

4 Analysis of Existing Legal Framework

4.1 Review of the legal and regulatory Framework in the West Bank and Gaza

4.1.1 The Constitutional framework

Until the drafting of the perpetual Palestinian constitution, the amended Basic Palestinian law of 2003 is regarded as a temporary constitution, which regulates the fundamental rights and freedoms, determines the nature of the governing regime, the function of the public authorities in the country, and the limits of the jurisdiction. According to this law, the principle of the rule of law is the basis of government in Palestine. All governmental powers, agencies, institutions and individuals shall be subject to the law. Moreover, the government is accountable to the President and the legislative Council in the framework of the principle of separation of powers. Article 33 of this law states that the enjoyment of a balanced and clean environment is a human right. The preservation and protection of the Palestinian environment from pollution for the sake of present and future generations is a national duty.

4.1.1.1 Declaring a state of Emergency

The seventh chapter of the Basic Law that includes articles (110-114) regulates the declaration of the state of emergency, where the President of Palestine is granted the right of the enactment of a presidential decree for declaring a state of emergency when there is a threat of the national security caused by war, invasion, armed insurrection, or a natural disaster in a period that does not exceed 30 days, and the goals of the decree, the region, and the period must be included within it. And if there is a need of an extension of the period, article (110) allows the President to extend it to another 30 days if a two-thirds majority of the members of the Legislative Council vote in favour of the extension. This council must not be dissolved during the period of emergency. The Legislative Council have the right to review all or some of the procedures and measures adopted during the state of emergency, at the first session convened after the declaration of the state of emergency or in the extension session, whichever comes earlier, and to conduct the necessary interpellation in this regard.

4.1.1.2 Managing the Country by Executive Authority

According to the basic law, the Executive Authority has two heads; the President and the Council of Ministers. The third chapter of the Basic Law identifies the President's jurisdiction exclusively, while the fifth chapter identifies the competences of the Council of Ministers and the Prime Minister without any restriction. The competences of the President can be summarized by the sovereign affairs that do not have to do with managing the country's usual and daily matters. According to the law, the Council of Ministers supports the president do so. Based on Article (63) of the Basic Law, the Council of Ministers is the highest executive and administrative instrument in the country and shall comprise a Prime Minister and a number of Ministers, not to exceed twenty-four. The administrative and executive jurisdictions are from the responsibility of the Council of Ministers except the executive powers of the President, some of the council's jurisdictions that have to do with this report are mentioned in Article(69):

- Preparing the administrative apparatus, set its structure and provide it with all necessary means, as well as to supervise it and follow up on it.
- Supervising the performance of all the ministries and the administrative agency's units, in addition to the coordination between them.
- The responsibility of the maintaining of public order and the internal security.
- Establishing or dissolving agencies, institutions, authorities and similar administrative units belonging to the executive apparatus of the government, provided that each shall be regulated by law.

- Appointing heads of institutions and agencies mentioned above, and to supervise them in accordance with the provisions of the law.
- Determining the jurisdictions of all Ministries, bodies, Authorities, and institutions subordinate to the executive bodies.

On the other hand, Article (85) of the Basic Law stipulates that the law shall organize the country into local administrative units, which shall enjoy juridical personality. Each unit shall have a council elected directly, as prescribed by law. This law shall specify the areas of responsibility of the local administrative units, their financial resources, their relations with the central authority and their role in the preparation and implementation of development plans. The law shall specify the aspects of oversight over these units and their various activities. The law has to preserve the territorial unity of the homeland and the interests of the communities.

Practically speaking, the law #1 of 1997 on Palestinian Local Authorities amended by the law #9 of 2008, has been the law that regulates the relationship between the local authorities and the ministry of the local government on one hand, and the relationship between these and the Council of Ministers on the other. This law is addressed later.

It should be noted that Article (118) of the Basic Law maintains the application of the law the regulations and the decisions in force in Palestine before the implementation of this law to the extent that they do not contradict the provisions of the Basic Law, until they are amended or repealed, in accordance with the law. Notwithstanding this, article (114) of the mentioned Basic Law has cancelled all provisions regulating states of emergency that were applicable in Palestine prior to the entry into force of this Basic Law.

Nevertheless, the presidential decree (33) of 2003 was issued concerning the governors' jurisdictions, to grant the governor the highest executive authority, and the head of public administration in the governorate, including the power to represent the President of the state. In addition, the governor supervises the implementation of the Palestinian Authority's general polices ¹. This decree determines several powers for the governor that overlaps with the responsibilities of the Municipalities and the Police. Thus, the governor has an authority in management, along with the Local Government Bodies, the Council of Ministers, and the President. This decree is discussed later.

4.1.2 Primary Laws

4.1.2.1 Law #3 of 1998 Concerning Civil Defence

This law identifies the natural disasters as the exceptional circumstances caused by the nature. It identifies the emergency as the state of the imminent danger that threatens or prevents the usual performance of the public authorities. It determines three agencies to do the job of the civil emergency and to report about the disasters and emergencies. These agencies are; the Public Directorate of Civil Defence, the High Council of Civil Defence (HCCD), and the Local Committees of Civil Defence in governorates.

