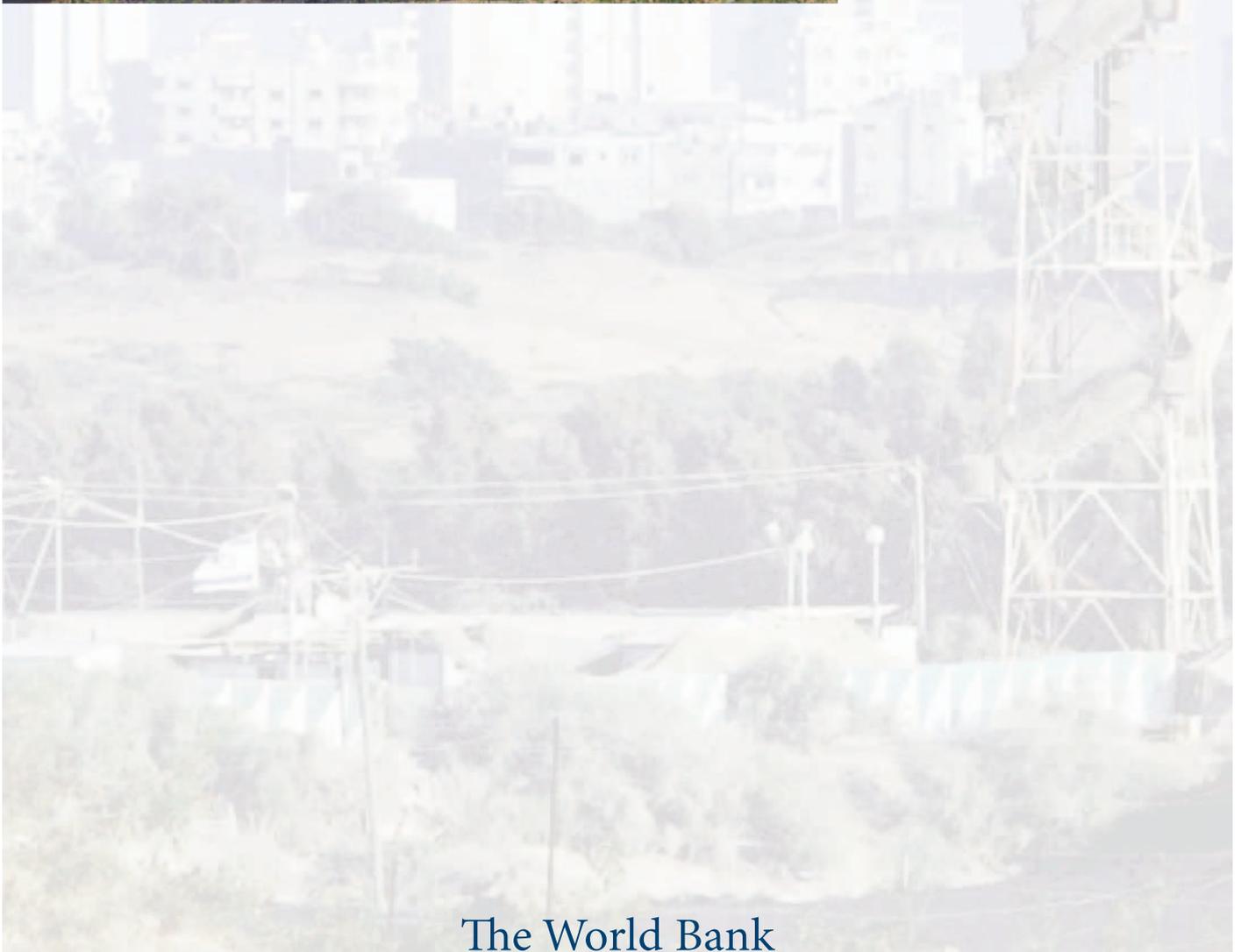




Settlements



Technical Paper IV – Settlements¹

Summary

It is critical that the transfer, management and disposal (TMD) of settlement assets be well-planned. No firm decision has yet been taken by the Government of Israel (GOI) on which assets it will transfer, or by the Palestinian Authority (PA) on how the assets will be used. GOI is prepared to coordinate the asset transfer process with the PA, both from a security perspective and at a technical level. While advocating a position on settlements based on international law, the PA is planning for the use of the settlement assets in the context of the Medium-Term Development Plan 2005-7. The PA has indicated that settlement assets that do not fit into the regional plans for Gaza and the West Bank should be dismantled.

The Bank recommends the establishment of a dedicated administrative body for the disposal of land, using fast-track procedures. In order to ensure the transparency and efficiency of the TMD process, clear rules and procedures should be formalized and agreed upon in advance. The involvement of the general public in the entire process is essential. Building on international experience, a three-tiered institutional approach is proposed – to include the Palestinian Legislative Council, a multi-stakeholder Supervisory Board under PA leadership, and an existing or new PA body for implementation. In the Bank's opinion, a small, light special agency structure – without independent budget authority, reporting to the Supervisory Board, and provided with dedicated technical assistance – would be the preferred set-up.

1. **It is critical that the transfer, management and disposal (TMD) of settlement assets be well-planned.** Data on settlements remain scarce, and no firm decision has yet been taken by the Government of Israel (GOI) on which assets it will transfer, or by the Palestinian Authority (PA) on how the assets will be used. Building on earlier work², this paper discusses potential uses of settlement assets, reviews TMD procedures, and discusses possible institutional and implementation alternatives, including the pros and cons of a dedicated PA body. TMD is a dynamic subject in the Palestinian/Israeli context, and the recommendations in this note have evolved from those presented in the Bank's June 23 report.

