

WORKSHOP PROCEEDINGS

**Good Governance and Participation  
in the General National Guidelines**

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**Good Governance and Participation  
in the General National Guidelines**

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The workshop "Good Governance and Participation in the General Guidelines" has been organized by the Palestinian NGO Network, in cooperation with the Friedrich Naumann Foundation, and through the support of the European Commission. It falls within the framework of Friedrich Naumann Foundation's "Bunyan" regional training program.

## Prologue

The workshop entitled "Good Governance and Participation in the General National Guidelines" falls within the regional "Bunyan" project undertaken by the Friedrich-Naumann Foundation towards "Proper Management and Participation in Public Orientations."

The Palestinian Non-Government Network (PNGO) was in charge of organizing the workshop, with support from the European Union. The objectives behind the workshop of "good governance" focused on the following:

- \* Specifying the political, legal and legislative cornerstones of setting up a Palestinian state and society based on the principles of democracy and good governance. This would entail endorsing standard democratic formation indicators to measure the quality of good governance within the Palestinian set-up.

- \* Assessing the outcome of the Palestinian national reform plan according to the principles of good governance.

- \* Specifying the concept, applications and indicators for good governance within the NGO institutions (civil, private and public sectors).

Participation in the workshop included representatives of public and civil institutions, political parties and factions as well as a number of academics and Palestinian Legislative Council (PLC) members. As a result, there was a lively interchange over issues related to enhancing good governance in Palestinian public and civil institutions.

The PNGO network is eager to publish the proceedings of the workshop with gratitude to all participants. Special thanks to the Friederich-Naumann foundation and the European Union for supporting the project!



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**Ramallah Workshop**  
**24 April 2003**



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- 2- The PNA- Minister of Public Works- .....Mr.Azzam Al Ahmad
- 3- Friederich- Naumann Foundation- ..... Dr. Rene Klafi
- 4- General Representative of Friederich- Naumann Foundation in Jordan and Lebanon  
.....Dr. Uli Vogt- Director General of the "Bunyan" training program.

## SPEECH OF PNGO NETWORK

**Dr. Abdel Rahman Tamimi**

This is a time when there is a dire need for an extended silence and abundant work where wisdom should be placed in the service of adopting good governance in running our affairs. This comes at a time when we are engulfed by stormy circumstances that spread frustration and despair for future generations.

The concept of good governance and proper management is not confined anymore to certain persons that have a desire to work and assume full responsibility. Rather, it is an ongoing comprehensive process of building structures and institutions on the one hand, and on the other, securing mechanisms for appropriate performance and group participation in decision-making.

Furthermore, the concept of good governance is not confined to the unilateral political aspect. Rather it is a comprehensive process involving not merely theory, but also implementation .

Proper management is not a passing matter but rather a comprehensive, ongoing process starting from the basic components of society. This involves the meeting of civil values with the political and communal forces. At the core is the principle of the rule of law and its independence. Communal participation in sharing the political, social and economic future is basic in the welfare of the people and the attainment of a maximum level of social justice, security and stability.

While there is a necessity to bring the occupation to an end and allow for the emergence of a contiguous Palestinian state socially, geographically and economically, there is actually a need to lay the foundations of good governance and proper management in the interim circumstances. In fact, good governance is a prerequisite to achieve national independence.

To contribute to such an end, the PNGO Network opened the floor to raise the issues of concern to foster the role of institutions and transform individual efforts into a collective awareness. Thus this workshop comes at the right time with the right objectives.

The support of the international community and friends all over the world

is a key guarantee to assist the Palestinians in achieving the political, economic and social aspirations. As such, we are grateful to the Friederich-Naumann foundation and the "Bunyan" program for proper management and participation in public orientations.

We also appreciate the E.U. commission in its dedicated support to issues of concern to the Palestinian society politically, economically and socially.

## **SPEECH OF THE PALESTINIAN NATIONAL AUTHORITY**

**Mr. Azzam Al Ahmad**

The PNA- Minister of Public Works

Obviously Palestinians are yearning to establish a modern society within the framework of an independent, sovereign state. In fact this has been the dream of Palestinians both in the homeland and Diaspora since the eruption of the contemporary Palestinian revolution. With the projects calling for a settlement of the problem since the mid 70's there has been discussion concerning the type of the state and the kind of the regime that is aspired for.

Even before announcing the Oslo accords and the establishment of the PNA, there were various committees formed by the Palestinian National Council (PNC) with the aim of preparing the constitution of the forthcoming state. The PLO- related institutions had prepared plans and developmental programs dealing with social, economic and educational issues.

With the establishment of the PNA following the Oslo accords, particular concern emerged over such issues both at the level of Palestinian circles and the Arab/ Israeli/ International levels. Donor countries realized the direct and indirect impact that a Palestinian entity would have within the Arab and Israeli set-ups. It is well known that when the PNA came into being, it borrowed laws and regulations from Jordan and Egypt that were out of date without reviewing or updating. It also kept some of the military orders imposed by the Israelis despite the fact that such orders were designed to reinforce occupation without taking into consideration Palestinian interests.

Such a background evoked the disparity and contradictions inherent within the PNA, particularly between the West Bank and Gaza. There are so many examples that were felt over the years in this respect. Furthermore, the restrictions imposed by the Oslo accords on the work of the PLC in litigating and legislating raised a serious obstacle in the functioning of the Council. It hampers building institutions and good governance while exposing the PLC to political manipulations.

What is more important, in my opinion, is the impossibility of building such institutions and effective rule with the ongoing Israeli occupation and the measures taken on the ground. Initially there was lot of talk for the estab-

lishment of a democratic parliamentary system within the PNA based on political pluralism and securing the basic rights and liberties of the public in all forms. This would go hand in hand with building institutions that would respond to the interests and needs of the public within the rule of law in an atmosphere of justice that would be binding to all bodies, institutions and individuals.

The efforts to achieve such results since the emergence of the PNA were so wishful that there was a tendency to exaggerate and move away from reality. In fact it was like following a mirage and confusing matters upside down away from the actual realities and needs. The situation exacerbated following the end of the deadline assigned to conclude the interim phase accords of self-rule. The blunt reality is that continued Israeli occupation continues to pose a serious obstacle along the path of the Palestinians. What kind of a socio-political system could emerge and how could the separation of legislative, executive and judiciary powers occur as long as the occupation continues?