¹ The governors' Affair Department was moved from the Ministry of Interior to the presidential residence according to the presidential decree #74 of 2003, that was issued in May 20, 2003. This department's tasks are the following; 1. Works a secretariat of Governors Council and its coordinates meetings. 2. Keeps in touch with the president for the affairs of governors and governorates. 3. Keeps an eye on the needs of the governors with the Ministers, the governmental departments, and the public institutions. 4. Supervise public plans and polices adapted in governorates. 5. Receives the reports of governors and informs with the president's orders and instructions. 6. Establishes a database and prepares reports about the activity of governorates.

Articles (5, 6) determine the jurisdictions of the Public Directorate. The most relevant of these are; preparing projects and work plans and supervising performance, taking the measures required with local committees to deal with disasters and emergencies, setting operation rooms, constructing shelters and public places, preparing the shelters at private sector's buildings, and preparing rescue and salvage teams.

On the other hand, Article (7) determines the membership of the High Council of Civil Defence of 16 members. The head of the council is the Minister of Interior. In addition, the Council has the capacity of inviting whomever it sees necessary to attend its meetings. Some of the Council's jurisdictions are; laying down the public policy of Civil Defence, approving the project plans of Civil Defence that are presented by the general directorate and follow up their implementation, and taking the necessary measures for facing any contingent incident (Article 12).

As for the local committees in governorate, they are composed of the governor (chair) or whoever represents him, heads of provincial and municipal councils and camps committees, the director of Civil Defence in the governorate, a physician named by Ministry of Health, five or less citizens selected by the governor, and a representative of Police department (Article 13). These committees implements the civil Defence's plans and projects of the governorate, supervise forming and training salvage and rescue teams, carry out awareness activities, coordinate with other governorates if a disaster happens (Article 14).

In addition to the above, the law grants the Minister of Interior large powers in enacting decisions and orders he sees appropriate for the circumstances, and in controlling private properties and equipment and the recourses of basic services; water, electricity, and food to the advantage of Civil Defence. The Minister also has the power of assigning whomever he sees worthy to contribute in serving the Civil Defence.

The law provides allocation of an annual fund for the provincial and municipal councils by Civil Defence committees to enable the councils to apply the safety measures. This must be decided by Minister of Interior depending on the Civil Defence committees' recommendations.

4.1.2.2 Law #1 for the Year 1997 on Local Authorities

Article (15) of this law grants the Council of the Local Committee large organizational powers in; issuing executive ordinances and regulations required to organize the work of the local authority and achieving its needs. The most relevant jurisdictions granted by this law are:

- Take precautionary measures against extreme flows, floods, fires, and natural disasters.
- Take precautionary measures to face the risks of flows and floods, preventing fires, observing oil and burning materials, and preparing to face natural disasters and distress relief.
- Constructing health institutions as; aid stations, sanatoria, and hospitals and supervising them with the concerned Governmental Bodies.
- Adopting all the awareness steps and measures required to protect the public health and to prevent the epidemics from spreading among people.
- Planning cities, organizing buildings and streets, and constructing shelters.

4.1.2.3 A Decision to Law #15 of 2009 concerning the Palestinian Authority to Regulate the Telecommunications sector

Article (64) of this law gives the permission for the telecommunication authority in collaboration with the Council of Ministers to manage all the services and the networks of any service operator or provider, and to call those operators' or providers' workers who are responsible for actuating and maintaining those services and networks whenever a natural or environmental disaster happens, but without granting the operator or the provider the right of asking for compensations

4.1.2.4 Law #7 of 1999 Concerning Environment

Article (1) of this law defines environmental disaster as the accident resulting from natural factors or human act that caused severe damage to the environment and its confrontation requires potentials that may surpass the local capabilities. . Article (78) of this law obliges the authority of Environment quality in participation with the competent authorities, to formulate emergency plans for coping with the environmental disasters.

4.1.2.5 Law-decree #14 of 2014 concerning Water

Article (8) determines the jurisdictions of the Authority of Water. These include providing best solutions and alternatives during emergencies and crises to ensure providing the service in a continuous manner in collaboration with the other service providers and those agencies related to the sector. Article (50) of this law, compels the Authority of Water to collaborate with the relevant parties interested to formulate special mechanisms and methods to manage the crises whenever there is aridity, flood, or plague, whether caused by water or by a general pollution².

4.1.2.6 Law decree #12 of 2013 Concerning the Agricultural Risks Prevention and Insurance Fund

Article (1) of this law defines the natural disasters as; "unexpected accidents caused by natural forces and that cause properties' damages. These disasters affect severely the agriculture sector in a way that a farmer cannot face without the help of the fund."

This law established an independent fund specialized for compensations of natural disasters and agricultural insurances. This fund has two accounts; one for the compensations of natural disasters and the other for the agricultural insurances. The Council of Ministers supervises the work of the fund and allocates special annual operational and development allocations included with the country's budget.