I – Settlement Assets and Their Potential Uses³

2. **GOI intends to transfer 17 settlements in Gaza, 4 in the northern West Bank and all military installations. Annex**

1 summarizes salient information on the settlements in Gaza⁴. Several types of settlement assets can be distinguished:

- *public infrastructure*⁵: electricity, water, telecommunications, roads, gas;
- *public buildings*: schools, health and community centers;
- *private houses*;
- *productive assets*: agricultural businesses, manufacturing and industrial enterprises⁶;
- *military installations*; and
- *land*.

3. **The ownership structure of the assets varies.** Most public infrastructure is owned by Israeli service providers – the Israeli Electric Company, Mekoroth (water), Cellcom and Orange (mobile phone infrastructure). Houses and productive assets (intensive agriculture, small-scale manufacturing) are either owned or leased privately or collectively. In order to leave these various assets intact, GOI intends to enter into

agreements with the owners and to enforce these up to the moment that the Israeli Defense Forces (IDF) withdraw from the settlement sites⁷.

4. **The Medium-Term Development Plan (MTDP) 2005-7 of the PA is the appropriate framework for determining Palestinian use of relinquished settlement assets.** The MTDP approach is based on two principles – *first*, it is necessary to look at whether the settlement assets are of relevance to the needs of the populations around them, and to consider whether they can be integrated into the local economy; and *second*, the natural resource base needs to be protected for the long-term benefit of the Palestinian people. Since the settlements were established for a very different purpose, it is inevitable that some assets will not fit in with Palestinian developmental needs; these assets should be dismantled, and the debris cleared away (see paragraph 26).

5. **In reviewing available information, the Bank has assessed the most appropriate uses of settlement assets.** Bearing current data limitations in mind, the following uses can be suggested for consideration by the PA.

6. **Public infrastructure should be transferred to the relevant Palestinian entities⁸ and integrated into the Palestinian systems.** This would allow for better coverage with public services; Palestinian providers have amply demonstrated their capacity to provide these services. Short-term investments may be required to upgrade, adapt and/or expand the settlement systems to connect them to the Palestinian grids.

7. **Public buildings should be retained, to the extent that local population density and the demand for services so justify.** Public buildings in remote settlement sites where houses will be razed should be dismantled. Those that do fit into local development plans should be transferred to the respective ministry (for schools

and health facilities) or municipality (for community centers).

8. **Private houses do not generally fit Palestinian settlement patterns in densely populated Gaza; nor would their satisfactory disposal be at all easy⁹.** Although the Modified Disengagement Plan of June 6 notes that settler houses will in general not be left behind¹⁰, GOI may consider transferring some houses intact if the PA proposed uses not seen as contrary to Israeli interests. Indications received so far indicate that the PA does not wish to receive the houses, though no formal statement on the subject has been made.

- The Gush Katif settlements are situated in an environmentally fragile area, on top of the Gaza aquifer. Urban development in this area would risk destroying this critical resource¹¹. With the exception of some recreational and tourism facilities, these settlements should probably be dismantled.
- Netzarim and the settlements in northern Gaza could be incorporated into local urban planning, but due consideration would need to be given to protecting the shoreline from erosion and pollution.
- The other settlements do not appear to lend themselves to any immediate local purpose, and could be converted to university, conference or recreational facilities, or returned to agricultural use. This would imply the partial or complete dismantling of private houses and other infrastructure in these sites.

9. **Productive assets include industrial and agricultural businesses. Ideally, these should be handed over as going concerns;** this is also the preferred option of GOI. However, there are both technical and legal reasons why this may not be feasible. First, since it will probably be impossible to establish the ownership status of the land in question prior to Israeli withdrawal,

any investor would face the risk of expropriation¹². Second, the PA is likely to declare the purchase of such assets illegal, since it considers the settlements to have been built in violation of international law (see also paragraph 24).

- The only *industrial zone* other than the Erez Industrial Estate is Neveh Dekalim in Gush Katif. It contains less than 20 small enterprises employing only 210 people, of whom 120 are Palestinians¹³. Because of its location and limited economic impact, continued industrial use of the site may not make sense. The future of the Erez Industrial Estate is discussed in **Technical Paper II**.
- Prospects for *agricultural production* on land vacated by Israel (settlement sites, cleared areas and military installations) are more promising. The development of Palestinian agriculture in these areas is envisaged by the PA¹⁴. Even in Gaza's water-constrained environment it would appear to make good sense in the short-term to use a portion of the Gush Katif area for export-oriented agriculture¹⁵, provided that the deficiencies in the border regime can be addressed. In a more benign political climate, moreover, Palestinians could once again capitalize on relationships with Israeli business as well as benefit from GOI's stated willingness to transfer technology and marketing know-how¹⁶.

10. **Military installations could be adapted for use by Palestinian security services**, depending on their location; alternatively, they could be restored to their original state and/or used for agricultural production. The sites would first need to be examined for possible environmental contamination and for any residual ordinance.

II – Potential Uses for Land

11. **A significant amount of land will become available to the Palestinians in Gaza and the West Bank upon Israeli**

withdrawal¹⁷. Since land is likely to contribute more to the Palestinian economy than all other remaining assets combined, its proper use is key.

Current Situation Regarding Land Administration

12. **According to GOI and to donor research, most of the Gaza settlements are located on public land. By contrast, PA data indicate that three of the four West Bank settlements are located mainly on private land.** Some of the public land, however, appears to have been used for agricultural purposes prior to its requisition after 1967 by GOI, and such usage could be considered to have conferred ownership rights¹⁸. In addition, there are small areas within some Gaza settlements that are registered to known private owners. Recently-cleared areas around the settlements¹⁹ are also thought to be privately owned (or to be public land with historical private use).

