



Palestinian National  
Authority

# LAND MARKET STUDY

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Ministry of Planning

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PRELIMINARY OUTLINE FOR REPORT



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# 1 Executive Summary

## Overview

This Land Market Study is part of the Policy Studies component of the Palestine Authority Land Administration Project. These studies are used to inform the development of the National Land Policy Framework. In the course of carrying out the land market study the following tasks were undertaken:

- Stakeholder interviews,
- Stakeholder workshops, and
- Qualitative and Quantitative questionnaires of Household surveys, Financial Institutions surveys and Property and Land Broker surveys.

This report reviews the context of Palestinian land markets and identifies the challenges to be faced in developing a land policy that supports a formal and open land and property market. The basic social and economic principles of a property market are used to form the basis of reviewing the current market practices with input from consultations, surveys and workshops. As the property market remains significantly within the informal sector, the majority of policy recommendations suggested are designed to enable a greater capture of the market in the formal system. The obstructions and then incentives to do this are described. The investigations concentrated on the following areas of the land market:

- informal property market behavior;
- informal transaction instruments;
- financial products; and
- financing trends.

A range of challenges faced by the land and property market were identified and are described in this summary. The policy recommendations consider the context providing a holistic approach towards developing an economically and socially viable property market in the occupied Palestinian territories. This is followed by more definitive measures to improve the situation that would enable a better functioning property market.

## Palestinian Land Market Characteristics

Today the property market is marked by a variety of regulatory anachronisms, changing objectives imposed by past occupants of the Palestinian territories and their consequential actions that created gaps in property governance and land management. As a result general market behavior has slipped away from a formal and regulated system and has become shrouded in secrecy as people rely on local social networks to secure their most precious asset. The rich Palestinian history has molded both the daily economic behavior towards land and property as well as the culture for exchanging land. As a result the land market is less efficient, more localized, and based a lot on trust among the community rather than on rulings enforced by government.

The property market does not depend on credit provided by State organizations or subsidies. The local market is fundamentally restricted due to heavily enforced travel restrictions between West Bank and Gaza and within the West Bank areas between settlements. Such an issue severely hampers the fluidness of the market however as basic economy and political stability stabilizes market transactions are expected to

increase.

The level of informality in the property market place from this study is estimated at approximately 85%<sup>1</sup>. As people adapt to negotiate within their restricted environments the outcome has been a creation of innovative informal mechanisms and a range of barriers for those wishing to enter the formal market. The market has continued to remain vibrant within the informal sector despite the challenges. However, the informality of the Palestinian land market today ultimately forgoes many of the socio-economic benefits a formal property market can bring to a nation.

The entry barriers and difficulties to remain in the formal market are seen as:

- High transactions costs rendering both first and subsequent registration costly and cumbersome<sup>2</sup>.
- Limited trust in the public service provisions. This lack of trust and confidence renders these organizations and the registration process weak and ineffective.
- The requirements for registering subsequent transactions for the users to recognize real social and economic benefits. So far these benefits are not obvious, so transactions do take place informally adding considerably to complication the application of inheritance shares, emigration, and expropriations.
- Payment requirements of property taxes for all owners that have not registered the transfer of property till the final transfer.
- Unpredictability of rules and requirements for registration. There is also high level of discretion.
- Enforcement of property rights are costly and take a long time as the Judiciary frequently becomes involved.
- Lack of homogenous and coherent land and property management policies vision and mandate, as there is absence of good governance regarding land and property management.

The current situation therefore is a very small formal market with limited mechanisms or incentives to enable expansion that will benefit greater economic potential for society. There is a lack of investment predictability on land and property, low levels of transparency in transactions leading to opportunistic investments, and a substantial waste of resources both tangible and intangible for the private and public sector.

Brokers witness that the formal property rights system and overall policy on property governance does not provide the appropriate environment to attract international investors or even local investors wishing to invest. 85% of brokers responded that their pool of information comes from people wishing to sell their land or property indicating a strong bias in the market. International property markets base their information on formal secure registries regulated by laws. These securities cannot at present be guaranteed in Palestine.

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<sup>1</sup> This figure is an extrapolation from the 3 surveys undertaken.

<sup>2</sup> See Land Registration report

## Registration Issues

There have only been two occasions in Palestine's recent history where registration of property occurred on a large scale. One period was during 1955-1956 when the West Bank was under the Jordanian Kingdom and they set out to register land by applying a "Settlement Law". This instigated a scheme of systematic surveying and registration in the West Bank. However only approximately 30% was ever surveyed or registered before Israeli occupation began in 1967. The Egyptians occupying Gaza were more diligent in their settlement efforts during occupation at a similar time to the Jordanians. Almost the entire Gaza strip has parcel records registered, with estimations up to 98%. Israeli occupation brought property transactions to a halt, particularly as up to 1000 military orders were imposed. The past decade in both West Bank and Gaza saw an increase in attempts to register property with encouragement and aid donations by foreign agencies, banks or governments. However, initial registrations are not key indicators of a land market as the majority of registrations investigated at the PLA were found to not reflect the current ownership status. In most cases the registered owner was found to be deceased while others have neglected to register subsequent transactions, particularly in the form of inheritances.

The Palestinian society although a very entrepreneurial and creative one, behaves in a closed and untrustworthy manner, which is a characteristic of many societies under significantly lengthy occupations. The economic hold Israel has on Palestinian territory and political instability of the territories creates further difficulties and unpredictable climates in the markets.

Other registration factors that markedly affect formal registration behavior is the requirement of property owners to pay all outstanding taxation payments, including taxes accumulated that are unrelated to their property before land can be registered. This a major disincentive for people to register.

## Informality of Market and Opportunistic Behavior

Informality proved to be higher than expected. Although the registry has 30% coverage of originally recorded properties in the West Bank, these records have not been maintained or updated and therefore records do not reflect the status of ownership on the ground. Empirical evidence shows that informality has permeated originally registered properties and indicates the percentage of informal properties to be closer to 85%, than the original unsettled land area of 70% since Jordanian occupation.

97% of the non-registered owners have not even intended to register their ownership rights as incentives are negative. Rather than registration being an essential requirement it is perceived as a bureaucratic informality that is costly (68% of respondents replied that it is expensive to register property), and exposes what is considered very private information of citizens.

74% of our respondents replied that they do not consider registration processes and information confidential. This last piece of data is significant as authorities at the PLA restrict access to information from the public. There is the perception of the public that the registration process is generally insecure.

Opportunistic behavior is prominent in the southern part of the West Bank as those residents were not exposed to the benefits of the Settlement Law program by the Jordanians. Rent seeking is more salient in Bethlehem as external factors play a key role: (i) a weak community with unimportant community conflict resolution system to

substitute for the ineffective court system; (ii) large emigration of the population since the late 1800s creating a large number of abandoned properties; (iii) both civil and property registry files were partially or fully destroyed. This opportunistic behavior is not however shared in cities as Hebron precisely because Hebron has very strong community with almost no emigration, placing trust of property rights, economic and social issues within the families of the community (the Hamules). Disputes are also resolve through the Sulha process. Such an environment allows minimal space to manipulate property rights data. Hebron however is more of an exception than the general rule.

### **Innovative Mechanisms to Support Transactions**

To overcome formal market insecurities innovative mechanisms evolved to enable the property market to continue. Transactions were mainly organized by word of mouth, the use of simple private contracts, or by Irrevocable Powers of Attorney (IPAs). IPAs were originally introduced by the British at the beginning of their mandate to legitimize a transfer of an unregistered property. An IPA is signed by the original owner giving irrevocable rights on the property to the IPA recipient for a renewable period of time. These are very liquid and relatively secure if there is not much population movement in the community where it is used. Security is particularly reinforced by the community.

Products that now can be transformed into leases are “Key Money”. Key Money is a pure response to the informal market created by rent protection and non-registered leases. Key Money is a practice of subleasing arrangements among renters and owners for commercial properties. During our qualitative questionnaires and interviews we came across this practice that can apply for a number of years. This practice works in a similar manner to trading of property leases, lease to own and license. This is a way the informal Palestinian entrepreneur has come about to manage the rigidities created by rent control and non-registered leases.

### **Financing in the Land Market**

With a significantly limited range of investors a bias is created in the market towards cash as the main source of funding property transfers. Cash is secure, liquid, and quickly guarantees the closure of the financial transactions. A remarkable 78% of property transactions are conducted using cash. This is a typical picture where the frequency of transactions is informal and short term. The majority of loan applicants require funding where the purpose of purchase is for residential use. Financing from institutions is difficult to secure because there are limited means for Banks to issue foreclosure. As all foreclosures must go through the courts, this makes it a costly and lengthy exercise. Property security is therefore not a strong guarantee for loan repayments. In addition, rent protection laws add further difficulties for institutions to enforce foreclosure and the pressure of informal practices ensure renter protection. Finance institutions are therefore extremely reluctant to accept loans where the construction or purchase future rental purposes.

Only 12 % of the financing is loan based. 10% of such loans were found to originate from Islamic banks. Such loans are ways to facilitate purchases of homes and other properties or develop properties. Islamic banks provided mechanisms for lease-to-own loans. This is common among Islamic traditions where the property is registered at the name of the Bank and each installment paid by the borrower the equity is transferred progressively to the borrower till his last payment when the equity is fully transferred to the borrower. Loans from Hebron and Gaza are almost in total requested from Islamic Banks (where the loan is not based on interest but on gradual equity transfer)

and NGOs. This strongly reflects the influence of religious culture that prohibits the concept of interest accumulation.

Mortgages are a relatively new instrument and they are not perceived in the same context as most Western markets. One main distinction is related to the concept of mortgages (guaranteeing a home asset for a home purchasing loan of 30 years for example). Loans are usually personal and based on the income of the borrower and reputation. The western concept of a mortgage is very new in Palestine and is only taken out with a loan term of 1-2 years. Land and property would be used in loans only as pledges-guarantee in case of insolvency or in the case there is a need for additional guarantee to the yearly income of the borrower for financing a project of any sort. This latter concept is the one commonly understood as a mortgage.

Today's mortgages cannot yet be used as a basis for the securities markets, secondary bonds market. Some new market players – such as the Palestinian Mortgage and Housing Corporation, have started to issue mortgages.

Due to the large presence of informal markets finance institutions base most of their criteria for approving loans on people's income. The second criteria used, is reputation, followed by status of their property to ensure it is registered.

### **Palestinian Desire for Reform**

There is interest for formal financial institutions to play a more important role in the financial markets of the region. This is due to the relatively important remittances of expatriates and growing construction sector as a share of GDP. Also there is pressure for the PNA to create its own State which tends to increase the urgency to formalize the land market and enabling institutional and regulatory behavior. Incentives however seem to be conflicting among the owners and users of the registry and the financial institutions as well as real estate brokers.

There is desire to reform particularly from more institutionalized players of the land market and these stakeholders consider property registration value adding. However reform should be approached cautiously as there is a significant lack of any institutional history from which to draw precedence in the type or strategy chosen. It is not sufficient to adopt strategies used from other jurisdictions without thorough investigations of the applicability to the Palestinian context. This situation is critical to resolve as one of the major factors of enabling a successful land market will be establishing trust and voluntary civil participation within government institutions that assist the development of the market framework.

### **Policy Recommendations**

#### **A) Reform through principles of good governance**

It is important that the State and policy makers define their role in the reform followed by placing clear objectives for land and property in supporting the economy. This is of primary importance as it will be the guiding principle of the course the Palestinian land market takes. Establishing a reform agenda based on good governance is aligned with the principle values of Sharia law. Such an exercise will create a unified agreement across all sectors and stakeholders and will allow for the alignment of incentives among all players. These policy and mission statements also require supporting implementation strategies to ensure the reform is realized.



### **Best Principles for Reforming Informal Land Markets**

- Have Political Will that creates a champion for reform through time.
- Share a holistic vision for the role of Land and Property. All ministries and organizations must have this shared vision, especially those involved in Housing, Agriculture, Economics, and Infrastructure.
- Translate the vision into a clear mission and objectives with support from written rules (laws and regulations)
- Translate this mission to the laws and regulations of the organizations responsible for the implementation of the property rights system. These require clearly defined objectives, an internal structure, quality control guarantees and oversight by the public and private sectors.
- Build a Strategy for the implementation of the mission and objectives. A critical ingredient in the reform process is to decide *which* organizations will take the responsibility to implement the new policy and *when* this will take place at each city. A time line of priorities and an action plan can support this process. It should also be established *Who* will be responsible to oversee the process and *How* client's feedback takes place is also important.
- Most importantly the reform strategy must be Simple.

### **B) Rebuilding the Palestinian Civil Service**

The second major policy recommendation suggests the rebuilding of the Palestinian Civil Service. To this end, a number of more mechanical recommendations are suggested that align with international best practice strategies for reform. The current environment presented for Palestinian reform is shrouded with issues of distrust in the public sector and the services provided. Therefore opportunities for the PNA to establish a public sector "from scratch" require discipline and courage in the face of a strong and resilient informal sector. The civil service reform based on the parameters and framework suggested above should be considered as the starting point. To ensure the reform strategy is localized and does not impose foreign methods without adaptation to the local environment a number of further studies are required to ensure smooth implementation and implications are dealt with correctly. A consultative process to define the land market objectives are aligned with all stakeholders is strategically necessary.

### **C) Key Implementation Recommendations**

A number of key elements and mechanisms are required to support such reform.