The Fund is managed by a board of directors of 15 members headed by the Minister of Agriculture. The appointment of the members is by a decision of the Council of Ministers. The Fund's President is the Executive Director, who oversees the administrative and technical work. The Fund's President is appointed by a decision of the President, upon the recommendation of the Council of Ministers, based on the recommendation of Chairman of the Board Fund management (undersecretary level). The law defines the powers of each decision of the Board of Directors, the Chief Executive Officer, and the Fund's financial resources.

The resolution authorizes the fund's law to compensate damages per year to no more than (80%) of the balance of its resources. If the value of the losses and compensation for natural disasters that surpass Fund financial capacities of more than (80%) of its resources, the Fund defines the value and submits to the government, to define and agree with on the proportion of the Government's contribution to the disbursement of these contributions through the Fund.

4.1.3 Secondary Legislations

² The Governors Council holds meeting with the leadership of the president once every two months or when the president asks to do. See the presidential decree #15 of 2005 concerning the governors meetings, that was issued June 27, 2005.

In this part of the report, we refer to the most relevant legislation issued by the Executive Authority related directly to the topic of the report. Other legislations that have less significance are in an Annex.

4.1.3.1 Decision #1 of 2011 by the Interior Minister Concerning Regulating the Work of the Volunteers in the Palestinian Civil Defence's Works

This decision regulates the conditions and the fields of volunteering and the tasks of volunteers and their training, rights and obligations, in addition to forming voluntary committees in governorates, the funding of their involvements, and the mechanisms of calling them. Some of the fields volunteers are involved in; participating in acts of rescuing and searching for missing, first aid, transfer of the injured to health centres, fire fighting, contributing in evacuation and sheltering, providing social and logistic services, and educating and training citizens.

To regulate volunteering, the decision provides dealing with deferent parties: governmental, civil, and monetary institutions, associations, unions and clubs, and private institutions. It also provides forming voluntary groups in the establishments of public and private sectors, in cities, villages and camps in the fields of Civil Defence. The decision provides applying legislations related to the Civil Defence's members on volunteers in emergencies when coming to discipline, irregularities, and achievements. Also, granting the General Civil Defence Directorate the responsibility of issuing an administrative regulation for the work of volunteers, and of providing a communication system between the Directorates of Civil Defence in governorates and voluntary groups. This decision commands the Directorate to issue instructions for the implementations. As for the High Council for Civil Defence, the decision grants it the Authority of modifying, and explaining it.

4.1.3.2 The Presidential Decree #22 of 2003 concerning Governors' powers

According to the decree, the administrative agency of a governorate consists of; the governor, his deputy, and a number of advisors and administrative staff. The governor has the competences and jurisdictions of a minister when dealing with the administrative staff. Article (5) of the decree determined the jurisdictions of the governor in:

- Preserve the security, morality, public order and health, and protecting public liberties, and citizens' rights.
- Protecting private and public properties, achieving security in governorates in cooperation with officers of the police and the public security.
- Working on economic, social, and urban progress and development in addition to achieve equality, justice and rule of law.
- Taking all the measures and procedures required to combat natural disasters and significant accidents.
- Implementing the instructions and orders issued by the President or the Council of Ministers.
- Chairing the Executive Council in the governorate, which consisting of:
 - The directors of the governmental departments in governorate, except the courts and the public prosecution.
 - A number of chairpersons of Municipal Councils in the governorate.
- Chairing the organizing and planning committee in the governorate that consists of a number of chairpersons of local councils.
- Collaborating with competent authorities in supervising and working to provide local services for citizens like; health, educational, cultural, social, and others in the governorate.

4.1.3.3 Administrative Formations Regulation #1 of 1996

This regulation was issued under Article (120) of the Jordanian constitution of 1952, which was in force in West Bank before the Palestinian basic law coming into force, pursuant to the decree of the late president Yasser Arafat #1 of 1994 concerning the continuation of laws and regulations that were in force in Palestine prior to the date of 5/6/1967. Upon the issuance of the presidential decree of 2003 mentioned above, and the issuance of the law on the Local authorities of 1997, this regulation is considered repealed to the extent it contradicts with the two legislations mentioned.

Article (24) of this regulation gives the governor the authority to adopt all the necessary measures to deal with and control natural disasters, if the governor instructs the competent authorities to combat and control activities. In addition, Article (28) of the regulation gives the governor in collaboration with competent authorities and bodies the right to supervise the local public services, like taking the measures necessary to combat natural disasters such as; fire, epidemics, pests, famine on the condition of instructing the competent ministry to complete the controlling in its technical way.

