
REFORMING THE
PALESTINIAN AUTHORITY:
AN UPDATE

April 2004

Report by the
INDEPENDENT TASK FORCE ON
STRENGTHENING PALESTINIAN
PUBLIC INSTITUTIONS

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PREFACE

In 1998, the **Independent Task Force on Strengthening Palestinian Public Institutions** was commissioned by the European Commission and the Government of Norway to undertake a comprehensive study of Palestinian institution building – in the words of the report it issued in 1999, “to determine what is right, what is wrong, and how to fix it.”

The report, *Strengthening Palestinian Public Institutions*, published in both English and Arabic, remains the most detailed and authoritative guide on the subject. Following publication, the Independent Task Force, Chaired by Michel Rocard, a former prime minister of France, and comprised of distinguished former leading government officials in Europe and the U.S. was asked by the European Commission and the Government of Norway to monitor the Palestinian Authority’s implementation of the 1999 report’s proposed reforms. This current report is the latest in a series of follow-up reports issued by the Independent Task Force over the past five years.

The Task Force has been assisted in its work by Dr. Khalil Shikaki, Associate Professor of Political Science at Bir Zeit University and Director of the Palestinian Center for Policy and Survey Research in Ramallah, and Dr. Yezid Sayigh, Academic Director of the Cambridge Programme for Security in International Society and Teaching Fellow in the Politics and History of the Modern Middle East at the Centre of International Studies at the University of Cambridge. Both have served as Senior Consultants to the Independent Task Force since its creation in 1998.

April 2004

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REFORMING THE PALESTINIAN AUTHORITY: AN UPDATE

Introduction

The Palestinian Authority (PA) reform process has been stalled since March 2003. Israeli measures undertaken in the name of security have been a major impediment, but so have internal Palestinian political factors. Primary among these have been resistance to reform on the part of President Yasser Arafat, his associates and allies among the PA senior bureaucracy and Fatah militants, as well as a combination of unwillingness and inability on the part of the two successive prime ministers to focus consistently on the reform agenda.

Israeli Prime Minister Ariel Sharon's proposal in the first quarter of 2004 to implement a unilateral withdrawal from the Gaza Strip has triggered further challenges to the PA's internal control and authority in the short term, and in the medium term poses strategic risks as well as opportunities for the PA's survival and the reform process. In the short run, general political elections may be the most effective means of ending the PA's political paralysis in dealing with reform and the peace process.

This report is divided into three sections: the first surveys the PA reform process since March 2003 (beginning with a review of the period from May 2002 – March 2003); the second assesses the possible impacts of current political developments (especially an Israeli unilateral withdrawal from Gaza); and the third proposes policy recommendations for the international community.

I. The Palestinian Authority Reform Process

A. Background

President Arafat and the Council of Ministers undertook significant reform steps during the period of May 2002 to March 2003. The most significant were:

- Signing of the Basic Law and the Judiciary Law. However, many aspects of the two laws remain unimplemented. More than once, the President has violated both laws.
- Establishment of a new cabinet and the holding of cabinet meetings separately from the wider “Palestinian leadership.” The new cabinet established a reform committee and subsequently approved the so-called “100-day plan for reform” developed and submitted by the committee. However, many of the recommendations of the reform committee remain unimplemented.
- Appointment of Salam Fayyad as Minister of Finance and the implementation of major reform measures, leading to substantial progress in placing expenditure and revenue under the control of the Ministry of Finance. However, in this period, the Minister of Finance was unable to achieve his further objective of ending the payment of security service salaries by cash, rather than bank transfers.
- Appointment of an Interior Minister in charge of the Police and Preventive Security Forces. This left the National Security Forces and the General Intelligence Agency under the direct control of the President. The first Interior Minister, (ret.) General Abdul-Razzaq al-Yahya, found it difficult, if not impossible, to reform his ministry or reform the security services under his control. Indeed, his control over the ministry and security services remained in question. His successor, Fatah Central Committee member Hani al-Hasan, did not even try to assert control or implement reforms.
- Replacement of inactive Minister of Justice (first with Ibrahim al-Daghma and then with Zuhair Sourani), and the appointment by the president of the Supreme Judicial Council (SJC). However, the manner in which the SJC was appointed violated the Judiciary Law. The functions and mandates of the Ministry of Justice and the SJC remained vague, effectively paralyzing them.
- Setting of a date for national elections (January 2003), which started a debate on amending the elections law. However, the continued Israeli occupation of Palestinian cities prevented any serious progress toward holding elections.