- Registration procedures should facilitate formalization of the accumulated unregistered claims stemming from Inheritances and Absentees.
  - A detailed study of procedures to formalize inheritances is suggested as this is a large reason for the perpetuating informal land market. An action plan needs to be developed to capture the current market after inheritance issues are resolved.
- Remove procedural barriers and disincentives regarding property registration.
  - Eliminate the requirement to present taxation clearance receipts for processing property rights and issuing property registration at the PLA.
  - Reduce and Streamline procedures created by the Municipality and

- encourage application of the Condominium Law.
- Eliminate legal and regulatory barriers that hinder the robust development of a formal financial market based on property
  - Rent protection should be abolished.
  - Introduce leasing as a formal instrument
  - Foreclosure should not be inhibited by legal procedures. Law of Court Procedures of 2001 must be revised. Foreclosure should become administrative also in Gaza.
- Legal, regulatory, and document streamlining for the facilitation of the formalization of property owners. Establish a legal division within PLA for legal dispute resolution.
- Create accountability for all private players involved in the property market. Brokers and other property transactions facilitators should be registered either at the PLA or in a union of professionals.
- Systematic Settlements Surveys to continue.
- Establish large Market Awareness campaigns regarding the new activities of the PLA and the benefits of having properties registered.

## 2 Background

The Land Market Study has been commissioned as one of seven inter-related land policy studies being undertaken as part of *Component One: Conducting Land Policy Related Studies for the Formulation and Development of Regulatory Framework of the Land Administration Project*.

Study One: Register Accuracy, and Factors Limiting Registry Utilization  
Study Two: **Land Markets**  
Study Three: Land Disputes  
Study Four: Public and Municipal Land  
Study Five: Fees, Finance and Property Valuation  
Study Six: Legal and Institutional Framework for Land Administration  
Study Seven: Education

The role of the study is to review the performance and dynamics of land markets in West Bank and Gaza and to assess the factors impacting on land market activity. This review will inform the development of policy recommendations to enable efficient, equitable and active operations in the land market.

### 2.1 Work to Date

Three questionnaires were developed using quantitative and qualitative questioning methods. The questionnaires were designed to identify which factors affect the supply and demand of property, the incentives and disincentives to registering property, the factors determining informal and formal transactions, and the characteristics of informal and formal behaviour. The questionnaire covers topics such as; perception of informal property, perceptions of effectiveness of the registry and the system of enforcement (courts) requirements and the perceptions of users of the system, time and costs, as well as details concerning the transacted property including type of property, location, price and legal status. Data is also being collected on sources and levels of financing, methods of payment, and the value of the property.

Interviews were undertaken with owners (household surveys), financial institutions, brokers and representatives from the municipalities.

The results of the questionnaires form the basis for the Land Markets Report, supported by desk research.

## 3 Introduction

Land is an important asset for Palestinians and as with many societies land is one of the most powerful factors of production that underlines economic and social prosperity creating important impacts for all types of citizens (poor, middle income and rich). Land in the occupied Palestinian territories is scarce and in high demand for various purposes (residential, commercial, industrial and agricultural). As a general rule, a society and country's understanding on how to manage land assets and market contracts derived on its basis are vital for a country's economic prosperity. Contracts

may be in the form of rental arrangements, land sales, inheritance of land, land leases, or mortgages, as well as many other market adaptations to the property commodity. Apart from managing the various land-use and ownership arrangements, a country also needs to establish a proper framework that allows the development of financial and property markets by ensuring that entry and exit are granted on fair and equitable ground.

The efficient operation of land markets is influenced by a number of factors, both public and private: supply and demand of land; professional costs including brokers lawyers etc; other transaction costs related to time, processes, requisites, and transaction and service fees and taxes; and other disincentives that are defined by formal institutions of land administration. In order to guide policy-makers in effectively reforming institutions to support land markets, a number of key issues need to be understood in the way land markets operate and function. This study provides the basis for this understanding.

The study presents how land and property are treated in Palestine, how land markets currently operate, how they affect the everyday life of people and how they can be improved. It will analyze and outline impediments that currently prevent the development of a robust and upgradeable formal financial market that is based on land and property. To this end, the study touches upon the institutional and organizational management of both public and private land. It presents ways in which all properties can be incorporated into one unified system of market trading to reduce distortions in valuations. The report also touches on all organizational bottlenecks that generate additional transaction costs and affect the fluidity of land tradability and market functionality. The study builds on the legal, political and economic realities in Palestine by explaining how history and legislative structures have inhibited market development. Based on this thorough analysis, it will draw conclusions and recommendations to establish a market with long-term viability.

Qualitative and quantitative findings describe the performance and dynamics of land markets in West Bank. Information was also sourced for Gaza; however no field surveys were conducted in Gaza due to security restrictions. The focus in West Bank concentrates on Areas A & B. The results of this study will give the MOP a better vision on the potential role of land and property for Palestine's social and economic development. It will help define responsibilities of the state in regard to land and property and provide advice on how to adopt policies for better land administration. Policy recommendations are holistic in their nature to touch on the economic and social significance of the asset, rather than presenting simple technical, juridical or finance response that are covered by other policy studies.

### 3.1 Analysis Approach

The report explains the reasons why property rights are important in general and specifically in the case of Palestine. It explains the current situation of Palestine's land market based on a methodology that involves both top down and bottom up work and an evaluation of the actual users of the market.

More specifically this methodology includes:

- **Desk research** carried out analyses the formal rules and regulations regarding the operation of market functions and market players. This analysis identifies the types

of transactions used, with a review of formal laws and rules in a normative manner (i.e. how they should operate) comparing them with the current practice of informality. Laws are supposed to reflect societal-market needs and regulate those needs rather than imposing exogenous structures that may work very well elsewhere but not necessarily responding to local needs.

- **Field work** was conducted using a method of ad hoc interviews among stakeholders either in the field or at their place of work in order to identify the practical reasons behind the informal market and assess the effectiveness of the formal and informal land market.

- **Survey based investigations:** A set of 3 surveys were conducted to quantify the market behavior and help analyze the reasons behind market rigidities, identify the amount of informality in the land market, and consequently the frequency of informal transactions, the incentives behind such behavior and the desire and inclinations for reform. The surveys were directed to the users of the property market across the board. Quantitative and qualitative questions were applied to both urban and rural properties.

Survey 1: The *Land Market Survey* was used to interview owners and possessors of property and land through (both rural and urban) a sample of 100 property ownership registration entries at the PLA. The sample was collected from a population of close to 270 entries in the PLA in the district of Ramallah and checked among other issues for the continuity in formal registration and informal market behavior. There was a considerable error factor in the quantitative results of the survey as the sample was relatively small, however the basic information is useful for the purposes of our study and it is triangulated with the qualitative questions and unstructured interviews. The Land Market survey was only able to be conducted in Ramallah due to the inaccessibility of data at the PLA and a strong resistance from officers to cooperate due to distrust towards our researchers. Annex 1 is provide to present the difficulties of the data collection and reflects the week public service provision and lack of confidence and trust.

Survey 2: The *Financial Institutions Survey* used a sample of 21 formal and informal financial organizations investigating the supply of credit, the requirements to obtain bank loans for property purchase and development, the types of financial products used and enforcement applied.

Survey 3: The final survey focused on *Property and Land Brokers*. Land brokers represent a certain amount of formal and informal transactions in addition to being a third eye identifying the concerns of the land market and the property rights system. This study uses a sample of 90 brokers across the occupied Palestinian territories and analyzes the types of demand and supply of property information available in the market.

All surveys were analyzed against the unstructured interviews and meetings with our stakeholders to further examine the registry records, levels of trust in the system etc.

- **Stakeholders' workshops:** A first stakeholders meeting was organized at

the initial stage of the study in order to present preliminary results, questions and challenges identified at that first stage of the process. Valuable feedback was received. A workshop was conducted that included a broader range of stakeholders from both the public and private sectors to present the final quantitative and qualitative results of the Land Market Survey. Another set of feedback regarding the recommendations was received. Annex 2 provides a list of Stakeholders and workshop participants.

In addition to the empirical research a general overview of the socio-economic benefits formal property rights bring about for an economy, and the analysis and impact of history to land governance and land markets is provided. This is useful to help identify the elements that stress the market today.

The study identifies the overlapping visions regarding land management throughout history; overlapping adoptions of legal frameworks throughout history; resulting high transactions costs and inefficient and non-transparent transaction processes; level of security of formal property rights; level of trust in the formal system by the average citizen; and the level of insecurity and security of transactions. The study takes a holistic approach to investigating the land market for developing comprehensive and sustainable market reform recommendations. Both public and private, formal and informal relationships must be involved in the solution.

The study presents an overall reform of vision on *how* to manage Land and Property that will lead to policy recommendations starting with the definition of a set of incentives to establish property rights security and promote market growth

## 4 Importance of Property Rights<sup>3</sup>

Policies that do not create the enabling environment for a robust and vibrant formal land and property market (or the lack of any policy that enables such market) have negative economic effects and serious repercussions on the social fabric of a society. Establishing a sound institutional framework for property rights is consequently an issue of crucial importance for Palestine, especially as it is now at the cross roads of establishing its formal presence in the map of Nation States.

### **Economic Benefits**

Economists, anthropologists and sociologists who study property rights have identified compelling social and economic benefits arising from formal property markets. Modern economies and economic development are based on secure property rights, contracts definition and enforcement of regulatory behavior.

Looking strictly at financial markets for instance, one can observe an increased credit supply and liquidity because the more that is known about a transaction fewer costs are involved. Trading at low cost makes it possible to apply a lower interest rate based on higher predictability of lending risk. When risks are lower, loans are more likely to be available to property owners. Moreover, as a system becomes more effective in producing reliable property rights, the wider availability of information reduces transactions costs. Lowering transactions costs benefits the State, investors and loan holders. The greater security offered by formal property rights boosts confidence in the market, turns savings more liquid and increases incentives to make improvements and invest in buildings, equipment, infrastructure and so forth. Security of contracts for property transactions enables households to invest in housing systematically which has an important multiplier effect in the economy through construction and mortgage finance. As economists have furthermore established, secure property rights also result in a considerable increase in agricultural productivity and in household consumption as the level of wealth is higher than before.

More generally, the greater market power of individuals through formal property rights allows all income groups to play an increasingly important role in social and economic decision-making. The process of making property rights formal extends the informal social contract that acknowledges people's rights at the community level to formal institutions. Other effects have been shown, such as citizens' welfare increases, the middle class becomes stronger with a voice as their wealth base is no longer focused only on their job but also on their property assets, expanding their savings pool and prosperity.

The economic affects of prohibitively high entry barriers in the formal land and property market are quite serious and can help explain why more than 70% of all property in Palestine is traded in informal markets. On a broader social scale, these effects lead to prohibitively high-risk assessments by possible investors, foregone or unsophisticated transactions and a low level of trust and information exchange.

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<sup>3</sup> This part is inspired by *Prosperity Unbound*, Elena Panaritis, Palgrave Macmillan June 2007 chapter called the "Tipping Point"

The uncertainty associated with informal property distorts market values and prices. It makes the asset a less desirable good, reducing its current and future expected value. This leads to a waste of resources for the government, citizens and investors who do or want to participate in the formal market. In the case of Palestine, land and property only matters to the community that is in very close proximity to the land – creating an important bias to the type of investments and investors (attracting only expatriate Palestinians who bring in remittances, but almost no international investors)

### **Social Benefits**

Fairness and equity are becoming an entrenched part of society and the market. Evidence suggests that through formal property rights, underrepresented groups re-assume a role in the society and in the market. The role of women, for example, becomes more prominent where formal system provide regulatory instruments to equalize women's participation and representation. Environmental policies are also better enforced. In the case of environmental policies, we do observe that with the application of appropriate policies that allow for the formal definition of property rights citizens become more aware of the environment and work towards applying and enforcing environmentally friendly policies. Garbage collection, for example, is largely improved as street and neighborhood cleanliness increases because private property allows for the development of civic awareness. Most importantly better public sector governance is more strongly promoted.

The existence of robust public records of property rights also allows for easy checking of information by banks and individuals, minimizing disputes and indeed preventing them in the first place as ownership can be readily determined. The State's services are no longer exclusively for society's elites, or those who can pay gifts (bribes), but for everyone. The result is enhanced social stability. Community members voluntarily provide information about their property to the authorities because they trust that it will be used appropriately and to their benefit. The private sector becomes more involved because it trusts the predictability of the business environment. These are the basic ingredients and outcomes of effectively operating land markets that portray a high level of security. These are often referred to as "best practice principles".

Governments also benefit from formal property rights. The higher level of information that comes with formal property rights enables local or central governments, their respective public organizations and even private suppliers of public services to provide more effective delivery of public services and utilities, for instance, roads, water, electricity, thus achieving better resource management. Revenue collection also becomes easier and more efficient. Public governance is greatly facilitated as the State has created the enabling environment for the solid growth of private investment through the establishment of rules that allow for the secure and efficient management of property contracts and transactions.



## 5 Palestinian Land Market

### 5.1 Rules and Behavior Over Time

The property rights universe in Palestine resembles a mosaic of variant institutional overlays. This mosaic is represented in the numerous laws that govern property rights, which were all established by occupants at specific moments in time, with a distinct intention of its originator, be that in a time of empires, dynasties, kingdoms, mandates, or religious conflicts.

The Palestinian territory has never enjoyed an independent sovereign government, it was either under occupation or it was a protectorate of other kingdoms or empires. Actions of the rulers were unaccounted for as were the demographics of the occupied jurisdiction, including migration patterns. Various occupations of the Palestinian territory resulted in a series of arsons at the registries, where registration data were burned. Up until today, it is very difficult to reconstruct the data that were lost in those times<sup>4</sup>. During different periods of rulers inconsistent and discontinuous characterizations of private and public property was applied. (The Public Land Management study is investigating these issues). Box 1 described the basic types of land classifications. Today this characterization is not a simple exercise and it has complicated the development of modern land markets as unclear classifications have lead to misuse and mismanagement, reducing certainty and thus liquidity and investment.

