
REFORMING THE
PALESTINIAN AUTHORITY:
AN UPDATE

January 2003

Report by the
INDEPENDENT TASK FORCE ON
STRENGTHENING PALESTINIAN
PUBLIC INSTITUTIONS

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INDEPENDENT TASK FORCE ON STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS

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FOREWORD

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 two years.

The Task Force has been ably 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, who have served as Senior Consultants since its creation in 1998. I wish to thank Dr. Scott Lasensky, Fellow at the Council on Foreign Relations and Assistant Director of the U.S./Middle East Project, and the staff of the U.S./Middle East Project for their role in the work of the Task Force.

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EXECUTIVE SUMMARY

Domestic and international interest in Palestinian reform in the second quarter of 2002 generated much needed political pressure on the president of the Palestinian Authority (PA), forcing him to form a new government and to implement several reform measures. Major laws, such as the Basic Law and the Law of Judicial Authority, were signed by the president in May; new reform-minded ministers, such as Salam Fayyad (finance), were appointed; a date was set for general elections; and a newly appointed ministerial Reform Committee presented a 100 Day Reform Plan.

But the reform process remains critically impeded, not only by continued armed confrontations and Israel's siege and blockade of Palestinian cities, but also by the ineffectiveness of the Reform Committee, non-implementation of newly signed laws, and the absence of reform vis-à-vis the Council of Ministers, the Interior Ministry, the judicial system, and public administration in general. The role of the Palestinian Legislative Council remains marginal despite an aborted attempt to strengthen its oversight functions.

Efforts to sustain reform should focus on management of the reform process. For example, the capacity of the ministerial Reform Committee could be enhanced with the appointment of a dedicated reform minister, a dedicated staff unit and a clear mandate to implement – without further executive or legislative authorization -- measures in the 100 Day Reform Plan, already approved by the Legislative Council and President Arafat.

Other steps should include: constitutional reforms, including the development of a Palestinian constitution and amendment of the Basic Law and the election law; reforming the executive branch by empowering the Council of Ministers; reforming the judiciary by forming a new Supreme Judicial Council and clarifying its mandate vis-à-vis the Ministry of Justice; introducing security sector reform, including a definition of the functions and the mandate of the Interior Ministry; empowering the Legislative Council by implementing provisions in the Basic Law that assure separation of power; and encouraging the electoral process.

Recent events indicate that pressure works when used wisely. It is effective when coupled with positive incentives, such as political, financial and symbolic support. However, framing reform in terms of regime change may have negative consequences. It may have doomed genuine reform by shifting the focus from a reform *process* that would address serious constitutional and institutional needs, to specific outcomes -- e.g. who will be allowed to rule and which candidate can deliver security to Israel.

In the aftermath of the US demand for Palestinian regime change and the subsequent Israeli siege of the Muqata compound, Arafat has sought ways to put an end to the whole reform movement. It is doubtful he will concede to any further reform steps if it means his own early marginalization.

Furthermore, it is doubtful that significant reform can be expected in the absence of progress in the peace process. Reform linked to progress in the peace process is far more likely to succeed.

OVERVIEW

The Israeli reoccupation of Palestinian cities in April 2002 unexpectedly served as a catalyst for reform in the Palestinian Authority. Fear of anarchy in the absence of Arafat, heightened concern about the sudden disappearance of PA security institutions, and the utter failure of other PA institutions to deliver services at a time of extreme need, highlighted the urgent need for reform. In the wake of the reoccupation, public demand for reform soared.

In April and May, new demand for reform came from the Fatah Revolutionary Council, the Fatah Central Committee, the Palestinian Legislative Council, and from senior advisors and associates of Yasser Arafat. According to a May poll, more than 90% of the public supported local and external calls for reform. Both the Fatah Revolutionary Council and the Fatah Central Committee presented Arafat with a list of specific demands, including the appointment of a prime minister. At the same time, debate in the Legislative Council produced a “reform program” listing demands for significant reform measures.

Riding the storm, the international community presented its own list of demands, including constitutional, institutional, fiscal, and security reform. In June, the U.S. president went beyond the prevailing reform agenda by demanding regime change. One of the consequences of this demand has been to embolden members of the PLO old guard to become publicly critical of Yasser Arafat (e.g., Nabil Amr and Abu Mazen) and step forward as candidates for prime minister.