The regulation prescribes the establishment of two councils in the governorate to facilitate its affairs: the Executive Council, and the local Advisory Council. The Executive Council consists of the governor as a chairperson, the membership of the assistant governor, the leader of the region, and the heads of departments except courts (Article 6). The local Advisory Council consists of the governor as chairperson and no more than 15 members, members of the legislative council, Municipal Council, Chambers of commerce, banks, associations, clubs, farmers, and representatives of medical doctors, engineers, lawyers and workers (Article 39). It should be emphasised that the topics regulated by the Presidential Decree concerning the powers of governors have abolished the corresponding provisions articulated in the regulation in question, whereas the provisions of the regulation concerning the administrative commanders responsible for brigades, districts and sub-districts, are ineffective because these do not exist in the Palestinian administrative structures as provided for in the Local authorities law of 1997

4.2 Assessment of the current legislative and regulatory Framework

After reviewing the legislations in force that are related to the management of disasters and emergencies, starting from the constitution, going through primary laws, and endings with Secondary legislations, we can extract the following general remarks:

1. The seventh section of the Palestinian Basic Law, which regulates the declaration of the emergency for the reasons mentioned in Article (110), including the occurrence of a natural disaster, is considered appropriate in terms of protecting the fundamental rights and freedoms, since the international norms and standards, as well as best practices provide the inadmissibility of the restriction of these rights and freedoms, except in the minimum for achieving the purpose of the declaration of emergencies with constitutional guarantees to review the procedures taken by Parliaments during the emergency period.
2. The Civil Defence Law of 1998 failed when it ties allowing the General Civil Defence Directorate to adopt the necessary procedures in cooperation with the concerned committees to deal with disasters and emergencies, only when the president declares the state of emergency by a decree. It is well known, according to the constitutional principles that the president does not resort to declare the state of emergency except when the very serious risk of the country happens in line with the reasons and criteria set out in constitutions. This means that the civil defence might face case that requires intervention other than those stipulated by the Basic Law. If this occurs, the civil defence will not be able to legally act towards this event since the president of the state will not declare the state of emergency, as this particular event is not provided for in the constitution. It was necessary that the Civil Defences granted the flexibility and power to accommodate what constitutions cannot adopt, through formulating concepts that differ from those prescribed by the Basic Law such as: the announcement of the high alert state or emergency to

confront the dangers that are not mentioned in the Basic Law such as those committed by Human.

3. The Civil Defence Law failed in establishing an integrated system to manage disasters risks, either from administrative, financial, or technical aspects. That is, the law addresses the effects of the disasters when they occur, with few provisions on preventive measures. The law lacks rules on the other stages of the disasters risks management that mentioned in the introduction to this report.
4. The law of Civil Defence is considered weak when coming to forming an efficient and inclusive institutional framework to manage risks. The High Civil Defence Council mentioned in the law does not represent all stakeholders, and lack crucial powers; this law identifies the High Council's jurisdiction in; 13 approving the work of the Civil Defence public directorate; and laying down general policies for Civil Defence. In order to form these policies well, all the parties interested should be included and scientific information along with human, logistical, and material capabilities should be provided. And as for the local committees in governorate they also have logistical roles only not executive ones, it is therefore not acceptable that their roles when a disaster occurs is to collaborate with the other governorates as mentioned in the law.
5. The law of Civil Defence grants the Ministry of Interior powers that overlap with the jurisdictions of the High Council and the General Directorate, a trend that could not be acceptable when dealing with environmental disasters, which requires an effective collaboration between all stakeholders including the society and other international parties when needed. Yet, in reality, not all the security agencies are subject to the mandate of the Ministry of Interior, and in some governorate the equipment of Civil Defence are not owned by the Ministry of Interior, but by the municipalities as the case in Nablus and Hebron.
6. The law of Civil Defence provided for a good provision sit permitted to temporarily take over the real estates and buildings required for preparing public shelters, hospitals, and public centres, and to fairly compensate owners from damages. However, the law failed in designing the methods and criteria of this takeover and the principles of estimating the compensation.
7. The absence of the secondary legislation needed for implementation of the law of Civil Defence like the technical specifications for constructing public shelters, and the administrative regulation referred to in the law to effectively organize the work of volunteers.
8. The rules mentioned in law (1) of 1997 concerning local authorities are considered suitable when coming to the prevention stage from disaster risk, still there is a need for improving enforcement of the law.
9. The rules of the law decree (15) of 2009 concerning the Palestinian Authority of regulating the telecommunication sector are considered appropriate when coming to granting the authority the power of taking over networks whenever a disaster occurs in order to use these networks in managing disasters. Still, there are two issues need to be dealt with in this regard. The first issue is the lack of coordination mechanism between the authority when it takes over these networks and the authorities of Civil Defence in order to use it in disaster management. The second issue is confiscating the operator's right of compensation during the public utilization period. Denial of compensation might be only provided companies granted concessions from the state, to comply with the constitutional rules that protect private property unless a fair compensation has been paid in accordance with the law. Furthermore, it is vital to include provisions in the agreements

and licenses that are granted for the companies, which provide public services such telecommunication, electricity, and oil.