#### Box 1 - Land Type Classification

Mulq – city and municipality land  
 Waqf – religious land owned by religious trust  
 Emir– rural land ultimate ownership of the Prince during the Ottoman Empire in existence only until 1918 – eliminated by the British mandate  
 Miri – transferred usage of land from the Emir to a the individual farmer  
 Matrouk – land in public use (e.g. roads) and other land within earshot of the village  
 Mawat – non cultivatable lands

(Reference: The NAKBA state information service)

The application of inheritance laws has also added to the mismanagement of the property market as inheritance depends on the type of property that is inherited. The laws applied to inheritance, when the testator died without a will, were the Byzantine ones until they got discontinued by the Persian, Islamic, and later the Ottoman ruling. Sharia principles are currently the basis of the prevalent laws, however we still find applications of the Ottoman and Byzantine law. The application of these laws and their evolution are described in **Box 2 – Application of Inheritance Laws**.

<sup>4</sup> Modern times' registrations of births, deaths, property ownerships, inheritances and other property transactions after 4<sup>th</sup> C AD, followed the Byzantine Law during the Byzantine Empire. The registrations would be administered by the churches and archived there. The subsequent rulings (Persian, Arabs, Ottoman, British, Jordanian, Israeli etc) were based their ruling in the way property would be managed as it is the basic family asset and income. Palestinians experienced lootings of the registration information and many times their burning was common; although there were also arson accidents. In the end the rules applied for property registration varied. For example, Bethlehem is a good case to study where today property registration is limited and referenced to old registration information has been mainly purged. The last burning of the central registry in Jerusalem took place in 1934 as a result there are only 2 incomplete references for property ownership in Bethlehem the one used by the Latin parish which started to register births and properties in 1517 and some copies of the Ottoman registrations of property taxation and use.

### Box 2 – Application of Inheritance Laws<sup>5</sup>

The jurisdiction of the various inheritance laws depends on the type of land classification and not on the religion of the owners. The inheritance is certified by the religious courts and that certification is submitted in the registration file of registry for the final ownership transfer. The reason the religious courts exist (Muslim, Orthodox, Catholic etc) is to represent their communities regarding family law and assets, as there is no separation of mosque/church and State and therefore the mosque/church - is involved as a proof for the definition of family, asset, and inheritance rules

Shares of inheritance according to land classification: Emiri land is a classification established by the Ottomans<sup>6</sup>. Emiri land was put to halt by the British mandate in 1918. At this time the Ottoman registries were also stopped<sup>7</sup>. Ultimate ownership of the Emir land was held under the Ottoman Principles, this land was used by farmers and would be transferred to special use only if the Emir would allow it (after 10 years of consecutive use). Such transferred land would be classified Miri land and it can be adjacent to Mulq land. Inheritance rules of Miri lands excluding Mulq follows the *Intequali Law* (established during the Ottoman times) when either the father or the mother die the share of the offsprings equal 1:1 for male and female. In the case of the husband's death the wife share is 1/4<sup>th</sup> in the case of the wife's death the husband share is 1/6<sup>th</sup>.

Mulq lands follow the *Sharia law* of inheritance (law derived by the Koran and it supersedes a will or testament). In case the father dies the share is: 2 for the male offspring(s); 1 for the female offspring(s); 1/8<sup>th</sup> the wife's share. In the case the wife dies the husband receives 1/6<sup>th</sup> of the share and the remainder is shared among the offsprings in 2 (male) to 1 (female).

*Byzantine law* applies to lands governed under the Byzantine Empire later occupied by the Ottomans but then owned by the Orthodox Patriarchate. These lands can transfer ownership or usage; however their management continues to follow the Byzantine law. This law only applies if the deceased has not left a will or testament. In such law there is no declared share other than the assets are divided in equal parts among offspring. If any of the parents die the other parent receives 1/4<sup>th</sup> of the property. If unmarried children die the property goes back to the parents and not to the siblings. If married children die the property is inherited as follows 1/6<sup>th</sup> each of the parents and the rest the spouse and the of springs<sup>8</sup>.

<sup>5</sup> Much of this information was received from research of laws and archives at the religious courts as well as of a series of interviews with the religious courts.

<sup>6</sup> In 1858, the Ottoman state issued a law of land ownership; followed by a list of instructions regarding the right of land registry muniments in 1859, and then it declared the land registry law in 1861, land registry annexed in 1867, and the foreigners' property system in 1869.

<sup>7</sup> The British administration took many decisions regarding the land ownership, in 8 May 1918, General Mouni issued a decision for halting the Emir land property as well as closing all the land registry departments since the Ottoman authorities took all the property documents to Damascus

<sup>8</sup> Byzantine Family Law

The British mandate starting in 1918 till 1948 discontinued the use of the Ottoman registry records but based on those records they continued the registration of transfers and sales<sup>9</sup>. The subsequent Jordanian ruling till 1967 created a series of land laws and started a new registration process based on ownership. During the years of Jordanian occupation until 1967, approximately 30% of land was settled in the West Bank through a process of systematic adjudication and surveying. Egyptian ruling during the same period in Gaza brought the amount of settled area up to 98%. The Israeli occupation that followed (after 1967) applied a series of Military Orders in the property rights definition pot – picking and choosing their historic reference laws, confusing further the land market. Today's land surveying and registration follows the French Civil Code legal tradition, using the Turkish Civil code version. The administration of this process is attributed to the settlement carried out by the Jordanians in the West Bank.

Today the property market is marked by a variety of regulatory anachronisms, interests brought in by the respective occupants and actions that created gaps in property governance and land management. As a result general market behavior is shrouded in secrecy. This rich history and adventurous road Palestine has traveled has molded both the daily economic behavior towards land and property as well as the culture of exchanging land, their most precious asset. The result is a land market less efficient, more localized, and based a lot on trust among the people and the communities and little on what "government" rules would impose or provide.

For a better understanding of the peculiarities of today's land market and the difficulties faced to turn it into a more efficient and robust market, it is important to: (i) first outline the main challenges Palestine faces and then (ii) use the results of the surveys to present the effects of those challenges in the market today. This study identifies the impediments more clearly as well as identifying the existing incentives that any reform must build on.

## 5.2 Opportunity to Establish a Formal Land Market Through Challenges

### 5.2.1 Land Market Environment

Today Palestine is facing the unique opportunity to establish a modern state. An opportunity loaded with an additional set of challenges that affect the policy decisions as well as the reform process to enable a well functioning formal market. These challenges are presented below.

- (i) *Lack of any institutional history of an established independent state to draw upon.* To this end, establishing all government institutions and independent legal framework from inception is a large task. Nation building has never being a simple or easy endeavor.
- (ii) *Resist the temptation of using the usual quick solution of adopting rules, laws, and frameworks from other countries that seem to be operating well in their contexts.* Indeed a difficult task, as most new Nation States do run into such solutions (see most Eastern European

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<sup>9</sup> In the case of Bethlehem, most of the saved records are Ottoman and British. Only 2 registrars

countries) only to find out that they are not always effective in their local reality and a few years later they need to reform them again attempting to get it right. Mere adoption or importation is not recommended (the effects are similar to those of imposed rules by an occupant with a more serious effects in the actual governance of the country). This is because the people do not feel represented and secured instead they feel betrayed by their own new government leading to mistrust and a loss of respect in the formal organizations. This is a serious repercussion that needs to be avoided or minimized especially in a fragile and sensitive environment in Palestine. What is generally recommended in cases like Palestine when creating a new Nation state is, that the authorities work on codifying the understanding of the local informal market and behavior and translate this into formal rules of the government.

- (iii) *Difficult external political situation under which Palestinian National Authority struggles to create its formal existence.* For example today Palestine (West Bank and Gaza) only holds 22% of the territory it held before 1948, from which 42% can be claimed by the Israeli government as it belongs to Israeli settlements in the West Bank<sup>10</sup>. The definition of areas A, B and C as well as the creation of a large number of Israeli settlements in the occupied Palestinian territories do not allow for a homogenous and easy application of property right rules. This lack of clarification and management authority is leading to a very weak agricultural sector<sup>11</sup> (mainly in areas C), almost no private lending and definitely no public credit, nor land consolidation for agri-business. This particularly stressful situation has also promoted an internal misalignment of policy visions and organizational malfunctioning compromising the final constellation of a universal legal framework and set of property rights rules.
- (iv) *Weak Civil and Administrative services.* There is considerably limited experience of civil service management and organizations' administrative management throughout the public sector in general. Roles of responsibility, outputs, budget sources, and organizational mandates are not clear and often overlapping. This is understandable, as the country is coming to age in terms of its State institutions and organizations it's budgetary and controls systems, and accountability mechanisms. This situation became more acute after the election of the Hamas government in 2005 as the PNA got isolated from formal international aid in its central budgetary support. Such formal isolation however did not reduce the international aid funding but instead it changed its channeling. International funding would be directed through several alternative ways (for example through the office of the President directly, regional governments not run by Hamas, and directly through NGOs). Although a necessary financial lifeline, this erodes further the weak formal public sector structure and created parallel budgetary lines of command with no central oversight and control. This depends on the difficulty of ensuring accountability. This is a major challenge as it permeates the whole civil service including those organizations involved

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<sup>10</sup> Peace Now report – Halla gave us the info

<sup>11</sup> In such areas this has crippled the Palestinian economy as the Palestine economy was based mainly an agricultural society.

in the governance of land property, the Judiciary, PLA, property taxation and valuation among others. Furthermore eroding trust continues in the formal state authorities from both the citizens and users of the public services as well as the civil servants.

- (v) *General apprehension in the publicity of land exchange and dealings.* Palestinians do consider land as their honor and it is not well perceived by their local community members to sell property outside their community. Even less so to sell it out to enemy occupants. Secrecy and small social networks of property dealings are well preserved. This situation holds back the establishment of a robust and open property market. In addition it is generally the clarity and availability of information that enforces correct market prices and investment opportunities.
- (vi) *Misuse of the property rights system by previous Palestinian occupants have created mistrust and promoted secrecy among property owners regarding transactions.* Military orders by the Israeli occupation forces for expropriating private and public (Emiri, etc) lands for security reasons further increased mistrust of governing authorities and reduced security for the development of any land market<sup>12</sup>. Conflict resolution was applied only through the Israeli courts an additional reason not to trust the system further increasing the fear of citizens to inform the authorities (that is the registry office) of properties that belong to expatriated citizens. Registrations are not popular. They exist either because of the Settlement Law of 1955, or if a proper sale took place. Registrations would also occur if land was to be sold to Israelis and in which case secrecy of the land dealing was most appropriate as the local community would not accept such a trade. In the case of inheritance lands, these were generally not registered. Land exchanges however did take place but mainly with an Irrevocable Power of Attorney (IPA). A situation that shows how the citizens learned to engage in innovative mechanism outside the formal market structure to conduct transactions. The IPA is an instrument that gives someone the power to transfer and assign rights. It initially had a 1 year limit, but this was extended under the Israeli military administration to 15 years. The IPA thus was an alternative means of transferring property without the need for registration.
- (vii) *Lack of public access to the registered information at the Palestinian Land Authority.* This is a situation that does not raise concerns among the people as it feeds in the culture of secrecy regarding land and property transactions. However, lack of public access also reflects lack of accountability of mistakes as well as lack of transparency leading to misevaluation of properties. In the worst cases we note that such situation leads to opportunities of illegal alteration of records which result in further distrust and unreliability of the system. In such cases we can also have minors altering inheritance registration information for their future benefit. This is a serious issue, as its handling will need to be

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<sup>12</sup> Notes with Hala and information from all 3 reports including Peace Now etc....( from Hala's documents)

hands-on regarding the more efficient functioning of the PLA leading towards an autonomous, self running and profitable organization with a quality control system that will not only include the State but also the private sector.

- (viii) *Unsuccessful management of societal and market changes through time by the PNA in relation to inheritances, emigration, refugees, expatriated Palestinians "absentees" and their "abandoned" properties.* Only 30%<sup>13</sup> of the properties in the West Bank were fully surveyed and registered until 1967 – under the Settlement Law- of which only 52%<sup>14</sup> have kept up to date. In fact our Land Market household survey indicates that more 78% of the originally registered owners are now deceased and their properties are not registered in the names of the new owners<sup>15</sup>. These statistics indicate a serious misalignment in the formal market. One example is presented below that resembles numerous unregistered inheritance cases.

### **Box 3 - Anecdotal Evidence of Challenges of Inheritance**

Much of the land and properties that at some stage were registered are now considered as having informal tenure as most has transferred ownership through inheritance. They are considered informal because no inheritances have been registered and therefore the registration document does not reflect its current owner.

Some of the reasons for not registering property were: registration fees, property tax fees, and requirement to gain community agreement of who owns what in the area, thus rendering the registration an unnecessary bureaucratic detail. Although a bureaucratic annoyance once, as markets grow and transactions start requiring formality - inheritance transfers have added tremendously to the complexity of today's situation. Follow the story of Atef

Saleh owned a large tract of property, 50,000 m<sup>2</sup> (50 dunams) in 1900. This was registered in his name under the traditional Ottoman land laws. Saleh had five children who inherited the land (heirs). The heirs to the property did not register their interests. This was not a problem at the time because land was rarely traded and the economy was largely agricultural. The property remained in the immediate family. During that time the Empire based taxation on land production and not on the land itself. As long as the children and grandchildren of Saleh paid their duly taxes the rulers were satisfied and the markets worked well.

The land continued to remain registered in the name of Saleh. Each one of his heirs had seven children, so the total number who owned this land became 35 people. Each of the seven children had four children, leading to a very large pool of owners of the same tract of land. This was a total of 140

<sup>13</sup> 20% from systematic registration and 10% of sporadic registration

<sup>14</sup> Arab Bank

<sup>15</sup> HH survey results Alfa

people. The plot is still registered in the name of the original owner who since deceased.

The reality is that today there are 140 people with active rights on this plot. Some of the heirs are abroad, some are in Palestine. Under the current registration conditions each present ownership claimant as registration requisite is due to pay the property taxes of all those in the past that did not register after Saleh. In addition to resolving the issue of registering each of their rights to the land, incurring these tax payments is a large disincentive to avoid updating to formal property rights registration. To go forth in registration, it is critical that the 140 people or as many as are alive today see the benefits of registration. This is a very common situation in Palestine where many heirs are entitled to having the land dividing among them.