13. **For private land with ownership already documented, the procedures for land disposal should be relatively straightforward.** In cases where private land is unregistered, or where public land was privately used, distribution is likely to be more complicated. Furthermore, the land on which West Bank settlements are located is classified as Area C under the Oslo Accords. As such, the PA has no legal competence for land registration or administration, or for planning and zoning. In order for the PA to have jurisdiction the land would need to be re-classified as Area A or B.

14. **Until its disposal, all land vacated by Israel would be administered by the PA.** An assessment of options for public or private use of the land, including settlement areas, feeder roads, cleared areas and military zones, is being carried out as part of the MTDP process. The decisions made may in turn require the conversion of private land to public land using the appropriate legal procedures for expropriation of private property, or the sale of private land. Agricul-

tural land cleared around settlements would need rehabilitation if it were to be cultivated once again.

15. **Efforts to improve land administration in the West Bank and Gaza are underway, and a comprehensive land survey has already been conducted by the Palestinian Land Authority (PLA) in Gaza**²⁰. The bulk of land in Gaza has now been officially surveyed, though not registered. Further required steps include building the capacity of the PLA in order to advance the registration process, and adopting clear procedures for the administration and management of public land. Any mechanisms devised to improve the management of public lands in light of the Israeli withdrawal of settlements, and the subsequent transfer of the land to the PA as public land, could serve as a basis for overall reform of the land administration system as it relates to public land.

Key Issues for Consideration

16. **Restitution or compensation?** The PA needs to make two clear policy decisions related to land. Firstly, the PA needs to decide whether land will be returned to individuals that can prove private ownership of the land. In this case, the PA needs to establish clear policies to help determine whether land should be restored to its owners, or whether they should be compensated and the land used for the public benefit. An important consideration in determining whether restitution or compensation should take place is whether new structures, such as a public buildings or infrastructure, are located on the land. In such cases, it may be preferable to expropriate the land and provide compensation to the owners. Secondly, the PA needs to make a decision as to the extent land ownership will be recognized based on prior usage of land for agricultural purposes. The PA might also chose to provide compensation to individuals who were eligible to register ownership based on land usage, but who were prevented from doing so because the land was requisitioned by

GOI. Funds would obviously be needed to pay compensation in any situation where land is expropriated or compensation is paid; these might be generated (in part) from the sale of public land or productive assets (see paragraph 43).

17. **A judicial or an administrative body?** The number of possible ownership claims, based either on prior ownership or usage of land, is not yet known and should be further investigated. The number of potential claims will affect the decision as to whether judicial or administrative procedures would be the most efficient way to resolve claims. One possible option for a judicial procedure would be the establishment of a special lands settlement tribunal under the authority of the Higher Judicial Council. However, even a small number of claims could well overburden the slow-moving PA court system or any specialized judicial body. Judicial procedures may also prove more costly and time-consuming for claimants. This argues for the establishment of a separate administrative process for resolving ownership claims (such as was done in the former Yugoslavia). An administrative body would need to be established by law, and its powers and relationship to the courts system clearly delineated. The administrative body would report to a central PA body to ensure criteria are applied uniformly throughout the West Bank and Gaza.

18. **Existing or fast-track procedures?** Given the current problems associated with land administration, it would be more effective to fast-track procedures for land use planning and land claims administration. Since there is a need to dispose of settlement assets quickly in order to realize their economic benefits, and since land claims may be the most time-consuming element in the TMD process, it would be advisable to separate land claims and dispute adjudication from the disposal of other assets (unless these assets are situated on disputed land).

19. **Community involvement?** Community acceptance is essential for any land administration system. While consultation with the public on many facets of the proposed TMD approach will be needed, there will be particular interest in how land is handled. Land ownership information should be made widely available through a variety of media – such as newspapers, TV and radio, postings at municipal offices, the internet, and public meetings.

20. **Public or municipal land?** The Gaza settlement areas generally do not fall within current municipal boundaries in Gaza²¹. Once the settlement areas are evacuated, these boundaries will need to be adjusted, not least to accommodate expanding urbanization. The PA needs to determine whether public land will transfer to the PA as public land, or to municipalities as municipal public land.

III – Emerging GOI Position on Settlement Assets

21. **GOI is prepared to coordinate the asset transfer process with the PA, both from a security perspective and at a technical level.** Areas of coordination mentioned to the Bank/donor team include planning the disposition of debris, strengthening contacts between Palestinian and Israeli entrepreneurs, strengthening contacts between Palestinian and Israeli utility providers to ensure the continuation of service delivery, and securing the settlement sites during and after withdrawal.

22. **GOI has also clarified a number of issues related to the transfer of settlement assets** – including the following:

- *GOI would not object to the development of a manual of procedures, for use by both parties, explaining the TMD process in detail.* This manual could be prepared with the assistance of a third party.

- *GOI is willing to find ways to facilitate the transfer of businesses and agribusinesses in working order (see paragraph 9).*
- *Immoveable parts of military installations would be left in the evacuated areas if their future use does not pose a potential risk to Israeli security.*
- *Israeli utility companies will continue to provide electricity, water, gas, fuel, and telecommunications to Gaza and the West Bank under current agreements – and would provide services to the settlement sites if proper arrangements could be put into place, to include payment guarantees.*
- *GOI is ready to increase the supply of electricity and water to Gaza, at Israeli commercial rates. Arrangements would need to be worked out between the respective entities on both sides; once again, Israel would need assurance that its utility companies would be paid.*
- *GOI is investigating options for the environmentally sound disposal, in Gaza and the West Bank, of the debris from dismantled infrastructure or buildings.*

23. **In order to move the process forward and to give the PA adequate time for advance planning, GOI now needs to:**

- *decide which assets will be handed over, and in what condition, and to communicate this;*
- *provide the PA with detailed information on these assets and on the sites and military installations;*
- *determine and communicate a precise withdrawal calendar.*

IV – Emerging PA Position on Settlement Assets

24. **The PA believes that under international law decisions about which assets should be left behind intact are**

theirs to make. The PA has indicated that if it requests that certain structures be left behind, the value of these assets could be taken account of in final status negotiations. If the PA decides that certain structures should be removed, it believes that GOI should be responsible for dismantling the structures, removing the debris outside Palestinian territory²², and ensuring that the land is returned in same the state as it was upon confiscation.