10. The provisions of disasters and emergencies mentioned in the law of environment and the law of water contribute in managing disasters risks, but these provisions lack for the executive mechanisms needed to determine the quality and level of collaborating with other competent authorities because the executive regulations of those two laws are not issued yet.
11. In general, the provisions mentioned in the law-decree (12) of 2013 concerning the fund of risk prevention and agricultural insurances are fair. But these will not be applied before issuing related executive regulations and instructions, as the law authorized the council of this fund the right to issue secondary legislation, such as determining the types of agricultural risks and damages that are compensable, the standards and mechanisms of compensation, the types of risks insured, the conditions of insurance along with its types and forms, the premiums that the farmers should pay, the principles of calculating the damages compensations, the principles of estimating the value of crops, and others. In all cases, the insurance premiums should be affordable to encourage all the farmers to engage in this kind of insurance. And the farmer should not be deprived from maturing compensations because of environmental disasters even if the compensations are not included among the clauses of the contract.
12. As for the secondary legislations related to this report, it has to be noticed that there are a lack of clarity and an overlap between the presidential decree on the governors' competences and the ordinance of the administrative division of 1966 on one hand, and between these two legislations and the regulations of local authorities on the other. The aspects of shortcomings can be summarized through the following:
 - a. The responsibilities granted for the governor by Article (5) of the presidential decree are considered wide and absolute and overlap with the competences of other parties like; local authorities, the Police, and the Departments of Ministries. The articulation of these provision in general sense without balancing it with the jurisdictions of the governor and the other parties mentioned obstructs the work, and creates a state of arguing over powers instead of implementing responsibilities and duties.
 - b. Granting the governor the authority of adopting all the measures required to combat natural disasters and serious accidents cannot be actually applied without differentiating between the governor's responsibilities and the responsibilities of the other departments in the county, the society, and the governorate, as there is a need for human and materials capabilities and mechanisms of planning, implementation, and supervision. This can result in overlapping and duplication of work efforts, as well as hampering risk management.
 - c. The role of the Executive Council, which was not formed fairly among the governorate various components, in disaster risks management is missing, and not linked to the Central Authority, Civil Defence, and Ministry of Interior, despite the fact that the governor follows the President not the Ministry of Interior
 - d. On the other hand, the legal controversy remains valid concerning the applicability of these two pieces of legislation, and which one take priority in application whenever a conflict between them occurs. Is there a constitutional power for the president to issue the decree? If there is such power, is it permissible for the decree to oppose the administrative division system of 1966 issued by Article (120) of the Jordanian Constitution? Based on this, the legal opinions might get out with several answers for these questions. Whatsoever, what concerns us in particular is the Civil Advisory Council formed by the regulation

- of 1966, and whether it still legally exists, as the Presidential Decree says nothing about it and just points to the Executive Council?
- e. The governor's jurisdiction overlap with those of the Local authorities according to the law of 1997, and the regulation of construction and organizing of Local authorities of 2011, and the decisions of the High Council of construction and organizing which displaced the governor from the leadership of the local organising committee.

4.3 Conclusion from a Legal Perspective

Based on the above, it is clear that the legislations regulating the disaster risk management are duplicated and overlapped, roles are unclear, and lack accountability rules. This results in a defective and ineffective risks management system. This assumption is confirmed by the simple practical cases that took place between the years 2004-2006. The existing system failed to address those cases, whereupon new Presidential decrees and decisions by the Council of Ministers were enacted in order to deal with the situation. For example, the Palestinian President issued decree (17) of 2006 concerning forming a National Emergency Committee to face H1N1. The Council of Ministers issued resolution (71) of 2004 to establish an emergency fund for the effected by the Israeli aggression and resolution (187) of 2004 to declare the readiness state in all the official ministries and institutions to face the Israeli attack. On the other hand, the Presidential decree (12) of 2002 concerning annexing of Preventive Security to the Ministry of Interior has not been implemented.

Accordingly, it is clear that the existing legislations do not recognise the concept of institutionalising disaster risk management, and the real situation indicates that each event is treated based on case-by-case consideration, and only when it occurs, because of the defect of the legal and institutional system. Therefore, new legislations are needed to deal with these defects and shortcomings. New legislation should deal with disasters risk management from its various stages, and through three levels; the institutional framework (the administrative structure), the financial system, and the executive and technical aspects in addition to the clarity of roles and responsibilities and the availability of accountability and transparency measures.

Based on the previous paragraph, the most appropriate legislative tool is the law, as it is impossible to deal with all the issues based on a regulation issued by the Council of Ministers or on instructions by the Minister of Interior. The reason is that the law comes in the second place in the hierarchy of legislation (Constitution, law, secondary legislation). As there are several laws in force related to disasters and emergencies, there might be a need to modify these laws based on the requirements of the new approach decided by the stakeholders of this new law. Such a modification cannot be legal from a constitutional point of view except if it's at the same footing with the legislation that is being modified or higher. This means that the new law can modify any provision or rules stipulated in any regulation, law, instructions, or decisions in force. On the other hand, managing disasters will require creating new administrative bodies and structures or abolishing existing once. According to Article (69) of the Basic Law, this cannot be legally occurred except by a law. In addition, whatever the level of the new legislation is, it cannot regulate all the related issues in all their details, but it leaves these details to other specialized regulations, bylaw, and instructions. This result in a better chance of a sequential and integrated regulation, as the most technical issues are left to experts.