### 5.3 Empirical Results of the Three Market Surveys Used

Given the environment described above, the present land markets in Palestine are characterized by:

- very small representation in the formal sector: i.e. very few transactions are registered in the PLA today with their current owner;
- a relatively vibrant informal market that operates with minimal security and inefficiency;
- absence of trust in the PLA and Public Services in general;
- a lack of homogenous land and property management policies;
- unpredictability of rules and requirements;
- overlapping and contradictory regulations; and
- Absence of good governance regarding land and property management.

These issues result in high barriers of entry to the property market and difficulty to remain in the formal market. There is a lack of investment predictability on land and property, low levels of transparency, very high transaction cost leading to speculative investments, which is a substantial waste of resources (tangible and intangible) for both the private and public sector. The shape of the land market is strongly affected by a wider range of challenges in the economic, social, political and institutional environments. These broader issues are described in detail below, reflective of the market characteristics.

More specifically the effects of the earlier mentioned challenges have pervaded the daily life of the Palestinians regarding their expectations about their economic future; the way they manage savings, investments, and properties; and the way they have managed their relationship with their country and their society. The three quantitative and qualitative surveys have given us data to explain some of the formal and informal behavioral trends of citizens towards the formal property registration system, including public organization's involvement in the system, such as the Palestinian Land Authority, the courts, and the banks.

The *Land Market's* household survey started with an analysis from the identification of a sample of registered properties at the PLA. From this sample the registered owner was contacted to confirm the registry record information. Investigations were made to

identify the person's relationship to the property and the registered owner; the owner's perception about the PLA and its effectiveness; the perception of costs involved; the financing used to develop the property; the intentions behind the ownership; the fears and apprehensions the specific owner has with the formal system; and the perception of trust in government institutions. The *Financial Institutions* survey focused on a sample of formal and informal credit providers that lend using property either as an additional guarantee to the list of guarantees or for issuing mortgages. The *Real Estate Brokers* survey focused on the practice of Brokers across the West Bank and Gaza analyzing their behavior towards the existing land and property market; assessing the types of conflicts they may be encountering, the sources of financing of sales, and the usage and relevance of the registry.

The main results from these investigative surveys are presented in the following sections.

### 5.3.1 Frequency of registration is insignificant and uneven

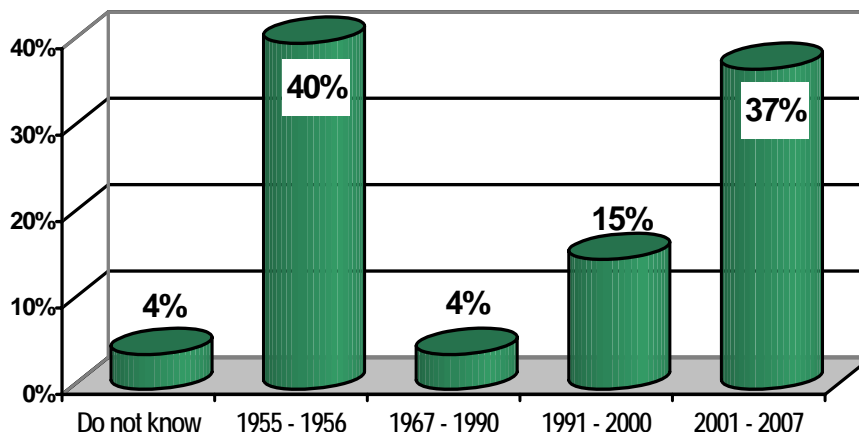
The Land Markets Household survey shows two high points during which people showed an interest in keeping registration records formal (see Figure 1). The first one is during the 1955-1956 period with 40% of our sample registered. This is the period that the Jordanian Kingdom applied the "Settlement Law", applying systematic surveying and registration of settled areas at the West Bank. The second period started showing an upward trend after 1998 to 2006 with a 3, 9, 6, 10, and 20% of our sample getting registered. This could be explained by a series of a few political and economic changes. It was in the mid 1990s that the banking system was open to Palestinian and international rather than only Israeli<sup>16</sup>. Also during that time there was a rise in the return of expatriates as the peace talks seemed to proceed. The number of property sales increased and there was initiation of housing construction. Also some formal registration of inheritances occurred. Construction today is the leading economic factor of Palestinian GDP. As the sample is taken by the Ramallah district PLA, one additional fact for the increase is the application of the condominium law that allowed for the individual purchase of apartments. This trend increase however may not be as high in other cities as the condominium law is not fully applicable in other cities throughout the West Bank, and it is not applicable in Gaza. Property transactions were not registered and sporadic registrations were limited.

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<sup>16</sup> In that year Israel allowed in the occupied territories for the operation of Palestinian and international banks other than the Israeli ones (the Israeli banks were they only ones allowed till '94).



**Figure 1 Percentage distribution of properties according to the year of their registration**



First registration has historically been instigated through systematic government program efforts (1955) however there was a significant lack of subsequent registrations during the time from 1956 to 2006. The questions we are called to answer, therefore are what are the incentives Palestinians have in order to keep their property rights updated and what matters to them regarding property transactions today?

Security and trust are highly valued within the social and economic fabric of Palestinians. Both elements reinforce each other and constitute the functioning of markets and society. Their markets are based on reputation and trust. An outside observer therefore quickly characterizes such a market as non-sophisticated and informal. Although both trust and security are what underlines a well functioning property market at a high level of market sophistication, they must be institutionalized in the formal market processes. In the case that such institutionalization is not in effect and both elements are in use at a personal and local level, as in the case of Palestinian the market; transactions are more simple and informal. An informal market is considered one where transactions are ratified and recognized among the players of the *local* community but are not recognized outside that community. Informal markets are defined by a low level of market transactions and almost no formal credit. They are linear and primary, mainly for residence or agriculture and kept in the family<sup>17</sup>.

After the 6 day war of 1967 Israel occupied the West Bank, East Jerusalem and Gaza stopping the settlement registration process. Property rights rules, and land administration were applied in an adhoc manner depending on the case and the security circumstances. Property rights enforcement rules were applied by Israeli courts and today this is the case only in Area C. Today a non-harmonious mixture of past occupational rules and regulations are remaining in effect with the exception of some Israeli Military Orders of land expropriation that were revoked after the Israeli withdrawal in Gaza in 2005.

Under such conditions equilibrium is not in order as political parameters seem to be in flux continuing to affect local economic factors. Particularly the economic hold Israel has on Palestinian territory and authority creates difficulties in the markets. The Palestinian society although a very entrepreneurial and creative one, behaves in a closed and untrustworthy manner, which is a characteristic of many societies under significantly lengthy occupations. The city of Bethlehem is an example of the response

<sup>17</sup> HH survey

of people to land during occupation upheaval. The majority of the Palestinian people emigrated abroad since the late 19<sup>th</sup> Century, leaving behind a large number of unattended properties leading to a serious problem of unclear inheritance rights<sup>18</sup>. This situation coupled with the medley of property regulations and laws, arsons occurring at registry offices, and poorly managed public sector organizations, lead to people keeping information close to one's chest. This includes not sharing it with government organizations and then trading in an informal way, often with opportunistic behavior. We observe for example that a very large number of property transactions take place with IPAs because they provide a fast and efficient way of completing a transaction and it is recognized as a semiformal solution<sup>19</sup> avoiding lengthy delays and foreign procedures imposed at a land registry office. Registration therefore does continue to take place but in a trusted system. It is predicted that land registration behavior would occur more frequently if there was trust in the system, if clear benefits were shown to be understood by owners and other registration users, market friendly inheritance rules were applied, and if low transactions costs and there was a clear perspective of prosperity. Prosperity for Palestinians is generally reinforced during times of security and peace.

The important question therefore is: how much of the registrations when conducted systematically or in a sporadic fashion, remain current? And, how many of the properties fall into informality?

### 5.3.2 Informality higher than expected

Informality proves to be higher than expected. Although the registry has 30% coverage of originally recorded properties in the West Bank, these records have not been maintained and updated and therefore do not reflect the status of ownership on the ground.

We assumed informality to be contained only among the non-settled areas (70%<sup>20</sup>). That is the areas that were not surveyed and registered till 1967 by the Jordanians in the West Bank and Egyptians in Gaza. Empirical evidence shows that informality has permeated originally registered properties and indicates the percentage of informal properties to be closer to 85%.

In the case of the West Bank the Land Markets survey showed that 48% of the registered owners on the files of the PLA do not match with the actual owner of the property in place. This data is quite important as it suggests that first registration does not guarantee formality in the market since almost half of the originally first registered properties have fallen into informality as they have not registered any of the subsequent transactions (inheritances, subdivisions, sales etc.) Of the half that had changed ownership without updating registry details, the majority (71%) of owners are deceased. This information can lead us to the probable assumption that inheritances were not formally transferred (since about 40% of those living on the properties were relatives).

According again to the same survey, the majority of property transfers take place mainly by inheritance (60%) and only (35%) through sale. Inheritance is a major challenge as 62% replied that about 5-8 children would have claims in a property after the death of the owner and 20% replied that more than 8 heirs are involved in the inheritance. Claims do not get registered for a variety of reasons: (i) absence from the

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<sup>18</sup> Further stressed by the lack of birth records –as birth and death records had been destroyed in the past – See minutes with Dr. Salomon.

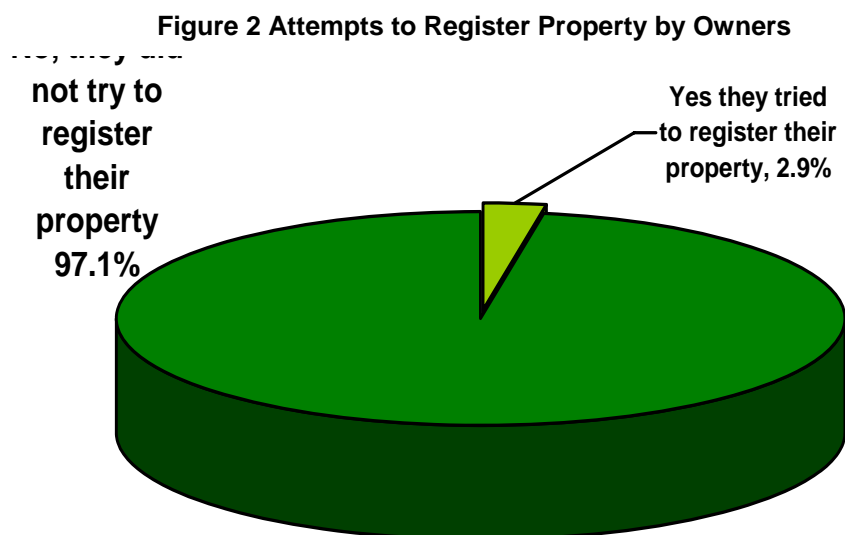
<sup>19</sup> Minutes from the PLA in Bethlehem, from meetings with the Mayor of Bethlehem, Property Lawyers in the region and NGOs.

<sup>20</sup> Land registration study

country and thus fear of having the land confiscated by the Israeli's; (ii) registration fees are costly; (iii) having to pay the property taxes of all the previously non-registered transfers a problematic situation when 84% replied that they did not pay their property taxes in the last year. In the case of Atef's (Box 1) the heirs would be paying the property taxes of all earlier transfers that resulted to 140 heirs; (iv) the residents of the community were in agreement with the new owners and thus there was no need to transfer the ownership formally; and (v) because the property was not divided among the heirs' shares<sup>21</sup>. To this end a significant percentage of the market properties do not remain current in the registry books.

### 5.3.3 Owners have almost no interest to register

97% of the non registered owners have not even intended to register their ownership rights as incentives are negative. Rather than registration being an essential requirement it is perceived as a bureaucratic informality that is costly (68% of respondents replied that it is expensive to register property), and exposes private information of the citizens.



74% of our respondents replied that they do not consider the registration process and information confidential. This last piece of data is significant as authorities hold the PLA process and information restricted and not available to the public, yet the perception of the public is that it is insecure. This explains the lack of trust in the security of the formal system by the regular citizens, users of the registration system as well as an element of fear in sharing information publicly. For example fear was very prominent when undertaking the Land Market surveys as the surveyors had to try numerous times to gain the trust of owners in order to be allowed to approach the properties and proceed with the questionnaire. At times surveyors would be chased away as they were mistaken for public officials. On one occasion, the owner placed a notification in the local newspaper claiming that he was the owner of his property and warned readers that that strangers approached his property uninvited (see Annex 1).

<sup>21</sup> Qualitative survey results.

Nevertheless, the more institutionalized players of the land market (for example bankers and brokers) have a different view and consider property registration worthwhile and value adding. 100% of our brokers sampled replied that they do consider property registration value adding.

#### 5.3.4 Opportunistic behavior harbored by informality

Informal market behavior is mainly a result of a series of administrative regimes that occupied Palestine, a challenging political environment that reduced the incentives to register and increased insecurity. These have led to an uneven growth of the property market and its related financial sector. Palestine however is made out of creative and market oriented citizens but with little market exposure and a lot of fear.

Informal land markets are not necessarily illegal<sup>22</sup>. They are local-based and that gives them a good starting point to have a vibrant market as their communities recognize them and enforce them. However, if they are not enabled to develop into becoming formal they will not have the impetus to grow into bigger and more successful markets with the option to participate in the international capital market.

Although not illegal in their route and definition, it is important to attest that in some cases it has led to criminal behavior. This is mainly attributed to the fact that informality is a major ingredient to opportunistic, rent seeking, short-term behavior and does not promote the desire for long-term reforms. Such behavior highlights quick profit rather than long term desires as there is limited forecasting of the financial or security situation. Bureaucratic burdens and the unclear mixture of regulations and laws have added to the problem making more unattractive intentions to register property and operate in a formal market environment.