I am aware that some would say that we should not blame all our problems on the occupation to justify our shortcomings. However what reforms can we achieve as long as the occupation is there? What are we up to in this respect? What happened to the plan of the 100 days for reform?

Unfortunately the reform that we are so eager to achieve had to comply with external pressures that are far from our concern to establish a Palestinian democratic sovereign state. It is often a response to Israeli dictates and interests. On the ground, Israel does not view the PNA as a prelude for a Palestinian state but rather as a political system that would safeguard the occupation of our land.

Clearly, I have not responded in this short speech to major questions of concern to us. However, I hope that our continued efforts would culminate in clearing up matters and, with the patriotic Palestinian spirit; we could carefully determine the practical steps towards building our authority and state.

## SPEECH OF THE FRIEDRICH-NAUMANN FOUNDATION

**Dr. Rene Klafi**

Friederich- Naumann Foundation

I would like to welcome all participants, the E.U. delegation as well as the representatives of Palestinian NGOs in Israel and the Palestinian areas. Projects for both countries are directed through one office in East Jerusalem, which is a task that is not so easy.

The FNST works to promote liberal policies that focus on the principle of freedom. It seeks to foster this principle both in Germany and with partners abroad. We operate in 70 countries all over the world with offices in all continents.

Our projects concentrate on issues of human and civil rights to promote the rule of law and democratic values. We advocate the free market economy and as a whole, helping to build up democratic societies. The Foundation has been operating in Israel since 1984 and in the Palestinian areas since 1994. Our projects are conducted through cooperation with partner organizations. Obviously many of our projects that are directed through our Jerusalem office focus on dialogue between Palestinian and Israeli parties.

Like many participants in the region, FNST is committed to a peaceful resolution of the Palestinian/Israeli conflict. This is why we are concerned to contribute to the Palestinian efforts to conduct their affairs in an open, democratic manner. We aspire for a liberal society that would stress the rights of people and provide the opportunity for a life in dignity and prosperity.

These are our objectives that we share with our partners in Palestine. During the last decade, FNST established close contacts with a number of institutions and professional organizations as partners representing civil society. We consider that enhancing the institutions of civil society is bound to create a promising mechanism for a liberal model of rule. Such a model will involve the public to participate in activities at various levels such as local councils, societies, pressure groups and other private institutions with initiatives that they deem necessary.

At the core of our work in the Palestinian areas is our concern to work

actively to strengthen the market economy, civil liberties and building democracy.

In addition, we have been involved since 1999 in a relatively major project entitled "The German fund for Palestinian NGOs". The projects that we support range from human rights to strengthening the youth sector, women affairs and protecting the environment. Regardless of the content of these projects, we try to establish dynamic structures to the NGOs in a manner that would help in capacity building with our partners in this fund.

Most of our partner organizations are in marginalized rural areas. Since liberation focuses on the horizon and a comprehensive vision, we consider that the universal features of the human race are more important than national divides. Networking and communication at the regional level is of great importance for us. This is why the project that brings us together today is part of a regional project, which is headed by my colleague Dr. Uli Vogt who is based in Amman and will tell us more about it.

Clearly these are important and difficult times for the political developments in Palestine and the issue of governance. In fact, during the past months there was ample discussion around good governance. This is why our conference comes at an opportune time to enhance Palestinian civil society organizations. I wish that we would all have a fruitful and successful day.

## BUNYAN 2 PROGRAM SPEECH

**Dr. Uli Vogt**

General Representative of Friederich- Naumann Foundation in Jordan and Lebanon  
Director General of the "Bunyan" training program

I wish to share with you some information about the Bunyan project. Some years ago I was here within the framework of a Bunyan project workshop. This is part of Arabic regional mechanisms to enhance good governance. It might be useful to inform you about our regional program that seeks to foster good governance and participation in public trends. There is no unified expression to these concepts. Every Arabic country has its own interpretation. The Bunyan program covers nine Arab countries. During the first phase in 1997 we focused on the Arab Middle East (Lebanon, Syria, Jordan, Egypt and Palestine). In 1999 we added Tunisia, Yemen, Algeria and Morocco. There is a reference group from all those countries with representatives of civil society organizations.

Good Governance is a technical term. Governance in certain Arab countries is a delicate matter that is confined to the government. Since our focus is on civil society, we had to opt to the term of proper management.

The Bunyan program is a Euro-Arab project conducted by the German Friedrich-Naumann institute. We have offices in Jerusalem, Cairo, Tunisia and Rabat. Our direct Arab partner is the International Institute for Management and Training in Lebanon with support from the European Union. PNGO network is another partner like the ones we have in Morocco and other regional networks and civil society organizations.

In the Bunyan 1 program we dealt with 150 institutions in the Arab world. This involves networking, facilitating exchange of expertise and experience among organizations. Focus is made for capacity building, supporting networking among the various groups with European Union support. The evaluation phase was in 1999.

With Bunyan 2 in 2002 we set up consultation mechanisms to update the program. This phase ends in June 2003. We asked the European Commission to extend the program till the end of 2003 due to the difficulties of movement from one area to another.

### **The Objectives of the Bunyan project:**

- \* Promoting principles of Good Governance.
- \* Participation in public trends and dialogue in each country.
- \* Supporting networking in the Arab countries. Representatives of the networks paid visits to Palestine, Lebanon and Morocco.
- \* Producing information kits.
- \* Strengthening and empowering the NGO sector.
- \* Holding local and regional workshops to foster good governance and secure mechanisms for that.
- \* Focusing on dialogue with a stress on social policies and networking.

This is the fourth workshop in our series. We will ask you for an evaluation at the end. Our projects include a program for computer accounting dealing with small projects.



### **First Session Papers**

1. Indicators of Good Governance within the Palestinian set-up

Dr. Nader Izzat- Development Studies Program- Birzeit University.

2. The role of political parties in enhancing principles of good governance

Dr. Ahmad Majdalini- Political Bureau Member- Popular Struggle Front.