However, framing reform in terms of regime change may have had negative consequences as well. It may have effectively doomed genuine reform by shifting the focus from a reform *process* addressing serious constitutional and institutional needs to an emphasis on specific *outcomes* – e.g. who will be allowed to rule and who can deliver security to Israel. It may also affect the chances for holding national elections, for the U.S. – fearing Arafat may win a presidential election – now advocates legislative and local elections only. Although the latest draft of the Road Map, adopted by the Quartet in December 2002, does not specifically rule out presidential elections, the U.S. objection to such elections at this time may nevertheless prevent any elections anytime soon.

Responding to local and international pressure, Arafat took bold reform steps in an attempt to appease his critics and ensure his survival. In May, the president signed the Basic Law and the Law of Judicial Authority, vital laws passed by the Legislative Council in 1997 and 1999. Without setting specific dates, Arafat announced new local and general elections for early 2003.

A new and compact cabinet was formed in early June and an inter-ministerial Reform Committee was established by a presidential decree. The Reform Committee was

headed by Yasser Abed Rabbo, the minister of culture and information, and composed of newly appointed ministers Salam Fayyad (finance), Ghassan Khatib (labor), Ibrahim Daghma (justice) as well as old timers Nabil Sha'ath and Saeb Erekat. Nabil Qassis (tourism) was appointed coordinator of the committee. Within a few days, this committee had produced an ambitious 100 Day Reform Plan.

With significant international donor input, the 100 day plan evolved in July into an impressive and detailed reform matrix outlining reforms in the constitutional and institutional domains: public security, public finance, the justice system, and the electoral system. The matrix outlined a detailed PA reform agenda and specific implementation commitments under each agenda item. It also outlined donor reform benchmarks and required donor support measures. PA commitments and donor benchmarks included the following:

- publication of the Basic Law by July 15
- convening of the Palestinian Legislative Council to approve the new cabinet
- restructuring PA ministries and authorities within two months, possibly incorporating institutions operating outside the jurisdiction of ministries
- appointing an election commission by the end of July and holding elections by January 2003
- unifying Preventive Security Services, the Police, and the Civil Defense under a newly restructured Ministry of Interior
- unifying all PA revenue and expenditure operations under the control of the Ministry of Finance, and unifying all PA payroll administration under the Ministry of Finance
- rationalize budget preparation and submit 2003 budget to Legislative Council by November 1, 2002
- reorganizing the commercial and investment operations, establishing the Palestinian Investment Fund, and carrying out comprehensive auditing
- reviewing the Civil Service Law and submitting an amended draft to the Legislative Council
- preparing a modern pension system to go into effect as quickly as possible

- enhancing the independence of the office of the Auditor General with regular reports submitted to the president and Legislative Council, and implementing internal auditing in all ministries
- implementing revenue sharing with local authorities
- implementing the Judiciary Law, including the appointment of a new Supreme Judicial Council – and delineating responsibilities between it and the Ministry of Justice
- appointing new judges, rehabilitating physical infrastructure and appointing competent public prosecutors

As the following progress report indicates, few of these measures have been fully implemented. Arafat has shown willingness to empower Salam Fayyad (finance), and this is where major progress has been seen. But there has been little progress in other reform areas, particularly security (including the Interior Ministry under Abdul Razzaq al Yahya, succeeded by Hani al-Hasan), or the justice system (including the Justice Ministry under Ibrahim al Daghma, succeeded by Zuhair Sourani). Security conditions and political developments have impeded progress.

In an unprecedented move, the Legislative Council refused in September to vote confidence in the new government. Seeing the writing on the wall, the cabinet resigned. The Council wanted several ministers dismissed and indicated its doubts about the commitment of the president and the new cabinet to serious and genuine reform.

Due to uncertainty about a new government, little reform work was accomplished until the formation of a new cabinet in late October. The Reform Committee did not meet for two months. But during this time Arafat sought ways to put an end to the challenge from the Legislative Council and the whole reform movement. He may have succeeded. For example, the Legislative Council approved the new cabinet by a wide margin even though it is essentially a replica of the previous one. As has been the case since 1999, when the Independent Task Force published its first report, Arafat continues to publicly support reform, but his actions demonstrate little, if any, commitment.

The new Palestinian cabinet needs to renew its commitment to the reform agenda. It should put in place a new reform program similar to the 100 day program of the previous government and the international community should test the seriousness of Arafat and his government's commitment to the reform agenda.

PROGRESS REPORT

CONSTITUTIONAL AND LEGAL MATTERS

- The president signed the Basic Law. The law went into effect in July.
- The president signed the Law of Judicial Authority; the law went into effect in June.