25. Preparing for the acquisition of settlement assets is being handled as a part of the PA's Medium-Term Development Plan. This plan incorporates the strategies and priorities of the different sector ministries and entities, although the contribution of governorates and municipalities has been less pronounced. Other preparatory activities for the handover of assets include joint work by the Ministry of Planning (MOP) and the PLA to develop a land ownership registry for land in the settlements, a plan by the Ministry of Agriculture on the use of agricultural assets, and a post-withdrawal plan by the Municipality of Gaza.

26. The PA has indicated that uses of the assets will be guided by the regional plans for Gaza and the West Bank. As part of the MTDP process, these are being updated to reflect an Israeli withdrawal²³. Through this process, the PA is seeking to balance the possible integration of settlement assets with the Palestinians' need for additional urban or agricultural land, the protection of natural resources (particularly water) and the provision of transport modes. The updated plans will provide a comprehensive planning framework for spatial development in Gaza and the entire West Bank, and will serve as a key building block for the MTDP. The PA's position is that settlement assets that do not fit into the regional plans should be dismantled.

27. All PA entities and municipalities, it is stressed, must heed the MTDP and the regional plans, and donors will be

expected to refrain from promoting any projects related to the settlement sites that do not take account of the MTDP and the PA's TMD procedures.

28. Planning an effective TMD process takes time, and an early start is important. While the settlement sites need to be inspected and inventoried before the PA will be in a position to decide on their precise uses, the PA has other immediate priorities, such as:

- *the finalization of the two regional plans;*
- *developing an interim PA position on the TMD process;*
- *the initiation of a process of consultation across the broad spectrum of Palestinian society on the disposal of the settlement assets and on the TMD process;*
- *a review of existing laws and regulations pertinent to the TMD process, and the drafting of new legal instruments that will ensure that the TMD process is fully sanctioned under law;*
- *the establishment of a working group to assess institutional options (see paragraphs 45ff.) and to propose a preferred structure;*
- *deciding whether Palestinians will be permitted to buy Israeli businesses; and*
- *an assessment of how to integrate public infrastructure into existing systems. This will include the drafting of commercial agreements between Israeli and Palestinian providers.*

V – Administering the Settlement Assets

29. In order to ensure the transparency and efficiency of the TMD process, clear rules and procedures need to be formalized and agreed upon in advance²⁴. An *ad hoc* process with ambiguous responsibilities and unclear rules and procedures could be very damaging – both to the reputation of the PA and in terms of missed economic opportunities.

Procedures for Asset Transfer (T)

30. **GOI does not currently intend to hand over assets directly to the PA, though this position may change.** At the same time, an acceptable third party to which GOI could transfer the assets as a ‘custodian’ is unlikely to emerge²⁵. Under such circumstances, the following handover sequence could be envisaged for each settlement site:

1. GOI would prepare an Israeli asset protocol (see paragraphs 32f.)²⁶;
2. the IDF would continue to secure the site once the settlers have left;
3. the IDF would coordinate their withdrawal with the Palestinian security services²⁷, as well as the body designated by the PA to handle the TMD process (see paragraphs 52ff.);
4. the IDF would then withdraw from the site;
5. the PA would declare the site a closed security zone, to avoid any trespassing;
6. PA security personnel would promptly arrive and secure the site;
7. the PA body handling the TMD process would arrive at the site;
8. PA security personnel would search the site (buildings, cleared areas, etc.) and remove anything of a harmful nature;
9. the PA body would prepare a PA asset protocol covering the assets left behind at the site²⁸;
10. meanwhile, GOI would hand over a copy of the Israeli asset protocol for the site to a third party;
11. once completed, the PA would hand over a copy of the Palestinian asset protocol to a third party;
12. the third party would forward the PA asset protocol to GOI, and vice-versa.

31. **If settlements are evacuated in groups²⁹, the demands on PA implementation capacity will be significant.** In principle, steps 4-7 could take place within one day, and steps 8-12 could technically be concluded in no more than one week. In order for step 5 to take effect immediately

upon withdrawal, legislation would need to be promulgated in advance³⁰. Steps 1 and 9-12 could be replaced by a joint Israeli-Palestinian inspection of the site during step 3³¹, possibly with the inclusion of a third party as observer.

32. **The asset protocols would serve several purposes.** They would contain accurate information on the assets left behind, and would facilitate the interim management and subsequent disposal of the assets. If made public, the protocols would dispel rumors about the physical state of the sites at the moment of transfer.

33. **The form and content of the Israeli and Palestinian site protocols should be the same³².** The protocols should be prepared in English (plus Hebrew/Arabic) and should contain:

- *an inventory of all assets left behind, to include an assessment of their working order (including foundations, water and sewage tanks, dumping sites, generators, other moveable equipment, etc.);*
- *an assessment of all damage to remaining assets;*
- *an assessment of the environmental condition of the site, and the identification of any contamination of land (solid waste) or water (wastewater); and*
- *maps of the site, maps of public utility networks and plans of standing buildings.*

Procedures for Asset Management (M)

34. **Assets should be disposed of as quickly as possible to reduce the risk of damage or misuse.** However, experience elsewhere shows that disposal can be time-consuming. It is, therefore, critical to prepare to manage the sites/assets *ad interim*, pending final disposal.