## INDICATORS OF GOOD GOVERNANCE IN THE PALESTINIAN SET-UP

**Dr. Nader Izzat Said**

Director, Development Studies Program, BZU

This paper focuses on the importance of linking the concept of good governance with the requirements of sustainable, emancipatory human development. Good governance reflects an advanced developmental form in society. At the same time it is a cornerstone for possible development. Success or failure of the efforts to enhance development is closely connected to the type and quality of rule. Therefore the relationship between good government and development is intertwined.

The importance of good governance is associated with the exercise of liberties within the type of existing social institutions. This means that the actual institutions represent the ground rules or rather restrictions that mold human interaction. This in turn, sets an impetus for political, social and economic interactions among people. Institutional development represents the way a society changes over time. Therefore the key to understanding historic changes (North, 1990-3-5) lies in grasping the conflict and harmony or competition and dialogue within the social groups as a whole. This process is bound to serve the interests of certain social groups at the expense of others.

It could also come in the form of formal restraints imposed by certain people setting up the ground rules or in the form of informal restraints through tradition and inherited habits.

Thus institutions have a direct or indirect impact on the welfare of the society and individuals through what Sean (1999) refers to as transparency guarantees or what we call systematic imperatives. This determines the type of relationship between individuals and institutions with the level of affecting and bringing about change.

\* In asserting the interconnection between good governance and human development, I wish to provide a definition of good governance that would reflect the interaction. This depends largely on international and local human development reports.

## Good Governance

This is the governance that enhances, supports and mentions the welfare of people. It is based on empowering people and broadening the circle of options, opportunities and liberties in the economic, social and political spheres. Particularly the poorer and more marginalized sectors are taken into consideration.

### A Comprehensive Concept

**1-** Exercise economic, political and administrative authority to run the affairs of a country at all levels.

**2-** Having a clear set of mechanisms, operations and institutions through which individuals and groups exercise their legal rights and render obligations, disputes are resolved by mediation.

**3-** Good governance sets up political, social and economic priorities on the basis of a broad array of social opinion. It would assure taking into account the needs of the more deprived groups that would have a say in decisions related to the contribution of development resources.

**4-** The concept of good governance is not confined to the state and public operations but includes the private sector and civil society institutions.

### The most important elements/ features of good governance

**The rule of law:** Securing just legal frameworks and applying them without bias.

**Transparency:** Free flow of information and opening up institutions for those who are concerned.

**Responsiveness:** Institutions seek to be in the service of all those that have an interest in them.

**Building understanding:** Finding common ground among various vested interests to reach an understanding that would be best to the collective.

**Equality:** Providing equal opportunity to women and men.

**Efficiency and Effectiveness:** Results that cover needs with better use of resources.

**Accountability:** Decision-makers need to be accountable in front of the people and concerned institutions.

**Strategic Vision:** Leaders and the public need to have a broad vision of good governance

**Developmental and Emancipatory Vision:** The ability to solidly combine the requirements for development and resistance

Among the most important policy indicators as to the exercise of good governance are the following:

- \* **Setting human capabilities free while encouraging initiative and creativity.**
- \* **Programs for eliminating poverty.**
- \* **Political participation (democracy).**
- \* **Representation of the more deprived groups.**
- \* **Enhancing the role of civil society and freedom of assembly.**

Based on literature and international experiments relating to the matter, we could place indicators that measure good governance within three main categories:

### **First category:**

Indicators that measure the means of forming governments, monitoring and replacing them:

#### **\* Representation and accountability:**

This includes indicators that measure the political process, civil liberties, political rights and independence of the press. It has also to do with people's level of ability and participation in choosing governments and checking up people in power while holding them accountable.

#### **\* Instability and political violence:**

Includes indicators that measure the feeling of undermining the authority and bringing down governments through unconstitutional or violent means.

### **Second Category:**

Indicators that measure the government's ability to devise sound policies and implementing them properly

#### **\* Effectiveness of the government:**

Indicators that measure the quality of public services, the type of the bureaucracy, efficiency of civil servants, dependence of the civil admin-

istration from political pressure as well as the level of the government's credibility in confirming to policy decisions.

**\* The burden of control:**

Indicators that measure discrepancies of the government through multi-disciplinary think tanks and assessing policies

**Third Category:**

Indicators that measure the level of respect that the citizens and the state have toward bodies that are entitled to deal with socio-economic interactions.

**\* The Rule of Law:**

Indicators that measure the level of people's confidence as to the principles set up by society and conformation to such principles. This includes crime rates, efficiency of the judiciary, level of expectations of the possible rulings and level of actual implementation of such rulings and pledges.

**\* Illegal Profits:**

Indicators that measure what people observe and feel as corruption in the sense of utilizing a public position to earn personal profits.

**Coming back to the afore-mentioned indicators, the following tables came out of a public opinion poll conducted to assess the quality of government in Palestine:**

**Confidence in Institutions**

<b>Rate of Palestinians that declared their confidence in the following institutions</b>		
Institution	9-2000	2-2003
PNA institutions (in general)	42%	32%
PLC	41%	34%
Security Establishments	49%	38%
NGOs	53%	47%

### Freedom of opinion and expression

Compared to other Arab countries, how to assess the freedom of opinion and expression since the introduction of the PNA, is it...?	
Better than Arab countries	27%
Similar to other Arab countries	40%
Worse than other Arab countries	26%

### The type of the Political System

Do you believe that the Palestinian political system is democratic or non-democratic?	
Democratic	22%
Semi-Democratic	40%
Undemocratic	33%

### Peaceful transformation of the PNA

Do you think that the transformation of the PNA in future would occur peacefully- without violence? (9-2001)	
Yes	34%
Maybe	24%
No	34%

### Corruption in the PNA institutions

Do you view that corruption in the PNA institutions in 2002-2003?	
Increased	67%
Decreased	20%

Do you agree or disagree with the following statements (those who agreed)?	
Let politics to politicians	73%
No one abides by the law	72%
There is no police to intervene to solve problems	55%

## Transparency and the flow of Information

Are you familiar with the names of the new Palestinian cabinet members (3 months after their nomination)?	
I don't know	81%
Yes I know	19%

