question of whether the Lebanese Government practices<sup>58</sup> that were applied to Lebanese displaced persons are applicable to them.

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<sup>58</sup> On this issue, please refer to § 2.

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## § 2. ASSESSMENT OF THE EXISTING PRACTICES

The existing practices inside the buildings constitute a paralegal system (*para legum/ contra legum*). In the case of a registered plot, the occupation, regardless of the length of the period, does not grant an occupant a real right over the plot. The occupation remains an infringement which can be terminated by the “owner” at any time, regardless of any investment of the occupant to restoration or improvement the occupied unit.

Nevertheless, lengthy occupation is considered, according to the existing practices in the Gaza Compound, as justification for sale (even if the unit is rented), investment, and rent, in summary, for ownership. It even justifies the right of the “owner” to retain the property in case of death (by transfer to the heirs) or abandonment for a certain time. The Building Committee of Gaza IV is considering granting the inhabitants certificates of occupation similar to certificates of ownership.

We may equate such practice to the procedures occurring in other camps (e.g. Nahr el-Bared). This practice can be considered to be what is commonly accepted in Lebanon as “compensation for leaving”; generally a one-off payment to the tenant of a commercial establishment in order to vacate the occupied space. Such practice was widely adopted during times of economic prosperity in Lebanon.

Signed lease or sale contracts are, generally speaking, null and void since the seller/tenant is not legally entitled to occupation it in the first instance. Nevertheless, these contracts are registered with the Buildings Committee and reinforced in the buildings.

These existing practices seem to have become gradually embedded since the buildings became fully occupied and there were no longer vacant units or the possibility to extend the boundaries or establish new spaces. Some interviewees reported that in the late 1980s, units were occupied by people in need for accommodation and evacuated whenever this need ceased to exist, without compensation, sale or any other form of profit. In this case, occupation is transitory and exclusively connected to humanitarian need. With the scarcity of units, occupation began to gain an economic value. Over time, as inhabitants established their homes, families, invited relatives and friends to, at first, occupy vacant units and later to rent or purchase units began. With the acceptance of the right to concede occupation (sell) and the separation from the concept of “need”, the inhabitants’ position regarding ownership began to transform. In parallel with the arrival of people who are not able to purchase units, (e.g. Syrian workers) the right to transfer occupation for a limited period of time (lease) became a common and accepted practice.

The questions regarding these practices relate to the provision for enforcement of these essentially null contracts. A sale contract is best enforced if immediate execution takes place, in other words, if the occupant delivers the unit immediately upon receipt of cash payment. Undoubtedly, the situation becomes more delicate with lease contracts, where the obligations are not immediately executed. However, the existence of lease contracts requires the establishment of additional provisions for enforcement. The following are the primary existing provisions for enforcement:

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1. Promotion of the legitimacy of the right through the gradual embedment of the concept of ownership in the minds of inhabitants.
  2. Maintenance of the balance of powers in the buildings on the side of the “owner”/renter. This provision for enforcement takes on particular importance when the tenant is non-Palestinian (e.g. Jordanian, Egyptian, Sri Lankan, Syrian) and after the withdrawal of the Syrian Army in 2005. This explains the recent preference toward signing lease contracts with non-Palestinians.

Of course, the second provision becomes less important inasmuch as the first one is promoted and widely accepted. Recently the signing of lease contracts with Palestinian families (displaced from Nahr el-Bared or families having ties with inhabitants of the buildings) was witnessed.

Although the idea of ownership is increasingly embedded in the community, the perception of ownership remains relative. The purchase prices of units are much lower than those of units in neighbouring buildings. Furthermore, the tenant’s recognition of the “owner’s” right decreases when the latter starts to making unreasonable demands such a sudden and significant rise in rental fees. In such cases, the tenant commonly contests the “owner’s” right and in some cases the validity of the contract.

On a different level, there is a need to assess the practices endeavouring to register all contracts with the Buildings Committee. These practices were initiated at first, in the buildings which witnessed a high rate of sale and lease contracts for the purpose of fulfilling the need to (1) a to regulate entry and exit, in other words, to establish a sort of social control, (2) establish a system to recognise the holders of rights in order to prevent a conflict of ownership, (3) provide the buyer or the tenant with a document justifying his occupation and (4) ensure the payment of monthly instalments (such justification is perceived important in order to demand a compensation if requested to leave the building). For inhabitants, in buildings with a high turnover or ownership or lease it is perceived necessary to follow the official forms of registration.

Concerning the other buildings, (Gaza II and III), there was no initial need for registration, due to the established social practices, the low rate of cession of right to occupation and the strong familial ties connecting the inhabitants of these buildings. In these buildings, the inhabitants appear more pragmatic and less connected to the right of ownership.

Finally it is important to assess the value of these practices in the Lebanese legal context, in other words, to what extent are these practices acceptable in the legal system and to what extent could the courts and public prosecutors take these practices into consideration.

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In this respect, the following points should be noted:

1. The recognition of the Buildings Committee by the Lebanese Government represented by the Gendarmerie: The Gendarmerie called upon the Committees and made it clear to them that they would be responsible for the implementation of the Lebanese Law in the buildings, specifically in regards to the prohibition of construction of additional floors or units in the buildings. This is considered by several members of the Buildings Committee as official recognition of their role. In fact, the request of the security institutions is most probably driven by the need to improve control of the buildings.
2. The intervention of the Public Prosecutor in cases of aggression on a unit or conflict on ownership: No documents related to these cases were able to be examined. However, two cases about resorting to the Public Prosecutor or the Gendarmerie to stop aggression on the rights of inhabitants were investigated. The first case concerned the request by the plaintiff to evacuate a unit. In this case, the Public Prosecutor refused to intervene. This is most likely because the case constitutes a civil conflict that does not fall under the jurisdiction of the Public Prosecutor. Therefore, a rejection of the request was expected and justified. The second case concerned a complaint against the construction of an additional unit. In this case, the Public Prosecutor intervened. This intervention can be attributed to the fact that construction is legally prohibited and hence, the Public Prosecutor is authorised to intervene at his own discretion regardless of the complaint. In both cases, it was not able to be deduced if the Public Prosecutor will intervene to halt aggression on the personal rights of inhabitants. It is possible to request the intervention of the Public Prosecutor not only on basis of aggression on units but also on basis of seizure of the assets of the plaintiff.

The remaining question relates to the possibility to associate the legal status of Gaza inhabitants with that of displaced persons during the Lebanese civil war. This reasoning is based on the fact that the majority of Gaza inhabitants were displaced from their houses during the War of the Camps<sup>59</sup>. In the aftermath of the civil war, there were 400 000 displaced in Lebanon. Some of the displaced occupied others' properties. This raises an important legal issue because the *Taif Agreement*<sup>60</sup> provides for the return of displaced and the restoration of their villages. In the case of the Gaza Compound, are the displaced considered an infringer according to the Penal Code or does their displacement constitute a justification for occupation until their return to their land and compensation? Is it possible to issue verdict of evacuation of occupied houses or should the judiciary/ administration postpone evacuation until the fulfilment of the conditions of return, including the payment of compensation? The Judge sitting in urgent matters, ruling in lawsuits filed by owners of occupied houses, systematically considered these houses as illegally occupied and ordered immediate evacuation. However, such rulings were pragmatically suspended on basis of certificates issued by the Ministry of Displaced proving that the occupying persons are displaced and that their situation was not yet settled. There is also the issue of payment of financial compensation to the displaced in return of evacuation of occupied houses in

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<sup>59</sup> Refer to the glossary for a definition of War of Camps.

<sup>60</sup> Refer to the glossary for a definition of the Taif Agreement.

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Central Beirut. Accordingly, it is legitimate to consider the application of the same rules of displacement could be applied to the inhabitants of the Gaza Compound. It is recognised that this option would not be easy to adopt for two reasons: (1) the Lebanese Government has always discriminated between Lebanese displaced and non-Lebanese displaced (on this issue, please refer to the Taif Agreement), and (2) the issue remains primarily a political issue tied to the widespread anti-Palestinian sentiment.

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## **IV: Description and Assessment of Practices and Perceptions in the Adjacent Area**

### **Section I: Description of Practices and Perceptions**

#### **§ I. SALE AND PURCHASE OF BARE LAND:**

The followings are the most common practices in the sale and purchase of plots in the Adjacent Area.

Practice no. 1: Sale and purchase of bare land.

Practice no. 2: Purchase by an irrevocable power of attorney granted before a Public Notary.

Practice no. 3: Purchase by an irrevocable power of attorney granted to a Lebanese relative of the effective Palestinian buyer.

Practice no. 4: Sign a sale contract before the Popular Committee.

Practice no. 5: Sale according to unofficial maps dividing the land into plots.

Practice no. 6: Purchase by a revocable power of attorney executed before a Public Notary.

