

TASK FORCE REPORT

REFORMING THE  
PALESTINIAN  
AUTHORITY

CONCLUDING REPORT

A REPORT BY THE INDEPENDENT TASK FORCE  
FOR THE STRENGTHENING OF PALESTINIAN PUBLIC INSTITUTIONS

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YEZID SAYIGH AND KHALIL SHIKAKI, PRINCIPAL AUTHORS

A PUBLICATION OF THE U.S./MIDDLE EAST PROJECT

# Reforming the Palestinian Authority: Concluding Report

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Strengthening of Palestinian Public Institutions*

Henry Siegman, Task Force Director

*Yezid Sayigh and Khalil Shikaki, Principal Authors*

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## FOREWORD

In 1999, the U.S./Middle East Project of the Council on Foreign Relations published an Independent Task Force report, *Strengthening Palestinian Public Institutions*, the first comprehensive and systematic assessment of the institutions of the Palestinian Authority (PA)—its structure and procedures, its ability to set priorities and to allocate resources, and its transparency and accountability.

Prepared by the Independent Task Force for the Strengthening of Palestinian Public Institutions, directed by myself and chaired in its early years by former Prime Minister of France Michel Rocard, that report had two distinguishing characteristics. It was the product of a team of mostly Palestinian experts under the direction of the Independent Task Force's two principal consultants, Yezid Sayigh and Khalil Shikaki, who are also the principal authors of this latest and final publication of the Independent Task Force. And its goal was a practical one: to determine, as we stated at the time, "what works, what doesn't work, why not, and how to fix it."

The report proved to be an invaluable tool not only for those within the PA and in Palestinian civil society who were deeply committed to the development of sound institutions and good governance, but also for the international donor community whose truly massive assistance over the years has had a crucial—if at times contradictory—impact on the reform process.

Of course, the policies and actions of the government of Israel have also had a critical impact on that process, often distorting the PA's priorities and strategic goals, not least because of the government of Israel's unceasing settlement activity in the West Bank, Gaza, and East Jerusalem. The violence of the intifada and of the government of Israel's retaliations, as well as closures and economic sanctions have subjected Palestinian public institutions to an

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unrelenting onslaught. But as this report points out, these factors did not negate the need to pursue PA institution-building, nor did they wholly block, at any point, all means and avenues of doing so. As the authors of the report stress, if the PA's performance in building effective public institutions and establishing good government may not be measured in terms of ideal standards, it can and should be measured against what was possible.

Despite the many failures and disappointments described in this concluding report, and despite the suffering that the occupation has inflicted on the Palestinian population, the past ten years confirm that Palestinians, according to the authors of this report, "have the tools necessary to build a successful system of government and a viable independent state, and [that] the PA possesses the basic structures, frameworks, and skills required to formulate coherent policies, devise appropriate policy instruments, and deliver effective public services in all domains."

The general elections of January 2006 offer a significant opportunity for a newly led PA to tackle core political obstacles and to activate a more effective, accountable, and transparent government. That is why the concluding report's identification of the critical political ingredients and reform priorities that face the new PA cabinet are of particular importance. If the new Hamas leaders of the PA survive—literally and politically—the latest crisis that has beset the PA and the Palestinian population—primarily in Gaza, but also in the West Bank—they will quickly have to begin delivering on their promise of change and reform or face the same loss of public confidence as their predecessors.

I wish to express my gratitude to the individuals and institutions that have made possible the important work of this Independent Task Force. The European Commission and the government of Norway have been generous in providing the necessary financial support. The European Commission's devoted and expert staff constantly offered us wise guidance and encouragement. Key to the success of the project was the year-long research and policy proposals prepared by a working group of outstanding Palestinian experts, which provided the background and much of the analysis for the initial Task Force report published in 1999. Equally important was

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the oversight and guidance provided by members of the Independent Task Force and by the International Board of the U.S./Middle East Project, chaired by General Brent Scowcroft. My thanks to the Independent Task Force's two senior consultants: Dr. Yezid Sayigh, professor of Middle East Studies at King's College London, and Dr. Khalil Shikaki, director of the Palestinian Center for Policy and Survey Research. Their courage and integrity were critical to the success of this undertaking.

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April 2006



## CONCLUDING REPORT



## INTRODUCTION

In its report, *Strengthening Palestinian Public Institutions*, published in 1999, the Independent Task Force (ITF) of the U.S./Middle East Project identified the following as the primary goals of capacity building in the Palestinian Authority (PA):

- constitutional government;
- political accountability and judicial review;
- transparent and accountable management of public resources;
- rule of law and citizens' rights;
- democratic participatory politics and pluralist civil society; and
- effective and responsive public administration.

The report additionally noted that strengthening public institutions does not involve structures alone, but also the rules, norms, and practices that define public institutions and their operating culture and that determine relations with their constituents. It concluded that attainment of the above goals therefore required the following:

- accountability to lawfully established bodies enjoying a popular mandate;
- operation according to a clear legal and regulatory framework;
- openness to participation by civil society (nongovernmental organizations [NGOs], political parties, and the private sector); and
- effectiveness and efficiency in performing set tasks and mandates, and in mobilizing and utilizing public resources.