EXECUTIVE BRANCH

- A new cabinet was appointed by Arafat in October. The number of ministers is more in line with the Basic Law.
- The cabinet was approved by the Legislative Council.
- The cabinet, for the most part, meets separately, no longer joined by members of the so-called “Palestinian Leadership” which includes non-ministers.

PUBLIC FINANCE

- Substantial progress has been made to place both revenues and expenditures under the control of the Finance Ministry.
- Full consolidation of PA revenue has been achieved, including revenue from commercial enterprises.
- PA payroll administration is now fully under the authority of the Finance Ministry.
- Commercial and investment operations have been unified under the control of Ministry of Finance and the Palestinian Investment Fund has been established.

RULE OF LAW

- The president appointed and later extended the life of the Supreme Judicial Council.

- The president also appointed a new justice minister, Ibrahim Daghma, to replace an inactive minister. Daghma was later replaced by Zuhair Sourani in October.

SECURITY SERVICES AND MINISTRY OF INTERIOR

- Arafat appointed a new Interior minister (Yahya), later succeeded by a second new minister (al-Hasan).
- Arafat issued a decree unifying Preventive Security Services, the Police, and the Civil Defense under the Ministry of Interior.

ELECTORAL SYSTEM

- An election commission has been appointed.
- A date was set for elections (January 2003), but was later postponed.
- Debate on amending the electoral law is underway.

CHALLENGES

THE REFORM COMMITTEE

- It has no independent capacity to assess, investigate, monitor, or follow up.
- There are no procedures for deliberation and decision-making.
- There is no budget or secretariat, although discussions have been held with a donor country to provide assistance in establishing a secretariat.
- The Committee has an excessive number of members, comprising some 40% of the entire cabinet.
- Committee members all have other ministerial portfolios and political duties, reducing the time and effort they devote to reform.
- Reform tasks are split among different committee members, weakening coordination and leading to uneven progress.
- There is no significant or regular consultation with civil society.
- The Committee reports to Arafat only, disregarding the Council of Ministers and the Legislative Council.

CONSTITUTIONAL AND LEGAL MATTERS

- Arafat violated the Basic Law right after he signed it. For example, article 60 stipulates that the president can issue decrees that have the power of the law only if the Legislative Council cannot meet in time to address an urgent issue.

Yet the president issued several decrees in June and October, without a basis in law, that established government authorities headed by ministers.

- Arafat violated the Judicial Authority Law by extending the life of the Supreme Judicial Council despite the fact that many of its members do not meet the legal requirements. At the time, the Legal Committee of the Legislative Council, the justice minister and the Bar Association all agreed the president violated the law by extending the Council's term.

EXECUTIVE AUTHORITY

- Specific steps for Executive reform have not been proposed by the Reform Committee or the PA. Thus, the cabinet remains essentially a place for debate, not decision.
- The president did not appoint a prime minister. Although the Palestinian Legislative Council's 100 day reform plan does not address the issue of a prime minister, individual legislators, the Fatah Revolutionary Council and the Fatah Central Committee all endorsed the proposal. In a November poll, 73 percent of Palestinians in the West Bank and Gaza expressed support for the appointment or election of a prime minister.
- The president established several authorities (previously ministries) that are not subject to executive or legislative oversight. The list includes authorities for civil affairs, the environment, NGOs, and Jerusalem.

RULE OF LAW

- The judicial authority law he had just signed was violated by the president by keeping members of the Supreme Judicial Council in their positions and by appointing a Prosecutor General without the Supreme Judicial Council's recommendation. Also, according to the law Arafat signed, the Supreme Judicial Council is limited to nine members (it now has 14) and sets a 70 year age limit (four members are over 70, including its head).
- The president was very slow in clarifying the mandates of the Supreme Judicial Council and the Justice Ministry. Before the Judicial Authority Law was signed, the head of the Council, supported by Arafat, sought to revise the legislation by assigning the functions of the Justice Ministry to the Judicial Council. The Legislative Council refused to do so, but the conflict over mandates continued. Under normal conditions, the cabinet or the relevant ministry (i.e. Justice Ministry) would provide the necessary clarification in accordance with the law. Two proposals aiming to do that have been submitted to Arafat, but so far he has taken no action, leaving the matter unresolved and the Judiciary law unimplemented. (There were new attempts to resolve this issue in late December 2002, as this report went to press.)
- The president took no measures to abolish the highly controversial security courts, or even to freeze their proceedings. He merged the regular prosecutor's office with

the office of the prosecutor for the security courts. By appointing the security court's prosecutor to head the new unified office, he worsened the situation.