Practice no. 7: Pay immediately the price against receipt.

Practice no. 8: Pay the price in several instalments.

#### **I. Sale and purchase of bare land:**

**Frequency:** This practice was very common until 2001 but less so afterwards.

**Perceptions:** Until recently, the purchase of bare land was considered a top priority for Palestinians. They prioritised saving, in order to acquire property (to the extent that emigrants would send earnings to their relatives in order to purchase land). The right of Palestinians to land and property at this particular time is a particularly delicate issue for the following reasons:

- a. They purchased land at a high cost in comparison to other areas in Akkar (the surrounding region).
- b. The notion of land for Palestinians who have been displaced for 60 years holds a fundamental level of importance. Land, in many cases is perceived to be directly related to dignity. Some displaced people from Nahr el-Bared and the Adjacent Area report feeling guilty for leaving their homes, saying that if they knew their homes were going to be destroyed they never would have left.
- c. Most importantly, interviewees believe that discussion of the legal status of property, so soon after the destruction of their homes, aims to (1) incite Palestinian refugees to emigrate, (2) impose permanent settlement (tawteen), or (3) initiate a larger premeditated plan to relocate Palestinian refugees to third countries. In all cases, it is perceived to jeopardise their right of return.



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## **2. Purchase of land by an irrevocable power of attorney granted before a Public**

**Notary:** In some cases, there is evidence of a long chain of irrevocable powers of attorney. A landowner sells land by an irrevocable power of attorney to a second person (in most cases a Palestinian from the area) who does not register the transfer of the land, but who sells it to another person (again most likely a Palestinian from the area) who in turn resells it by irrevocable power of attorney to another person.

**Frequency:** This practice was very common prior to the 2001 Law but suspended with the introduction of the said Law.

Perceptions:

- a. According to people who purchased land by an irrevocable power of attorney, this practice is justified by the following reasons:
  - It is easy and simple to perform.
  - It is cost-effective when compared to official sale contracts.
  - It is the most common practice among inhabitants of Nahr el-Bared and the Adjacent Area.
  - It is a written document, certified by a Lebanese official whose mission it is to legally protect the rights of people and ensure the validity of transactions.
  - It is a legal instrument. It is commonly believed that this practice provides legal protection. Many are unaware that a power of attorney expires after 10 years. For those who are aware of the legal shortcomings of an irrevocable power of attorney, they feel they are victims of the 2001 law, which deprives them from the right to renewal of the power of attorney and the right to registration with the Real Estate Registry.
  - Above all, they believe that long-term occupation grants them the right to stay.
- b. According to a well-known landowner who has sold more than 65 000 square meters of land in the Adjacent Area, he advises all buyers to immediately register with the Real Estate Registry for the following reasons:
  - First, he is well-aware of the shortcomings of the power of attorney. However, after the promulgation of the 2001 Law, he considers that the Judge is obliged to accept registration, even after the death of the seller, based on the grounds that the Law is unjust and inhumane. He claimed that Palestinians have no intention to infringe on public and private

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properties: "No Palestinian of the camp has ever built on land that he did not purchase".

- Second, he is selling by virtue of powers of attorney which will expire in few years and then he will be unable to renew their powers of attorney.

### **3. Purchase of land by an irrevocable power of attorney granted to a Lebanese relative of the effective Palestinian buyer:**

**Frequency:** This practice was very frequent prior to 2001 (in families having a Lebanese relative) and perceived to have increase after the promulgation of the 2001 Law.

**Perceptions:** Having a Lebanese relative (wife, daughter in law, etc) is important for a Palestinian family. It is a common practice to grant the Lebanese relative the power of attorney for several reasons:

- a. It upholds the right to register the property at any time.
- b. Should the family decide to register, the registration on the name of a Lebanese significantly reduces the taxes payable. Currently, this reasoning no longer applies as both Lebanese and foreigners pay the same registration taxes.
- c. There are no limits on the purchased area and hence, no need to present a certificate of property ownership<sup>61</sup> from all Lebanese Mohafazat<sup>62</sup>.

During an interview with a mixed family, the head of family was proud to have "three Lebanese" (three of his children were married to Lebanese women). All the properties of the family are purchased by virtue of powers of attorney granted to these Lebanese women.

The main land seller in the region also purchases plots by irrevocable powers of attorney granted to his Lebanese wife.

**4. Sign a sale contract before the Popular Committee:** The Popular Committee adopts a standard contract for all sales transactions. The requirements are: (1) the signature of the two parties, (2) the presence of two witnesses, (3) a stamp of 1,000 Lebanese Pounds (LBP),<sup>63</sup> and (4) a fee of LBP 25 000. After the 2007 conflict, the fee decreased to LBP 5 000.

**Frequency:** This practice was rarely adopted prior to 2001 but has become more common after the promulgation of the 2001 Law.

**Perceptions:** This practice is justified by the following reasons:

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<sup>61</sup> Such certificate is required by law in order to make sure that the total purchased area by a person (including his family) does not exceed the legal purchased area.

<sup>62</sup> Refer to the glossary for a definition of Mohafazat.

<sup>63</sup> LBP 1 000 = USD 0.66

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- a. The urgent need to counter the provisions of the 2001 law and ensure purchase of land for personal use. One of the interviewees believed that the 2001 law was created to incite fighting between Palestinian, adding that fortunately, “we had the guts to promote the role of the Popular Committee and succeed in preventing such conflict”.
  - b. The Popular Committee is recognised as an arbitrator in conflicts between inhabitants of the Camp and thus can be a guarantor for the enforcement of these contracts.
  - c. The Popular Committee maintains an archive of these contracts which prevents duplication of purchase.
  - d. Some people assume these contracts are valid and recognised by the Lebanese Authorities.
  - e. Some do not perceive purchase by contract before the Popular Committee to be risky or dangerous. Indeed, they believe that this common practice came in response to a collective problem.
  - f. It is a practical and cost-effective practice.

**5. Sale according to unofficial maps dividing the plot into shares:** The buyer will purchase a number of shares in proportion to the desired surface area. This practice allows the buyer to register the purchase of shares of the plot.

**Frequency:** This practice is very common.

**Perceptions:**

- a. The seller considers that the unofficial maps, created by an engineer, are legally valid because they respect public property rights (access roads etc.) prescribed by Lebanese Law.
- b. The seller perceives himself to be a benefactor who is making the purchase possible and endeavouring to protect the rights of his patriots through keeping records of sale transactions (name of buyer, date of transaction, the location of the purchased land on the map, the purchased area, type of transaction whether a power of attorney or registration with the Real Estate Registry, etc) in order to prevent future conflicts.

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### **Purchase by a revocable power of attorney executed before a Public Notary:**

**Frequency:** This practice was never adopted prior to 2001 and rarely after the promulgation of the 2001 Law.

**Perceptions:** Few people have heard about this practice. Only large landowners were aware of the legal shortcomings of a revocable power of attorney and as such do not recommend it. One landowner reported he has only once sold by revocable power of attorney but, could not provide a copy of the documentation.

#### **6. Pay immediately the price against receipt:**

**Frequency:** This is the most common practice.

**Perceptions:** It is generally perceived as a safe practice for both parties.

**7. Pay the price in several instalments:** In the case of a purchase of large areas of land, the buyer (in most cases an attorney-in-fact) commits not to sell any part of the land before payment of all due money to the main landowner.

**Frequency:** This practice seems to be applied in the case of purchase of large land areas. Similar commitments in the purchases of land for personal use were not recorded, most probably because payment in these cases is immediate in most of these cases.

**Perceptions:** This is considered the main guarantee for the landowner. An interviewed buyer insists that he signs this commitment out of ethical considerations to the landowner.

## **§ 2. SALE AND PURCHASE OF APARTMENTS**

The following are the most common practices of sale and purchase of apartments in the Adjacent Area.

Practice no. 1: Sale and purchase of apartments.

Practice no. 2: Sign a sale contract before the popular committee.

Practice no. 3: Sign a sale contract stamped by a lawyer.

Practice no. 4: Sign a sale contract without witnesses or certification.

Practice no. 5: Pay immediately the price against receipt.

Practice no. 6: Sign an instalment sale contract.

### **I. Sale and purchase of apartments:**

**Frequency:** This practice was very rare (if any) prior to 2001 but became increasingly frequent since the promulgation of the 2001 Law and especially after the 2007 conflict.

**Perceptions:** This practice is increasingly adopted for several financial, practical and legal reasons:

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- a. It is easier to buy a habitable apartment than to buy a bare land and invest time and effort to build a house.
  - b. It is less expensive than purchasing land.
  - c. It partially solves the problem of the increase of demand against the decrease of vacant areas.
  - d. The 2001 Law prohibiting ownership and inheritance contributes to the increase of demand for apartments.