Much has been achieved by the PA in the years since the initial report was published, often under the most adverse security and economic conditions, yet the PA has failed to provide con-

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tinuing and effective government, and it suffers significant systemic shortcomings. Major progress that has been achieved in establishing governing structures and legal frameworks and in setting policies and objectives since 1999 has unfortunately been balanced, and in certain respects undermined or even reversed, by negative trends that have deepened and extended to the point of becoming prevalent.

However, the successes and failures of the PA must be seen in context. The government of Israel (GoI) has had a fundamental impact on the PA's political priorities and strategic goals, not in the least through its unceasing settlement activity in the West Bank and East Jerusalem. The GoI has also had an extraordinary impact on developments in PA governance and institution-building, whether indirectly, by imposing border closures and economic sanctions, or directly, by impeding the movement and operation of PA personnel and of the users and beneficiaries of PA public services. These adverse conditions have intensified since the start of the intifada in the autumn of 2000. Whatever the background or the immediate causes of actions by both the GoI and the PA, Palestinian public institutions have been subjected to an unrelenting onslaught from a reform perspective.

Nonetheless, despite the violence and disruptions of the intifada and GoI policies and practices, the need to pursue PA institution-building and reform remained, and the disruptions did not wholly block the means and avenues to begin that process. As opinion polls have regularly confirmed, this has been the consistent view of the Palestinian public, of Palestinian parliamentarians, and of civil society actors. Indeed, the PA executive branch has itself concurred with the need for certain structural and policy reforms and has set up several bodies at the ministerial level since 1998 to tackle them. The PA has also benefited from the sustained political, financial, and technical support of the international community, enhancing its opportunity to pursue a reform agenda despite the severe security and economic conditions.

In brief, although the PA's performance in building effective public institutions and establishing good government may not be

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measured in terms of ideal standards, it can and should be measured against what was possible.

This report assesses what reforms have been accomplished in relation to the primary goals listed above, noting immediate priorities for the incoming parliament and cabinet. It then identifies principal factors that have assisted or impeded progress and the trends in political and institutional culture that have also affected the reform process and its outcomes. It focuses on the need to affect changes in systemic approach, collective expectations, and individual work ethic, which are necessary if genuine reform and improved government are to be attained.

The report concludes with a summary of the critical political ingredients and reform priorities that face the new PA cabinet following the Hamas election victory in January 2006. Clearly, the outcome of the elections, which were pronounced free and fair by local and international observers, transformed the Palestinian political landscape. The Palestinian Liberation Organization (PLO)'s political elite, which had governed the PA since its inception, was no longer fully in charge of its institutions, and both this PLO lack of control and the election results reflect public discontent with the failure of the long-dominant Fatah party to lead Palestinian state building, institute clean government, and enforce law and order. Hamas began its term in government with the promise of combating corruption and ending lawlessness, under the leadership of a new and highly motivated, ideologically driven elite. However, it must deliver on its electoral promise of change and reform or eventually face the same loss of public confidence as its predecessors.

## THE CURRENT STATUS OF PALESTINIAN AUTHORITY GOVERNANCE

### CONSTITUTIONAL GOVERNMENT

One of the PA's most significant successes since 1999 has been to establish a constitutional basis for government. From September 1995 to July 2002, the PA operated without a constitutional document other than the Oslo II Accord, but in July 2002, President Yasir Arafat signed the Basic Law that had first been presented to him by the Palestinian Legislative Council (PLC) in 1997. Some confusion arose because the version of the Basic Law published per his instructions in the *Official Gazette* differed slightly from the version approved by the PLC, but this published version of the Basic Law has been in effect since 2002. The PLC amended the Basic Law in March 2003 to establish the post of prime minister and to increase the powers of the cabinet over the budget, law and order, and internal security. This was a welcome development, although the division of powers between the president and prime minister was not sufficiently clear, requiring clarification and resolution by the incoming PLC.

Given that the majority of the new PLC members are now from Hamas, while the president is from Fatah, if the lack of clarity remains unresolved, it will likely pose a serious challenge to the proper functioning of the PA executive.

In parallel, the PLO launched a constitutional drafting and consultation process in 1999 in preparation for the eventual establishment of an independent Palestinian state. A commission was established, and in 2002 it presented a draft constitution for public debate. The draft was subsequently revised three times, but the commission has been inactive since 2003.

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### POLITICAL ACCOUNTABILITY AND JUDICIAL REVIEW

The PLC has shown moments of political resolve in its relations with the executive branch, such as its no-confidence vote in the cabinet line-up proposed by President Arafat in September 2003. Otherwise it has been gradually marginalized and become increasingly ineffective since 1999. Since October 2003, when Ahmad Qurei (Abu Alaa) resigned as speaker of the house to succeed Mahmoud Abbas (Abu Mazen) as prime minister, the new speaker of the house, Rouhi Fattouh, and the PLC have played little part in resolving several disputes over mandates between the president, prime minister, and cabinet; between the Ministry of Justice and the Supreme Judicial Council; and between the comptroller general, cabinet, and PLC.

The inability or unwillingness of the PLC to confront executive dominance was largely due to the PLC's domination by a single party—Fatah—and to Fatah's internal fragmentation in the face of autocratic leadership by President Arafat. This feebleness, along with Israeli and U.S. reluctance to get involved, also explains the three-year delay in holding the general elections for a new parliament, which were originally scheduled for January 2003. The marginalization of the PLC has also had negative impacts for judicial review, particularly for the continued weakness or incapacity of the posts of attorney general and comptroller general.