- *The sites will need continuous security protection.* The municipalities and governorates should be consulted on security arrangements, and should be asked to cooperate actively. Site protection meas-

ures should be reviewed periodically to reflect changes in the security environment and/or the decreasing quantity of assets still managed by the PA body.

- *Environmental damage needs to be addressed, and this will require active intervention.*
- *Any remaining rubble or other debris would need to be cleared and properly disposed of, and the sites should then be prepared for future uses.*
- *Valuable assets should be protected using suitable measures (weather-proofing, repairs, regular maintenance, cleaning)³³.*
- *The market value of the assets should be estimated.* This would help determine whether particular assets should be sold at once, upgraded to realize a higher sales price, transferred to the public sector or dismantled.

35. **The management process should be handled by the private sector.** It would be advisable to contract private (preferably local) companies to carry out all functions related to the interim management of the settlement assets (other than security) – under the supervision of the designated PA body, and in close coordination with the PA security services.

Procedures for Asset Disposal (D)

36. **Irrespective of the institutional arrangements selected³⁴, the disposal of the assets and the use of land should be guided by the MTDP.** Once disposal decisions have been made, the PA implementing body should dispose of the assets in cooperation with relevant PA entities. If new information becomes available during the process that makes it advisable to alter planned uses, MOP – in consultation with relevant PA entities and the municipalities – should be the authority to revise disposal decisions.

37. **The procedures for the disposal of assets should vary by type of asset.**

- In the case of *public infrastructure*, assets could be transferred to the appropriate PA entity or municipality using a simple handover protocol, and following a joint inspection that would be made once the sites have been relinquished by GOI and declared safe by the PA security services. The receiving entity would be responsible for maintenance and for further development and, if appropriate, for continued contact with the relevant Israeli supplier. Further protection of these assets should not be necessary.
- A similar process could apply to *public buildings*, should a decision be made to transfer these facilities to the public sector.
- If it is decided to use any cleared *housing sites* for new Palestinian housing, a tender should be issued for the development of the site following due consultation between the Ministry of Public Works and Housing, the relevant municipality, MOP and the PA implementing body.
- *Productive assets* with income-generating potential (agricultural land and facilities, manufacturing plants, tourism facilities) which are not required for public purposes should be sold or leased to the private sector – not managed by a public entity.

38. **Asset sales need to be well-prepared and methodically implemented.** Managing the sale process would be a primary task for the PA implementing body. An asset may first need to be repaired, upgraded or even partly demolished to achieve a favorable market price. Potential buyers (firms, cooperatives, individuals) should be identified and a marketing strategy developed accordingly. The bidding process should be explained in advance to the public, and should be subjected to independent audit. Once a successful bidder has been selected, the asset(s) should be transferred without further delay. Post-sales as-

sistance, such as help in acquiring the requisite licenses and permits, should also be provided as part of the TMD process.

Involving the General Public

39. **The involvement of the general public in planning how the received assets will be disposed of and to whom, and subsequent public participation in the TMD process, is essential.** A broad public consensus on intended asset use and on the TMD process is likely to generate a better sense of public participation and to reduce the risk of looting, demolition or squatting. Assets will contribute more to local development priorities if the views, needs and preferences of the local population are duly considered.

40. **The finalization of the regional plans – determining the uses of assets – as well as the actual planning of TMD – determining the process – should explicitly include consultations with local stakeholders.** Standard methods of community participation should be employed to this end³⁵. Such information would also be critical for establishing the baseline against which the social and economic impact of the asset TMD process can be measured.

41. **The public should be regularly informed of implementation progress.** Various channels should be used, including updates through different media, meetings organized by municipalities, local leaders and associations and the publication of regular progress reports. Importantly, civil society should also be represented at the proposed Supervisory Board (see paragraph 50).

Fiscal Implications

42. **The TMD process will have significant cost implications for the PA.** These costs are mostly unrelated to normal PA operations, and would need to provide for:

1. the establishment of a PA implementing body, or making other institutional arrangements to carry out the TMD process;
2. environmental protection/the clearing of any debris left behind;
3. the protection and maintenance of assets pending their disposal;
4. the improvement or demolition of certain assets prior to their disposal;
5. complementary investments to integrate public infrastructure assets into existing Palestinian systems;
6. managing the sale of productive assets; and
7. public consultations and outreach.

43. **Revenues generated from the sale of assets may be substantial,** especially if the PA decided to auction or lease part of the vacated land³⁶. The need for transparency in such transactions is therefore essential.

44. **Particularly in view of the achievements in Palestinian public financial management³⁷, all income and expenditure transactions related to TMD should be handled through the normal treasury process.** All estimated expenditures should be transparently budgeted for and resourced, and all revenues from sales should be deposited in a sub-account of the Ministry of Finance’s Single Treasury Account.

VI – Institutional Arrangements

45. **The PA is advised to establish a dedicated institutional structure to plan and implement the TMD process.** An *ad hoc*, “business as usual” approach is definitely not recommended – for two reasons. Firstly, this is not business as usual; the handover of settlement assets is unprecedented and will be the subject of high levels of local and international interest. The reputational opportunities and risks for the PA are thereby considerable. Secondly, there is the question of precedent. Not only is good PA performance in the TMD process im-

portant as a barometer for the future – the approach taken should also be one that builds up experience and can be adapted as and when other settlements in the West Bank are handed over.