## **2. Sign a sale contract before the Popular Committee:**

**Frequency:** This practice was very rare (if any) prior to 2001 but became very frequent since the promulgation of the 2001 Law.

**Perceptions:** It was agreed that people prefer to register contracts at the Popular Committee<sup>64</sup>. In the end, this is the only guarantee they can obtain.

## **3. Sign a sale contract stamped by a Lawyer:**

**Frequency:** This is a rare practice.

**Perceptions:** According to a well-known apartment seller, buyers are impressed by a lawyer's stamp. For this reason, the seller sometimes asks his lawyer to stamp the sale contract.

## **4. Sign a sale contract without witnesses or certification:**

**Frequency:** This is a rare practice.

**Perceptions:** According to a person who purchased an apartment from his cousin without certification or witnesses, it is "nonsense and legally worthless" to sign a sale contract before the Popular Committee. He believes if there is any intention to regularise the situation, it would be political and not necessarily legal. When he first returned to the camp, after years of emigration, he reported that he "failed to understand" how people manage their lives under the 2001 law.

## **5. Pay immediately the price against receipt: See § I, practice no. 7.**

## **6. Sign an instalment sale contract:**

**Frequency:** This was a rare practice prior to 2001 but became frequent after 2001 and especially in the aftermath of the 2007 conflict.

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<sup>64</sup> See perceptions about the role of the Popular Committee in § I, practice no. 4.

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**Perceptions:** According to a well-known apartment seller, this practice evolved along with the financial hardships and the desire to purchase apartments. These contracts generally include a clause that ownership only becomes effective after the payment of all instalments. However, such contracts may lead to serious problems related to failure of the buyer to pay due instalments and failure of the seller to legally enforce the contract. At the time of interview, the seller was speculating the possibility of taking legal action against a person who purchased an apartment and then resold it before payment of outstanding instalments.

### **§ 3. MAKING A 'COPY' OF DOCUMENTS LOST DURING THE 2007 CONFLICT**

The following are the most common practices of obtaining copies of lost documents in the Adjacent Area.

Practice no. 1: Obtain a "copy of a lost" irrevocable power of attorney from the Public Notary.

Practice no. 2: Obtain a "copy of a lost" contract from the Popular Committee.

Practice no. 3: Obtain a certificate from the main landowner.

#### **1. Obtain a "copy of a lost" irrevocable power of attorney from the Public Notary:**

**Frequency:** This is a rare practice.

**Perceptions:** In general, most people maintained a certified copy of the irrevocable power of attorney. However, a large number of families lost these during the conflict. Few requested the Public Notary to provide them with a "copy of a lost" power of attorney. One interviewee who obtained a "copy of a lost" power of attorney reported that the Public Notary is willing to provide a copy within few days even without the precise date of issue.

#### **2. Obtain a "copy of a lost" contract from the Popular Committee:**

**Frequency:** This is a rare practice.

**Perceptions:** The archives of the Popular Committee were burnt during the conflict. Currently, the Committee is seeking reconstitution through calling on people to submit copies of their contracts if available, or to issue a copy of the destroyed contract in the presence of the same witnesses.

The Popular Committee is currently seeking to automate the registration system.

#### **3. Obtain a certificate from the main landowner**

**Frequency:** This is a rare practice.

**Perceptions:** People who lost their papers and do not have access to the seller, are asking the main landowner to provide them with a certificate of ownership.

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#### § 4. PURCHASE OF LAND OWNED BY THE LOCAL MUNICIPALITY (MASHA')

The following is the most common practice of purchasing a land owned by the municipality.

**I. Purchase of a public property (*masha'*):** The interviewee was a Palestinian family who purchased a publicly owned property from a Lebanese person who conceded his right before a Public Notary.

**Frequency:** This is a very rare practice.

**Perceptions:** This practice is justified by the following reasons:

- a. The need to buy a land at any cost.
- b. Acquaintance with the seller.
- c. A lack of legal knowledge. People simply do not know whether the transactions are legally valid. They rarely check the legal capacity of the seller or consult a specialist before purchase. At the time of interview, the family believe the sale is valid.
- d. The cession is certified by a Public Notary who is considered a credible state representative.

#### § 5. REGISTRATION

The followings are the most common practices of land registration.

Practice no. 1: Register the purchase of shares.

Practice no. 2: Register shares according to unofficial maps and amicable partition of the property.

Practice no. 3: Registration under the name of a Lebanese relative.

Practice no. 4: Registration of the purchase of an apartment.

##### **I. Register the purchase of shares:**

**Frequency:** This practice was rare prior to 2001 and became legally impossible after the promulgation of the 2001 Law.

**Perceptions:** Interviewees justified non-registration by the following reasons:

- a. The high cost of registration.
- b. The legal constraints related to the maximum size of cumulative lands that can be purchased by a foreigner (5 000 square meters).
- c. The legal requirement to provide a certificate of property ownership issued by all Lebanese Mohafazat was difficult to obtain during wartime.

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- d. Most importantly, registration was not a common practice in the Nahr el-Bared or Adjacent Area. Surprisingly, few problems have risen out of this practice. All interviewees reiterate that they have not witnessed conflict based on property rights among inhabitants of the Nahr el-Bared or the Adjacent Area. However, the case of a Palestinian family who bought a land and failed to register with the Real Estate Registry and another family who subsequently purchased the same land and opted for registration was documented.
  - e. Registration of land is not considered a priority. Obtaining a written document is considered sufficient.

## **2. Register shares according to unofficial maps and amicable partition of the property:**

**Frequency:** This practice was very frequent prior to 2001 (if registration occurred) but became legally impossible after 2001.

**Perceptions:** Registration took place in very rare cases, and in most cases upon the advice of the seller. For those who registered, they perceive that they used their best efforts to comply with the Laws, yet they were not protected because of the 2001 law which prevents inheritance of real rights by Palestinians.

## **3. Registration on the name of a Lebanese relative:**

**Frequency:** This practice is very frequent (in the case of registration and presence of a Lebanese relative).

**Perceptions:** please see §1, practice no. 3.

## **4. Registration of the purchase of an apartment:**

**Frequency:** This is a very rare.

**Perceptions:** Prior to 2001, the purchase of apartments was rare. After 2001, interviewees believe that the registration of land is the best guarantee they can obtain. With regard to the registration of apartments, it does not considered to be an option based on the following reasons:

- a. The land is not registered.
- b. There is no construction permit.
- c. It is not a known practice.



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## § 6. INHERITANCE

The following are the most common practices of inheritance.

### **I. Inheritance of real rights in the Nahr el-Bared or the Adjacent Area:**

#### **Perceptions:**

- a. The right to inheritance is generally well respected. Inheritance usually occurs in an amicable way, either through the sale of all real rights and distribution of the money among heirs or through the distribution of the real rights among the heirs. Any conflict arising from the division of real rights is solved through prominent figures of the Nahr el-Bared or through the Mufti of Akkar.
- b. After 2001, some interviewees (in most cases large families) are trying to find a way to protect the rights of their heirs. One interviewee is considering the establishment of a company, whose shares would be owned exclusively by his three Lebanese daughters-in-law. This company would be the landowner and lease the buildings to his 12 children for 99 years. In this way, the interviewee believes that all his children be equally protected<sup>65</sup>.

### **2. Inheritance of real rights outside Nahr el-Bared and the Adjacent Area:**

#### **Perceptions:**

- a. Prior to 2001, the real rights owned by Palestinians outside the camp (mostly in Akkar and Tripoli) were transferred upon death to the heirs and registered in their names.
- b. After 2001, inheritance of real rights outside Nahr el-Bared became a major concern for Palestinians. They consider the law not only to be unfair but also constitute a breach of human rights. They are all familiar with the story of a family whose apartment was transferred to the Islamic Waqf in Tripoli after the death of the head of family. The Waqf informed the family that they would not take any measures against their right to occupy the property. However, this reassurance did not ease the family's concern and their understanding is that the property has been lost as the result of a discriminatory law.

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<sup>65</sup> As said earlier, the 2001 Law prohibits long-lease contracts.

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## § 7. LEASE AGREEMENTS

The following is the most common practice of signing lease contracts.

**I. Sign lease contracts before the Popular Committee:** The Popular Committee uses a standard format in the presence of two witnesses, a stamp of LBP 1 000 and a fee of LBP 10 000 (after the 2007 conflict the fee has been reduced to LBP 5 000).

**Frequency:** This practice was rare prior to 2001 (lease contracts were rare except for business properties) but became more frequent after 2001 and especially after the 2007 conflict.