The January 2006 election, which resulted in a new parliament comprised of a strong opposition bloc and a radically different Fatah bloc, offers a significant opportunity to invigorate the legislature and enhance its oversight functions in relation to the executive branch. Among the principal tasks facing the PLC in order to attain significant improvements in judicial review are the need to publish past reports of the comptroller general's office and the need to allocate sufficient funding for the proper staffing and functioning of the attorney general's and comptroller general's offices.

However, there is a risk that Hamas may be tempted by the clear majority of 56 percent it enjoys in the legislature as well as the dependability of its parliamentary members, to ignore and marginalize

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the oversight role of the PLC. This possibility could well be the case if Hamas faces what it regards as obstructionist tactics by Fatah to its legislative and policy agendas. In this case, Hamas could find itself concentrating power in the hands of the executive as a means to circumvent its political opposition—in effect repeating the mistake previously made by Arafat and Fatah. It will be essential for the new PLC to emphasize strict implementation of the parliamentary by-laws in order to ensure adherence to proper legal procedures and endorse the rule of law, rather than follow a policy of creating facts through partisan majority.

### TRANSPARENT AND ACCOUNTABLE MANAGEMENT OF PUBLIC RESOURCES

The regularization of public finances has arguably been the PA's most significant achievement to date, with wide-ranging consequences for its ability to maintain service delivery and employ a large proportion of the active workforce. This is especially significant in light of the poor state of financial management prior to 2000, the decline of revenues and massive economic recession since the start of the intifada, and the continued resistance to financial reform by President Arafat until his death in November 2004. Although some positive steps were taken to improve management of public finances in early 2000, these were either reversed or suspended until June 2002, when the appointment of Salam Fayyad as minister of finance signaled a new phase in PA financial reform.

Among the signal successes of PA financial reform since then has been the consolidation of revenues in a single account controlled by the Ministry of Finance, the consolidation of PA commercial monopolies and investments in a newly established Palestine Investment Fund that is subject to external audit and parliamentary scrutiny, the transfer of the Gaza payroll from the General Personnel Council to the Ministry of Finance, the introduction of bank transfers to pay police salaries instead of cash payments, and the improvement in preparing the general budget and submitting it to parliament by the Ministry of Finance.

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These achievements are impressive, but the PA still faces serious problems that may, in certain cases, reverse progress, or even overwhelm its public finances in the absence of follow up and further reforms.

A major challenge to maintaining current levels of financial transparency will emerge if and when Western donors cease financial support to a Hamas government. The new ruling party could be tempted to ignore transparency in order to avoid international and public scrutiny of its finances, particularly if the PA receives financial support from Iran or other undisclosed sources.

A second major challenge is to review the financial provisions of the Civil Service Law; massive inflation of the public payroll through years of uncontrolled hiring made its continued application unaffordable, in turn preventing adequate and equitable pay for civil servants and police personnel who are professionally qualified for and dedicated to their jobs. The long-overdue General Pension Law, which was finally approved by the PLC in April 2005, is also unaffordable, and similar problems prevented the full application of the necessary retirement of some 1,200 PA police officers as part of security sector reform in early 2005.

The difficulty of reforming civil service pay and pensions reflects a wider problem of proper planning and provision in the PA. It also reveals the continuing fragility of budgetary discipline and its vulnerability to overriding political considerations, among them the desire to stabilize the Gaza Strip in the wake of the withdrawal of Israeli forces and settlers in August 2005 and the desire to boost the standing of President Mahmoud Abbas and his diplomatic strategy as well as the standing of Fatah ahead of the parliamentary elections of January 2006. Consequently, the PA budget again slipped out of control under the pressure of political expediency as public hiring and spending in other areas increased, driven partly by the security agenda as the PA recruited Fatah militants into its police force and partly by Fatah's electoral agenda as it sought to garner votes ahead of the general elections.

After marked improvement in the preceding two years in preparing the draft budget and submitting it for parliamentary approval in a timely manner, the Ministry of Finance failed entirely to sub-

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mit the draft budget for 2006 to the PLC. Other current problems include: no external audits or parliamentary oversight of the police budget and the prevalence of a general culture that continues to blur the distinction between public assets and private gain.

### RULE OF LAW AND CITIZENS' RIGHTS

The closely related areas of judicial reform and security sector reform are of central importance to establishing the rule of law and citizens' rights, therefore restoring the domestic credibility and legitimacy of the PA. Yet the PA's performance since 1999 in this regard has been seriously disappointing. Its lack of progress in these two areas has had debilitating effects on economic activity, on the PA's ability to implement agreements with Israel, and on its relations with the international community.

The PA scored some achievements in relation to judicial reform with President Arafat's long overdue signing of the Judicial Authority Law in May 2002 and his replacement of the inactive minister of justice with the appointment of a Supreme Judicial Council and the appointment of a new attorney general, which preceded the abolition of the state security courts in July 2003. However, serious problems exist and the justice system today remains largely powerless and ineffective. One problem was that President Arafat appointed the Supreme Judicial Council in a manner that immediately violated the newly promulgated Judicial Independence Law; another was that both he and the new head of the Supreme Judicial Council sought to exploit the government vacuum following the resignation of then-Prime Minister Mahmoud Abbas in September 2003, in an attempt to revise and expand the council's powers and responsibilities. A new council was appointed in conformity with the Judicial Authority Law in 2003. A new attorney general was appointed by President Abbas in 2005.