4.4 Analysis from a DRM perspective

4.4.1 Existing Legislation in relation to DRM Objectives

Chapter 4.1 and Annex A present and discuss various articles in existing Palestinian legislation relevant to disasters. Each article usually relates to **more than one** disaster-related objective.

Presented below is a general grouping of these articles based on their **primary objectives**. The analysis indicates that every piece of legislation can be viewed from a DRM perspective.

Mitigation

- Resolution of the Council of Ministers #131 (2007) concerning the methods of calculating technical and mathematical reserves³. Granting companies the right to keep technical reserves including catastrophe reserve to cover losses resulting from serious accidents or any other form of dangers that is difficult to predict, such as natural disasters.
- Agricultural Risks Prevention and Insurance Fund Law #12 (2013).
- Agriculture law #2 (2003). Establishing a compensation fund for farmers for natural disasters.
- Towns, villages and buildings planning law # 79 (1966). Preventing building in the places that are mannequin of floods or collapses, and removing damaged and dander buildings.
- Law-decree #8 (2015) on the Palestinian agricultural lending institution requiring those who asked a loan from the institution to be insured by the prevention risks fund and the agricultural insurances.
- Resolution of the Council of Ministers #6 (2011) to establish the local system for dwellings and community planning. Takes into account the legislation related to safety, public health, and environmental protection, and requires specific specifications for public services buildings as shelters.
- Bylaw concerning the multiple dwellings in Gaza (1994). Establishes two separated exits for any building to facilitate the departure of occupants in emergencies.
- Resolution of the Council of Ministers #113 (2014) concerning the governmental health insurance. Including the services of natural disasters and wars in the health service.
- The Decision of the Council of Ministers No. 21 of 2003 Concerning the Conditions of Safety in Buildings under Construction. Keeping the work installations from the risks of fires and collapsing, and constructing emergency exits.
- The regulation of licensing the halls of public events, issued by the central committee of buildings and planning cities in Gaza. Providing reserves of water, electricity, means of telecommunication, fire resistor agencies, and emergency exists.

Preparedness, including the control of resources during disasters

- Palestinian Authority to regulate the Communications sector Law #15 (2009).
- Environment Law #7 (1999).
- Law-decree #14 concerning Water (2014).
- Regulating Work of Volunteers in PCD Works, MoI Decision#1 (2011).
- The public health Law #20 (2004). Granting the minister the right to use any health institution or any of its parts in emergencies
- Palestinian child law #7 (2004). The country's duty of protecting children and all their rights in emergencies and disasters and armed conflicts
- Penal law 374 (1936). Punishing whoever refuses to help when a fire, flood, earthquake, or any other public disaster occurs
- Law by Decree concerning public procurement Law #8 (2014). Giving the permission of direct procurement for governmental bodies in the cases of natural disasters, and choosing an individual counsellor to be engaged in tasks of emergencies or caused by natural disasters.
- General supplies Law #9 (1998). Storing the materials required for emergencies and crises by the unit of central warehouses in the department of general supplies.

³ Technical and mathematical reserves a company's provision for future liabilities, less liabilities that have fallen due, and deposits repaid by reinsurers in long term insurance

- Firearms and ammunition law #2 (1998). Granting the minister of interior the authority of withdrawing licensed weapons in emergencies and unrests.
- Telecommunication law #3 (1996). The licensee obligation to provide the emergency service freely for beneficiaries.
- The Decision of the Council of Ministers No. (384) of 2005 Concerning the Regulation of the Woods and Forests. Permitting the citizens to transport the woods in the governmental forest caused by natural disaster (storms, snow, or others).
- Instructions by the Capital Market Authority #2 (2008) concerning disclosure requiring the Issuer to inform the Capital Market Authority about disasters, fires, and accidents along with the expected effects on the company's financial standing as soon as possible.
- Supply and Price Control Bureau Regulations #19 (1959). Granting the minister the power of stopping exporting food, and of obligating merchants to provide data about what is stored and to mandatory buy a certain amount thereof.
- Resolution of the Minister of Post and Telecommunication #1 (1996). Granting the minister the authority of stopping the use of wireless devices in emergencies or handing them to any governmental body, and granting the Council of Ministers the power of stopping the work of radio/wireless stations of licensed diplomatic bodies in emergencies.
- Presidential decree #2 (2006). Forming the committee of Governorate Security headed by the governor and the members be; the leaders of National Security and Police, and the directors of security agencies in the governorate.
- Presidential decree Considering the Palestinian Red Crescent Society as the only voluntary relief society that works as an agency helping the public authorities in the humanitarian field according to Geneva convention of 1949 (2006).

The analysis shows that the law focuses on mitigation and preparedness. A detailed analysis of the Palestinian legislation should involve analysing each of article in detail in how they address objective (risk analysis, mitigation and operational preparedness), summarizing for each objective to get an overview and performing a gaps analysis.