### **Perceptions:**

- a. Prior to the conflict, people would sign lease contracts before the Popular Committee for the following reasons:
  - Lease contracts are less frequent and less important than sale contracts.
  - This practice is cost effective - yet it ensures the acquisition of a written document and the enforcement of the contract through the Popular Committee.
  - Inhabitants do not seem to fear conflicts because they know each other and have rarely witnessed conflict related to property rights.
  - The Lebanese Law concerning lease contracts is not necessarily applied.
- b. In the aftermath of the 2007 conflict, Nahr el Bared and the Adjacent Area witnessed a large increase in the number of lease contracts signed before the Popular Committee. People want to return to the Nahr el Bared, (almost two-thirds of families have not returned due to the lack of accommodation) however most do not have access to their destroyed houses. Displaced inhabitants are starting to lose patience with the “unjustified delay of rubble and debris removal”. They currently live in rented houses with the assistance of an UNRWA USD 200 per month rent support payable every three months.
- c. Rehabilitation of houses carried out by NGOs may contribute to insecurity for the tenant. This is mainly due to two reasons:
  - First, rehabilitation is usually limited to one house per family. Accordingly, the tenant, who leased a house due to the destruction of or inaccessibility to his former house, will be most likely be reluctant to ask for rehabilitation of the leased unit because by doing so implies the loss of his right to request the rehabilitation of his former house. Moreover, the owner of the house will not request rehabilitation in his name because doing so implies the loss of his right to request the

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rehabilitation of his own damaged house or other leased houses. In this case, the owner may prefer to terminate the leasing contract in order to rent to a family from Nahr el-Bared and not from the Adjacent Area (rehabilitation works will not affect the right of these people since the Government is planning to rebuild Nahr el-Bared) or to tolerate the occupation of a friend or relative willing to allow rehabilitation, In all cases, the tenant fears termination.

- Second, the rehabilitation of leased houses is driving owners to raise rental fees.

## **§ 8. CONSTRUCTION OF HOUSES**

Practice no. 1: Construction of buildings for sale

Practice no. 2: Build new houses or upper floors without construction permits

Practice no. 3: Get certificates of construction from the Mukhtar or the Popular Committee.

### **1. Construction of buildings for sale:**

**Frequency:** This practice was very rare prior to 2001, (most of the construction of buildings for sale was done at a later stage) but became frequent after the promulgation of the 2001 Law.

**Perceptions:** The construction of buildings has increased due to the increase of demand for apartments. See § 2, practice no. 1.

### **2. Build new houses or upper floors without construction permits:**

**Frequency:** This practice is very frequent.

**Perceptions:** Enquiry as to whether or not interviewees obtained construction permits led to the following responses:

- a. Some people reported it was not possible to obtain a permit because the land is not registered. Others replied that the constructed area does not respect the legal limits applied to “non-classified” land. Whereas others had no knowledge about construction permits and claim they had never heard about the practice of obtaining a permit.
- b. One interviewee reported that she obtained a construction permit for the third floor of the building for which she paid LBP 300 000 (she did not present any documentation). Some interviewees referred to the irony of the situation – fully understanding that the buildings do not comply with legal requirements whilst acknowledging that the only way to ensure the basic needs of life was to build in the absence of government control or to pay a bribe to the gendarmerie for them to ignore the construction.

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- c. The Municipality issued construction permits of 120 square meters for USD 100. It was applied for a limited period of time before the Kaem-makam<sup>66</sup> and the Muhafez<sup>67</sup> prohibited this practice. The Mayor justified this practice by the need to organise construction, even if legally prohibited.

**3. Get certificates of construction from the Mukhtar or the Popular Committee:**

**Frequency:** This practice is very frequent.

**Perceptions:** This is done to provide a proof of ownership to the electricity company.

**§ 9. SEEKING THE ADVICE OF LEGAL PROFESSIONALS**

**Frequency:** This is a rare practice.

**Perceptions:** Legal counselling, especially inside the Adjacent Area is totally absent. Furthermore, seeking the advice of legal professionals is remarkably rare. With the exception of a few persons, working in the fields of construction and sale of lands/ apartments, people rarely seek legal advice. They mostly rely on the common practices inside Nahr el-Bared and the Adjacent Area.

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<sup>66</sup> Refer to the glossary for a definition of Kaem-makam (included in Mohafaza/ Caza/ Municipality).

<sup>67</sup> Refer to the glossary for a definition of Muhafez (included in Mohafaza/ Caza/ Municipality).

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## **Section 2: Assessment of the common practices and perceptions<sup>68</sup>**

As stated in the preface, the Adjacent Area was established in the surroundings of Nahr el-Bared as a natural reaction to the population increase and the desire to maintain existing social and familial ties.

It is also possible to link the expansion of Nahr el-Bared with the aspiration of Palestinians to legally acquire land to build houses, especially after the destruction of a number of refugee camps during the civil war and the subsequent displacement of thousands of refugees.

Of course, such aspirations became immaterial with the promulgation of the 2001 Law which denies Palestinians the right to acquire real rights.

### **Prior to 2001:**

Practices may be summarised as follows:

#### **I. The search for acquisition of bare land.**

In general, the sale is fulfilled through an irrevocable power of attorney certified by a Public Notary, in the name of a Palestinian or, if possible, on the name of a Lebanese relative (wife, daughter-in-law, etc). Although people are aware of the legal requirement to register any sale contract with the Real Estate Registry, they believe that an irrevocable power of attorney constitutes a sufficient guarantee for their rights. Few people realise that an irrevocable power of attorney granted to a Palestinian became obsolete upon the promulgation of the 2001 Law and will be considered as such after the lapse of 10 years from the date of granting the power.

Despite the fact that the Law on acquisition of real rights by foreigners prior to 2001 allowed the registration, in the name of Palestinians of a purchased land area amounting to 5 000 square meters, registration encountered several obstacles:

- High cost of registration in the name of Palestinians in comparison to the cost of registration of sale contracts in the name of Lebanese.
- Requirement to obtain a non-ownership certificate from all Lebanese Mohafazat, in order to ensure that the area purchased by a Palestinian in Lebanon does not exceed the maximum limit of 5 000 square meters.
- The existence of construction infringements which increased the difficulty to obtain a construction permit.

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<sup>68</sup> Please note that this section includes a summary of the practices and perceptions.

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## **2. The construction of a house on the purchased land, generally through construction workers and without obtaining a legal permit.**

This common practice becomes binding for several reasons:

- a. The current construction exceeds the ground and total exploitation coefficients.
- b. If the purchased land constitutes only a part of the plot, it is common that the remaining parts contain numerous construction infringements and hence render it impossible to obtain a legal construction permit.
- c. A construction permit requires the assistance of a civil engineer, which is an unfulfilled condition in most cases.

Accordingly, the most common practice is the purchase of bare land by an irrevocable power of attorney and the construction of a building for the personal use of the buyer and his family without a construction permit.

Obviously such practice constitutes a potential source for many conflicts. Palestinians in the Adjacent Area consider that ethics, trust and solidarity inside the community constitute sufficient guarantees for conflict prevention, regardless of the legal status of the real right. However, the potential for future conflicts increases with the prohibition of acquisition of real rights by Palestinians.

The remaining point concerns the rare cases of construction infringements on the public property of the municipality (*masha'*). There are a few families who purchased land from people with the right to exploit *masha'*. These buyers do not perceive the purchase as illegal as they paid a fair price by virtue of a cession of land certified by a Public Notary.

### **After 2001:**

Three questions arose:

- 1- What is the status of land acquisitions signed prior to the promulgation of the 2001 Law?
- 2- What is the status of contracts signed after this date?
- 3- What were the repercussions of the 2007 conflict on the land property?

#### **I. About acquisitions signed prior to the 2001 Law:**

Since the registration of real rights purchased in the name of a Palestinian became impossible after the promulgation of the 2001 Law, any existing sale contracts are now obsolete. The same rule applies to irrevocable powers of attorney authorising Palestinians to acquire land. The buyer or seller may request the Court to declare the contract obsolete. In this case, the buyer

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may request compensation for any construction made before 2001, given that it was undertaken in good faith<sup>69</sup>.

Furthermore, even if the irrevocable power of attorney is granted to a Lebanese relative (e.g. the wife), it is worth noting that this does not constitute a firm guarantee. After the promulgation of the 2001 Law, the Palestinian heirs of a Lebanese owner (her husband and children) are unable to inherit real rights.

Palestinians living in the Adjacent Area do not seem concerned with seeking a solution to this adversity of the Law. The field work did not reveal any families filing lawsuits against the provisions of the Law. The only serious attempt to overcome the Law consists of registration of lands in the name of a Lebanese company whose shares are wholly owned by the Lebanese daughters-in-law. The company will then concede a long-term lease contract to the heirs. However, as it has been stated above, long-term (10 years and above) lease contracts are also prohibited under the 2001 Law.