Do you have information about the 100-day plan to conduct reform as proposed by the current Palestinian cabinet?	
Yes	14%
No	84%

## International Support

Do you think that donor countries set priorities according to the needs of Palestinian society or according to political objectives of their own?	
According to Palestinian priorities	18%
According to their own political objectives	75%

Do you think that the PNA institutions (ministries, bodies, establishments) are capable to serve Palestinian society in a better manner than the case is actually?	
1) Yes	63.6
2) No	30.5
3) No opinion	5.9

1. Given the circumstances do you think PNA institutions are	
1) Fulfilling their job properly	15.9

2. In general, do you believe that the PNA has economic programs to face the current crisis?	
1) Yes	20.4

3. In general, do you believe that the PNA has a plan to face social problems?	
1) Yes	28.4

4. Do you believe there is a need to conduct reform within the PNA institutions?	
1) Yes	81.1

5. Does the local council (in your village, town, camp) involve the residents in decisions related to major local projects affecting the village, town or camp?			
1) Yes	20.5	23.6	6.15

**In case of understanding necessary reforms at the level of the PNA institutions, how do you view the following reforms?**

- Eliminating corruption .....(97%)
- Employment according to merit.....(96%)
- Achieving an efficient and just judiciary system.....(95%)
- Developing the performance of ministries to make it efficient in services provided to the public .....(94%)
- Boosting the efficiency of municipal and rural councils.....(92%)
- Making the decision-making procedures more democratic .....(89%)
- Expanding community participation in defining and implementing public policies—(87%)

# THE ROLE OF POLITICAL PARTIES IN THE APPLICATION OF GOOD GOVERNANCE IN PALESTINIAN SOCIETY

**By: Dr. Ahmad Majdalani,**

Political Bureau of the Palestinian  
Popular Struggle Front

The preoccupation expressed by civil society institutions regarding national and political public affairs, including issues such as good governance, democracy and human rights contribute to broadening the discussion and dialogue within Palestinian intellectual and political circles. It helps to specify the type of the political system that we aspire for. Participation in such discussions and dialogue are positive enlightening steps that help disseminate ideas and increase awareness regarding the issues under review.

Undoubtedly the issue of good governance and the role of political parties in promoting it raise a number of questions both at the theoretical as well as the actual practical levels. The issue is not unconnected to the prevailing political culture that is largely a continuity of a long-lasting heritage in the process of the emergence of Arab states within the concept of calling for "enlightened despot". This logic was marketed by some intellectuals on the payroll of rulers as a necessary interim phase in light of the political immaturity of Arab societies. Based on such an assumption, tyrannical regimes that exercise all forms of repression and torture had a pretext and even a legislation to proceed in such excesses.

However, the specificity of the Palestinian political experience was different in that it emanated from an ongoing struggle. Although the decision-making circles that actually call the shots are an extension to other Arab elites in power, the fact that there is a situation of national liberation conducted from outside the national soil has resulted in a unique experience. Despite all the shortcomings and flaws, a form of democratic practice is in place.

However, the system remained closed although there has been a political, factional and ideological pluralism. Essentially, the system is based on agreed-upon allotments that could change here and there but in principle the doors are closed despite the broad representative features embedded in the National Council, the Central Council and the Executive Committee.

For decades this has been the case as a result of the nature of the struggle against the occupation as well as the leadership operating primarily from exile. Issues such as control, accountability and transparency while operating through institutionalized structures did not surface as priorities. Instead political and factional disagreements floated, often on issues of sharing funds and so on. In most cases matters were settled through deals, closing files and covering up shady matters under the constant pretext of the need to safeguard national unity.

The establishment of the PNA offered a serious opportunity to the Palestinian political system to reconstruct and shape up matters. For the first time, the Palestinians were in direct touch with their society and land. Conducting presidential and legislative elections presented new criteria that could not only democratize the political system but also the society as a whole.

However, the dominating leadership with its traditional resentment to change and endless improvisation preserved its control and monopoly of the decision-making process. This clearly affected internal conditions that were in need of review in form and in content. With the collapse of the socialist camp, following Gorbachev's democratization process, there was an opportunity for the political parties, especially those on the left, to alter their outlook and modes of operation. Although they dealt with the changes in form, they failed to draw the lessons and come up with a new line of thinking that could have an impact on the ground. Another golden opportunity was lost when those political parties failed to become mass organizations focusing on the social and economic issues that they claim to represent. Instead they remained stuck in the political and general national rhetoric. Failure to realize the new situation whereby proceeding along the path of liberation was now intertwined with social, political and democratic functions distanced the parties from the realities on the ground. A feeling of alienation spread even within party members due to the inability of the political discourse in keeping up with the fast-moving changes on the ground.

The repeated criticisms leveled by most political factions against the Palestinian political system, underlining flaws, shortcomings and violations of civil liberties with a monopoly in decision-making is largely true and justified. However this does not justify for those factions not to undergo a deep review of its platforms and modus operandi. Clearly those parties need to adopt principles of good governance including checking the

executive authority and restraining its excesses. This is not possible without putting their house in order. Furthermore, they have to make up their mind whether the political system is legitimate or dubious or whether its legitimacy is valid or not. Otherwise the whole matter would be an intellectual exercise that is out of place and time.

- The dynamism of the Palestinian political system and ascertaining political, ideological and factional pluralism is not possible without a comprehensive democratic process. Regulating elections are crucial to secure transfer of authority in a smooth and proper democratic manner.

- The drafting of a modern, democratic election system based on proportional or mixed representation is bound to foster pluralism and pave the way to rejuvenate the political system and reinforce monitoring, accountability with good governance mechanisms.

- Democratization of the internal party life through holding regular conferences and staying in close touch with the public through public exchange of opinion. An authentic review is needed within party structures and bodies.

- Holding municipal and rural council elections to maximize public participation in decision-making. This also needs defining the various options facing people according to their ability to build their lives.

- Democratization of civil society institutions and NGOs while making sure that performance and elections are properly conducted. Caution is needed not to let these institutions fall in the trap that political parties have fallen into, especially in light of the fact that some of these institutions are an extension and tools of the factions.