However, an effective delineation of the division of powers and responsibilities between the Supreme Judicial Council and the Ministry of Justice remained beyond reach until the PLC approved an amendment to the Judicial Authority Law in October 2005. The

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amended law combined revisions proposed by the PLC Legal Committee and a Judicial Steering Committee established by presidential decree in March 2005. The status of the new law remains contested, as the Supreme Court decided in November 2005 that the law was unconstitutional.

In January 2006, President Abbas issued a new version of the Judicial Authority Law that gave him further powers over the justice system. The legality of his decision will probably be contested by the new PLC, possibly foreshadowing continued contestation and paralysis in this important sector of government. An additional controversy erupted in February 2006 over the status of the Constitutional Court Law, which governs the composition, powers, and functions of a constitutional court whose responsibility is to ensure that past and future laws enacted by the PLC are within the constitutional parameters of the Basic Law. In its last meeting in February, the outgoing PLC approved amendments requested by the president that greatly expanded presidential power over the appointment of judges to the court, in contrast to a previously signed version that withheld such powers from the president. The vote by the new Hamas majority in March 2006 to annul all decisions passed by the previous PLC in its last meeting was strongly opposed by the Fatah minority, who demanded that the Palestinian Supreme Court review the constitutionality of the latest vote.

The legal framework for the functioning of the judiciary remains controversial despite the progress made during the past year. Consequently, the incoming PLC and cabinet must work swiftly to resolve several pressing matters in the area of judicial reform. Given the makeup of the new PLC, conflict involving the Supreme Judicial Council, the Ministry of Justice, the PLC, and the president is likely to persist and worsen as it becomes another arena of competition between the president and the new ruling party. Possible conflict over the respective roles of the minister of justice and the president in forming the Constitutional Court and over its proper legal functioning must be resolved as a matter of priority. Otherwise it will be difficult to resolve disputes over the constitutionality of laws passed by the new and, indeed, the old PLC.

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Of equal importance is the need to ensure effective enforcement of court orders, which is sorely lacking at present, and for which the police must work closely with the courts. Evidence of the continuing incapacity and lack of authority of the justice system was its inability to monitor and enforce the electoral law ahead of the general elections of January 2006.

The second area of reform necessary for the establishment of the rule of law and protection of citizens' rights is security sector reform. The government of Mahmoud Abbas from March to July 2003 appointed a new interior minister with nominal responsibility for the civilian police and preventive security branches. However, the succession of two interior ministers within the next two years underlined the superficial nature of this reform and their inability to introduce meaningful or lasting changes in the structure, procedures, and practices of the security sector.

The fact that President Arafat formally retained direct authority over the Public Security Force and General Intelligence, and controlled the budget of the PA police as a whole only underlined how little had really changed. Indeed, he was able to reverse even this modest reform by instructing the civilian police and preventive security to report to the powerless National Security Council, which he headed (rather than the Ministry of Interior), although this body had not been established by law and had no constitutional mandate to exercise such authority as it did.

The situation in the security sector has not changed as substantially as was initially hoped since the election of Mahmoud Abbas as Arafat's successor. An initial flurry of measures, including the mandatory retirement of some 1,200 officers and reshuffle of commands, did not lead to lasting change or to a sustained reform process. The PA was unable to pay generous retirement packages and suspended the scheme, causing considerable unhappiness within the police force. Yet despite severe budgetary restraints and the threat of penalties from the international donor community, the PA expanded recruitment for the police throughout 2005 in order to absorb rising unemployment and contain Fatah militants, having already increased personnel levels by 20,000 since 1999. At the start of 2006, the PA police was in a state of near collapse. This is indis-

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putably due in part to the systematic Israeli onslaught on police facilities and equipment since late 2000, hugely diminishing its morale, cohesion, and operational capacity, but it is also due to the PA's continuing failure to seriously address problems of structure and command.

The PA needs to take firm and sustained action on several levels. First, results of the legislative elections have brought into focus the potential for a return to Arafat's era of conflict over control of the security services. The new PLC should clarify the constitutional and legal aspects of the functioning of security services, particularly in the distribution of powers and responsibilities among the cabinet and the president.

The PA should replace the present collection of separate and draft laws before parliament, with a single, unified basic law for the security sector as a whole. The previous PLC debated the adoption of such a law just before the recent elections. Second, further rationalization and integration of the organizational and command structure of the police force is needed, and it should be brought clearly and directly under the authority of the interior ministry and the cabinet. Third, the interior ministry should acquire the capacity to develop a budget and submit it to the PLC, and the police budget should be subject to external audit by the comptroller general's office. The chief of police should be instructed to work closely with the justice system in order to enforce court orders and enhance the rule of law. Furthermore, the continued deterioration of the PA ability to enforce law and order could easily degenerate into violent clashes between different armed militias. Ensuring the PA's monopoly over the legitimate use and means of force should be a top Palestinian priority. Lastly, the extensive overlap and intermixing between PA police branches and Fatah, at the level of the rank-and-file but especially at the command level, must be ended in favor of the clear and singular subordination of the former to the proper PA authorities.

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### DEMOCRATIC PARTICIPATORY POLITICS AND PLURALIST CIVIL SOCIETY

There is little question that the PA has developed few genuinely authoritarian features and is commendably democratic compared to most governments in the region. Palestinian civil society has proved particularly resistant to authoritarian tendencies, maintaining a high level of pluralism and open dissent, even though this opposition has largely been conducted informally or outside the formal political framework provided by the PLC and licensed media.