- Most of the Basic Law was amended in March 2003 allowing the creation of the position of Prime Minister. The amendment conferred considerable power on the Council of Ministers for day-to-day governance, including control over the budget, law and order, and internal security.

B. The Abu Mazen Government (March 2003 – September 2003)

i. Overview

The appointment of Prime Minister Abu Mazen (Mahmoud Abbas) and his government in March 2003 led to some further progress on the reform agenda. However, little was achieved as the government resigned six months later.

The process of reform became highly politicized, as those who stood to lose the most as a result of its implementation sought to resist it by presenting it as an externally-driven, and hence illegitimate effort intended to weaken and replace the elected President and his loyal supporters in the PA bureaucracy. Moreover, Arafat sought to portray reforms initiated by Abu Mazen as hurting Palestinian national interests. Efforts to implement the Civil Service Law and put in place a tentative retirement plan ended amidst uproar from the Palestinian Liberation Organization (PLO) old guard (now senior civil servants) who feared losing their status and power. The legitimacy of reform was questioned by a growing number of people in the political elite, particularly within Fatah (including young guard members). These powerful elements sought to label Abu Mazen “disloyal” to both Arafat and Fatah. However, opinion polls indicated that public support for reforms remained solid.

One way Abu Mazen sought to deal with this emerging threat and to maintain his legitimacy was the establishment of the National Reform Committee. This committee – made up of some 25 members of the Palestinian Legislative Council (PLC), academics, civil society leaders, and businessmen – was asked to debate the reform agenda and present recommendations to the Ministerial Reform Committee. This proved ineffective. Every step towards reform seemed to bring the prime minister into conflict with Arafat, and as a result Abu Mazen paid less and less attention to these issues. Abu Mazen was already under tremendous pressure for failing to convince Israel to release prisoners, end the occupation of Palestinian cities, cease settlement activities, stop assassinations and incursions, or even remove some of the most suffocating checkpoints. Faced with the added challenge internally, he eventually resigned his post.

ii. Specific Reform Steps

The following reform issues preoccupied the Abu Mazen government:

- The Ministerial Reform Committee was made smaller. It was headed by Yasser Abed Rabbo, Nabil Qassis as coordinator, Salam Fayyad (Finance Minister) and Abdul-Karim Abu-Salah (Justice Minister). A secretariat was appointed. The committee showed serious interest in reform even though it felt frustrated by the prime minister's lack of attention and by an increased questioning of the legitimacy of reform.
- Efforts were made to clarify the relationship between the Ministry of Justice and the Supreme Judicial Council (SJC). A new SJC, more in line with the statute's requirements, was appointed. Despite this nominal progress, little implementation followed. This was particularly the case with the clarification of mandates, implementation of court decisions, and the president's interference in the affairs of the judiciary.
- The government sought to integrate several public authorities into existing ministries and to make others accountable directly to the cabinet. The government approved a blueprint for institutional reform to restructure all PA ministries. However, few ministries volunteered to implement the new guidelines.
- Serious efforts were made to make the Interior Ministry and those security services now attached to it (Police and Preventive Security) accountable to the cabinet.
- Financial reforms were allowed to proceed at a faster pace. Security services belonging to the Interior Ministry (under security chief Mohammed Dahlan's command) were paid through the banks, but the president did not agree to do the same with the security forces under his command.
- Security courts were abolished.
- Little effort was exerted to institutionalize the office of the prime minister or the secretariat of the cabinet.
- Similarly, little effort was exerted to ensure that existing laws were consistent with the amended Basic Law, leading to continued disputes over mandates between the cabinet and the prime minister on the one hand and the president on the other.