## **2. About contracts signed after 2001:**

The most significant point after 2001 is the sustained refusal of the Public Notary to issue irrevocable powers of attorney in the name of Palestinians. The grounds for refusal are that an irrevocable power of attorney assumes the transfer of real rights to the grantee, which is prohibited under the 2001 Law. The restrictions faced after 2001 imposed a change in sale practices in the absence of Lebanese relatives. This change takes two forms

- a. The first form relates to sale procedures. Two new practices evolved:
  - The purchase by a regular power of attorney. However, this practice is rarely adopted given that a power of attorney is easily and unilaterally revocable at any time by the principal.
  - The certification and registration of contracts with the Popular Committee. This has become a very frequent practice granting the Committee a central role in Nahr el-Bared and the Adjacent Area and establishing rituals such as pasting a stamp of LBP 1 000 on the contract.
- b. The second form relates to the object of purchase. People became more interested in purchasing apartments as opposed to bare land. Should the property rights become increasingly vulnerable, the cheapest option is automatically considered the best option.

Regarding the construction of houses; people continue to build without a prior permit.

Accordingly, the practices in the Adjacent Area have become further removed from the Lebanese Legal framework. If it is possible to consider the transfer of property prior to 2001 as

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<sup>69</sup> For more details, please see Chapter II.

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a paralegal (*para legum*) system, the post 2001 system is, for the most part, clearly an illegal (*contra legum*) system and will be considered illegal for as long as the cornerstone of this system is the transfer of property to people who are legally and categorically prohibited from acquisition of real rights.

In fact, almost all interviewed Palestinian refugees (especially those who signed contracts prior to 2001) did not hide their resentment towards this Law which not only prohibits them from property acquisition but also their right to their “previously” acquired property, because they failed to register with the Real Estate Registry or due to the fact that they cannot inherit from deceased relatives.

Above all, interviewees believe that the Law is in effect an embargo which has increased their vulnerability in relation to their legal status. This feeling of vulnerability has increased in the aftermath of the 2007 conflict and generates a permanent state of anger and anxiety. Most interviewees believe that the legislator, through this Law, is not aiming to preventing settlement (*tawteen*) but rather consciously and deliberately aiming to encouraging emigration of Palestinian refugees to other countries.

### **3. Repercussions of the 2007 conflict:**

The major repercussions of the 2007 conflict are the near total destruction of Nahr el-Bared and partial destruction of the Adjacent Area. This destruction has led to significant changes in the practices of Palestinians inhabitants.

- a. There is a sizeable need for temporary accommodation until the restoration of or return to homes is complete. To this end, UNRWA is currently assisting displaced families with rent support of approximately USD 200 per month. This has increased the number of leased of units in the Adjacent Area.
- b. The 2007 conflict has promoted fear within the Palestinian community regarding the intention of inciting Palestinian refugees to emigrate to other countries. In turn, they are less inclined to purchase land and more eager to purchase apartments. This trend contributes significantly to the increase in demand for units and has transformed the construction of buildings and division into private apartments into a high-profit business. Furthermore, several factors resulting from the conflict such as the loss of official documents have widened the gap between the Palestinians and the Law (along with the official institutions), resulting in an increase in solidarity among Palestinians, and indirectly the rise of the Popular Committee as the recognised authority for the certification and registration of all sale and lease contracts. It is worth mentioning that the Popular Committee is in the process of rebuilding the archives and automating registration of contracts.



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The common practices of the Adjacent Area can be summarised and assessed as below:

1. The purchase of lands and payment of all due amounts reflects a commitment of inhabitants to act in good faith and in accordance with the accepted rules of social organisation. In the rare cases of construction infringements on public property, people have justified the infringement by the fact that they paid a fair amount of money and that they hold an official document certified by a Public Notary.
2. In many cases, there is an impossibility or at least a fundamental obstacle preventing compliance with the transfer of property laws (mainly the registration with the Real Estate Registry) or construction (getting the prior construction permit), owing to a number of reasons:
  - a. “Non-classification” of the area, which makes it unfit for expansion.
  - b. Prohibition of acquisition of real rights by Palestinians after 2001, acknowledging that the right to exercise ownership in the previous period was costly and plagued with bureaucratic constraints (getting a non-ownership certificate).
  - c. The high number of co-owners of the same plot and the need for all to give their consent for any construction.
  - d. Resulting in a situation whereby plots are full of construction infringements and illegal buildings.
3. The social organisation of the Adjacent Area acts as a substitute for the Law and in some cases as their counterpart. Accordingly, Palestinians adhere to the existing practices and customs. This partially explains their strict compliance to the conventional rules of sale (payment of the price, written document) without prior consultation or amendment of the standard sale contract. This in turn explains the increasing role of the Popular Committee.
4. People are not acquainted with the basic rules of Law. Very few are aware that the irrevocable powers of attorney became obsolete with the promulgation of the 2001 Law or of the importance of registration of purchase with the Real Estate Registry (the sale contract is effective only after registration). Unfortunately, some families believe that the possession of an irrevocable power of attorney implies automatic registration with the Real Estate Registry whilst others were unaware of the need to request a construction permit.
5. There is a high level of indifference towards registration (even when it was possible before 2001 or after 2001 in the name of Lebanese relatives). People commonly ensure that their rights are observed in the existing social systems, but give less consideration to the Lebanese Law and legal guarantees - knowing that the gap between the Palestinian refugee and the Law is increasing since 2001 and especially after 2007.

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## **V: Description and Assessment of Practices and Perceptions in Nahr el-Bared Camp and the 'Neighbourhood of the Displaced'**

### **Section I: Description of practices and perceptions**

#### **§ 1. TOLERATING SETTLEMENT ON VACANT LAND:**

The inhabitants of Nahr el-Bared have limited knowledge about the ownership of the land they occupy. It is collectively understood that a Lebanese landowner offered the land to host Palestinians refugees upon their arrival in the late 1940s. Since this time, the camp has fallen under the patronage of UNRWA. Inhabitants recognise that they do not own the land but concurrently claim the right of ownership to their houses.

Upon their arrival, refugees lived in tents. However, as time progressed they began to construct more permanent homes. Construction styles varied depending on technical advancements and their individual economic situations. The expansion of houses and the construction of additional floors came about in response to the natural population increase. A child, who arrived to the camp in the late 1940s, is now most likely a grandfather. Inhabitants dedicated remarkable efforts in the construction of their houses and in most cases exploited the full potential of their homes (commonly constructing up to three floors). Currently, many live in pre-fabricated houses that do not meet the basic conditions of life. They believe they are entitled to compensation and full reconstruction of their houses without delay. Above all, they believe they have the right to a decent life.

The "Neighbourhood of the Displaced" (*Muhajareen*) is a section of land in the Adjacent Area. However its legal status can be likened to that of Nahr el-Bared. It is differentiated from other areas because the said land has never been sold to individual landowners. Most inhabitants are Palestinian families, displaced from the destroyed Tel al-Zaatar Camp in 1976 and were hosted in the neighbourhood by the PLO. In the early 1980s, the PLO made an agreement whereby they donated a large part of the land to the Islamic Waqf. A 2005 European funded initiative renovated the area donated to the Waqf. During the 2007 conflict, the neighbourhood was totally destroyed. Displaced inhabitants, currently live in pre-fabricated houses and have received promises of reconstruction from a number of European delegations.

#### **§ 2. CONSTRUCTION OF HOUSES**

The following are the most common practices for the construction of houses.

- Practice no. 1: Build during the first years of their stay in Nahr el-Bared Camp without any permit.
- Practice no. 2: Build upper floors when deemed necessary.
- Practice no. 3: Obtain certificates of construction from the Mukhtar or the Popular Committee.

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**Build during the first years of their stay in Nahr el-Bared Camp without any permit:**

**Frequency:** This practice is very frequent (if not unanimous).

**1. Build upper floors when deemed necessary:**

**Frequency:** This practice is very frequent.

**Perceptions:** The construction of additional floors occurred as a reaction to the natural population increase. Inhabitants dedicated remarkable efforts in the construction of their houses and in most cases exploited the full potential of their homes (commonly constructing up to 3 floors).

**2. Obtain certificates of construction from the Mukhtar or the Popular Committee:**

**Frequency:** Very frequent

**Perceptions:** This is done to provide a proof of ownership to the electricity company.

**§ 3. SALE AND PURCHASES OF APARTMENTS**

**3. Sign sale contracts before the Popular Committee:**

**Frequency:** This practice is frequent.

**Perceptions:** See Chapter IV, § 1, practice no. 4.

**§ 4. INHERITANCE**

See Chapter IV, § 6.

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## **Section 2: Assessment of Practices and Perceptions:**

### **§ 1. PRIOR TO 2007 CONFLICT**

The inhabitants of Nahr el-Bared developed the practice to sell or lease their houses in return of a price (compensation) or a rent fee. This practice is similar to the practices occurring in other camps and to a certain extent in the Gaza Compound and may be considered as “compensation for leaving”.