Yet the continuation of patronage-based recruitment to the civil service and police force and the concentration of powers in the hands of President Arafat, sanctioned by the Oslo II Accord, gave rise to a form of benevolent autocracy with antidemocratic potential familiar to the wider Middle East. The decision by Palestinian opposition groups not to compete in the parliamentary elections of January 1996 deprived the PLC of a strong and effective opposition, removing a barrier to its gradual marginalization. Furthermore, although the PA softened its earlier direct intimidation of the media after 1999, it continued implicitly to encourage media self-censorship with regard to criticism of the PA, Fatah, and above all, the president. This, coupled with the establishment of ministries of information and of NGO affairs, tended to impede public debate and the development of open, participatory politics.

As noted above, the PLC played a very significant role in the institutionalization of Palestinian democracy by providing it with a firm constitutional basis. The PLC achieved a major step forward when it finally succeeded in pushing President Arafat to approve the draft Basic Law in July 2002, albeit critically aided by external circumstances and pressures. However, the PLC has otherwise notably failed to drive the development and deepening of democratic politics and party pluralism further since that time. The fact that it was originally elected to office in January 1996 on the basis of the Oslo II Accord, which provided for only one election, and that the PA did not subsequently seek to modify this provision or otherwise arrange for further elections eventually eroded its mandate and weakened its ability or willingness to hold the executive

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branch accountable, as well as weakening its own accountability to the Palestinian public. The PLC failed to press the executive branch effectively before 2004 to extend local democracy by holding long-promised and repeatedly delayed municipal elections, for fear that opposition groups, principally Hamas, would make significant gains.

The failure of the PLC to hold the executive branch accountable for its policies, financial management, and delivery of public goods, even after the promulgation of the Basic Law in 2002, weakened it as a central and indispensable element in the development of liberal democracy. This failure mirrored the lack of internal accountability and democracy within most Palestinian political parties or movements, a problem that the PLC could have addressed with targeted legislation. The PLC moreover proved powerless to halt, let alone reverse, the “paramilitarization” of Palestinian politics since the start of the intifada and made little visible attempt to do so or even to reassert itself as a central forum for the discussion of government policy and performance during a critical phase in Palestinian political and institutional history. It should be noted that the PA executive branch, and especially President Arafat, had gradually marginalized the PLC from its very inception, but the PLC failed to use opportunities, such as the opening after June 2002, to develop specific new legislation designed to encourage and regulate multiparty politics, open media, and civil society organization. This should be a priority for the new parliament since the PLC comprises a strong opposition bloc for the first time, giving it both the incentive and the opportunity to develop democratic legislation.

### EFFECTIVE AND RESPONSIVE PUBLIC ADMINISTRATION

The PA executive branch and public administration have labored under immense difficulties since the start of the intifada and the imposition of severe Israeli measures, which paralyzed them in a number of domains and greatly increased the cost of delivering pub-

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lic goods while making the Palestinian public more dependent on the PA for the provision of a basic lifeline. In general, the ministries most directly involved in public service delivery, such as education and health, proved the most resilient, in part because they could build on long experience of voluntary and grassroots organization and operation under adverse conditions.

However, the cabinet largely failed to respond to the crisis with coherent or consistent policies, and the PA soon ceased to operate as a coordinated system of government. The relaunch of the reform process in May 2002 led to significant and positive changes over the following year in the structure of the executive branch, though the actual impact on its ability to formulate and implement policies and operating procedures since then has been partial at best. Nonetheless, a solid basis has been laid for further, and potentially rapid, improvement in the effectiveness and responsiveness of public administration.

Principal developments in the executive branch since 2002 have included the revamping of the PA cabinet, separating it from the customary meetings of the Palestinian political leadership and strengthening its technocratic expertise. This paralleled the amendment of the Basic Law to provide for the appointment of a prime minister with considerable powers in March 2003 and was followed by the reorganization of the prime minister's office, the cabinet secretariat, and the president's office. Restructuring extended outwards, as a number of autonomous government agencies that had previously reported to the president were now attached to the cabinet and several ministries were merged or otherwise reorganized. For example, the ministries of Economy and Trade, Industry, and Supply were merged into one—the Ministry of National Economy. This consolidation was accompanied by a government decision to develop standardized job descriptions and structures for all ministries

These changes have been erratic in some cases, and their overall impact on the capacity and performance of the executive branch has so far remained limited. Much remains to be done, and the incoming administration should prioritize a number of tasks.

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First, the cabinet faces fundamental problems in its ability to set policies, develop policy instruments, and oversee implementation. Despite impressive improvement in support institutions—the president’s and prime minister’s offices and the cabinet secretariat—the cabinet still lacks the capacity to conduct policy analysis and monitor and ensure the consistency of new government policies and drafted legislation with the Basic Law and other existing laws.

Second, the continuing imbalance and overlap of powers and responsibilities between the president and the prime minister needs to be resolved; it paralyzed the government of Mahmoud Abbas from March to July 2003 and subsequently impeded the major reform initiatives launched by Abbas after he assumed the presidency in January 2005. The new parliamentary majority will find itself in conflict with the president over mandates and jurisdiction. Areas of potential conflict could include control over security services and senior appointments in the civil service and the justice system. While a Hamas government might seek to assert control and take away much of the powers of the presidency, Fatah might seek to preserve and indeed enlarge the powers and responsibilities of the president and marginalize those of the PLC and the cabinet.