C. The Abu Ala' Government (September 2003 – Present)

i. Overview

With the appointment of the Abu Ala' government in September-October 2003, the reform process took a heavy blow. Abu Ala' understood that the downfall of his predecessor was in large

part due to his pursuance of the reform process that brought him into direct conflict with the president and the “old guard.” The new prime minister therefore sought to avoid any conflict with the president. This meant not only the end of the reform process, for all intents and purposes, but also the undoing of many previous reforms. Abu Ala’ did however continue to express nominal support for the reform process, appointing himself head of a restructured inter-ministerial reform committee as well as head of the National Reform Committee. He also appointed his office director and cabinet secretary, Hasan Abu-Libdeh, secretary for the two committees. Yet these appointments ensured the prime minister’s ability to control the reform process and thereby prevent it from becoming a future source of political threat or embarrassment to him.

The paralysis of Abu Ala’s government will only intensify in the future. Only general political elections can transform the current political system and provide it with the needed legitimacy and political will to pursue serious political reform.

ii. Specific Reform Impacts

The following reform measures were affected by the new political circumstances:

- The most significant progress was the cabinet’s decision in February 2004, approved by the president, to cease paying the salaries of the National Security Forces (under the president’s control) in cash and instead to channel all salaries through bank transfers.
- Progress was also maintained in the area of public finance, with further consolidation of control over PA-owned or controlled commercial activities and the presentation of the general budget to the PLC on time. (It should be noted, however, that this success appears to have been brought about only through punitive financial pressure from the European Union.)
- Similarly, efforts headed by Hasan Abu-Libdeh to institutionalize the office of the Cabinet Secretariat and the Office of the Prime Minister were impressive. More progress is still needed however.
- Efforts to implement the Civil Service Law came to a complete halt.
- Security sector reforms made in the second half of 2002 were reversed. By direct orders from Arafat to the heads of the Police and Preventive Security Forces, these services no longer report to the Interior Minister or the cabinet. Instead they report to the so-called National Security Council (NSC).

This development represents the most direct threat to the amended Basic Law which insists on placing law and order and internal security under the control of the cabinet. The amended Basic Law makes no mention of the NSC. The latter body therefore has no basis

in law, and consequently the PLC has no authority over it and cannot hold it to account. The NSC is under the effective control of the president, returning the situation to mid-2002, when the latest reform process was initiated.

- The SJC exploited the vacuum left after the resignation of Abu Mazen and acted contrary to the Judiciary Law by assuming many of the responsibilities of the Ministry of Justice. The resulting tension between the two institutions continues to impede efforts to strengthen the justice system and law and order. The interference of the president in the affairs of the judiciary has increased considerably during this period. It is reported that he has interfered in the appointment and relocation of judges. Moreover, the ability of courts to implement their decisions, always limited, has diminished even further.
- In the area of public administration, efforts (described above) to restructure ministries and government agencies have come to nothing. Efforts are underway to revive previous plans, but resistance to implementation is strong from ministers and deputy ministers. Only one ministry (Planning, under Nabil Qassis) is still committed to the implementation of the original plans.
- Efforts to consolidate autonomous PA authorities and agencies not reporting to the cabinet have also been halted. While the cabinet continues to examine the issue, no decisions have been made on this matter since Abu Ala' became prime minister.
- Abu Ala' and his cabinet seem unwilling or unable to take the initiative regarding the urgent need to ensure consistency between the amended Basic Law and all other laws that were signed before March 2002.
- Similarly, the PLC has remained highly inactive since October 2003, taking no initiatives whatsoever. The new PLC Speaker seems also unwilling or unable to play a role in the growing controversies and disputes over mandates involving the president, prime minister and the cabinet, disputes between the Ministry of Justice and the SJC, and between the Controller's Office and the cabinet and the PLC.

II. The Impact of Israeli Unilateral Withdrawal from Gaza

A. General Prognosis

The manner in which the Palestinian leadership responds to Sharon's unilateral withdrawal plan is likely to have considerable impact in the coming period on the PA's internal legitimacy and cohesion, and consequently on its willingness and ability to pursue reform. This applies even if an Israeli withdrawal does not actually take place: the PA lacks a visible or credible political

strategy to exit the ongoing conflict and achieve core national aims, and runs a risk of further critical degradation of its control and cohesion in the absence of a purposeful pursuit of institutional reform and improved governance.