In general, these signed sale contracts are null and void because the object of contract (that is the transfer of ownership or lease) is non-existent on the grounds that the “seller” or “tenant” is not legally entitled to occupy it. Nevertheless, these contracts are registered with the Popular Committee and reinforced in the camps. A significant number of families obtain certificates of ownership from the Mukhtar or the Popular Committee in order to submit them to the electricity company.

### **§ 2. AFTER DESTRUCTION IN 2007**

People who lived in Nahr el-Bared and constructed their own houses believe that their right of asylum implies reconstruction of the camp as well as their right to return to the same places they were forced to flee based on the following considerations:

1. Obligation of reconstruction in respect of the right to asylum and the right to return:

During the civil war, several camps (Nabatieh, Jisr El Bacha, Tel al Zaatar) were totally destroyed and never rebuilt. Consequently, Palestinians living in Nahr el-Bared became suspicious about the objective of the 2007 conflict, despite the events that initiated it. In general they perceive that the ultimate goal was the total destruction of the area and, subsequently, the dispersion of inhabitants, the prohibition of their right to assembly and self-organisation, weakening of the national and political sentiment, imposition of emigration of Palestinians, etc. – all of which are perceived to jeopardise their right of return. The Lebanese Government has sought to reduce these concerns through promises of reconstruction.

The reconstruction pledge of the Lebanese Government supports both the right for Palestinians to remain in Lebanon within organised communities and the ultimate right of return to Palestine.

2. Acquisition of ownership due to long-term occupation:

People argue that long-term occupation of the land (in most cases 60 years) establishes their right to occupation. In fact, such an argument is in contradiction with the legal provisions, since occupation - regardless of duration - does not entail a right to the registered plots.

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However, it should be noted that the Lebanese Law has made exceptions to the right of ownership in the past. Tenants holding leasing contracts, signed before 1992, were granted the right to renew the lease at a reduced fee.

Lebanese Law has also provided compensation for internal displacement during the civil war and stipulated provisions concerning reconstruction of houses, even if they were illegally constructed<sup>70</sup>. This Law expired on 8 August 2001.

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<sup>70</sup> Law No. 322 issued on March 24<sup>th</sup>, 1994.

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## **VI: Reconstruction Plans of Nahr el-Bared and Adjacent Area**

This chapter exclusively tackles the status of Nahr el-Bared and the Adjacent Area given that the official plans for reconstruction are currently faced with serious problems.

### **Section 1: Nahr el-Bared**

The officially declared plan can be summarised into four elements:

1. Expropriation of plots in the territory of Nahr el-Bared. This depends on a strict delimitation of the areas to be expropriated. Two problems recently arose and imposed a further examination of the expropriation plan: (1) plots that infringe on adjoining public properties, and (2) plots on the boundaries of the Nahr el-Bared that fall outside the original 1940s demarcation.
2. Setting up a special area plan that allows for (1) increased construction ratios (total and ground exploitation coefficients) and (2) the reconstruction according to the maps provided by “Khatib & Alami” Company and in cooperation with the inhabitants and, for security reasons, the Lebanese Army. The work needs to be adjusted according to the abovementioned concerns.
3. Execution of the abovementioned maps depending on the availability of financial resources.
4. Transferring Nahr el-Bared, after reconstruction, back to UNRWA which will be responsible for handing the houses over to their “owners”.

There is neither a clear vision about the relationship between the UNRWA and the Lebanese Government, nor about the relationship between the UNRWA and the inhabitants. In other words, there is no vision regarding the nature of occupation of reconstructed residential units that will be put at their disposal.

### **Section 2: The Adjacent Area**

The reconstruction of destroyed buildings seems to raise serious concerns. It is possible however to suggest the following recommendations.

1. To set up a special area plan for the Adjacent Area in whole or in part (the Neighbourhood of Displaced is the most populated plot), taking into consideration the urban development which occurred entirely outside the law.
2. Ambiguity exists over the possibility to obtain the required permits for reconstruction of damaged buildings, due to the complexity (not to mention the impracticality) of acquiring written approval of all owners registered with the Real Estate Registry. Several solutions have been proposed; the key one, issued by the Commission for Consultation and Legislation at the Ministry of Justice, suggests a theory which allows for the running

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of the affairs of a third party without his prior consent. This would imply that the Government (or whoever is delegated by the Government) could carry out reconstruction to the benefit of landowners without their prior approval. This proposal entails two legal requirements, (1) the State is unable to identify the address of the co-owners, and (2) the State is not aware of any objection from co-owners. Should either requirement remain unmet, the proposal must be discarded. The documents presented to Vienna Conference<sup>71</sup> included the application of this theory, which has a precedent in the late 1990s (it was used as a means of obtaining the prior approval of all landowners for the reconstruction of specific places in Tripoli (Khanak Hmaro) and for compensating citizens who independently managed public works in Mount Lebanon for the benefit of the entire community). The same theory allows for the implementation of works on the basis of “National interest” (Raison d’Etat). The proposal was not unanimously approved by decision-makers. Opponents fear the overuse of this theory and, hence, opt for the adoption of other legal suggestions, even though these options would potentially be harder to implement. In response, proponents believe that the theory provides an opening for the reconstruction, citing the cost of adopting other propositions (incorporation of companies, expropriation, etc.) would be high due to the anxiety and distrust of people in the Government.

The Nahr el-Bared Popular Committee expressed the strong hesitation, not to say determined objection, toward any proposition that would further affect Palestinians possession of their purchased lands.

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<sup>71</sup> Refer to the glossary for a definition of the Vienna Conference

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## **VII: Recommendations**

### **Section I: Recommendations that may be implemented without state intervention**

#### **§ I. REGULATING THE EXISTING PARALEGAL OR ILLEGAL PRACTICES AIMING AT CONFLICT PREVENTION** (*finding a *modus vivendi**)

It is well known that Palestinian communities have established institutions and mechanisms for the purpose of organising paralegal practices, and, hence the capacity to defining stakeholders and preventing conflicts. NRC has participated in initiating such mechanisms, through providing the Committees of the Gaza Compound with sale or lease standard contracts, and by promoting the representation of women in these Committees. The set of recommendations below present a number of suggestions to further promoting these mechanisms for the purpose of organisation and conflict prevention.

These recommendations were designed to promote appropriate mechanisms that (1) conform to the established practices, and (2) are not subject to conflicting interpretation, especially in regard to the well-embedded practices or practices that are perceived as the only means of occupation.

#### **The Gaza Compound:**

The field work allowed for definition of relationship between the inhabitants and the Buildings Committee: As a result of familial ties in Gaza Building II and III, the committees are seen as representative, credible and legitimate. In Gaza IV, legitimacy is lower due to the existence of numerous nationalities and differing political trends. However, the personality and organisational experience of the Head of the Committee in this building make him a prominent and recognised figure. In Gaza I, inhabitants do not trust the Committee and perceive it as a continuation of the previous political regime (Syrian secret agents). In general, all these Committees need technical assistance in order to organise archives and documents. Accordingly, it is highly recommended to:

1. Assist the committees to form an archive of the occupation transactions of units. It is of utmost importance in this respect to give a serial number to each of the signed sale and lease transactions and register them in a book (register), so that every family obtains a transaction number. It is worth mentioning the NRC rehabilitation project, each unit was designated a number.
2. Create maps of every floor and set up provisions for amendment of these maps as well as notices of map amendments. Maps shall include the following information:
  - a. The name of the owners of units.
  - b. The number of inhabitants of each unit.
  - c. The intended use of common areas.



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- Maps already created by the contractors currently working in the buildings should be deposited with the Buildings Committee.
3. Provide the Buildings Committee with simplified standard contracts. Upon review of the contracts suggested by the NRC and recently adopted, it is noted that they should be simplified to include the following information only:
    - a. Sale contract: name of the “owner”, name of the buyer, the serial number of unit, terms of payment (if possible: immediate payment in cash to prevent later conflict), date of delivery (if possible: immediate delivery to prevent later conflict), number of transaction and names of witnesses.
    - b. Lease contract: name of the tenant, name of the landlord, number of the leased unit, terms of payment, date of delivery, number of transaction, names of witnesses, duration of lease, clause for arbitration of future disputes.
  4. In the case of death of a resident, it is recommended to differentiate between two situations:
    - a. If the heir lived with the deceased resident in the unit: the name of the heir shall immediately substitute the name of the deceased relative in the archives of the Buildings Committee.
    - b. In all other cases, the substitution shall take place upon declaration of the heir(s) after one year if no litigation has been raised over the ownership of the unit.
  5. In the event that an inhabitant signed a sale or lease contract in the absence of the Buildings Committee, the latter should register the notified contracts under a serial number and to recognise the validity of these contracts after one year if no litigation was raised during that period.

To this end, the Buildings Committee must immediately provide the new resident a stamped “notification with acknowledgement of receipt”. This is necessary especially in buildings where the level of trust in the Building Committee is low.