The level of our success in developing and democratizing civil society institutions depends largely on our ability to create an atmosphere that is compatible with good governance based on the rule of law and the true separation of powers while assuring control and accountability according to clearly defined mechanisms.



## **Second Session Papers**

1- Assessing the Palestinian Reform Plan according to good governance indicators and its relationship with building the Palestinian state

Dr. Nabil Kassis, Minister of Tourism and member of the ministerial committee for reform.

2- Definition of concept, applications and indicators of good governance in civil society institutions

Mr. Izzat Abdel Hadi, Bisan Center for Research and Development.

3- Requirements of good governance in activating the role of the private sector

Dr. Naser Abdel Karim, Birzeit University.

# AN OVERVIEW OF THE PALESTINIAN PUBLIC REFORM

June 2002- April 2003

Minister Nabil Kassis

## Introduction:

Following ten months of government reform and the formation of a new government that places the issue of reform as one of the central matters in the set of priorities, there is a dire need to review and assess the situation. There is also a need to trace the obstacles that hamper further progress. In this framework there are two basic issues. The first has to do with having the political will to conduct the research. The other deals with obstacles that disrupt the process of reform.

From the outset, the issue of reform was connected with the issue of institution-building. When this was launched following the Oslo accords, our people and the international community urged us to build modern and efficient institutions. We attempted to do that within the available means. The general atmosphere was affected, from a positive point of view, by hoping to reach a peaceful final settlement, human capacity building a strong civil society, an emancipatory movement based on democratic practices, a prosperous diaspora that would be ready to return and invest at home. On the negative side, we had to deal with the weakened and chaotic Palestinian structure resulting from years of occupation. There was a lack of material resources needed in the process of reconstruction, coupled with lack of skilled people. Also there were the restrictions imposed by Israel in terms of "interim" arrangements. With Israeli settlement activities, the political atmosphere was charged. Furthermore, there were delays in implementing bilateral accords related to withdrawal or redeployment of forces. There were also some bad practices resulting from decades of oppression and deprivation.

We realized early in the game the need to reform the emerging institutions or rather to rectify the process that brought forth such institutions. The 1996 report of the director of the General Control Bureau that was published in 1997 placed its finger on that. This prompted the President to appoint a high-level committee to study the report, draw the lessons and come up with recommendations. On its part, the PLC held intensive discussions concerning the results of the report and came up with its own

recommendations. A team of experts under international supervision prepared another study about institutional reform with prominent figures headed by Michel Rocard, the previous French prime minister. A ministerial committee was formed to determine urgently needed and immediate steps for reform. The judiciary sector was regarded as the most important sector in need of immediate reform to produce tangible and quick results responding to the needs of the public. The committee concluded that there was a vital need to legislate the judiciary authority law. However, there was little progress on the ground. Regardless of the measures taken, the steps lacked organization and were insufficient and inefficient.

The pressure for reform multiplied remarkably following the wave of Israeli incursions and the re-occupation of Palestinian areas. The process of destroying institutions reflected its intrinsic weakness and vulnerability. Dealing with the reasons behind that was a matter that could not wait any longer.

## **1-The Political Decision for Reform**

Following the intensive discussions held within the Cabinet as well as the PLC and at the level of political parties, a number of recommendations were presented to the President for urgent action. On May 15, 2002, at the midst of the wave of Israeli incursions, President Arafat expressed in the opening session of the PLC about his intention to launch the process of reform that would address the faltering weakness characterizing public institutions. A day earlier he had approved the judiciary authority law asserting that this will be the binding law henceforth. Within less than a month from that, on June 9, 2002, the President appointed a cabinet that was assigned to draft and implement an emergency reform program. Major alterations were introduced in several important ministerial portfolios such as the finance, justice and interior ministries. Furthermore, a ministerial reform committee of nine members was announced on June 12. The committee was given ten days to produce the 100-day plan for reform. It worked diligently and produced the plan on time on June 23. The plan called for holding presidential, parliamentary and local council elections within six to eight weeks. In addition to being a Palestinian popular demand, the elections were considered a cornerstone for the process of reform. Additional items in the plan had to do with the need of the separation of powers- executive, legislative and judiciary. It called for urgent reforms in the financial, security, judiciary, public management

and civil service, economic and other sectors. The plan specified that initial steps need to be taken as a prelude for a comprehensive long-range reform. The issue was addressed within the framework of laying the proper foundations for a viable state with strong, efficient institutions that are held accountable. It will also function within the principles of fairness, transparency and be subject to the rule of law. It would endeavor to achieve the aspirations of the Palestinian people in putting an end to occupation, reaching a just, permanent and comprehensive settlement in the region. The Palestinian leadership proceeded in implementing the plan despite Israeli incursions and restrictions on movement that increasingly have become facts of life.

### **Signs to buttress the progress**

The international community responded positively welcoming the 100-day plan (attached is a table indicating the level of progress in the plan). The Quartet appointed a follow-up committee to keep track of progress at the local level of countries supporting the reform.

Groups were formed to buttress the process in seven areas: financial accountability, market economy, the judiciary and the rule of law, public management and civil service, elections, local government and civil society. Palestinian ministers were appointed as counterparts to their respective support groups. Reform in security aspects was handled separately outside the realm of the local work team.

It should be mentioned that the local work team on reform collaborated with the Palestinian counterparts to achieve the reform objectives. This helped in defining the progress indicators to determine the pace of implementation of the 100-day plan and measuring progress as it appears later in the tables.

### **The progress achieved is crucial but unsystematic in all areas of reform. Following are the most significant buttress signs recorded during the implementation:**

- \* Promulgating the Basic Law.
- \* Appointing a new-central elections committee.
- \* Announcing election date.
- \* Nominating members of the new supreme judiciary council that would assume responsibility starting from June 18, 2003.