Specifically, the PA faces three possible scenarios in the coming year: 1) improvement in its circumstances as political initiatives are undertaken; 2) rapid degeneration, probably triggered by Israeli withdrawal from Gaza (especially if this is uncoordinated with the PA); or 3) drift, because of a lack of any particular policy direction, leading to deepening loss of internal control and cohesion, possibly to a critical degree that threatens the functioning and even existence of the PA. Each of these scenarios will affect the PA's political fortunes - indeed its survival - as well as the likelihood that it will conduct serious reforms in any area. General political elections could provide the PA an exit strategy out of its current paralysis and make it more able to deal with the potential consequences, positive and negative, of any Israeli unilateral disengagement plan.

i. Improvement

A variety of developments could, hypothetically, lead to an improvement of general political conditions conducive to reactivating PA reform. These might include an effective revival of the "Road Map," easing Israeli restrictions on normal Palestinian movement, facilitating economic activity, and increasing Palestinian income and PA revenue.

The PA might be pro-active in helping to bring about such an improvement, for example by launching and maintaining a genuine shift in policy towards the conflict with Israel and in internal relations with militant factions; in any case, it would be a beneficiary of improved conditions.

One of the most effective means of enabling the PA to do that is holding Palestinian elections before the Israeli withdrawal. The Quartet's Road Map, accepted by all the relevant parties, calls for such elections. One way of demonstrating the link between that peace plan and the Israeli unilateral withdrawal is by linking the Israeli step with the roadmap's election requirement.

Holding elections in the Palestinian territories occupied in 1967 would help achieve three objectives:

- They would renew PA legitimacy, providing it with the political will to project leadership at a time when its very unity of representation and mere existence is at stake. With legitimacy comes the political will to lead and take risks.
- Of no less significance, elections would provide Hamas and the nationalist warlords with the opportunity to capitalize on their popularity, gained during the intifada, and translate it into parliamentary seats. The integration of these forces into the political system would

provide Palestinians the opportunity to make vigilante violence illegal and make it possible for the new government to collect illegal arms.

- Finally, elections would most likely provide Palestinians the means to find their way back to democracy and good governance. No single person, no matter how authoritarian, would again be able to concentrate so much power in his hands, as Arafat has, rendering accountability illusive.

Good governance and accountability would also be served as these parliamentary and presidential elections would be based on the constitutional amendments ratified in the Palestinian parliament in March 2003. These amendments significantly shift power and jurisdiction from the office of the president to those of the cabinet and prime minister. Although, due to the overwhelming control of the political system by the nationalist old guard, these constitutional changes have not yet produced the intended effects, new elections would most likely strip the old guard of much of its power and status, leading to the rise of young guard nationalist and strong Islamist opposition, a condition required for any rehabilitation of the PA.

ii. Rapid Degeneration

PA control and ability to provide basic rule of law and government services could decline severely, or collapse altogether, in the wake of a unilateral Israeli withdrawal from the Gaza Strip. This is more likely if the withdrawal is not coordinated with the PA and if the latter is not enabled to prepare and deploy security and other civilian administrative personnel in advance of any evacuation of Israeli settlements and/or military areas. The decline might not be as dramatic in PA areas in the West Bank, particularly if the PA is able to maintain salary payments, but the challenge posed by militant factions and the collapse of PA authority in the Gaza Strip would probably damage its remaining legitimacy and credibility elsewhere irreparably. Clearly reform would be impossible in this scenario.

iii. Drift

Despite the risk of rapid degeneration, drift is the most likely scenario. The PA is unlikely to adopt a more pro-active stance in the foreseeable future, whether towards the peace process or reform. Certainly the PA is unlikely to implement any serious reforms in the absence of forceful and sustained international involvement; at the same time, the political weakness and institutional paralysis of the PA may also mean that international pressure is likely to have limited systemic effects in the absence of greater political will and commitment to reform on the part of key Palestinian actors. In this scenario, too, prospects for reform are clearly circumscribed, although partial progress may not be inconceivable.