- The (illegal) head of the Supreme Judicial Council issued a series of decisions appointing judges and forming courts based on the power of a 1999 presidential decree rather than the powers granted by the Law of the Independence of the Judiciary.

SECURITY SERVICES/MINISTRY OF INTERIOR

- Despite the appointment of an interior minister and a presidential decree to unify several security services under the control of the Interior Ministry, the president still exercises direct control over security services and has prevented restructuring of the ministry.
- In practice, the interior minister does not exercise effective financial control or have the power to remove, constrain, or bring to account officers suspected of fraud or other violations.
- The proposed reform of the security services has applied only to the Civilian Police and Preventive Security branches, leaving out the Public Security and General Intelligence branches, which still report to Arafat.
- Only “technical” aspects of reform have been proposed so far -- such as organizational restructuring of the police, making new appointments, or integrating training programs.
- The “technical” approach has left out the most important aspects of security sector reform, namely ensuring proper ministerial authority and parliamentary oversight.

PUBLIC ADMINISTRATION

- Implementation of public administration reforms is hindered by the President's continued micro-management through control of appointments and the lack of effective control and supervision of public institutions at the operational level.
- The President continues to micro-manage expenditure of government agencies, creating tensions with the strict control mechanisms created by Finance Minister Fayyad.

- Civil service reform is still pending.

PALESTINIAN LEGISLATIVE COUNCIL

- The confirmation of the new PA cabinet in late October was the result of intimidation by the Executive – clear evidence that the Legislative Council has not developed into an effective and independent political oversight body.
- The fact that the Legislative Council has been so extensively co-opted and marginalized by the president since its election in January 1996 may explain why new political formations – parties, civil society platforms, or parliamentary caucuses – have not emerged to champion agendas based on socio-economic and governance issues, as the Legislative Council does not appear to offer a meaningful arena for the conduct of normal civilian politics.
- The continued weakness of the Legislative Council poses a fundamental flaw that may continually defeat the purposes of the reform process.

ELECTORAL SYSTEM

- There has been little progress in amending the electoral law.
- The election commission is impeded by continued Israeli occupation and cantonization.
- The PA opposes abolishing the separate presidential election. While this was not raised in the 100 day plan, or by other PA institutions, it has been a source of controversy within the Quartet. Although the current draft of the Road Map fudges the issue, the U.S. has explicitly called for postponing presidential elections. The lack of clarity on this issue could damage prospects for holding any national Palestinian elections.

RECOMMENDATIONS

(1) LEADING AND MANAGING REFORM

- The PA could do much to enhance the capacity of the ministerial Reform Committee in order to maintain the welcome momentum it generated through publication of its 100 day plan, and to build on the concrete and commendable progress made to date in certain limited sectors.
- Having successfully achieved its immediate mission of formulating the 100 day plan, and securing presidential, ministerial and parliamentary approval, the Reform Committee should be reconstituted to better address the specific tasks of developing technical plans, coordinating with international counterparts, and implementing and monitoring concrete measures.
- The track record of previous PA reform committees indicates a clear and pressing need for the reform portfolio to be led by a dedicated minister, who should have no other ministerial portfolios or political duties.
- The reform minister should be supported by a small, dedicated, full-time staff unit that has sole responsibility for liaising with PA ministries to coordinate and monitor the efforts of PA ministries and international counterparts, appointing and allocating technical experts and consultants, and reviewing and reporting progress for the minister.
- The reform minister should have a clear mandate to implement all measures identified within the 100 day plan without needing further recourse to the president, the Council of Ministers or the Legislative Council, except where the proposed measures call for prior executive or legislative action.
- Experience, both in Palestine and elsewhere, indicates that a large reform committee tends to be unwieldy and ultimately ineffective. Therefore, the Reform Committee should be dissolved or reduced sharply in number, giving way to a new committee of 2-3 ministers whose main role is to provide political backing for the reform minister, and to enable him/her to act fully within the terms of his/her mandate, without need for further recourse to other authorities.
- The Quartet's International Task Force can assist the reform process through holding periodic meetings with the PA reform minister, receiving regular written reports from PA counterparts, building its own capacity to monitor and verify

implementation of reforms, coordinating inputs by international donors to PA reform and institution-building, and providing carefully tailored and targeted technical assistance where relevant.