46. **Decisions on the structure to be adopted need to be taken soon** – and well in advance of actual disengagement, since establishing any structure will take time.

47. **Building on international experience, a three-tiered approach is recommended:**

- the PLC would exercise parliamentary oversight,
- a multi-stakeholder Supervisory Board under PA leadership would exercise executive oversight, and
- an existing or new PA body should handle day-to-day TMD implementation.

The Palestinian Legislative Council

48. **Enabling legislation needs to be passed to avoid a legal vacuum on the date of withdrawal.** The legislation would need to detail the procedures for managing abandoned property *ad interim*, the accelerated land claims process and the structure and powers of the Supervisory Board and any special implementation body. In addition, any budget related to the handover, management and disposal of the assets would require PLC approval.

49. **The importance of the TMD process also argues for PLC involvement.** PLC involvement should ensure healthy public debate on the planned use and on the process for disposing of the assets. This could include regular reporting on the TMD process to the PLC by the Supervisory Board, thereby increasing transparency and credibility.

The Supervisory Board

50. **The importance of the TMD process and its high visibility argue for**

the establishment of a Supervisory Board with broad representation. Membership could include:

- *Relevant PA ministries*, including Planning, Local Government, Agriculture, Industry, Public Works and Housing, Finance, National Economy, Interior and Justice;
- *Relevant PA security services*;
- *Relevant PA entities*, including the Water, Energy and Land Authorities;
- *Non-PA representation*, including affected municipalities, civil society and the private sector³⁸.

51. **Guided by the appropriate enabling legislation, the Supervisory Board would determine the TMD policy to which all PA entities would be expected to adhere.** The Board should also advise the PLC and PA on all TMD matters, as well as trouble-shoot the TMD process, monitor and guide the work of the dedicated PA body and of other PA/NGO/international agency contributors to TMD, and ensure accountability. As the author of the MTDP, MOP may be best suited to chair the Supervisory Board and to report to Cabinet on its behalf.

A Dedicated PA Implementation Body

52. **The Bank's June 23 report recommended the establishment of a PA special agency to manage the TMD process.** It was noted that “practical considerations point to the creation of a special agency” for receiving, administering and disposing of the settlement assets. “The [TMD] task involves a multitude of transactions across PA institutional boundaries, and will be very laborious. The existence of a single responsible agency would clarify accountability, simplify monitoring and provide a single point of focus.” The report also recommended that a third party act as a “technical partner” to the PA³⁹. Since then it has become clear that private houses are likely to be demolished, significantly reducing the difficulty of the TMD task. However, the complexity and reputational issues

associated with the TMD process still demand a very careful approach.

53. **The PA implementing body should be charged with operationalizing the TMD policy.** Core functions could include coordinating the individual components of the TMD process in accordance with MTDP and TMD principles, supervising the activities of other PA entities, municipalities, NGOs or international agencies involved in TMD implementation, overseeing the administration of the land claims procedures, administering revenues and expenditures, and handling local outreach. The body would need a physical presence both in Gaza and in the northern West Bank.

54. **In deciding the most appropriate implementation arrangements, several important factors should be taken into account:**

- the need for public legitimacy, oversight, and accountability, given the sensitivity and complexity of the process;
- the need to involve and coordinate closely with PA entities and municipalities;
- the need for expedited TMD procedures and the consistent application of these procedures;
- the range of technical expertise required; and
- the need to establish an approach that could be used in other parts of the West Bank.

55. **In the Bank’s opinion, this combination of factors argues for a small, light special agency structure. The agency would report to the Supervisory Board, and will need dedicated technical assistance.** It would not need special budgetary authority. It could be formed *de novo* or by adapting an existing structure. Compared to a decentralized (“business as usual”) approach under which PA entities assume responsibility for the assets under their particular sphere of responsibility, this would have a number of advantages.

- Centralizing all TMD tasks in one agency would increase operational efficiency and reduce costs.
- TMD policy would be applied consistently and much more transparently.
- The security forces would have one clear counterpart.

In contrast, decentralized implementation of the TMD process could well lead to unsynchronized schedules, confusing messages, an impression of chaotic management and public suspicion.

56. **Any such structure must not be seen as an alternative power center in Gaza, as this would run contrary to the need to strengthen the PA. Nor can it be allowed to evolve into a bureaucratic monstrosity.** The proposed option is not the only one feasible⁴⁰. The administration of settlement assets by an international agency under international custodianship, however, is strongly discouraged. Its establishment would be lengthy and expensive. Accountability vis-à-vis the PLC or PA would be limited, and a legal vacuum would likely be created (in relation to appeals, for example). TMD implementation by an international agency would also delegitimize the PA: the message conveyed would be that the PA is not up to such a task.

57. **In defining the role of the implementation body, clear account needs to be taken of the part that other PA entities must play in the TMD process.** As indicated above, MOP should have overarching responsibility for planning the disposal of assets. Site security should be assured by PA security personnel. Relevant PA entities and municipalities should assume responsibility for public and municipal infrastructure, respectively, with as little delay as possible. The Ministries of Agriculture and Public Works and Housing should be involved in determining the best uses of agricultural businesses and settlement sites. To succeed, the PA implementation body will need to balance the implementation of its

own assigned tasks with careful coordination and facilitation. This in turn will require significant leadership and political skills.

58. **Presuming that the PA is committed to creating a transparent TMD process and an appropriate implementation structure, the international community should provide the PA with the necessary technical and financial support.** It is further proposed that the PA periodically brief the Local Aid Coordination Committee (LACC) and the Ad Hoc Liaison Committee (AHLIC) on TMD progress.