B. Anticipating the Gaza Withdrawal

It is important for the PA to be able to demonstrate effective control and operational ability in the wake of any Israeli withdrawal from the Gaza Strip – whether total or partial, conducted swiftly or incrementally. This applies whether or not the withdrawal is conducted in the context of formal political understandings between the Government of Israel and the PA. (However, coordination and possibly international involvement, is crucial to ensure a peaceful handover of evacuated areas and assets, provision by the PA of law and order and basic services, and ensuring the key security requirements of both sides.) Success in these respects enhances the chances for a resumption of Israeli-Palestinian negotiations, implementation of the Road Map, and the holding of Palestinian general elections in the immediate term and attainment of Palestinian statehood in the longer term.

The Palestinian leadership and government should therefore complete its election preparations as soon as possible, including the necessary legislative amendments to the election law and the adherence to a comprehensive ceasefire by all Palestinian factions during the period of elections.

- The PA may not be able to take advantage of a possible Israeli withdrawal, in the more optimistic scenario, or prevent the further deterioration of its standing and its eventual demise, in the worst case scenario, unless it is able to regain its legitimacy and empower itself through the holding of general political elections.
- Elections could provide the PA with a leadership that enjoys public support and legitimacy and has the political will to act on both security and reform fronts while at the same time reduce the domestic challenges that have so far impeded PA security and reform attempts.
- Elections need to take place as soon as possible and preferably before the end of the year. The PA needs to complete election-related preparations as soon as possible. These preparations must include the start of the voter registration process and completion of the revision of the electoral law.

The PA should also provide two sets of operational needs in the event of an Israeli withdrawal from Gaza: 1) It should assume fully the tasks and responsibilities for which it is already responsible, especially the provision and/or restoration of law and order, basic public services (including social services), and economic management. And 2) the PA should extend its provision of these tasks and responsibilities to areas and facilities that are evacuated by Israel. Specifically, it should seek to:

- Prevent cross-border attacks against Israel, and secure all borders against infiltration.
- Secure all assets in evacuated areas against theft and private expropriation or damage.
- Regulate water extraction from the coastal aquifer.
- Manage the entry/exit of people, goods, and vehicles through the border crossing points with Israel and Egypt, and through the seaport and airport if they are restored to working order, in order to ensure economic stability.

In order to prepare effectively to implement the above tasks and responsibilities, the PA will need to:

- Rehabilitate its security forces and ensure effective planning and division of labor among the latter.
- Ensure a division of labor among PA civilian ministries and agencies that will be involved in management and/or service delivery.
- Clarify the cabinet's role, procedures, and mechanisms in overseeing PA preparations and implementation.
- Designate official channels of communication and coordination with multilateral agencies and NGOs – both international and local – involved in the provision of security and of humanitarian or technical assistance.
- Engage militant factions in political dialogue regarding security requirements and protection of evacuated areas and assets.

C. Israel's Role

The PA's ability to achieve the tasks mentioned above and to be able to prepare itself to take over evacuated areas in the Gaza Strip and restore its internal legitimacy and effective control is dependent on Israeli behavior to a certain degree. The existing Israeli "disengagement plan," as submitted to the U.S. administration in April 2004, contains a serious potential contradiction that may ultimately render the Gaza Strip a suffocating ghetto isolated from Israel and the rest of the world.

The Israeli plan (as it appeared in the Israeli press) presents the evacuation of Gaza settlements as an end to the 37 years of occupation: “there will be no basis for the claim that the Gaza Strip is occupied territory.” It further states that “the disengagement move will obviate the claims about Israel with regard to its responsibility for the Palestinians in the Gaza Strip.” But at the same time Israel insists that Gaza will not have sovereign powers and will continue to be governed by existing arrangements and conditions that cover most aspects of security and civil administration: “The disengagement move does not detract from the existing agreements between Israel and the Palestinians. The existing arrangements will continue to prevail.”

Moreover, the Israeli military will continue to enter Gaza and to maintain control over border crossings as well as airspace and territorial waters. Israel’s military will not be withdrawn from the strip of land along the Palestinian-Egyptian border which Israel calls the Philadelphia Route.