- \* Preparing and approving the budget (which was first announced by the ministry of finance, then used by other ministries and public bodies to prepare budget drafts). Finally the PLC voted to approve the proposed budget.
- \* Systematizing and merging fully all financial transactions as part of the wider financial reform.
- \* Establishing the Palestinian Investment Fund as a body with a legal stature.
- \* Making an inventory of all institutions that operate outside the authority of ministries. Having the executive authority approve the public policy guidelines that would ensure the abiding of such institutions by the authority of the cabinet or certain ministries.
- \* Endorsing PNA ministerial structures and applying them to various ministries.
- \* Concluding the first round of re-structuring ministries and other public institutions.
- \* Defining the powers of the ministry of justice and the Supreme Judiciary Council.
- \* Appointing a number of judges and prosecutors.
- \* Restructuring the ministry of finance and placing the preventive security forces in the West Bank and Gaza as well as the police and civil defense under the authority of the new minister.
- \* Referring bills related to market economy to the PLC.
- \* Conduct dialogue with the civil society within a clear framework ensuring the participation of NGO representatives to discuss the draft of the constitution and other issues of concern to the public.

Furthermore, there are additional indicators that there is a clear political will in Palestine to achieve administrative reform. The PLC asserted that the newly formed government is bound to stick to the Basic Law. Otherwise it threatened to block confidence from the cabinet formed on June 9. As a result the cabinet was forced to resign. The mere fact of presenting the cabinet to the PLC for approval re-enforces the role of the PLC. In response to the request of the Council on 29 Oct. 2002, the new 19-minister cabinet gained confidence comfortably according to the Basic Law after presenting its program. In a meaningful development, President Arafat announced on Feb. 14, 2003 his decision to appoint a prime minister. He convened both the Palestinian Central Committee and the PLC to approve the initiation of the new post.

This is a summary of all the steps that the government has undertaken to

achieve within the 100-day plan. However, there are additional supportive steps that need to be mentioned. This has to do with the appointment of the new Supreme Judiciary Council, the issue of State Security Courts, revising the election law and issuing procedures related to governors. There are other steps needed to define, within the reform program, outside the confines of the 100-day plan. In this context, it is not fair not to dwell upon some of the important and significant steps that were taken at such a short notice here and there. There was a need to take such steps. However the main issue is to determine whether there is a serious political will to respond to the need for reform. The answer is an emphatic yes, even with a sense of determination.

## **The Full Picture: Areas of Reform**

**Financial Reform:** The Cabinet's referral of the 2003 budget draft for approval by the PLC on Dec. 31, 2003 considered that reforming the financial areas is the most vital matter since the last meeting of the work team.

The General Budget for 2003 includes significant reform steps based on the progress achieved since July of last year. This has to do with opening up of the Palestinian fiscal system and ensuring its abiding by the finest international standards as to the design and management procedures. The draft of the budget was published in full. It was discussed in the PLC and with the specialized committee in sessions open to the public and the media. Work is underway to publish, on a monthly basis, detailed reports about the state of the budget starting from April 2003.

The process of merging the PNA's investments and commercial operations is moving on smoothly. A report concerning this matter was published through "Standard and Poor's".

Efforts to devise mechanisms for internal auditing within the ministry of finance are proceeding according to expectations. This was made possible primarily through the support provided by UNDP. Currently it is supported by USAID. The European Commission is expected to join in at some close time. In addition, there is currently a training program for Palestinian auditors in Japan. Donor parties are contributing in this area through international auditing firms.

Finally, an important step forward has to do with Israel's resuming, as of

last month, regular transfer of funds that it collects on behalf of the PNA. There is a systematic release of those funds that were previously blocked. It is expected that the long overdue transfers would be completed by the end of the year. Taking all the elements together, either directly or through improving our chances to borrow funds, the Palestinian ministry of finance managed, at the end of the day, to fulfill its current financial obligations. This includes covering 50 million dollars of pending obligations to the private sector.

During the following period immediately, honoring various necessary reform commitments undertaken by the budget report of 2003 would shift towards focusing on bringing improvements on revenue management. Efforts would be done to advance retirement fund savings. While this might need some time to implement, there are a number of steps that can be taken on the short term in facilitating the management of human resources within the public sector.

**Elections:** President Arafat issued a decree in Oct. 2002 in which he appointed Dr. Hanna Nasir, a well-known independent figure and the President of Birzeit University as the head of the Central Elections Committee. A team of nine independent members was announced with Dr. Ali Jarbawi, the previous director of the Palestinian Independent Commission for Citizens' Rights appointed as an executive secretary to the committee. It is worth mentioning that the Elections' Central Committee is building up an administrative electoral system including the establishment of 16 regional electoral circles. When circumstances allow it, the crew and the administrative corps are expected to receive training on issues related to elections through an International Steering Committee. In addition, the Central Elections Committee is currently creating the proper mechanism for preparing lists and registries, which is expected to be a complicated and time-consuming ordeal.

The Central Elections Committee has reported a number of obstacles hampering its work. These are very similar to the kind of obstacles facing the reform process as a whole. However, the PNA views holding the elections as the backbone of its reform program. Attempts to obstruct elections are the same type of what is obstructing the Palestinian reform plans.

**1-Absence of a political framework:** Free elections require first and foremost for the people to be free. Democratic elections definitely need an atmosphere of independence and a patriotic horizon. Lack of a politi-

cal horizon adversely affects holding free and fair elections. Holding free elections under military rule is absurd, particularly when Israel refuses to respect democratically elected leaders. Furthermore, in order to encourage a broad participation and boost the legitimacy of elections, it is pertinent for Palestinians to believe that they are truly exercising their rights freely. As such, the policy of assassinations conducted by Israel should come to an end, as well as incursion operations, house demolitions and other measures of collective punishment that spread the feeling among Palestinians that elections are illusory.

**2-Israeli restrictions on the Palestinian freedom of movement:** No real elections can be held amidst closures, curfews and other measures imposed by the Israeli occupation on the movement of the Palestinian people. In fact the elections that were supposed to be held in January of 2003 had to be deferred because of all the restrictions. Candidates to the PLC and the presidency need to move freely during election campaigns. Voters also need to move freely and attend meetings held by candidates. Needless to say voters also need to move freely on Election Day. This also applies to the process of making a central registration of voters. Members of the Central Elections Committee need to move freely for meetings and preparing the elections.