VII – Next Steps

59. **A number of steps need to be taken soon to prepare for the effective transfer, management and disposal of settlement assets.** The closer the coordination between the PA and GOI, the more effective the process is likely to be.

- *GOI needs to provide detailed data on the settlements and the assets to be left behind.*
- *The PA and GOI need to discuss how settlement public infrastructure can be integrated into existing systems.* This would include the drafting of commercial agreements between Israeli and Palestinian providers.
- *The PA needs to decide which assets it wishes to receive intact, and whether Palestinians will be permitted to buy Israeli businesses.*
- *The PA needs to initiate public consultations across the broad spectrum of Palestinian society on the proposed disposal of the settlement assets, and on the TMD process.*
- *The PA should review pertinent laws and regulations and draft the new legal instruments needed to ensure that the TMD process is fully sanctioned under law.* A special focus should be given to practical ways of handling potential land claims.
- *The PA needs to make a firm decision on the institutional and implementation arrangements that will underpin the TMD process.*

60. **There is no time to lose.** To allow sufficient time to pass the requisite legislation and establish the agreed structures, the process of internal Palestinian deliberation needs to be concluded by the end of February 2005 at the latest.

Annex 1
Israeli Settlements in Gaza

Settlement cluster	Population ¹	Number of built housing units	Type of settlement	Industry and agriculture	Greenhouses (regular) (in dunums)	Organic crops (in dunums)	Total greenhouse and organic (in dunums)	Water source	Consumption type	Water consumption (thousand cubic meters p.a.)
Northern settlements ²	1,412	370 and caravans	Residential	Self-employed; fish farm; services (restaurants, photocopying, lawyer)	-	-	-	Yad Mordechay water company and temporary drill	Home, industry	420
Isolated settlements ³	880	150	Residential and agricultural	Greenhouse agriculture; organic vegetables; spices.	138 ⁴	-	138	Netzarim drill, Kfar Darom drill, Morag drill	Home, agriculture	453
Katif bloc settlements ⁵	5,062	1,531	Agricultural and industrial ⁶	Greenhouse agriculture; poultry farms; dairy farms; ornamental plant nurseries; flowers; light industry (textiles, canned produce).	2,729 ⁷	446	3,175	Aquifer drills	Home, industry, agriculture	6,354
Total	7,354	2,051			2,867	446	3,313			7,227

Source: *Feasibility Study: Relocating settlements from Gaza Strip area*, Israel National Security Council, April 2004.

¹ Population figures are according to Central Bureau of Statistics figures from December 31, 2003.

² Nisanit, Dugit, Alei Sinai.

³ Netzarim, Kfar Darom, Morag.

⁴ This figure refers to Morag, which is the only agricultural settlement within this cluster.

⁵ Bdolah, Bnei Atzmon, Gadid, Gan Or, Ganei Tal, Neveh Dekalim, Netzer Hazani, Pe'at Sadeh, Katif, Rafiah Yam.

⁶ Neveh Dekalim has a small industrial zone comprising factories for printing, carpentry, metal-work, garages and food processing.

⁷ This figure refers to the 7 agricultural settlements in the Katif bloc cluster: Bdolah, Gadid, Gan Or, Ganei Tal, Netzer Hazani, Katif, Atzmona.

Endnotes

¹ This paper was prepared by the World Bank with assistance from UNSCO and DFID; December 1, 2004.

² *Disengagement, the Palestinian Economy and the Settlements*, World Bank, June 23, 2004. Section IV of the report provides an initial overview of Israeli settlements in Gaza and the northern West Bank. It identifies the settlements and their productive potential, discusses the role of the international community, makes suggestions for the handover and disposal of the settlements and their security, and reviews claims on land.

³ Given its preponderance as the most important asset for development, land is discussed in a separate section. The PA also sees the land that will be vacated as by far the most valuable element.

⁴ The four West Bank settlements are small dormitory communities without appreciable productive output.

⁵ Includes infrastructure to access/serve settlements emanating from Israel, as well as located purely within the settlements.

⁶ The Erez Industrial Estate is discussed in **Technical Paper II**.

⁷ Legislation for compensating Israelis for the assets that would be left behind (Law for the Implementation of the Disengagement Plan, 2004) has passed the first reading in the Knesset, including for owners of houses and businesses, as well as for utility providers for the infrastructure servicing the settlements.

⁸ For example, the Palestinian Water Authority, the Gaza Electricity Distribution Company, the Ministry of Public Works and Housing (for main roads), and the municipalities.

⁹ Options for the disposal of private houses, should it turn out that they are not demolished, are outlined in paragraph 79 of *Disengagement, the Palestinian Economy and the Settlements*, op. cit.

¹⁰ GOI's original position is detailed in the Modified Disengagement Plan of June 6. Section VIII of the Plan states that "[I]n general, houses belonging to the settlers, and other sensitive structures such as synagogues will not be left behind. The State of Israel will aspire to transfer other structures, such as industrial and agricultural facilities, to an international third party that will use them for the benefit of the Palestinian population that is not engaged in terrorism." Furthermore, Section IX notes "[t]he water, electricity, sewage and communications infrastructures will be left in place. As a rule, Israel will enable the continued supply of electricity, water, gas and fuel to the Palestinians, under the existing arrangements and full compensation". See Annex 1 of *Disengagement, the Palestinian Economy and the Settlements*, op. cit., for the full text.

¹¹ The soil is sandy and the aquifer is shallow and vulnerable to pollution. The sand dunes therefore need to be preserved.

¹² Either by a private owner – or by the PA should the land be deemed public land, and the investment contrary to the PA regional plan.

¹³ *Feasibility Study: Relocating Settlements from Gaza Strip Area*, Israeli National Security Council, April 2004.