Opportunistic behavior is prominent in the southern part of the West Bank as they were not exposed to the benefits of the Settlement Law program by the Jordanians. Rent seeking is more salient in Bethlehem as additional factors played a key role: (i) a weak community with unimportant community conflict resolution system to substitute for the ineffective court system; (ii) large emigration of the population since the late 1800s creating a large number of abandoned properties; (iii) both civil and property registry files were partially or fully destroyed. This opportunistic behavior is not however shared in cities as Hebron precisely because Hebron has very strong community with almost no emigration, placing trust of property rights, economic and social issues within the families of the community (the Hamules) and resolve conflicts through the Sulha. Such an environment gave minimal space to manipulate property rights data. Hebron however is more of an exception than the general rule.

In Bethlehem, the land and property transactions are completed mainly with the use of IPA's. The information in the PLA is not public as the case has been and continues to be in the rest of the country. Sales of lands to Israelis, confiscation of lands by Israeli, creation of Israeli settlements and the building of the separation wall changed further the legal landscape of property rights as lands would be classified at the convenience of the occupant but not in the most accurate and current manner. In addition, the lack of a well running and accountable public sector, courts, registry, and etcetera promotes less professionalism among public servants and has made opportunistic behavior common place.

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<sup>22</sup> *Prosperity Unbound*, Palgrave Macmillan June 2007

The occurrence of opportunistic and rent seeking behavior was explained by property lawyers:

- a. Documentation of any kind (usually inheritance) from the PLA gets *sold* (something that was very common during the Israeli Occupation of 1967-1995). The buyer searches for the person on the registration document and *forces* the consequent sale.
- b. In other occasions, documents in the PLA get forged in order to change ownership name.
- c. On occasions false signatories of deceased estate owners have been used to transfer properties.

### 5.3.5 Irrevocable Power of Attorney (IPA)

Transactions are mainly organized by word of mouth, the use of simple private contracts, or by IPAs. IPA is signed by the original owner giving irrevocable rights on the property to the IPA recipient for a renewable period of time. IPAs were originally introduced by the British at the beginning of their mandate to legitimize a transfer of unregistered property. Today the IPA is practically used for transferring actual property, it has a 15 year lifespan and works as a substitute to an ownership registration document at the PLA. It is very liquid and relatively secure if there is not much population movement in the community where it is used. Security is reinforced by the community<sup>23</sup>. It used to be registered with a notation at the PLA – but it was done more as a practice rather than a formal requirement. This is not the case anymore as the PLA does not note IPAs. The registry is only supposed to register by law ownership transfers of registered property through inheritance or sale.

The Real Estate broker's survey indicates that as proof of ownership they use an almost equal amount of IPAs (36%) to registrations from the PLA (39%) and about 14% of property transactions come from the property lists used for taxation purposes of the Ministry of Finance. They do not consider IPAs less secure than the registration information of the PLA as in both cases they would have to do a property check in either the PLA or at the courts or with the Public Notary. An interesting data point is that Brokers use the services of the PLA almost as much as those of the Notary – either for verification of the ownership information they have about a property they are to sell or for other types of documentation.

Property lawyers and brokers have indicated that the IPAs weakness is the time limited to 15 years. Because the use of IPAs is unregulated and there is no registry kept of properties using this mechanism one concern with IPAs are that there can be more than transaction on the same property occurring simultaneously. A recent concern is that as IPAs are not allowed to be registered where as in the past they would be registered by practice not law. Although such a possibility does exist particularly where there are weaker community ties, such as in Bethlehem. The overall confidence on the information from the PLA and the IPA could be considered almost similar. This is because, as surveys indicated, there is not much confidence in the information handling of the PLA. Interviews with property lawyers explained that property information at the PLA could be compromised; however the community reputation is a good deterrent. In addition of the total properties handled last year (2005 to 2006) only 30% of them had an up-to-date registration record.

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<sup>23</sup> In the case of Hebron the use of an IPA is secure because the community is strong in enforcing it. Reputation and trust is what the enforcement is based on. Concurrently this is not the case in Bethlehem as there has been considerable population movement resulting in the weakening of the community ties and thus of any community enforcement.

Brokers deal more with rural properties (53%) than with urban properties (43%). An interesting statistic is that there is also a property market within Camps exclusively in Gaza. Of all properties they handle in Gaza about 16% of them are in Camp properties. Most of these properties are traded using IPAs.

### 5.3.6 Sellers Market

Palestine's property market appears to be a sellers market restricting the demand side of available property, stressing property prices and reducing the investment component of a regular property market.

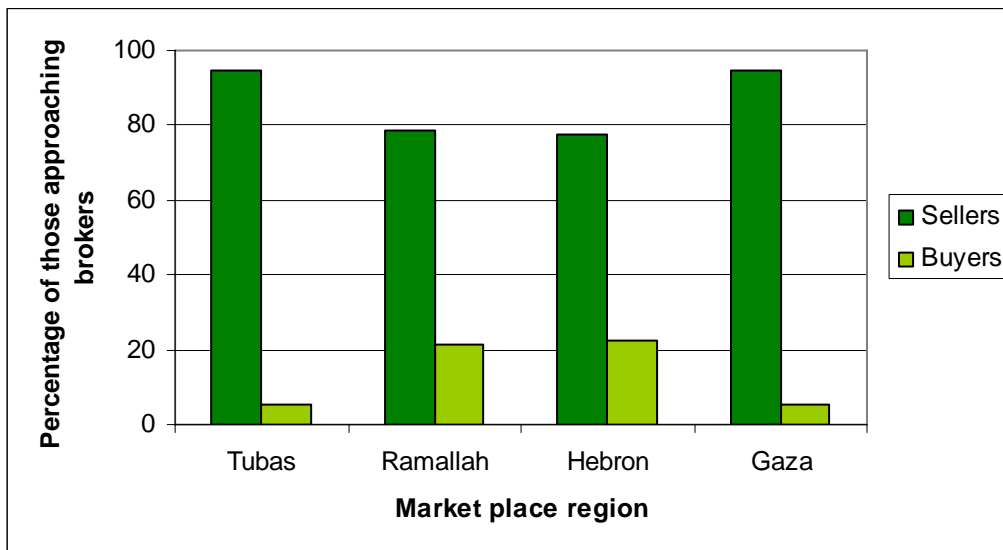
Informal market of unregistered property stifles the availability of public information and makes it more difficult as a buyer to enter as an informed participant in the property market. Undisclosed property information also stresses property prices and perpetuates a rudimentary housing market as well as a rudimentary property investment market. Such situation creates biases as to who will be the market players. This is not a desirable condition because it limits the use of the asset, the types of investors, as well as the type of capital that enters the greater Palestinian economic market.

Palestinians overwhelmingly responded (95%) in our Land Market survey that the purpose for purchasing land or property is residential versus only a small 5% for investment purchases. Only 22% of household participants have engaged in improvements of their properties. Housing construction is non-consolidated; housing loans are relatively expensive and usually not very long term, fewer than 10 years; and small mortgage markets (below 1% of the GDP);

A differentiation with Palestine and other similar income countries is that movement in the housing market demand in Palestine is mainly for middle income people rather than for the poor. That is, non-affordability is spread across the board, a situation that will increase as the economy will grow.

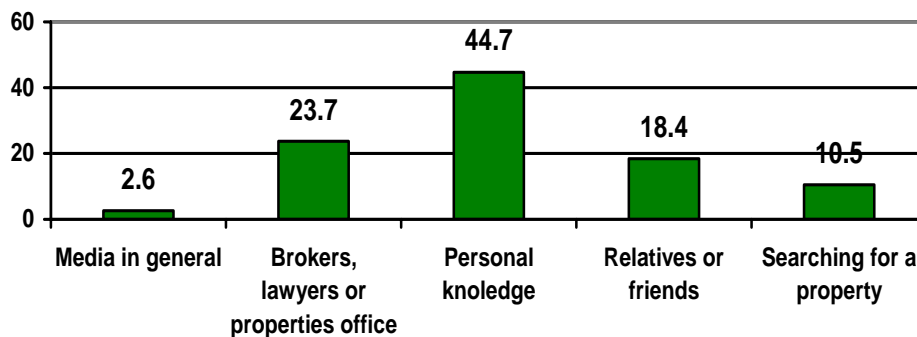
Brokers witness that the formal property rights system and overall policy on property governance does not provide the appropriate environment that attracts a wide option of international investors or even local investors choose to invest. 85% of brokers responded that their pool of information comes from people wishing to sell their land or property (see Figure 3). International property markets base their information on formal secure registries regulated by laws.

**Figure 3 Stakeholders Approaching Brokers to Conduct Transactions**



As shown in the graph, a considerably small percentage of their broker’s business is initiated by buyers. This is usually because the transactions costs engaged in finding out about available properties in the market are high. PLA’s information is not public. People buy and sell through word of mouth, a primary way of information exchange. To this end the majority of our household survey sampled, 78% learned about their property through informal channels and not through the registry (see Figure 4).

**Figure 4 Methods of Exposing Property Availability**



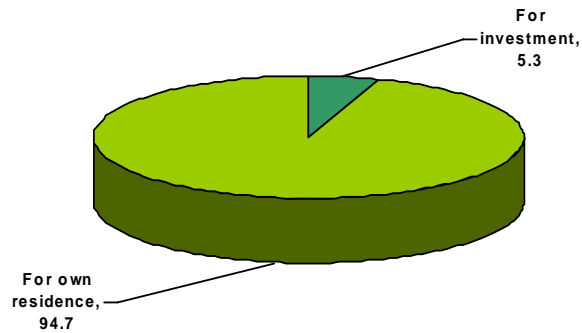
Other reasons the demand side is weak, are that the buyer needs to know his/her way around the Palestinian society and its market in order to be able to find and value a good property deal. He/she needs to know how to identify sellers, brokers, learn about the informal/formal market process including how to appropriately engage with notaries, IPAs, and information from the informal lenders. He/she needs to understand how to engender trust and become accepted so they can gain access to the pool of information on properties for sale. Such barriers of entry create a bias to investors and sources of financing. Investors are usually Palestinians from abroad – or investors from the region that know how to handle

the transactions costs, the culture, and ineffectiveness of the system<sup>24</sup>.

### 5.3.7 Cash is the preferred source of financing

With a significantly limited range of investors a bias is created in the market towards cash as the main source of funding. Cash is secure, liquid, and quickly guarantees the closure of the financial transactions. A remarkable 78% of property transactions are conducted using cash. This is a typical picture where the frequency of transactions is informal and short term, almost immediate. The majority of loan applicants require funding for the purpose of purchase is for residential use.

**Figure 5 Reason for Property Purchase (as a percentage)**

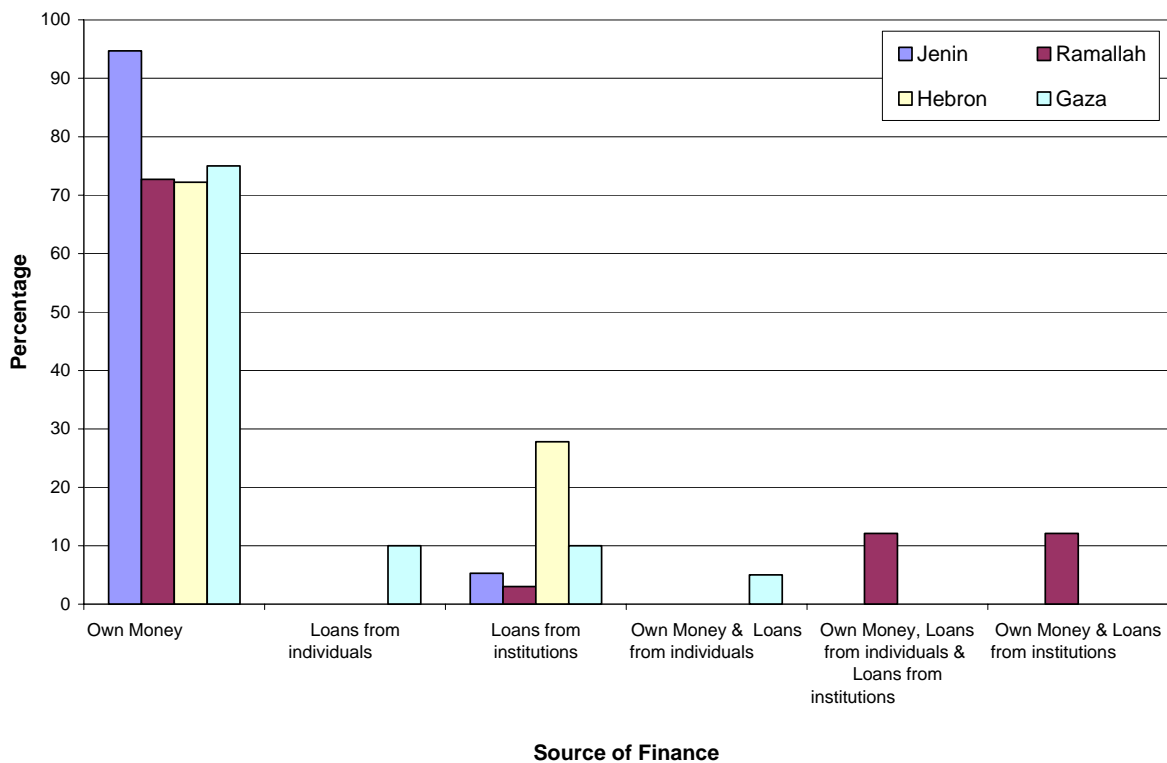


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<sup>24</sup> This characteristic is similar to some of the countries in the region. For example Egypt and recently Lebanon, however, Palestine's non dependency culture gives more of a positive feeling that a reform of the formal system will be faster – better accepted and adopted – resulting fast into a open, modern, and secure property market.