**3-Lingering in providing technical and financial support:** The International Steering Committee composed of members from the European Union, Norway, Japan, Canada and the U.S.A. pledged contributing funds and administrative support to Palestinian elections and are in constant contact with the Central Elections Committee. However the committee did not receive, until now, funds to cover its operational budget. It should be stressed here that donors need to support the Central Elections Committee to allow it to fulfill its tasks.

**The Constitution:** The Central Committee of the PLO formed in Sept. 1999 a committee with the task of drafting the constitution of the Palestinian state. The committee held intensive consultations with civil society members, academics and religious figures. More than 200 discussion circles were held. The first draft of the constitution was announced in February 2001. A second draft was developed based on the first. It is actually ready to be presented to the Central Committee of the PLO. This draft came as a result of public deliberations and international contributions.

During the last two months the committee held a number of consulting

sessions with Palestinian NGO and religious representatives. The discussions covered a wide range of key and procedural issues. It dwelt upon the rights of women and minorities. There was also input from Arab and international constitution experts from Egypt, Saudi Arabia, Lebanon, League of Arab States, the U.S.A., France and Spain. These experts analyzed the public structures that are appropriate to the Palestinian context as well as the general principles of a constitutional government. The committee benefited especially from the discussions held with experts from the Arab world and the expertise offered in this field. The objective was to adopt a free constitution based on the principles of the Declaration of Independence that was announced in Algeria in 1988.

The committee intends to proceed with its consultations over the coming months with the Palestinian public and civil society organizations and political parties in order to enrich and up-date the constitution. Some members of the constitution committee traveled in early march to participate in a workshop held in South Africa on constitutional procedures. The mission sought to help drafting a transparent plan that would be the basis for coming up with a constitution. The draft would be presented to the Central Committee of the PLO for an approval in the first reading prior to placing the final draft for a public plebiscite during the elections.

**Local Rule:** The ministry of local rule presented a detailed report on Israel's obstruction and destruction of municipal services. The report covers in facts and figures the enormous damages that occurred in every town and village caused by the policies of siege and restrictions on movement. This includes prevention of access to water sources, damage of sewage systems, wells and garbage disposal facilities with ongoing expropriation of land, destruction of infrastructure and other collective punishment measures in a clear violation of the fourth Geneva Convention. Municipal services were paralyzed creating a catastrophic situation. In addition, the ministry of local government is actively involved in capacity building within the municipalities. The purpose is to allow local bodies to manage and finance services as well as build and maintain infrastructures within municipal zones. Currently there are five programs financed by donor countries with staff that have been employed to operate and supervise such programs.

From a financial point of view, the 2003 budget is bound to solve pending problems and cover requests of local councils from the treasury. Ac-

tually the ministry of local government has established a unified municipal fund to receive all amounts earmarked for municipalities and local councils, including transfers from donor sources. These funds would be used to support municipal projects. In addition, the ministry of local government reported that there is a lack in municipal courts and requested the ministry of justice to rectify the situation through establishing new such courts. However there will still be a shortage of municipal courts while the ministry of local government is preparing for municipal elections.

**Civil society:** After some hesitation and testing the waters, the civil society is actually involved on a regular and active basis in determining the reforms needed in conjunction with the ministerial committee for reform. The latter is aware of the importance of mobilizing the civil society to ensure the process of reform. Clearly the need for such a reform is not confined to public institutions but also in civil society organizations that need to be rehabilitated. The two sides bridged the gap between them as a result of two factors. On the one hand there is no more the feeling that they are competing on two sides of the fence. More important, from the point of view of the ministerial committee on reform, is that the civil society finally got its act together and came up with representatives that will speak on its behalf. The framework of action was presented to the ministerial committee and was accepted as a new beginning. It includes representatives of every major group from NGOs, private sector institutions, charitable organizations and trade unions. The ministerial committee for reform feels that representation should be expanded to include political parties and chambers of commerce that are not involved yet. This would be more useful especially when issues such as the constitution and elections are raised.

There has been an agreement that the framework of dialogue between the ministerial committee for reform and the civil society would include all aspects of reform in a spirit of cooperation and partnership. Such a spirit led to a number of useful and beneficial encounters that were held jointly in Ramallah, Gaza and Nablus. There was an occasion when there was a meeting through video-conferencing between the ministerial committee for reform and representatives of civil society between Ramallah and Gaza where there was a lively discussion of the current situation.

**Infrastructure Building and Socio-Economic Rehabilitation:** The PNA's 100-day plan includes reconstruction of institutions and infrastructures that were damaged by the occupation forces. Necessary assistance would

be sought from the European Union, USAID, the Islamic Bank and certain European countries individually to compensate for losses suffered by the people as a result of Israeli measures.

However, the pace of Israeli destruction has been way ahead from all efforts for reconstruction. Applying and securing compensation assistance lagged behind and moved in a slow pattern. We do not wish here to reiterate what our representatives informed the Interim Coordinating Committee yesterday and today in this respect. However, let it be known that the average per capita income deteriorated by more than 50%-from \$1760 to 830. Unemployment soared to 67% in Gaza Strip and 48% in the West Bank, a fact that makes the efforts towards promoting reform seem irrelevant. This is why the public is not excited in response to the huge steps and efforts undertaken officially in the field of reform.

**Awareness:** With the PNA immersed in the reform program, there was a lack of information to the public as to what has been achieved. The ministerial committee will address this issue in a better manner in the forthcoming weeks particularly within the contacts with the civil society. The Palestinian minister of Labor Dr. Ghassan El Khatib, who is assigned to coordinate with the civil society, has a plan that includes disseminating information to the media with radio and TV broadcasts. An Internet site is under design with an e-mail address to receive letters from the public. The plan also includes the publication and distribution of various articles and brochures.

We consider the civil society as the sounding board to feel the pulse and concerns of the public. It reflects the way the government's performance is perceived. It also brings about the issues of relevance to the public and the obstacles with ways to surmount them. Therefore communication with institutions of the civil society is on top priority to achieve expected results.

**The Unit Supporting and Coordinating Reform:** A special unit was formed within the ministerial reform committee with the purpose of coordinating all aspects of the reform. The unit, which is directly under the command of the Coordinator, pursues matters with various reform groups and counterparts. Various ministries have assigned counterparts in the coordination efforts with the special unit in order to facilitate the exchange of information and assist in the follow-up of the decisions taken by the ministerial committee for reform.