¹⁴ With a particular emphasis on protecting the aquifers through less water-intensive farming methods.

¹⁵ The question of how much land should be dedicated to agriculture and for how long needs further examination. Among the policy variables would be the size of parcels allocated and whether they should be sold or leased; among the objectives to be balanced would be productivity, sustainable management, flexibility over time, and equity. In its June 23 paper, the Bank estimated that only some 3.3 square kilometers of the 32 sq. km. allocated to agriculture in the Gaza settlements is under cultivation, and calculated that a tripling of land devoted to irrigated agriculture could yield perhaps US\$50 million in annual income – equivalent to 5% of Gaza's 2003 Gross Domestic Product. *Disengagement, the Palestinian Economy and the Settlements*, op. cit.

¹⁶ There exists ample experience of Israeli-Palestinian cooperation, such as through extension and training programs prior to the *intifada*. Also, Palestinian agricultural produce for export is currently marketed solely through Israel's Agrexco. A diversification of marketing channels may be preferable, however.

¹⁷ In *Disengagement, the Palestinian Economy and the Settlements*, op. cit., the Bank estimated that 15-20% of the land in Gaza is either used by settlements or is located in their immediate vicinity and not currently inhabited by Palestinians. Similarly, the PA Ministry of Planning assesses the total area under Israeli control as around 20% of Gaza.

¹⁸ Under Ottoman law, which together with British, Egyptian (Gaza) and Jordanian (West Bank) law, is still applicable after IDF withdrawal, if private individuals cultivated public land for a period of ten years, they would develop a lifetime right on usage of the property.

¹⁹ During the *intifada*, the IDF have cleared 'security belts' around the settlements or access routes to them.

²⁰ Current problems in land administration are significant. The inter-ministerial committee established by presidential decree has met only infrequently, and clear policies for administering and allocating public lands have never been established. Prices for the lease and sale of public land vary widely within the same area and transparency for the overall process is lacking.

²¹ However, some land falls within what is considered the natural expansion area of municipalities.

²² The rubble from houses demolished by the IDF in Gaza is of great environmental concern today. (From the beginning of the *intifada* through October 2004, the IDF have demolished some 2,540 housing units, in which 23,900 Palestinians lived. Source: B'tselem Report: *Through No Fault of Their Own: Punitive House Demolitions during the al-Aqsa Intifada*, November 2004.) Rubble is currently treated as solid waste and randomly disposed of around the municipi-

palities; in some cases it has been buried *in situ* by the IDF. Rubble risks polluting the site where it is buried. This is particularly true of sand dunes, which are important infiltration areas for the Gaza aquifer.

²³ Both regional plans were initially prepared in 1998.

²⁴ The Oslo accords do not deal with the transfer of settlements. International law could be used to help determine the responsibilities of the parties involved in the transfer.

²⁵ The Bank has indicated it would not be willing to play such a role, and the PA is not supportive of the concept. A third party would in practice find it very difficult to protect the assets, since it would be loath to employ force to do so – for fear of losing its perceived legitimacy among Palestinians, and out of concern for its own security.

²⁶ The protocol could be prepared at any time before the IDF withdraw from the site.

²⁷ Willingness on GOI's part to synchronize withdrawal with the PA would significantly enhance the ability of the PA security personnel to secure the sites, and thereby avoid looting or unauthorized asset take-over.

²⁸ Representatives of relevant PA entities (in particular, the Ministry of Planning, the water and electricity authorities and the Ministry of Public Works and Housing) and of concerned municipalities should accompany the designated PA body – in order to assess possible immediate uses of public infrastructure, and to determine any immediate maintenance/repair requirements.

²⁹ According to Israel's *Modified Disengagement Plan*, *op. cit.*, the settlements to be handed over are divided into four groups. Implicitly the four groups are to be evacuated sequentially.

³⁰ According to the amended Basic Law, a presidential decree can only be issued in emergency circumstances when the PLC is not in session. Such a decree would then need to be approved by the PLC at its next session – if not approved it is deemed that the decree never went into effect legally. A presidential decree can also be rescinded/amended rather easily. Legislation would provide a more stable legal basis for the process and is therefore preferable.

³¹ Draft inventories can be prepared by both parties independently early on, using existing databases in conjunction with satellite/aerial imagery. Joint site visits after the evacuation of settlers could then be used to clarify and confirm these data. The Sinai Agreement between Israel and Egypt could be used as a basis for such cooperation.

³² Or one inventory per site, if a joint inspection were carried out.

³³ International experience suggests that temporary use of any kind, while it may facilitate the maintenance of certain assets, can be very difficult to reverse. It should generally be avoided.

³⁴ See paragraphs 45ff.

³⁵ Such as stakeholder workshops, focal group interviews and community meetings.

³⁶ The price of land in Gaza varies by location. By way of example, urban land may reach US\$1 million per dunum in the center of Gaza city, but generally ranges from US\$100,000 to US\$400,000 per dunum. Land in rural areas sells between US\$10,000 and US\$60,000 per dunum.

³⁷ See *Country Financial Accountability Assessment*, World Bank, June 2004.

³⁸ Each selected stakeholder group should nominate its representative(s) to the Board.

³⁹ "In this capacity, [the third party] could assist with, and monitor, the asset transfer and disposal process, and could interface between the PA and GOI as necessary. Third party involvement of this kind would help create public confidence that settlement assets would not be misappropriated. By leaving a light footprint, the international community would strengthen, not displace the PA." *Disengagement, the Palestinian Economy and the Settlements*, *op. cit.*

⁴⁰ See *Asset Transfer, Management and Disposal: Options for an Institutional Structure*, World Bank, September 2004.