6. Assist the Buildings Committee to automate the archives and introduce amendments as deemed necessary.
7. Assist the Building Committee of Gaza IV Building in equipping and managing a common area on the ground floor to create a room for public events in the compound.

These are a few mechanisms that may prevent or minimise future disputes in the Gaza Compound.

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## **Nahr el-Bared:**

It is important to note that the role of Nahr el-Bared Popular Committee is increasing which directly corresponds to the increase in paralegal practices. This finding is endorsed by the field work that demonstrates that the Popular Committee acted as a substitute for the Public Notary to certify sale contracts after the 2001 Law rendered them in violation of Public Policy. It goes without saying that, in Nahr el-Bared, the proof of rights is considered to be very importance due to the nature of transactions.

In this respect, we recommend the following measures:

1. Organise a database/archive for all transactions registered at the Popular Committee and issue the concerned person the corresponding serial number.
2. Automate the database
3. In consultation with government counterparts provide guidelines for safe construction in the absence of government control and the construction of buildings without permits. Compliance with existing or planned area planning<sup>72</sup> guidelines is crucial for the sustainability of the area, securing a durable solution.

This can be guaranteed through a number of measures: (1) sale contracts of apartments granted by the owner to the buyer attesting his commitment to build according to specific criteria, and (2) in sale contracts of land that express commitment of the buyer to build according to specific criteria.

4. Set up a template for the management of apartments and floors and determine the common expenses, with the possibility of creating committees in the buildings. It is recommended that the building regulations comply with the Lebanese existing laws.
5. Set up 3 standard sale contracts:
  - a. Sale of a whole plot.
  - b. Sale of a part of a plot to be determined by the number of shares and number of plots on an attached map.
  - c. Sale of an apartment.

It is also possible to set up standard lease or loan contracts.

6. Automate incoming transactions. It is worth mentioning that after the conflict, the Popular Committee has bought computers for the purpose of automation but they remain unused.

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<sup>72</sup> Refer to the glossary for a definition of area plan.

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7. Integrate in all contracts an arbitration clause to be executed in case of disputes. It is possible that the Popular Committee is the arbitrator or the competent authority to appoint the arbitrator. Of course, the resort to arbitration is null and void in issues related to Public Policy, such as our case. Under the current circumstances, we should depend on convincing parties to waive objection to appointment of arbitrator as a binding custom regardless of its compliance with the law.
  8. In the case of inheritance, it is of utmost importance to prove the right of the heir by virtue of an inheritance partition issued by the Religious court and to provide inhabitants with legal counselling in this respect.
  9. Promote legal awareness and/or provide legal advice on a case-by-case basis.

## **§ 2. PROMOTING LEGAL GUARANTEES**

In this section, we will study the needs for legal assistance in order to improve the legal status of the inhabitants of the Adjacent Area

### **I. The legal guarantees aiming at minimising the dangerous impact of prohibiting Palestinians from ownership:**

Guarantees are required, not only to guarantee transfer of real rights but also to guarantee inheritance rights. Under the 2001 Law, it is well known that the Palestinians cannot acquire real rights through sale or inheritance. The practice to register real rights in the name of a Lebanese friend or relative (daughter-in-law, wife, etc) does not constitute a firm guarantee because real rights registered in the name of a Lebanese wife will not count if all her heirs (husband and children) are Palestinian. Consequently, legal counselling on a case-by-case basis is urgently required.

Some interviewed families reported that they received legal advice to establish companies wholly owned by Lebanese natural persons (relatives) in order to acquire real rights or shares acquired by their Palestinian relatives. The company is then supposed to concede long-term lease contracts to Palestinians.

In this respect, the following should be noted:

- The establishment of companies would also benefit the organisation of co-owned real rights (as it is the case of most plots in the Adjacent Area).
- Lease contracts may be made for a maximum of ten years for Palestinians.
- In the case of death of a shareholder, the bylaws of the company may be amended in order to allow ownership of shares by non-Lebanese individuals. In this case, the “prohibition” on Palestinians to acquire real right will not be applied.
- Registration of companies is costly.

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- The use of a figurehead (prête-nom) is considered a felony. Thus, the transfer of the property to the company should reflect true intention.
  - Consequently, assessing the validity of this recommendation requires legal assistance on a case-by-case basis in order to avoid disputes or potential criminal liability.

## **2. Legal guarantees aiming at preventing the loss of real rights due to prescription:**

At this stage, it is recommended to provide legal guidance and counselling for people who registered irrevocable powers of attorney or sale contracts without registering the transfer of property with the Real Estate Registry. Besides the consequences arising from the 2001 Law, contracts in the name of Palestinians are subject to prescription after the lapse of 10 years from the date of signature.

After the lapse of 10 years, buyers have to request the seller either to renew the powers of attorney (this can no longer be done in front of a Public Notary if the beneficiary is Palestinian) or to waive his right to challenge prescription (such waiver deprives the seller and his heirs from the right to challenge prescription). In cases where the owner does not cooperate, it is recommended to provide legal counselling on a case-by-case basis to determine ways to avoid the repercussions of prescription, bearing in mind that Jurisprudence considers the period of 10 years interrupted (meaning started again) if the buyer has already used and exploited the purchased land and this exploitation has been witnessed by the seller (please see § 2, Chapter II).

In the case that prescription has not yet occurred, buyers may avoid prescription by any of the following options:

- Agree with the seller as mentioned above.
- Request the presence of the seller, via registered post, at the Real Estate Registry to renew the power of attorney.
- File a lawsuit to register the real right in the name of the buyer, whether Lebanese or Palestinian. Even if the request will be rejected on basis of 2001 Law if the claimant is Palestinian it will still interrupt prescription.

## **3. Legal guarantees aiming at managing and/or preventing dispute over the use of a co-owned real rights:**

In this respect and based on the field work, disputes may occur when a person is exploiting a part of the co-owned plot or a common area of a building. Thus we recommend the followings:

- Finalise maps where the shares of the plot or building (private plots and common areas) are easily identifiable. This is currently available in some buildings and land. The finalisation of such maps may facilitate the adoption of a special plan for the Adjacent Area.

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- Initiate regulations or bylaws in order to manage the co-owned buildings.
  - Encourage initiatives that aim to collect the legal documents per plot and to appoint a representative acting on behalf of all.

### **3. FILING LAWSUITS CHALLENGING THE EXECUTION OF THE 2001 LAW**

It is well known that the civil courts are unable to discard the implementation of a law based on reason of conflict with the constitution. However, civil courts may discard the implementation of a law by reason of conflict with the internationally recognised principles<sup>73</sup>.

Accordingly, it is useful to file standard lawsuits to (1) request the transfer of real rights to Palestinian or (2) challenge the transfer of property of a deceased person to the Islamic Waqf instead of their Palestinian heirs, by reason of conflict with the internationally recognised principles of non-discrimination and proportionality as mentioned above.

Such cases may also be filed before the State Council in the case that local authorities refuse to recognise the right to request a construction permit on basis of irrevocable power of attorney.

#### **Section 2: Recommendations for Lobbying Against the Laws and Official Procedures**

In this respect, the following recommendations are made:

- Create a special plan for Nahr el-Bared Camp and the Adjacent Area in order to increase the ratios of construction (the total and ground exploitation coefficients) and to take into consideration the natural population growth in this area.
- Endorse the proposal of the advisory Commission at the Ministry of Justice (see Chapter VI) as it appears to be the most practical and realistic way to guarantee the reconstruction of destroyed buildings.
- Amend the 2001 Law by reason of conflict with the Universal Declaration for Human Rights and other international treaties. It is important to consider a series of conferences and movements that could revitalise the subject and highlight the contradiction between the said law and the principles and values internationally prescribed and ratified by Lebanon.
- Lobby for the right for Lebanese women the right to grant their nationality to their husbands and children, on basis of prohibiting sexual discrimination. Although Lebanon has adopted the Convention on the Elimination of All Forms of Discrimination Against Women, the legislator made a reservation on a women's equal right to grant nationality. Recognising this right may allow many families in the Adjacent Area to escape the adversity of the law against Palestinians.

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<sup>73</sup> Please see Chapter II.

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## Glossary

**Area plan:** the planning of an area issued by Decree from the Council of Ministers and defining the construction requirements, such as the total and ground exploitation coefficients, in a particular zone.

**Company:** It is a form of business organisation: it may be a partnership or incorporation. The Law on Foreign Acquisition of Property defines a “Lebanese company” as follows: a company established in Lebanon is considered Lebanese only in case its bylaws provide that all shares are owned by Lebanese and explicitly prohibit shareholders from transfer of shares to non-Lebanese natural or legal persons. Any company which does not fulfil the abovementioned conditions is considered non-Lebanese.