**Figure 6 Sources of Financing Land Transactions**



Only 12 % of the financing is loan based. 10% of such loans were found to originate from Islamic banks. Such loans are ways to facilitate purchases of homes and other properties. Islamic banks provided mechanisms for lease-to-own loans. This is common among Islamic traditions where the property is registered at the name of the Bank and each installment paid by the borrower the equity is transferred progressively to the borrower till his last payment when the equity is fully transferred to the borrower. Loans from Hebron and Gaza are almost in total requested from Islamic Banks (where the loan is not based on interest but on gradual equity transfer<sup>25</sup>) and NGOs. This strongly reflects the influence of religious culture that prohibits the concept of interest accumulation.

Foreclosure has not been applied to such loans and defaults are minimal. Hebron seems an outlier in many of the questions of our survey. Islamic Banks are perceived as more trustworthy institutions that work with the Muslim community to help and facilitate their life asset management. Hebron is a community with less than 10% registered properties yet it is able to operate based wholly on trust among its Islamic community were the Islamic Banks are a main part.

**Box 4 - Eight sources of financing property development**

During the surveys with the stakeholders the following eight sources of finance were presented leading to the same conclusions that our household survey gave us. These sources are:

- a. *Government support – provided through* the Palestinian Housing Council. This council is an entity supported by the government that channels EU, World Bank and other donor money coordinated very closely with the Ministry of Housing. It started its operation in 1990s

<sup>25</sup> Interest payment is not explicit – it is calculated within the gradual percentage of equity transfer.



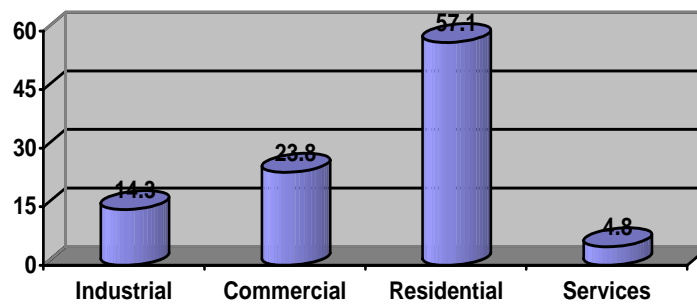
- b. *Municipality supported Housing projects* - financed and supported by the municipality for their employees. Repayments are deducted from their monthly salary.
- c. *Housing Cooperatives* - operate as a special purpose vehicle. This works as a non profit organization but for private developments. It should have a minimum of 12 members. The cooperative asks from the PLA the available plots for purchase and apt construction. These are plots on state lands. This type of financing has been available for approximately 10 years. The opinion is that this type has not been a very successful one due to management, and organizational problems, and problems with the application of the condominium law and registration of ownership subdivisions. Subdivisions are not finally registered on time (sometimes they pent for years) Banks therefore, cannot transfer the mortgage to the name of the independent owner rendering foreclose more difficult in case of default of one member; a less attractive proposition for a bank.
- d. *Real Estate Companies* - these appeared after the PNA was created and it's only for private housing. They are used to buy and sell land parcels and secondly for building houses and selling apartments.
- e. *Social Organizations Housing projects* - Professional Associate / churches / associations.
- f. *External Market Funding for Housing* - Donors / external via government or via non-governmental organizations. Usually channeled by the Ministry of Housing.
- g. *Private Bank Financing*
  - Direct Financing – through a line of credit for the developer
  - Mortgage Initiator - lease to own. Banks own buildings and give them out for rent or lease or sale. This is an investment decision by the banks. Apparently (according to Tawfic) this action is used by the Banks to by-pass the law that does not allow them to be operating as real estate developers.
  - The Bank creates Real Estate Companies – this will fall under #4 in the category of Real Estate Companies.
- h. *Individual Developers and Individual Financing* - More than 80% of the constructions in Ramallah fall under this category. They do business in zones A/B and mainly in C in West Bank and the Gaza. This category of financing usually does not use formal Banks. There are trade agreements where exchanges between materials and the final product, such as a built apartment are negotiated. For example one provides his/her plot of land in exchange for receiving 3 apartment units, or one provides the cement and receives 2 apartment units.

Regarding the registration of properties or land the conversation led to the conclusion that the process is quite cumbersome. The burden is especially felt on the request to present a tax clearance of the property throughout its registered life.

Figure 7 shows the main projects for financing by financial institutions. Regarding the financing of Agricultural lands and use, financing is very limited because of the precariousness of the sector due to the political situation. However we do find financing in:

- Oil Presses (pledging the machinery)
- Quarries
- Water Wells
- Agricultural marketing

All these projects require presenting a feasibility study, again reputation is very important.

**Figure 7 Most Common Type of Property Financed by Financial Institutions in the Last Year**

### 5.3.8 Financial products of formal credit providers are tailored to the informal market

Informality of the Palestinian property markets and the financial products available fall short in its efficiency and is not reaching the possible financial and economic returns of a formal market. There appear to be three parts to the problem, registry inefficiency and costliness, a lack of governance and uncoordinated set of regulations. Firstly there are a lack of incentives for new owners to keep changes of property ownerships updated at the registry, the requisites to register are costly and cumbersome often irrelevant to the actual ownership process, as the system stands today there are almost no market benefits to register. Secondly the lack of good governance regarding civil service and specifically the organizations involved in the property rights process reduces the trust in the existing system, involving the PLA, Courts, and Municipality when involved in issuing building and occupancy permits. Thirdly the rigidity of the regulations and convoluted history and implementation of regulations affect large issues of rent control, no formal “graded” Administrative Dispute Resolution instead only enforcements through the court system which are ineffective, costly and cumbersome. The empirical evidence suggests that there is an urgency for change. There are also a number of problems associated with financial products, particularly mortgages. These are described in detail below.

#### **a) Mortgages and the financial market based on property are primary and rudimentary.**

Mortgages are a relatively new instrument. Today’s mortgages cannot yet be used as a basis for the securities markets, secondary bonds market. Some new market players – such as the Palestinian Mortgage and Housing Corporation, have started to issue mortgages. However the long history of informal and insecure property rights system and the lack of market awareness among owners and policy makers have only enabled a cumbersome and small property market lacking the capacity to develop into a robust secondary market. A secondary market among other factors requires a large pool of formal properties, considerably larger than 30%, so that property values are not distorted. Secure property registration is essential and the availability of PLA information in order to get secure and uncontested access to the financial and legal weights of the rights. The ability of all parties to enforce the rights and the ability to enforce foreclosure effectively is difficult. In addition financial policies should not reduce the liquidity of the market, for example through rent protection or rent control.

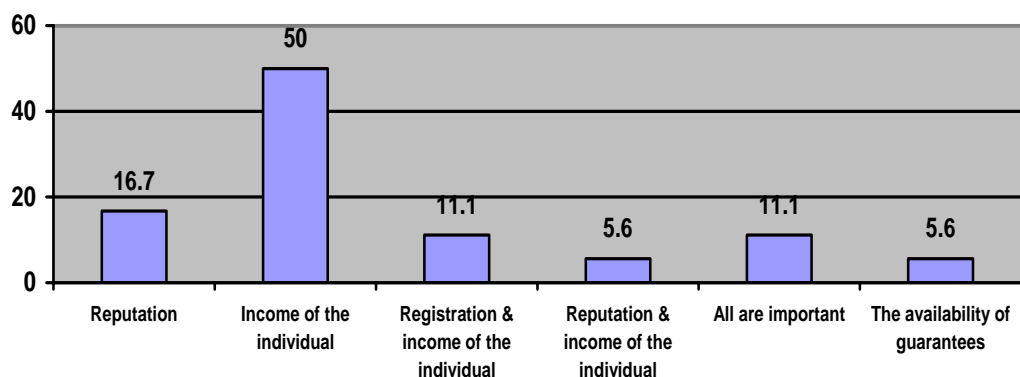
### b) What is a mortgage in Palestine?

Although the financial product terminology is identical to the one we know in developed capital markets it functions differently in informal land markets in Palestine. The recognition of such differences is imperative especially in order to develop a reform agenda. One main distinction is related to the concept of mortgages (guaranteeing a home asset for a home purchasing loan of 30 years for example). Loans are usually personal and based on the income of the borrower and reputation. The western concept of a mortgage is very new in Palestine and is only taken out with a loan term of 1-2 years. Land and property would be used in loans only as pledges-guarantee in case of insolvency or in the case there is a need for additional guarantee to the yearly income of the borrower for financing a project of any sort. This latter concept is the one commonly understood as a mortgage. It is not considered a worthy action if it denotes insolvency as this also cause a social blemish. When used for the financing of an entrepreneurial project it is considered a risky activity. Mortgaging where property is used as collateral is also not popular because of the difficulty in executing foreclosures. While there are laws supporting this, informal activities largely prevent this from occurring.

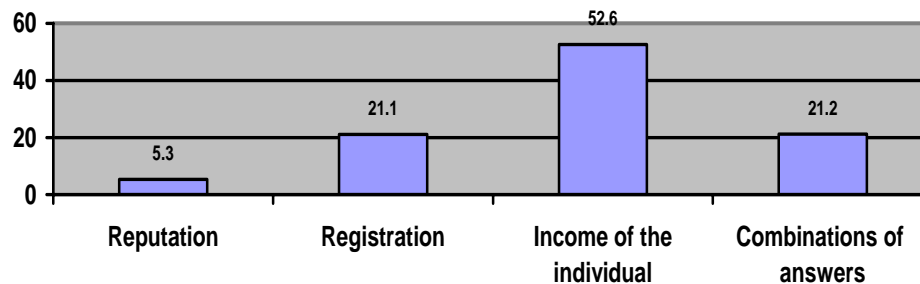
The “mortgage” is therefore not heavily based on the valuation of the property and rental potential of the property. This is because the property market is informal and thus less liquid, distorting the property prices and the predictability of their return. A steady income flow and the reputation of the borrower’s capacity to make repayments in the community from which he is borrowing prevail.

In general loans and mortgages where property is not collateralized, finance institutions rank requirements of borrower’s income (steadiness and amount) and borrower’s reputation highest. In cases where property is used as part of the loan guarantee with a property these remain significant however some weight is placed on the registration and security of the property. (See Figure 8 and Figure 9)

**Figure 8 Finance Institution Criteria to Finance Construction**



These results refer to finance institutions response to financing the construction of a building where the registered property is not always used as guarantee.

**Figure 9 Finance Institution Criteria to Finance a Mortgage**

Results in Figure 9 are shown as the distribution of the financial institutions most important criteria for accepting a loan request where property is used as a guarantee.

In both cases the value of the property ranks last. In developed formal property/land markets the value of the property ranks 2<sup>nd</sup> or 3<sup>rd</sup> as it is important to know the value of the property, in case of a possible foreclosure. Informality in the Palestinian market distorts the loan analysis and requisites and is unregulated.

Checking the desire of moving more towards real mortgages we note a 95% positive response by the financial institutions when asked if they finance projects unrelated to the mortgaged (collateralized) property. Therefore this is a positive trend in behavior that would support development of an open market. There is impetus and interest from the financial sector for a secure and robust property rights registration system. This can help as a catalyst along with the other positive elements. While this is of little use at present due to the small market size, it shows potential and an attitude to accept formal property market systems.

### c) Reasons financial institutions reject mortgage loan petitions.

The surveys suggested that some of the main reasons the Banks that do issue mortgages will reject mortgage applications that use land as a guarantee for a project are:

- A lack of updated registration between the proposed borrower and the property in question.
- Knowledge that the proposed mortgaged property will be rented. This is a disincentive because rent control laws that remain from the Jordanian period make rental property foreclosure almost impossible and there is a strong prevalence of dispute resolutions to accept the status quo. Banks ask for a notarized affidavit that the borrower will not rent the property. There are also occasional field inspections<sup>26</sup>. Even if they get a notarized affidavit, they would be reluctant to go ahead with a mortgage as foreclosure must go through the court and this is an undesirable course of action as it is very expensive in time and usually non conclusive.
- Knowledge that the proposed mortgaged property is already rented. The bank also asks for a notarized affidavit that the property is vacant or under the usage of the owner. The bank engages in random field

<sup>26</sup> Interviews with the Legal department of the Arab Bank

inspections as well. Similar to the earlier point, the banks would prefer not to handle as they do not wish to end up in court unable to foreclose.

- Financing a condominium construction. Building permits and habitation permits can be delayed for a very long time for the overall construction as these permits are issued first for the overall building and then subdivided issuing a registered title for apartment unit. If even one of the corporation members does not meet all requisites for the permit to be issued, the bank's ability to charge its monthly mortgage fee is stalled until the formalities are all finalized and individual titles are issued. In addition the Condominium law is not applicable throughout the occupied Palestinian territories.

**d) Banks prefer to apply mortgage loans to vacant or new construction projects (commercial or first time residential), and do not encourage renting out the mortgaged properties.**

In the West Bank and Gaza there is preference for banks to mortgage new constructions or vacant properties. 40% of the sample from the Financial Institutions' survey replied that they would not accept a rented property as a collateral as it is very hard to evict the renter. They make legally sure as well as with inspections that the properties are not rented prior to being mortgaged so that they can hold the right of foreclosure. The same applies for the properties after they are mortgaged; banks prefer that they are not rented out.

The transactions costs of making sure that the properties are vacant and will not be rented out after the loan are considerable<sup>27</sup>.

As foreclosures in 3 out of 4 times ends up in court, banks will do as much as possible to avoid having their client defaults as foreclosures end up being more costly in both time and money.

Such a problem is serious as it hinders the growth of the property market for investment and commercial usage. The usual practice for investments is to have the ability to rent out the mortgaged property to a relatively liquid rental market in order to receive the yield of the property.

In the cases of Agricultural land very little lending takes place. This is due to the precarious situation of inheritances not been registered and the fact that agricultural land is mainly in areas C.

**e) There is no registration of property based financial products (i.e. Property Lease) other than mortgages**

Most developed land markets are based on the trading of a variety of rights such as ownership, land lease, property lease and usage rights. This allows for larger liquidity in the market and the possibility of a series of financial derivatives.