4.4.2 Confusion regarding Law #3 on Civil Defence from a DRM Perspective

➤ *1st confusion: the definition of the term civil defence*

In the 1960's various countries, in many cases influenced by the Cuba Crisis in 1962, set up civil defence systems that had a High Council for Civil Defence, a Civil Defence Authority that provided a secretariat, several localized civil defence committees, budget, provided ministers the right to take over private property during an emergency. These are similarities to the Palestinian Law #3 on Civil Defence. The International Civil Defence Organization also outlines a history that relates back to war-related protection of population and property (<http://www.icdo.org/en/about-icdo/history>). Through the years, countries have developed their capabilities to include disasters in general.

Through time many countries, for example many European countries, have moved from using the term civil defence to civil protection. Even the International Civil Defence Organization uses the term civil protection. However, the term civil protection does not have one agreed upon definition. Below are three definitions of civil protection:

EU: Civil protection assistance consists of governmental aid delivered in the immediate aftermath of a disaster. It can take the form of in-kind assistance, deployment of specially equipped teams, or assessment and coordination by experts sent to the field. http://ec.europa.eu/echo/what/civil-protection_en

Switzerland: Civil protection is an integrated management, protection, and rescue and relief system. The following pages offer you basic information about the Swiss civil protection system and its themes.

<http://www.bevoelkerungsschutz.admin.ch/internet/bs/en/home/themen.html>

Japan: The Civil Protection Law is formally called “the Law concerning the Measures for Protection of the People in Armed Attack Situations etc.” It was enacted on June 14, 2004 and enforced on September 17, 2004. It stipulates the responsibilities of the national and local governments and measures, such as evacuation of residents, relief of evacuated residents, response to armed attack disaster, and other necessary matters related to civil protection measures etc.

<http://www.kokuminhogo.go.jp/en/about/law.html>

What the three definitions have in common is that they all see civil protection as activities within a *system*, not as activities performed by a single entity. Civil protection is therefore about *cooperation* among many to deliver assistance; is about coordination for the emergency services in general (both daily events and disasters). During a disaster civil protection is the key element of the emergency phase, where the emergency services, like fire departments, rescue teams and relief teams, are at the forefront.

It is important not to confuse the responsibility of *coordinating emergency services* with the role and responsibility *specific tasks* towards the emergency. In other words, it is important to separate activities to coordinate tasks of many entities from activities that are specific tasks within the emergency, like fighting fire, rescuing people, and dealing with hazardous materials.

Entities (national or local) are commonly set up to deal with daily emergencies, such as, ambulances, police, and fire and rescue teams, collectively called the emergency services. In Palestine these entities include:

- Palestinian Civil Defence, that deals with fire, fire prevention, rescue, and hazardous materials⁴.
- Police
- Hospitals and their field teams
- Red Crescent, who run ambulances and immediate relief in the field.
- In Palestine, the military and civilian liaison agencies can be considered part of the emergency services due to their importance during emergencies.

Along side the development of the concept of civil protection has been the development of the wider concept of DRM, thus moving away from the term civil defence. UN entities, such as United National International Secretariat for Disaster Reduction (UNISDR) have led international cooperation on widening the focus on disasters from mainly response and recovery to include terms that include risk analysis and mitigation. The cooperation includes the 1995 Yokohama convention, the 2005 Hyogo Framework for Action (UNISDR, 2005), and the 2015 Sendai Framework (UNISDR, 2015). The 2009 UNISDR Terminology on Disaster Risk Reduction provides over 50 definitions of terms, but does not include a definition for civil protection or civil defence. As neither term is part of UN terminology for disasters there is a lack of clarity on how to shift from a civil defence mentality to a DRM mentality. Clarity is provided by the clarity of DRM given by the priority actions and frameworks from UNISDR conventions and the DRM objectives; however, it is necessary to determine how current activities under the term civil defence in Palestine are affected by the shift in mentality. To address this confusion, it is suggested that the term civil defence be no longer used to describe management regarding disasters, the term civil protection be used for coordination of emergency services, and the term DRM be used as an overarching term that includes civil protection. The following definition for civil protection in Palestine is proposed as follows:

⁴ This discussion is only on the role of PCD as a responding agency, not its role as a coordinating agency

Civil protection is an integrated management, protection, and rescue and relief system. Civil protection assistance consists of governmental aid delivered in the immediate aftermath of a disaster provided by the emergency services, such as police, fire, rescue, ambulance, hospitals, and relief teams. It can take the form of in-kind assistance, deployment of specially equipped teams, or assessment and coordination by experts sent to the field. Assistance from civil societies, the private sector, non-governmental organizations and other non-governmental entities can be integrated into a civil protection mechanism.