**Constitutional Council:** In 1990, the Council was formed under Article 19 of the Constitution. The Council’s duties were laid out as to “supervise the constitutionality of laws and to arbitrate conflicts that arise from parliamentary and presidential elections”. The Council was controversially dissolved in 2005, and its reformation has been suspended by the country’s political deadlock. The Lebanese parliament approved on October 21, 2008, a new Constitutional Council Law

**Figurehead:** A person that serves to conceal the true identity or activity of another person. According to the Lebanese Law on Foreign Acquisition of Property, the use of figurehead in order to counter the provisions of this Law (i.e. acquisition of real property by a Palestinian through a Lebanese figurehead) is considered a felony and subject to punishment by forced labour and a fine.

**Force Majeure:** (French for "superior force") is a common clause in contracts which essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, which prevents one or both parties from fulfilling their obligations under the contract.

**Ground Exploitation Coefficient:** It is the maximum percentage footprint of a plot of land that a building can occupy.

**Lease contract:** In Lebanon, the status of lease contracts signed before the promulgation of the temporary Law no. 160 issued on July 23, 1992 are different from that of lease contracts signed after that date. **After the promulgation of the 1992 Law, (New Lease Contract)** rents can be freely agreed between the landlord and tenant. However, the Code of Obligations and Contracts guarantees a minimum stay for three consecutive years for the tenant.

For contracts signed **prior to the 1992 Law, (Old Lease Contract)** the tenant is granted a temporary right to keep the rented house. The increase of the rental fees requires the promulgation of a Law. Sublet is prohibited unless the tenant obtains the written approval of the landlord or the contract explicitly provides for such option. The landlord may also terminate the contract and regain the property, in two cases: (1) the landlord needs the house for personal use and he does not own a similar property in the same municipal area, or (2) the landlord intends to rebuild the property. In these cases, the landlord shall pay to the tenant a compensation varying between 25% and 50% of the property value.

**Legal person:** Legal persons are collective organisations considered by the law as having a legal personality distinct from the natural individuals who make them up. They are subject to the law with the attribution of legal capacity and may possess both rights and duties.

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**Masha'**: It is a land owned by the Municipality or by the State. It is possible to grant the right to use the land to a person for a certain period of time. However, it is not possible for the Municipality to sell or concede the masha'.

**Mohafaza/ Caza/ Municipality**: There are 3 levels of sub-national and regional authorities in Lebanon.

1. The **Mohafaza** (with some powers related to territorial, landscape and urban organization, etc). The **Mohafez** is appointed by the Council of Ministers. He is under the direct authority of the minister of Interior.

2. The **Caza** (with some powers related to personal and civil affairs, cadastre, etc...). The Caza is headed by the "**Kaem-makam**", again, appointed by the Council of ministers, and under the authority of the Minister of Interior.

3. The **municipality**. It is the only form of decentralisation in Lebanon. In theory, they are financially autonomous and empowered to give building permit.

Some municipalities can gather in a "**federation of municipalities**" in order to share some resources and organise cooperation between different towns, especially for services that need to be done at wider scales (water canalisation, irrigation, waste, etc.) These federations can also take care of municipal services in small villages where there is no official municipality.

**Non-classified land**: an area where no special planning is yet done. A decision published in the Official Gazette on July 27<sup>th</sup>, 2006 defines the total exploitation coefficient in non-classified areas as being 50% of the surface area of a plot and the ground exploitation coefficient as being 25% of the surface area. The surface of a plot in a non-classified area shall not be less than 12000 square meters according to the decree.

**Public Notary**: A public notary is a public official who, depending on the Ministry of Justice, is empowered to attest deeds, agreements and other instruments, in order to give them authenticity, and to certify copies of agreements and other instruments.

**Power of attorney**: A power of attorney is a written authorisation by which a person (called the "principal") appoints another as his/her agent (called the "attorney-in-fact") and confers upon him or her authority to do some act or acts in the principal's name.

It is referred to as *letter of attorney* in common law systems and *mandate* in civil law systems.

Unless the power of attorney has been made *irrevocable* (please see below), the grantor may revoke the power of attorney by telling the attorney-in-fact it is revoked. Under the Lebanese law, a revocable power of attorney becomes ineffective if the principal dies or becomes incapacitated because of physical injury or mental illness.

An **irrevocable power of attorney** is a power of attorney that cannot be revoked by the principal because it is granted for the benefit of the attorney-in-fact or a third party. It does not become ineffective upon the death of the principal.

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**Prescription:** It is analogue to the common law institute of a statute of limitations, applied to periods during which rights and obligations are legally enforceable. The period of prescription of contracts according to the Code of Obligations and Contracts is of ten years. The period may be suspended in case of force majeure, whilst interrupted by filing a lawsuit against the debtor, by sending a notification to the debtor, or by getting the recognition of the debt from the debtor.

**Pre-emptive right:** The Real Property Law awards pre-emptive right to any co-owner. The seller is under an obligation to inform the pre-emptive right holder of an intended sale to a particular person and of the conditions of the intended sale and to offer to him its sale under the same conditions.

**Public Policy Rule:** It is a rule that cannot be discarded by the will of contractual parties. A contract that includes provisions contrary to the public policy rule is inevitably null and void.

**Public Prosecutor:** Public Prosecutors in Lebanon are judges and receive the same training as judges. Public prosecutors have the responsibility for initiating criminal proceedings on behalf of the state against accused persons. Upon the prosecutor's determination that there is sufficient evidence to bring charges, the case is submitted to the examining magistrate. The prosecutor's authority is not absolute, however, and he or she may be required by the examining magistrate to give up pursuit of a case if no complaint was submitted.

**Plots:** All plots in Lebanon are divided into 2400 shares.

**Real Estate Registry:** The Real Estate Registry is the repository of all the recorded information about property. It was established in 1926. For a nominal fee, anyone can obtain a copy of the record of a piece of real estate.

There are two options to register a transaction. The buyer and seller can go to a public notary and sign a sale contract. Or, the parties can go directly to the Real Estate Registry office and register the sale. Similar to registering open plots, proof of ownership and municipal authorisation is needed for registration of buildings.

**Real rights:** The Lebanese Property Law allows the creation of certain real rights or interests in the properties, such ownership, superficies (the right to construct and own buildings on the land, without owning the land), usufruct (the right to use and enjoy the fruits or profits of another's property, without fundamentally changing its substance), mortgage (a temporary, conditional pledge of real property to a creditor as security for performance of an obligation or repayment of a debt), long-term lease (bail emphytéotique).

**Religious courts:** In Lebanon, the religious court system constitutes one of the four main court systems (judicial, administrative, military and religious) of the Lebanese Judiciary. It is composed of the court systems of the 18 recognised denominations pertaining to the three main religions of Christianity, Islam and Judaism. The jurisdiction of these courts is limited to personal status and family law matters as authorized by law.

**Sale contract:** Sale contract may be signed either directly at the real estate registry (this occurs when both parties desire immediate registration) or at the notary public. As per the express and clear provisions of the law, the buyer acquires full ownership only when the sale contract is registered with the real estate registry.



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**Taif Agreement:** Officially called Charter of Lebanese National Reconciliation, it provided the basis for the ending of the civil war in Lebanon. It is a written agreement among the Lebanese deputies, political groups and parties, militias and leaders, which tackled many essential points pertaining to the structure of the political system and to the sovereignty of the Lebanese state.

**Tawteen:** In the Lebanese context, the term refers to naturalisation of Palestinians in Lebanon, which means granting Palestinians the right to acquire the Lebanese Nationality. Discussion of the permanent settlement of Palestinians in Lebanon has become a taboo in Lebanon's political discourse on basis of the right of return and the preamble of the Constitution, clause (i), which states that "Lebanese territory is one for all Lebanese. Every Lebanese has the right to live in any part of it and to enjoy the sovereignty of law wherever he resides. There is no segregation of the people on the basis of any type of belonging, and no fragmentation, partition, or settlement".

**Total Exploitation Coefficient:** It is a multiple of the whole plot that defines the maximum construction area on the site.

**Vienna Conference:** Officially called the International Donor Conference for the Recovery and Reconstruction of the Nahr El Bared Palestinian Refugee Camp and Conflict-Affected Areas of Northern Lebanon, it was held on June 23, 2008.

**Islamic Waqf:** It is a Sunni institution running the properties owned by the Islamic Sunni sect.

**War of the Camps:** The War of the Camps was a sub-conflict within the Lebanese civil war in which Palestinian refugee camps in Beirut including Sabra, Shatila and Bourj el-Barajneh, were besieged in 1985 by a Lebanese militia. This conflict lasted through 1988, which led to mass starvation at the camps of Beirut under military siege by the militias.

**2007 Conflict:** Fighting between the Lebanese Army and the militant Islamist group Fatah al-Islam between May and September 2007 that led to a near total destruction of the Nahr el-Bared refugee camp and heavy damage to the surrounding area.

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