In the case of Palestine, there is only one immovable property right registered and that one is the "transfer of full property ownership"– on the basis of which a mortgage can be issued (and it is registered as a weight to the property). There is no promotion for the registration of long term leases that can in turn become the basis for lending. Note: the PLA claims that by law they can register leases however it does not happen.

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<sup>27</sup> Interviews with Arab Bank Legal department

Until recently IPAs were registered in practice but not by law at the registry. IPAs are not a sustainable solution as they have a short time limit. It is suggested that IPAs could be replaced with lease arrangements and the fact that the concept of the IPA is “irrevocable” is an important basis for leasing as it can later be traded.

Products that now can be transformed into leases are “Key Money”. Key Money is a pure response to the informal market created by rent protection and non-registered leases. Key Money is a practice of subleasing arrangements among renters and owners for commercial properties. During our qualitative questionnaires and interviews we came across this practice that can apply for a number of years. This practice works in a similar manner to trading of property leases, lease to own and license. This is a way the informal Palestinian entrepreneur has come about to manage the rigidities created by rent control and non-registered leases.

**f) The judiciary is legally involved in almost all property transactions in the case of a dispute and or enforcement.**

The preferred conflict resolution mechanism for robust formal markets is mediation. The involvement of the judiciary is least desirable as it often introduced costly, very lengthy and ineffective procedures.

For example 75% of mortgage defaults end up in court in Palestine. This is a considerable deterrent to any formal financial institution to engage in building a large portfolio of mortgages. To this end Banks go out of their way to have a reduced number of defaults as they want to avoid dealing with the courts.

Regarding common disputes according to the Real Estate Brokers’ survey when there is a dispute related to the conclusion of a purchase or any other financial or other matter the preferred method of conflict resolution is through mediation or the Sulha (in Hebron 100% of the out of court resolutions are undertaken by the Sulha process<sup>28</sup>) Further discussion on dispute resolution can be found in the Land Dispute Policy Study report.

## 6 Conclusions and Policy Recommendations

The Palestinian land – property market is at a cross roads. The market does not depend on credit provided by State organizations or subsidies. It is vibrant within the informal sector. There is interest for formal financial institutions to play a more important role in the financial markets of the region. This is due to the relatively important remittances of expatriates and growing construction sector as a share of GDP. Also there is pressure for the PNA to create its own State which tends to increase the urgency to formalize the land market and enabling institutional and regulatory behavior. Incentives however seem to be conflicting among the owners and users of the registry and the financial institutions as well as real estate brokers.

### 6.1 Palestinian Reform Desire

The few financial institutions that compete in the international market (Arab Bank – National Association of Mortgages) wish to see this transformation as soon as possible as they perceive the catalytic importance of secure property rights in a formal registry

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<sup>28</sup> Sulha definition in Robin's report.

system for capital markets. Such institutions start to require secure and formal requisites from their borrowers for mortgage lending. However, the leap is a very large one as incentives among the lenders, the borrowers, and the State are not aligned. Property owners were found not to perceive benefits from having the market transformed into a formal one. To them “going formal” means dealing with the existing registry system, high transactions costs, presentation and payment of unpaid tax receipts, having to resolve convoluted inheritance issues, and most importantly revealing to the public their private business and having to deal with inefficient public organizations. The individual benefits are not obvious and the public will require a significant amount of convincing and public awareness before they voluntarily participate in a formal market system and follow the regulations set by this.

This duality of intentions is based on the simple fact that today the formal property rights system is not effective and secure and there is a perception that registered information at the PLA may be compromised which is further upheld by the lack of transparency and sharing of registered information. In addition the significant majority (78%) of property transactions today are cash-based and trust-based reducing the financial dependence of a formal property right. After all informal property markets are ingrained in the Palestinian society. Legal remedies have typically harmed the situation rather than helped it. In addition, today according most financial institutions, products and market behavior are based on trust and reputation, ad hoc valuation techniques and much less on formal market analysis parameters. They can only operate with what is the reality on the ground thus they reflect the needs of the informal market and the more powerful players involved. Such a reality hinders the interest, at least from the owners’ point of view, for any change.

This picture promotes the parochialism of the markets, reduces labor and population mobility, and undermines the growth of property and capital markets. It reduces security and transparency in property transactions encouraging a market based mainly on supply “sellers market”, with cash and short term opportunistic investments. This behavior also develops frustration among market players, owners, construction finance, and bankers that wish to grow their market transactions and business at any levels, with intentions to eventually provide mortgaging finance, with securities based on property assets.

The Palestinian market players present a unique ability to adapt and participate in a relatively complex market environment which also includes political instability. At present the Palestinian market is not a developing market. The property market is assessed as being functionally restricted, and needs to be given the appropriate level of security and robustness for it to grow and expand.

Reform appetite exists from the side of the Financial Institutions and Real Estate Brokers as the benefits of a formal market are realized. As the Palestinian market becomes more open and trust starts to erode due to population movement, it is thought that owners will become more assertive for reform as they seek security instruments. This is expected behavior when citizens have not developed dependency with the Government nor any entitlement mentality. This is an important starting point for any change and reform of the formal property rights system as the starting parameters are favorable to a change towards a market friendly property market. This will create a push coming from the average citizen rather than from the State, an additionally significant point to note is that the common Palestinian citizen does not indulge in State subsidies or credit lines but has learned to operate independently. This is a very important issue as it can be one of the explanations why Palestinians are



more market oriented rather than State subsidy dependent.

## 6.2 Findings Summary

The Palestinian land market today is considerably informal forgoing much of the socio-economic benefits. The market is also fundamentally restricted due to restrictions in the freedom of population movement. As basic economy and political stability stabilizes market transactions are expected to increase.

The level of informality in this study is estimated at more approximately 85%<sup>29</sup>. It is a result of a constellation of a series of property rights' laws and regulations throughout history, which followed the different visions occupants had about land and its management. The outcome is a series of entry barriers to become formal and a series of negative incentives in remaining formal.

Complications in becoming a formal market player and remaining in the formal market are:

- High transactions costs rendering both first and subsequent registration costly and cumbersome<sup>30</sup>.
- Limited trust in the public service provisions. This lack of trust and confidence renders these organizations and the registration process weak and ineffective.
- The requirements for registering subsequent transactions for the users to recognize real social and economic benefits. So far these benefits are not obvious, so transactions do take place informally adding considerably to complication the application of inheritance shares, emigration, and expropriations.
- Payment requirements of property taxes for all owners that have not registered the transfer of property till the final transfer.
- Unpredictability of rules and requirements for registration. There is also high level of discretion.
- Enforcement of property rights are costly and take a long time as the Judiciary frequently becomes involved.
- Lack of homogenous and coherent land and property management policies vision and mandate, as there is absence of good governance regarding land and property management.

The resulting situation is a small formal market. The relatively informal market while vibrant has no ability for expansion that will benefit greater economic potential. There is a lack of investment predictability on land and property, low levels of transparency in the transactions leading to opportunistic investments, a substantial waste of resources both tangible and intangible for the private and public sector.

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<sup>29</sup> This figure is an extrapolation from the 3 surveys undertaken.

<sup>30</sup> See Dabbas' report

## 6.3 Recommendations

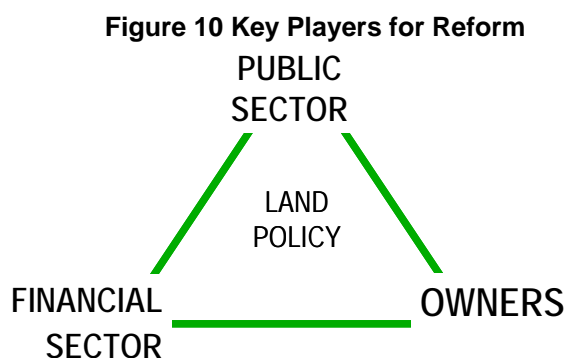
The initial section provides a holistic framework for reforming the property market based on the findings of the study. Following this, more detailed recommendations are provided to deal with some of the major obstructions transforming informal market instruments and dealings into the formal market or at least into more regulated market behavior. The recommendations were delivered in a workshop with stakeholders.

### 6.3.1 Reform through principles of good governance

A property market forms part of the economy's governance as it is based on the effective and efficient application of contracts and trust in the formal public organizations. Therefore a property market to function properly needs to follow principles of good governance where incentives are working towards a reform agenda of social and economic independence and sustainability.

It is important that the State and policy makers define their role in the reform followed by placing clear objectives for land and property in supporting the economy. This is of primary importance as it will be the guiding principle of the course the Palestinian land market takes. It will clarify the actions and policies that will follow as it will finally clear up the property rights field from historic applications of rules that are still active today, confusing and restricting the formal market.

Establishing a reform agenda based on good governance is aligned with the principle values of Sharia law. Such an exercise will create a unified agreement across all sectors and stakeholders (See Figure 10) and will allow for the alignment of incentives among all players. This objective must be translated into the mission statement and objectives of the organizations involved in the overall property rights system starting with the PLA. These policy and mission statements also require supporting implementation strategies to ensure the reform is realized.



Clear definition and security clear economic aspect of promoting property based markets that will be used as catalysts for the growth of capital markets and the Palestinian economy. Developed economies become stronger and robust when their capital markets are backed considerably by land and property based financial products and when they have a very high percentage of mortgage lending to GDP. For example

Denmark has more than 80% mortgage lending to GDP and the US more than 50%. In this case financial market's fluctuations are less acute. Specifically, land policy must also cover the social aspects of an evolving Nation State.

### Box 5 – Best Principles for Reforming Informal Land Markets

- Have Political Will that creates a champion for reform through time.
- Share a holistic vision for the role of Land and Property. All ministries and organizations must have this shared vision, especially those involved in Housing, Agriculture, Economics, and Infrastructure.
- Translate the vision into a clear mission and objectives with support from written rules (laws and regulations)
- Translate this mission to the laws and regulations of the organizations responsible for the implementation of the property rights system. These require clearly defined objectives, an internal structure, quality control guarantees and oversight by the public and private sectors.
- Build a Strategy for the implementation of the mission and objectives. A critical ingredient in the reform process is to decide *which* organizations will take the responsibility to implement the new policy and *when* this will take place at each city. A time line of priorities and an action plan can support this process. It should also be established *Who* will be responsible to oversee the process and *How* client's feedback takes place is also important.
- Most importantly the reform strategy must be Simple.

#### 6.3.2 Rebuilding the Palestinian Civil Service

There is limited trust in the public sector and the services provided. The opportunity for the PNA to establish a public sector "from scratch" requires discipline and courage in the face of a strong and resistant informal sector. A number of key requirements must be met for this to unfold.

##### 1. A civil service reform agenda focusing on land should be the starting point.

- a. Strong political will champion the reforms is essential as the changes involved will require a serious amount of legal and regulatory fine-tuning.
- b. State policy makers should work towards the **codification of informal land market behavior where appropriate and applicable**. As a result laws will reflect the social behavior and local incentives which will allow for greater incorporation of users in the formal market.

The temptation to adopt foreign policies is strong and policy makers ought to use lessons from their own history and local informal behavior. Lessons can be learnt from the study of foreign solutions but these shall be only used to provide options in creating a local solution. Resist the temptation of using the usual quick solution of adopting rules, laws, and frameworks from other countries that seem to be operating well in their

contexts.

- c. As a first point, it is important that the State policy makers **define the objective** they want to apply around Land. What social and economic aspects of land they wish to achieve. Do they wish to handle land as an asset and create a market around it, building secured asset regulations and an administrative framework to support this objective? Would they prefer to treat land as a primary social good for immediate shelter and subsistence? Depending on the objective, land policy and management will change accordingly. So far it seems that the PNA wants to manage land as a secured asset and be able to receive both the social and economic benefits of a robust and liquid land market. Such an objective before being effectively implemented must be well communicated among the organizations involved in the land market and property rights management system.
- d. The above mentioned objective must be translated into the **mission statement and objectives** of the organizations involved in the overall property rights system starting with the PLA.
- e. PLA should remain autonomous with the aim to become self sustaining and a profit making institution in the medium term. The PLA should continue the reform path it has started and structure itself with internal and external operational checks and balances. In this regard the recommendation is to:
  - i. Streamline the PLA procedures
  - ii. Make procedures public and clear to all users –citizens and public organizations
  - iii. Create a feedback mechanism for the users when the procedures are misused or badly handled
  - iv. Depoliticize the functioning of the organization through specific employment frameworks and structures.
  - v. Establish a bonus structure for the employees as well as an accountability mechanism – this will reduce the unwarranted discrepancy of bureaucratic procedures by PLA officers.
  - vi. Create Employment Manuals
  - vii. Create Operational Manuals
  - viii. Establish a strong legal department in the PLA that will support the processing of operations with the cases it handles.

Such a reform will require a deeper analysis that will produce the effective and efficient functioning of the basic organization responsible for the property rights systems. ***A thorough analytical study of reforming – and restructuring the PLA should take place including a study that will define the strategy of applying the new land objective closely aligned with the development of the National Land Policy Framework.***

- ix. Following the above recommendations PLA's information should become public to start correcting the sellers' bias that exists in the formal market today. Open public information will facilitate

the increase of the demand side in the market. This will enable better adjustment of property prices, a wider horizon of investors, not only Palestinian and the region, but also investors outside the region.

## **2. Registration procedures should facilitate formalization of the accumulated unregistered claims stemming from Inheritances and Absentees.**

Rules of inheritance and the bureaucracy behind their application increase transactions costs. Although the inheritance rules are very clear continuous unregistered transfers have created a bulk of informality that needs to be resolved in the short term. ***A detailed study of procedures to formalize inheritances is suggested as this is a large reason for the perpetuating informal land market.*** An action plan needs to be developed to capture the current market after inheritance issues are resolved. The process should be simple and easy to apply. It should be based on the introduction of allowing the transfer of inheritance shares from an unclaimed and non registered share to the surviving claimants. While many inheritance claimants reside in Palestine, a large portion of them are abroad.