Third, the cabinet should resume the restructuring of ministries, in accordance with standardized structures and job descriptions, and continue the integration of the remaining government agencies that do not yet report to the cabinet.

Lastly, nonfinancial aspects of the Civil Service Law should be implemented as a matter of urgency, in order to promote a meritocratic and performance-based institutional culture and to enhance public service delivery.

## ASSESSING THE PALESTINIAN AUTHORITY SYSTEM AND THE DYNAMICS OF REFORM

The PA has made little progress overall in transforming itself into an effective government of integrated ministries and agencies with a functioning division of powers and responsibilities between its main branches. In other words, the PA remains predominantly a collection of separate parts, rather than a differentiated but coordinated system. This fragmentation was partly a legacy of the long years of direct Israeli control of Palestinian civil affairs up to 1994, characterized by segmented administration and lack of political accountability to a democratically elected national leadership. The PA's failure to develop an effective system of government since then is heavily due to the unique impact of President Arafat's particular style of political management, leaving a disturbing legacy on all levels and in all domains that the PA is far from overcoming.

It is also due, among other factors, to the compliance of many in the rank-and-file of the governing party, Fatah, who were ultimately willing to be co-opted into the neopatrimonial system embodied by President Arafat. The refusal of significant political parties to participate in the PA until the elections of January 2006 had the unfortunate effect of further weakening the checks and balances that might have led to more effective oversight by the PLC and produced a shift in the PA's manner of governance making it, for example, a little more accountable and a little less corrupt.

### WORK ETHIC

The new administration faces a complex challenge that requires it to address intangible factors, as well as more structural or procedural ones, if it is to achieve the necessary transformation of the PA. First and foremost of these challenges is to promote a health-

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ier work ethic among the many dedicated civil service and police personnel who have continued to sustain the PA, in part through recognition and reward. The PA has yet to become truly task-oriented and performance-based. It should instill a greater sense of individual and collective responsibility for performance and attainment of set tasks and targets, starting with the most senior levels of government. From the prime minister and ministers down, public officials should take initiative and actively follow up with subordinates, generating pressure to deliver on work plans according to transparent benchmarks and approved deadlines. It is incumbent upon them to assume responsibility for addressing gaps and meeting challenges.

This should be reflected, among other things, in the adoption, by the cabinet, of a clear and coherent program for government action in the critical fields of social welfare, economic management, and rule of law. The prime minister, ministers, and heads of agencies must set an example of a work ethic in their daily routine, replacing the all too common salon culture of entertaining casual visitors, watching television, or engaging in political chitchat, and preoccupying themselves with minor administrative matters.

### MERIT VERSUS PATRONAGE

A second aspect of the PA's political and institutional culture that must be addressed is the prevalence of patronage-based recruitment and appointments. This is driven partly by the PLO legacy of distributing jobs on the basis of personal loyalty or factional quotas and also by a culture of mass employment reinforced by the close, almost symbiotic, relationship between Fatah and the PA. The very real problem of severe unemployment also demands effective responses, but using public hiring as a means of addressing it has burdened the PA with a hugely inflated payroll, reducing the operational budgets of ministries almost to zero, generating unsustainable budget deficits and growing domestic debt, and building up unaffordable future pension costs. The incoming

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administration should avoid the temptation to replace Fatah loyalists with Hamas supporters. It urgently needs to restore recruitment and promotion policies based on professional merit and on due process by the General Personnel Council in accordance with identification of actual need and availability of financial capability.

### PUBLIC VERSUS PRIVATE

The pervasiveness of the culture of patronage-based recruitment and politically driven mass employment in the PA has seriously blurred distinctions between public good and private gain. This has led both to actual corruption in some cases and to the perception of prevalent corruption in the PA even where it does not exist or is wrongly labeled. Corruption is commonplace in all societies, but it takes many forms, not all of which are universally acknowledged as corrupt. The PA is guilty of certain forms of corruption—mismanagement of public resources for political purposes or use of public office for private gain—but is also blamed for more than its due. The PA can easily take a number of immediate steps that would have a considerable effect in combating corruption and in enhancing both domestic and international perceptions of the PA. Principal among these is the effective investigation of corruption cases now being taken up by the attorney general, the empowerment of the comptroller general and its staff, and effective oversight by the PLC.

### LEADERSHIP AND POLITICAL WILL

Structures and procedures are important, but leadership and political will have a special part to play, especially in a system of government that is still being constructed. The PA has faced very real constraints—neopatrimonial political management and autocratic leadership internally, and national conflict and the pervasive reality of Israeli occupation and intrusive controls externally—but

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key individuals have often done less than they could. The reform of the PA's public finances, reorganization of the president's and prime minister's offices and cabinet secretariat, and restructuring of the Ministry of Planning all offer examples of what could still be done despite the adverse circumstances of the past five years, given the will to do so. These successes contrast sharply with the striking ineffectiveness of Prime Minister Ahmad Qurei, the paralysis of the Ministry of Justice until recently, or the timidity of the Higher National Council for Institutional Development that was established in the autumn of 1999 to respond to our Independent Task Force report for the Strengthening of Palestinian Public Institutions.