➤ **2nd Confusion: Role of HCCD**

Law #3 mandates the HCCD as a governing body over the PCD and has a coordination role. However, the scope of its coordination is unclear and there is a lack of clarity on what to expect from the HCCD. According to the legal review in previous sections, “The High Council of Civil Defence does not represent the different interested parties.” The question arises who are the interested parties. The confusion in Law #3 (that is carried over from the earlier civil defence era) lies in whether civil defence is a *national* perspective or a *Minister of Interior* perspective. The answer to this question answers the question about who are the interested parties. The confusion becomes evident if the domain of civil defence/protection is placed under the Minister of Interior, but is expected to be at a national level coordination with all parties, so that the MoI would have to coordinate all other ministers, including the Prime Minister, which places a line minister in a coordinating role over all other minister and the PM, and causes confusion.

It is suggested here that clarity will be brought to the confusion if the Minister of Interior is given the domain of civil protection, and the Prime Minister be given domain of DRM from a national perspective.

Clarification is needed on whether the HCCD has been intended to be the board for the PCD (and the PCD the secretariat for HCCD). If so, then the HCCD has given the PCD strategy and policy. The pros and cons of such a relationship should be discussed with relevant entities.

It is suggested that the HCCD be changed to HCCP, chaired by the MOI and the members are only those that relate to emergency aspects of a disaster. The emergency aspects need to be strongly coordinated with other parts of the disaster, such as relief and recovery. The HCCP does therefore not cover all aspects of a disaster; it covers civil protection both for small events and during disasters. The links between them are clarified in statutory regulations and standard operating procedures. To address the national level, a new DRM committee, headed by the PM should be established. Similar committees should also be established at the district and local levels.

➤ **3rd Confusion: Role of PCD**

In regards to risk analysis: The legal review in previous sections states, “The law of Civil Defence is considered weak when coming to forming an efficient wide constitutional frame to manage risks.” This weakness is mirrored in limited risk analysis activities within the PCD. The solution to the problem indicated in the statement does not lie in strengthening the PCD to do risk analysis, but to activate more relevant entities to engage in risk analysis, and coordinate it from a national level

In regards to being a coordinating agency: The role of the PCD as a **coordination entity**, as the title indicates, vs. a **fire and rescue agency** is unclear. The PCD has a small disaster management department (DMD) that focuses on disasters compared to the overall size of the PCD. The DMD has been the contact for the HFA reports, which should be moved to a national level entity that writes the reports in collaboration with all other ministries. No agreed upon disaster plan exists that has developed in cooperation with all emergency services, which is needed. Currently, the

PCD acts more like a fire and rescue agency than a coordinating agency. The DMD actively participates in discussions regarding the future of DRM, but its role in relation to other entities is unclear and its capacity to lead coordination during a disaster is weak.

In regards to fire: PCD is not only entity that deals with fire response. PCD needs to be analysed from the perspective of a fire service and legislation for all fire, rescue, and hazardous material related issues need to be addressed.

4.5 General suggestions for a new Palestinian DRM system

From the previous discussions in this report the following general suggestions are presented for a new DRM system in Palestine:

1. The term Civil Defence is no longer used to describe management regarding disasters
2. New concepts
 - Disaster Risk Management (DRM) is used as holistic, national approach to disasters
 - Civil Protection is used for coordination of emergency services
3. Domain
 - DRM as an overarching domain falls under the domain of the Prime Minister
 - Civil Protection falls under the domain of the Minister of Interior
 - Relief falls under the domain of the Minister of Social Affairs
 - Recovery falls under the domain of the Ministry of Economy
4. Coordination on DRM stays with those that normally coordinate
 - President Governors' Affairs Advisor coordinate governors
 - Ministry of Local Government Units coordinate Local Government Units
 - Sector leads coordinate within their sectors.
5. New standing committees (could also be called platforms, which is a UNISDR term)
 - National DRM standing committee, headed by PM
 - District level DRM standing committee, headed by governor
 - Local level DRM standing committee, headed by head of LGU
6. Procedures are developed for disaster assessment and coordination, termed the DAC system
 - The HCCP and the PCD should be heavily involved in developing these procedures at all levels (national, district, LGU, and field)

In addition to these six general suggestions, clarification is needed on the following issues, which fall under the domain of the MoI, but require the joint cooperation of all emergency services (those who work in the field during an accident or disaster):

7. Civil Protection
 - Clarify procedures for coordinating emergency services, i.e. civil protection
 - Clarify the need, the role, and membership of a higher council for civil protection
8. Palestinian Civil Defence as an entity
 - Clarify the role of PCD as a responding agency
 - Fire fighting
 - Rescue
 - Hazardous materials
 - Clarify the need, the role and the membership of a higher council for PCD
 - Clarify its role in terms of civil protection: does it have a coordinating role?
9. Fire regulation for other fire departments, such as in Hebron and Nablus.

The emergency services, and their associated ministries, need to have internal discussions to complete items 7-9 and come to an agreement about coordination of emergency services.

10. DRM legislation on declaration of *state of emergency* beyond what is in the Basic Law needs to be associated with a purpose. In some countries, for example the United States of America,

the president declares a federal emergency in order to open access to funds earmarked for disasters. The need for a declaration must not hinder or delay those reacting to a situation making the responders wait for a declaration. The purpose of a declaration could include:

- To open access to financial support to the operations
- To restrict travel of governmental staff
- To give ministers additional authority of control