In addition to inheritance issues are problems with identifying absentee owners who have not come forth to register their property because of fear it will be confiscated by the Israelis. For absentees owners as well as those claiming inheritance rights, the suggestion is to create a timeframe of about 2 -3 years of requesting owners to come forth to the respective Diplomatic missions (if abroad), or the Palestinian Representative offices and religious authorities. Claimants will need to present their evidence for registration to be sent to the respective PLA offices in Palestine. The 2 -3 year period should be established in order to broadly inform Palestinians of their rights on their lands and to increase awareness that registering them with the PLA will strengthen their rights. In the case no claimant comes forth the property will vest with the existing relatives of the family and should be registered as such by the PLA.

The idea is to harmonize the land market as much as possible, collecting more than 50% of the informal lands held by unregistered absentees and inheritances. The final registration of ownership should take place in an administrative manner by the PLA facilitated by its legal department with an assurance of having a non objection from other claimants. ***A study on the strategy and action of making this recommendation applicable should take place.***

The end result ought to be a quick way for the claimants to sell their shares through the PLA to whoever they wish including their relatives.

## **3. Remove procedural barriers and disincentives regarding property registration.**

### ***3a) Eliminate the requirement to present taxation clearance receipts for processing property rights and issuing property registration at the PLA.***

International best practice suggests that registration requirements must be strictly related to the property ownership and nothing else. Any other mixture will promote a disincentive to keep properties in the formal sector.

This recommendation fits in the clarification of the civil service organization. Each

public sector must be concerned with the delivery of its objective and mission to its constituents. Objectives and missions of various organizations must not be mixed. The requirement for the owner to present a tax clearance of his taxes, as well as a tax clearance of all accumulated taxes from the previously non registered owners of the same property proves to be a serious burden for the prospective registered owner. There is also limited premise for these taxes as they do not add anything to the proof of ownership. In reality such a requirement is used as a check to prevent tax evasion. This however should be the mission of the Tax Department and Ministry of Finance but not of the PLA or any other public entity that is providing a tangible public service to the citizen. Citizens will think more than twice to approach the PLA especially if the property has not been kept up to date. Mixing the missions of public organizations is confuses incentives and results in losses for everyone. Such policies, of crossing the missions of public organizations have taken place in many countries with poor results.

***3b) Reduce and Streamline procedures created by the Municipality and encourage application of the Condominium Law.***

The Building and Habitation permit procedures issued by the Municipality are variant, non standard, and allow for discretions applied by the officers. Their processes are long, expensive and unpredictable.

Streamlining these procedures and reducing them to the necessary essentials will allow for the subdivision of properties to take place swiftly and with minimal costs. This will reduce rent seeking behavior and a large amount of transactions costs leading to a faster and more secure property transfers.

Such a reform will stimulate the effectiveness of the condominium law as the registration of subdivisions will be more effective (faster registration of individual apartments) allowing the financial sector to further develop its mortgage market.

**4. Eliminate legal and regulatory barriers that hinder the robust development of a formal financial market based on property**

***4a) Rent protection should be abolished.***

Rent protection is a practice based on the Jordanian law of 1958 and has locked rental prices to a significantly low level. Such a policy has created market distortion in the primary property market by effectively not allowing for the disposition of the asset once tenanted. Secondly distortions are seen in the financial market based on property mortgages as it effectively annuls foreclosure.

This policy has created large distortions resulting in a large loss of economic revenue and financial resources. The informal market has come up with a creative way to come around the problems. The creative solution is the commonly known "Key Money". Key Money is one way of going around rent protection price ceilings as it introduces an informal type of long term leasing – where tenants are able to change with the paid approval of both the original owner, for approval to change the Key holder, and the original tenant whose protected by the rental laws.

Rent protection has resulted further in the non-transparency of both the sales and rental market making formal prices sticky but informal ones uncontrollable and inequitable.

***4b) Introduce leasing as a formal instrument***

Introduce leasing of real properties and allow for their formal registration. This will

allow for the transformation of “Key Money” to a formal financial product. Once leases are formal and registered they can be traded in the market openly and also mortgaged as a financial asset.

The PLA is authorized by law to register leases but ownership or usage leases do not exist as formal financial instruments. Such an introduction will release a significant amount of resources to the property market and its derivatives helping the transformation of the informal behavior to being robust and formal.

IPAs should also be registered at the PLA to regulate IPA activities on properties.

***4c) Foreclosure should not be inhibited by legal procedures. Law of Court Procedures of 2001 must be revised. Foreclosure should become administrative also in Gaza.***

As explained in 4a foreclosure becomes annulled because of the overlapping effects of other laws, primarily the law for Rent Protection and Court Procedures. Rent protection inhibits foreclosure and as a result severely reduces incentives for banks to mortgage properties that are used in the rental market. This effect is paralyzing for any property or land market as such markets are based on the investment ability of the assets. The investment ability of assets is directly related on the income they can generate. Rent protection eliminates such income and investment opportunity.

Regarding the 2001 law of Court Procedures the suggestion to amend is based fully on the fact that the judge can establish discretion on a foreclosure that has already started and thus not allow its completion for reasons irrelevant to the foreclosure per se. The tendency today has been to further reduce the issuance of mortgages because the law effectively moved foreclosure to judicial grounds again, and has made possible its annulment on grounds irrelevant to bankruptcy. This point has come to our attention forcefully by the banking sector.

International best practice suggests foreclosures are conducted using an administrative process better allowing the financial sector to have provisions for security of credit.

**5. Legal, regulatory, and document streamlining for the facilitation of the formalization of property owners. Establish a legal division within PLA for legal dispute resolution.**

Create a flexible legal system of registration that will facilitate the streamlining of owners documentation for the friendly registration of their properties. This could be assisted by creating a legal division of the PLA.

Legal and regulatory procedural streamlining of property and land disputes should take place in an administrative manner and only in the case that the claim or dispute does not get resolved should it be sent either to specialized Arbitration or to the judicial system (court) depending on the most appropriate resolution technique.

The background of this recommendation is based on the following: In Palestine we are dealing with an abnormal situation where more than 80% of the properties are informal either not registered or not registered as to the current status. The institution responsible for the registration and normalization of these properties, the PLA as it stands currently should have a strong legal department to harmonize

papers and documentations that are needed in order to incorporate the properties to the registry. The Jordanian law of 1955 has a very clear outline of this resolution process that incorporates 2 or 3 levels of mediation and then in case of serious dispute it is forwarded to either an Arbitrator or sent to the Judge. Applying the Jordanian Law would be a great improvement as the PLA right now does not have a strong legal department.

The recommendation is therefore directed to the management of all cases of informality. Consequently, a process is desired for solving issues associated with the high level of unregistered properties and creating a friendly pro-active arbitration process that will be directed for the resolution of owners' problems on the ground. This will require the creation of a strong legal department at the PLA able to assist resolving minor disputes and registration issues through administrative rather than judicial procedures. For this new activity the PLA should create a strategy of operations and manuals regarding the way to train new legal staff as well as the operation of registration facilitation in the field.

**6. Create accountability for all private players involved in the property market. Brokers and other property transactions facilitators should be registered either at the PLA or in a union of professionals.**

Brokers need to be regulated by their clients as well as by their own professional standards. Since such professional associations do not currently exist but should be introduced to ensure more regulatory behavior and standards.

**7. Systematic settlements surveys to continue.**

It is strongly recommended that surveying of lands and first registration in areas that have not taken place be continued with safeguards that will assure there is a culture to continue with subsequent registration of property transactions, including inheritances.

**8. Establish large Market Awareness campaigns regarding the new activities of the PLA and the benefits of having properties registered.**

Once the legal and administrative barriers are eliminated and a friendlier pro-active registration system is in place, a serious market awareness campaign must take place. Such a campaign will require training of the legal and engineering teams that go into the field. Clear communication materials need to be developed to inform the public of the processes to register and solutions to problems that exist on the ground. This campaign should be driven by the PLA and should run in conjunction with the systematic settlement procedures. Pilot activities can be used as a testing ground for the material, public response and issues that are being raised within settlement areas that can be addressed by improved information dissemination.



## **Annex 1 Sample Selection and Field Work Appraisal**

The sample was selected from the existing records of the PLA. Alpha researchers went to the headquarters of the registration offices of the PLA, where a systematic random sample of 270 records was selected. From the 270 records we retrieved the names of the owners and the location of the property whether its land or a building. There was no other information available in the records about the owner. Alpha researchers managed to get 100 respondents out of the 270 records that were sampled from the PLA. The response rate was 37%.

The sample of records was limited to Ramallah district because of accessibility issues related to the respondents. Moreover, the sample is too small to be divided to the various districts. No significant results can be obtained from splitting the sample. In addition, the process of data collection was very costly and cumbersome due to the lack of information about the owners of the selected properties and their addresses.

Alpha researchers faced several difficulties during the research process:

- Getting the sample from the PLA, we had to there twice before they allowed us to Access the records. Mr. Suleiman Dabbas made an important effort that allowed Alpha researchers to get accessibility to the records at the PLA.
- Locating owners of the selected properties was a serious problem. Alpha researchers had to go to certain villages where the property is located and then they get information about the owner from the local people that the owner is not living in the village any more, but he lives in Ramallah city. And then another searching process starts. When the researchers locate the address of the owner, we had to go two to three times till we find him. And when the researchers managed to get the owner many of them refused to answer because the issue of land and other properties is sensitive.
- Some of the researchers got into trouble with some respondents because they went to visit an owner on a disputed property. The owner thought we were spying on him. We had to bring several people to assure him that this is only a research project. Finally, the owner put an ad in the news paper warning any one from approaching his property.

### **Land Brokers**

A sample of 90 brokers was interviewed for this study. The field researchers make appointments with the brokers before they went for interviews. Many of the brokers did not show up in the first appointment, we had to go back on the average three times to get to meet one of the brokers.

### **Financial Institutions**

A sample of 21 financial institutions were interviewed that works with housing mortgage and mostly these institutions were banks located in Ramallah. Most of the financial institutions we interviewed have branches in various parts of the West Bank and Gaza. They adopt similar policies in their branches.

## Annex 2 Participants from Stakeholder Meetings and Workshop

**Table 1 Participants from First Stakeholder Meeting**

Date:	21/03/07	
Location:	Ministry of Planning, Ramallah	
	Participant's Name	Place of Work
1.	Dr. Atef Alawneh General Manager, Palestinian Capital Market Authority.	Office: 297-3727 Mobile: 0599-225221 E-mail: ceo@cma.gov.ps
2.	Nazmi Abu Maizer Advocate and Legal advisor.	Office: 296-6082 Mobile: 0599-964298 E-mail: maizer999@yahoo.com
3.	Khalil Ansara Legal Public Outreach component leader, Arkan.	Office: 297-1213 Mobile: 0599-252883 E-mail: kansara@arkan.org
4.	Johny Zeidan General Manager, Palestine Mortgage and Housing Corp.	Mobile: 0599-257920 E-mail: johny@pmhc.com
5.	Suleiman Dabas Registration specialist LEI Project Manager	E-mail: sdabasi@gmail.com
6.	Bashar Jumaa Director for the Geographic Center and Technical Support, Ministry of Planning	E-mail: bjumaa@mop.gov.ps
7.	Estephan Salameh Land Policy Specialist, Ministry of Planning	E-mail : esalameh@mop.gov.ps
8.	Hiba Hussein Legal Advisor LEI Project Manager	Office: 296-1733 E-mail: hh@housseini1.com
9.	Tuomo Heinonen Systematic Land Registration Advisor.	Mobile: 0545-990374 Tuomo.heinonen@gmail.com
10.	Filicia Barghouti Public Awareness Specialist.	Mobile: 0599-721921

11.	Tawfik Jabarin Valuer	Mobile: 0599-201817 E-mail: <a href="mailto:emar1982@yahoo.com">emar1982@yahoo.com</a>
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**Table 2 Participants from Second Stakeholder Meeting**

Date:	27/07/07	
Location:	Ministry of Planning, Ramallah	
	Participants Name	Place of Work
1.	Johny Zeidan General Manager, Palestine Mortgage and Housing Corp.	Mobile: 0599-257920 E-mail: johny@pmhc.com
2.	Nazmi Abu Maizer Advocate and Legal advisor	Office: 296-6082 Mobile: 0599-964298 E-mail: maizer999@yahoo.com
3.	Mansi F. Aiadeh Credit Director of the Arab Bank	<a href="mailto:mansi@arabbank.ps">mansi@arabbank.ps</a> Office: 2297-8378 Mobile: 054 649-1296
5.	Khaldon Abu Soud Legal Advisor to the Arab Bank	<a href="mailto:Khaldona@arabbank.ps">Khaldona@arabbank.ps</a> Mobile: 059 967-5617 Office: 297-8302
6.	Hala Rashed Legal Advisor Negotiations Affairs Department Negotiations Support Unit	<a href="mailto:hrashed@nsu-pal.org">hrashed@nsu-pal.org</a> Office: 2 296-3741

**Table 3 Participants of Stakeholder Workshop**

1	Ahmad Khaled	Legal researcher	BZU	599997371
2	Dr. Zakria Salawdeh	MOA	D.G Land improvement	522359903
3	Eng. Baher Marzouk	Bethehem Municipality	Project Dep.	599594495
4	Nabeil Abu Diab	ABP	Director	599355934
5	Khalil Haramé	PPU	Instructor	54389061
6	Atef Alawneh	CMA	CEO	599225221

7	Samer Mana'a			599111596
8	Arafat Asharef			547850874
9	Tawfeq Jabarien	Emar . Eng. Com	Eng.	599201817
10	Mqbel Jaber	PLA		599547644
11	Asri Attalah	Surveying Dep.		599640124
12	Ziad Ghannam		Reporter	599870922
13	Nazmi Abu Meizar		Lawyer	522631193