Political leaders and public policymakers who are unable to perform the duties for which they were elected to office might be expected to resign their posts, especially when faced with urgent needs and crisis conditions such as those faced by the PA since the start of the intifada, and especially since the Israeli reoccupation of the West Bank in the spring of 2002. Such resignation has very rarely been the response in the PA. The incoming administration, along with PA President Abbas, must instill a new sense of leadership and responsibility in the political leadership and government if the PA is to face its many pressing challenges. Leadership and political will are indispensable to institutional reform, and the PLC must also take the initiative in pressing for reform and holding the new cabinet accountable for progress in this area.

### REFORM

The Palestinian reform process has been repeatedly thwarted or stalled since its inception by a number of factors. Not least of these was the concentration of powers in President Arafat's hands, which, along with the special influence granted by his historic legacy and leadership charisma, enabled him to resist, limit, and, in many cases, ultimately reverse most reforms. Other vested interests that developed within the PA and its various civil and security institutions, and by extension within Fatah, also resisted

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reform more often than supported it or saw little reason to endorse or promote it actively. The combination of opposition from the president and other senior PA and Fatah figures, and of inattention or outright neglect by the prime minister since 2003 led to the failure of successive reform initiatives and committees set up for the task from 1998 onwards. Indeed, the repeated formation of new cabinet-level reform committees only highlighted their lack of power and the absence of significant results. The PLC, or any other PA body or sector, did not offer a counterbalancing power that might have imbued the reform effort with more urgency, continuity, and substance.

It is clear that reform requires sustained effort by a dedicated body that receives unequivocal support and leadership at the highest levels of government. The full implications of the formation of a Hamas government following the general elections of January 2006 may take time to become fully apparent, but it should be immediately obvious that the new elite has no vested interest in defending the status quo. Furthermore, for the new Hamas government to assert itself in an environment dominated by Fatah loyalists in the PA civil service and security agencies, it must embark on serious political and institutional reforms. Otherwise it will not meet its constituency's expectations, and its control over the PA will remain in question. Given these prospects, the Hamas government would err if it opts to focus its energy on a legislative and policy agenda of implementing Sharia and forgoes institution-building and improved service delivery.

### THE INTERNATIONAL DONOR COMMUNITY

In retrospect, despite good intentions and massive assistance, the international donor community has had mixed, and at times contradictory, effects on the Palestinian reform process. Different donors, including governments or multilateral organizations, often had conflicting expectations and demands. A prime example was the consistently high premium placed on security—in particular requiring the PA to uphold its security commitments towards Israel—

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to such an extent that reform, and indeed democracy, were effectively relegated to secondary importance and on occasion actively deferred. Coordination of donor policies and assistance remained flawed, despite the establishment of an extensive and complex structure dedicated to this task from the mid-1990s onwards. This tended to distort the incentive structure within which the PA as a whole, or its individual ministries and agencies, operated, generating both the motivation and the opportunity to defect from reform processes. The scope and scale of donor monitoring and implementation is unprecedented in any other post-conflict situation worldwide—by 2005, the international community effectively exercised micromanagement and financial trusteeship over the PA—and yet in many respects and areas, such as security sector reform, donor coordination is at an especially low level, with meager results.

The electoral victory of Hamas in January 2006 poses new dilemmas. A decision by the international community to disengage from the new PA government would risk destroying all that has been built during the last decade. But continued international funding and engagement could ensure that the issue of reform would remain on the PA agenda and possibly be accorded more systematic attention and effort than before. Ironically, the international donor community threatens to pull out at the precise moment when reform may be taken seriously by the PA. Forcing the Hamas government to seek funding from new sources, potentially involving a lack of transparency and accountability to outside monitoring, would set back the reform agenda once more.

The diversion of donor funding from the PA's finance ministry to the office of the president or to international agencies may ultimately weaken and marginalize the ministry and empower the office of the president in violation of the Basic Law. When viewed along with attempts to strengthen the role of the president in other areas, the international community is in effect preempting the Palestinian transition to democracy, rather than promoting political reform. The objective of reform would no longer be the strengthening of public institutions and their accountability to an elected legislature.

## CONCLUDING REMARKS

Seven years have passed since the publication of the Independent Task Force's original report on strengthening Palestinian public institutions. Numerous reform initiatives and bodies have been created in the intervening period, but their impact has, for the most part, been partial at best. The reform process has yet to bring about a fundamental shift in how the PA conducts its affairs, whether political or administrative, despite some very significant and notable successes in specific areas.

External circumstances must be acknowledged, above all the continuing reality of Israeli occupation and the GoI's relentless settlement drive and grinding economic siege, which have imposed almost impossible conditions on the PA despite the diplomatic intervention and financial assistance of the international community. Given Hamas's electoral victory, it is conceivable that Israeli-Palestinian tensions will rise again, shifting the focus away from reform. However, the PA's most basic problems and shortcomings were already evident before the intifada started in the autumn of 2000.

The challenge for the incoming administration is therefore to learn from past experience in order to strengthen Palestinian public institutions, restoring the PA's internal cohesion and domestic legitimacy as well as its international credibility and standing. To do this requires addressing the crosscutting political and institutional culture that affects the PA system of governance as a whole.

The Palestinians have the tools necessary to build a successful system of government and a viable independent state, and the PA possesses the basic structures, frameworks, and skills required to formulate coherent policies, devise appropriate policy instruments, and deliver effective public services in all domains. The general elections of January 2006 offer a significant opportunity for the PA to tackle core political obstacles to reform in the PA and to activate more effective, accountable, and transparent government.