This continued Israeli presence rules out the possibility of forging a security plan that would receive the support of all factions, including Hamas. Even if it wanted to, the PA would find it too risky to try to impose such a plan on the militant groups. Under such conditions, the option of Hamas agreeing to a cease fire and some form of power sharing with the PA would no longer be viable.

Within this ambiguous legal environment and potentially unstable security conditions, Israel should take steps that have the potential of helping to ease the security conditions, prevent serious economic setbacks, and promote political stability within the Palestinian areas:

- Israel should help facilitate the rehabilitation of PA security services and ease the general security environment in advance of any evacuation in order to assure a peaceful and stable transfer. As soon as possible, Israel should seek to transfer to the Palestinians control of the Philadelphia Route, thereby reducing the chances for Palestinian violence inside Gaza and from the Gaza Strip into Israel.
- Israel could, and should, implement measures to ease economic and financial conditions, especially affecting revenue transfers, labor flows, and trade with the West Bank, Israel, and the rest of the world. In its disengagement plan, Israel committed itself to keep in place water, electricity, sewage and communications infrastructures that serve the Palestinians in Gaza. Israel also agreed to maintain the economic arrangements that are currently in effect between Israel and the PA. Yet there is no assurance that Israel may not exploit certain conditions (such as bombing or rocket attacks) to change this policy, leading to the collapse of the Palestinian economy and the suffocation of the Gaza Strip. Israel should seek to transfer to the Palestinians as soon as possible control over Gaza land crossing points and allow the functioning of the airport and the building of the seaport.
- Israel should seek to restore the situation prior to September 28, 2000, so as to enable the holding of Palestinian elections. As part of its disengagement plan, Israel agreed to

evacuate settlements in the northern part of the West Bank, reduce its activities in the cities, and present the U.S. administration a timetable for the removal of checkpoints in the West Bank enabling Palestinian transportation contiguity. In order to insure the continued existence of the PA and to encourage the development of a stable political environment, Israel should take more of these steps as soon as possible in order to allow the holding of Palestinian elections. Specifically, Israel should facilitate voter registration by allowing registration to take place in east Jerusalem as it did during the 1996 elections, and by allowing the free movement of personnel from the Central Elections Commission.

III. The International Community's Role

A. PA Reform

The international community has not lost its ability to play an effective role in encouraging and assisting PA reform. President Arafat's recent willingness to allow payment of security service salaries by bank transfer is a case in point, though it had to resort to punitive measures that may have contributed to the decline in the PA's domestic and international standing. Whether or not further significant reforms can be effectively triggered through coercive means is not at all certain, given the PA's parlous political state and institutional incapacity. The international community might nonetheless focus on the following in the coming period:

- At a general level, the conduct of elections for the Palestinian Legislative Council (and Presidency) might be a means of reinvigorating the political conditions in which PA ministers, civil servants, and parliamentarians can become more pro-active in altering the manner in which PA governance and service delivery are performed.
- The transfer of the payroll from the General Personnel Council and its current director Dr. Mohammad Abu-Sharia, to the Ministry of Finance. This has consistently proved to be a major obstacle to civil service reform and to the proper implementation of the Civil Service Law.
- Reform of the judiciary system, starting with the Supreme Judicial Council and putting an end to non-constitutional behavior by its head.
- Continuation of internationally-supported efforts to assist the prime minister's office and the cabinet through development of professional secretariats and policy-planning units.
- Monitoring the proper and sustained implementation of the recent reform of salary payments to security services.

B. Israeli Withdrawal From Gaza

Finally, the international community might also assist the PA to respond effectively to an Israeli withdrawal from Gaza:

- It could help verify and inventory assets left behind by agreement in areas evacuated by Israel.
- In case Israel does not agree to a full transfer of powers to the PA, help perform certain functions e.g., the movement of people, goods and vehicles to/from Israel between Gaza and the West Bank, or through points of international entry/exit; and management of the coastal aquifer.
- Train, re-equip, and help rehabilitate PA security services.
- Provide financial and technical assistance, whether to PA ministries and agencies, humanitarian relief efforts, or economic development (including job creation) and public infrastructure projects.
- Assist in setting the date for, facilitate and monitor Palestinian elections.

IV. Appendices

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