(2) CONSTITUTIONAL REFORM

- The Basic Law should be amended to create a prime minister; clarify the powers and responsibilities of the prime minister; and regulate the relationship between a prime minister and the president, the Council of Ministers and the Legislative Council.
- A draft constitution for the Palestinian state should be developed to create a parliamentary system, as stated in the PLO's 1988 declaration of statehood and in the recommendations of the Legislative Council.
- The election law should be amended to take into consideration the amendment to the Basic Law and work done on the draft constitution including the possibility that the president be elected by parliament.

(3) REFORMING THE EXECUTIVE BRANCH

- The Council of Ministers must be transformed from a forum for debate to an authentic decision making body. The Reform Committee has not yet even raised the subject of the role of the Council of Ministers. The role of the Council in holding ministers and the president to standards of accountability needs to be addressed.

The president's ability to issue decrees, even when they deal with reform steps, must be checked by empowering the Council to take such decisions and to oversee implementation. The Reform Committee should formulate a clear and detailed description of the responsibilities of Council of Ministers. The process of decision-making should also be clarified: how agendas are set, debates organized, votes taken, minutes recorded, and reports issued.

- Also critical is the appointment of a prime minister— and to make such a step more meaningful, the powers and responsibilities should be clarified immediately.

(4) RULE OF LAW

- Change the composition of the Supreme Judicial Council to bring it in line with the Judicial Authority Law, and ensure the proper appointment of the prosecutor general (e.g. by recommendation of the Judicial Council).
- Clarify the mandates of the Supreme Judicial Council and the Ministry of Justice by implementing either Camille Mansour's proposal or Ibrahim Daghma's. (Mansour served as head of the Birzeit University Law Institute.)
- Abolish the security courts. Their proceedings should be frozen immediately.

(5) SECURITY SECTOR REFORM

- The Council of Ministers should submit to the Legislative Council a draft Basic Law for the Ministry of Interior, defining its duties, powers and job descriptions.

(6) PALESTINIAN LEGISLATIVE COUNCIL

- The Basic Law's provisions with respect to the Legislative Council's functions, duties, and powers should be applied in order to assure a separation of power.
- The president should sign remaining laws already passed by the Legislative Council.
- Basic Law articles dealing with Legislative Council approval of the governor of the Monetary Authority and the head of the General Control Office should be implemented.
- The General Control Office should submit current (and previous) reports to the Legislative Council in accordance with the Basic Law.

(7) ELECTORAL SYSTEM

- The electoral law should be reviewed and amended. Demands for reforming the law include calls for a more representative system, i.e. proportional versus majority representation; a more just districting scheme; and better organization and management of campaign funding and media access. Some reforms should be

carried out immediately, while others – due to time constraints – could be delayed until after elections.

- Should elections be legislative and presidential, or just legislative? This question needs to be addressed in light of the reference made in the Quartet's Road Map. Failure to address the issue may delay the holding of elections.
- The independence of the election commission should be affirmed. Currently, the president (who is also a candidate) appoints the head and the members of the commission.

CONCLUSION

- Pressure matters. Arafat was willing to embark on serious reform steps only under domestic and international pressure. It should be kept up. Frequent meetings with the Reform Committee is one way to keep up the pressure. Demands for written reports and commitments is effective as it forces the Reform Committee to seek Arafat's approval which in turn makes it more difficult for Arafat to avoid decisions.
- The appointment of an *effective* prime minister would greatly facilitate the reform process by encouraging accountability, distributing power and empowering the Council of Ministers. A prime minister in name only would not change the situation.
- Priority should now be given to four matters:
 - i- strengthening the Reform Committee
 - ii- ensuring that the delineation of the Supreme Judicial Council's mandate is implemented, while at the same time strengthening the capacity of both the Judicial Council and the Justice Ministry to implement their mandates
 - iii- empowering the Council of Ministers (with or without a prime minister)
 - iv- speeding up and supporting elections

The demand for implementation of reform measures should be linked to the provision of economic and political support to the PA in the form of "positive conditionality." For example, international demand for security reforms and the strengthening of the interior ministry could be part of a larger package that also comprises the rebuilding of Palestinian security services.

Similarly, political support for Arafat's status as PA president could be related to specific expectations regarding the separation of powers, strengthening the role of the Council of Ministers and streamlining decision-making. Reform in the civil service and public administration should be required in return for donor support for a revamped pension system and de-commissioning plan.

REPORTS BY THE INDEPENDENT TASK FORCE

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