## APPENDIX



## APPENDIX A

### INDEPENDENT TASK FORCE MEMBERS

MICHEL ROCARD, Chair of the Independent Task Force, is a member of the European Parliament. He is a former Prime Minister of France.

HENRY SIEGMAN, Project Director of the Independent Task Force, is a Senior Fellow and Director of the U.S./Middle East Project at the Council on Foreign Relations.

CARL BILDT is Chairman of the Kreab Group. He was formerly Prime Minister of Sweden and Chairman of the Moderate Party.

HANS-DIETRICH GENSCHER is a former Foreign Minister of Germany.

FELIPE GONZALEZ is a former Prime Minister of Spain and Secretary-General of the Spanish Socialist Party.

ABDLATIF AL-HAMAD is Director General and Chairman of the Board of the Arab Fund for Economic and Social Development in Kuwait.

LEE HAMILTON is President and Director of the Woodrow Wilson International Center for Scholars. He is a former U.S. congressman and served as Chairman of the House Committee on International Relations.

DOUGLAS HURD is Deputy Chairman of Coutts & Co. He is a former Foreign Secretary of the United Kingdom.

NANCY BAKER KASSEBAUM is a former U.S. Senator from Kansas.

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OTTO GRAF LAMBSDORFF is Chairman of the Board of the Friedrich Naumann Foundation. He is also a former Minister of the Economy in Germany.

JACQUES DE LAROSIERE is Chairman of the Strategic Committee of the French Treasury. He is a former Managing Director of the European Bank for Reconstruction and Development.

TERJE ROED-LARSEN is President of the International Peace Academy. He has served as U.N. Special Coordinator in the Occupied Territories.

MIGUEL ANGEL MORATINOS is the Minister of Foreign Affairs for Spain. He was the European Union Special Envoy to the Middle East Peace Process.

MARIO SOARES is President of the Mário Soares Foundation. He is the former President of Portugal.

THEODORE SORENSEN is Counsel at Paul, Weiss, Rifkind, Wharton & Garrison. He was a White House Counselor in the John F. Kennedy administration.

DICK SPRING is a former Deputy Prime Minister and Foreign Minister of Ireland.

## APPENDIX B

### INTERNATIONAL BOARD U.S./MIDDLE EAST PROJECT

GENERAL BRENT SCOWCROFT, Chair of the International Board, is President of the Forum for International Policy in Washington in the United States.

HENRY SIEGMAN (*ex officio*) is a Senior Fellow and Director of the U.S./Middle East Project at the Council on Foreign Relations.

MAHMOUD ABDALLAH is a Senior Adviser and a former Executive Vice President of the American Re Corporation in the United States.

FOUAD M.T. ALGHANIM is Chairman of Fouad M.T. Alghanim Est. in Kuwait.

H.R.H. BANDAR BIN SULTAN is Secretary-General of the National Security Council in Saudi Arabia.

H.E. OSAMA EL BAZ is First Deputy of the Egyptian Ministry of Foreign Affairs and a Political Adviser to the president of Egypt.

NICK BUTLER is Group Vice President for Policy Development at British Petroleum in the United Kingdom.

LESTER CROWN is Chairman of Henry Crown & Co. in the United States and Director of General Dynamics in the United States.

SIR JOSEPH HOTUNG is Chairman and Managing Director of Ho Hung Hing Estates Ltd. in Hong Kong and the United Kingdom.

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H.E. HAMAD BIN JASSIM BIN JABR AL THANI is Minister of Foreign Affairs in Qatar.

H.R.H. HASSAN BIN-TALAL, the Hashemite Kingdom of Jordan.

HAMZA AL-KHOLI is Chairman and CEO of the Al-Kholi Group of Companies in Saudi Arabia.

NEMIR A. KIRDAR is President of Investcorp International in the United Kingdom.

ROBERT K. LIFTON is Chairman and CEO of Medis Technologies Ltd. in the United States.

YOSEF MAIMAN is President of the Merhav Group of Israel.

FOUAD MAKHZOUMI is the Founder of the Future Millennium Foundation and the Makhzoumi Foundation in Lebanon.

BRYAN MOSS is President of Gulfstream in the United States.

GAMAL MUBARAK is General Secretary of the Policy Committee of the National Democratic Party in Egypt.

MUSALLAM ALI MUSALLAM is President and CEO of SKAB Commerce & Industry in Saudi Arabia.

HUTHAM OLAYAN is President and CEO of the Olayan America Corporation in the United States.

ROBERT L. ROSEN is Chairman and CEO of RLR Capital Partners, LP.

MOHAMMED AL-SAGER is Chairman of the Al-Mal Kuwaiti Corporation in Kuwait. He is also Chairman of the Kuwaiti Parliament's Foreign Affairs Committee.

PETER SUTHERLAND is Chairman and Managing Director of Goldman Sachs International and Chairman of British Petroleum in the United Kingdom.

## *Appendix*

ENZO VISCUSI is Group Senior Vice President of Eni S.p.A. in the United States.

H.E. YUSUF BIN ALAWI BIN ABDULLAH is Minister of Foreign Affairs in Oman.

GALAL EL ZORBA is Chairman of the Nile Clothing Company in Egypt. He is also Chairman of the Egyptian Federation of Industries.