In order to speed up institutional reform, the coordinating unit would take

up the implementation of the decisions taken recently by the cabinet concerning reform. It also follows up assessing the needs of the judiciary and securing those needs.

### **Impediments:**

The Palestinian Reform Work Team held a number of meetings locally as well as in capitals supporting reform. The meetings involved assessing progress and exposing impediments that hamper the process. It became clear that further progress in reform efforts is quite impossible in light of the measures taken by Israel. The impediments that the Central Elections Committee has faced apply to all reform efforts and in all areas.

At a time when there is a need for further action in certain areas, obstacles could be easily surmounted had it not been for the illegitimate Israeli collective punishment measures that hamper the work. While there is no dispute concerning reform steps that were emphasized by the PLC, the civil society and the reform work team, it is of primary importance to keep the matter outside political maneuvering.

The "Road Map" proposes specific steps to bring in security and end violence as steps needed for further reform. However despite extended lulls of relative quiet in Palestinian areas, Israel pursued its provocative, intimidating policies including assassinations, house demolitions and movement restrictions on Palestinians as well as curfews and other forms of collective punishment. All these measures are taking place at a time when there is a systematic plan to expand settlements and grab Palestinian lands in various ways. This includes the building of the separation wall and fences around Jerusalem and the rest of Palestinian lands that have become fragmented and the population confined to tiny cantons.

Undoubtedly, the efforts for Palestinian reform cannot proceed smoothly unless all Israeli impeding measures are halted. It should be noted that reform is an element that is vital to comprehensive peace. There are specific requirements that Israel cannot keep delaying. This includes withdrawal of Israeli forces to their positions prior to September 28,2000 and immediately revert to the status quo ante so that the PNA can proceed with its reform plan. The Palestinian institutions should not keep remaining a target for destruction by Israel directly or indirectly.

On its part the PNA is committed to pursue its reform program in all areas. However, we call upon the international committee to exercise pressure

on Israel to remove the impediments to reform along the path of peace.

Finally, the PNA appreciates the support of the International Community in its strategy towards peace and the drive to build a viable state with proper institutions yearning for peace, prosperity and security that will benefit all the peoples in the region.

# GOVERNANCE AND ADMINISTRATION OF PALESTINIAN CIVIL ORGANIZATIONS

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## Preamble:

The term "Good Governance" did not have much attraction in the sixties, seventies, eighties of the past century within civil society organizations. This has drastically changed towards the end of the eighties and nineties with the energetic proliferation of NGOs moving from relief to development and from natural society to civil democratic society.

The decline in the power of the nation state and the emergence of organized forces calling for democratic transformation while playing a developmental and societal role as a partner within the overall development process were responsible for the new concepts such as "institutionalization of civil organizations. More specifically responsibility to provide basic services shifted from the state to civil institutions and the private sector privatization and NGOs. The process required undergoing through major and strategic changes in the modus operandi of civil society organizations. It involved a comprehensive restructuring both administratively and institutionally in order to cope with the newly acquired areas of action, particularly providing specialized services to the local society. This does not necessarily mean approval of such an orientation. In fact there is still a controversy concerning issues of the state, the civil society and the private sector. In addition the new role calling for fostering democracy and human rights also requires radical qualitative and strategic changes at the institutional, value-system, and administrative framework in a manner that fits to the functions and requirements of building a democratic, free and transparent society.

In a nutshell, the transfer of part of the responsibilities of striving towards a sustainable humane and societal development with democratic building and respect of human rights to civil society institutions required endorsing democratic, professional, transparent and accountable principles. This in turn led to concern with issues related to good governance and internal democratic build-up especially after the establishment of the PNA. There are varying positions concerning the concept of good governance in contrast to the concept of institutional development or

democratic build-up. Sometimes good governance is viewed as a narrow technical concept that, in my view, falls short of a broader vision that includes democratic build-up and institutionalization of the NGOs. Such an outlook also overlooks the overall values, culture and developmental framework adopted by Palestinian civil society organizations.

For instance, within the Palestinian context, the response of the civil society organizations to the needs and priorities of the local society is a primary element in legitimizing these institutions. Thus it becomes a basic component of "Good Governance". This equally applies to PNA institutions. However, under Israeli occupation and the political, social and economic uncertainty, efficient response to the needs of the local society becomes difficult and almost impossible. Therefore the concept of good governance needs to be placed in the right framework and take into consideration the specificity of the local environment.

As a result, I will endorse here a broader concept for good governance where I prefer to use the term development build-up or institutional development since these represent a wider range that include values, principles, visions, strategies, etc. This is why I will focus on this concept within my presentation.

## **Good Governance and Proper Management: A Conceptual Framework**

### **The Cultural/Value Framework:**

In his paper entitled "Towards a Proclamation of a Code of Honor for the work of Arab Civil Society", Sayyed Yasin lists a number of objectives that voluntarily civil society organizations have to abide by. These include:

- 1) Endorsing a culture that is not based on violence but on the respect of life.
- 2) Endorsing a culture that is based on solidarity and the establishment of an economic system that is fair.
- 3) Endorsing a culture that is based on tolerance and a life that respects the truth.
- 4) Endorsing a culture based on egalitarian rights regardless of sex, color or creed.
- 5) Endorsing a culture based on participation between men and women.
- 6) Voluntary organizations in the Arab World would be committed to raise

social and cultural awareness of the citizens.

In light of the specificity of the Palestinian experience, I would add here the adoption of a culture whereby the civil society organizations would be part of the resistance against the occupation along the path of establishing an independent state and defending the Palestinian people's rights.

The "International Committee for Culture and Development" formed by the UNESCO in 1992 tried to crystallize a number of components under the title "Towards a Global Civil Culture". It focused on the need of civil society organizations to abide by:

- 1) Contemporary International Human Rights Conventions.
- 2) The notion of Democratic legitimacy both at the level of society as a whole or within given organizations.
- 3) The notion of general accountability according to an agreed-upon system and institutions that would be put in place.
- 4) Applying orderly, scientific ways of thinking in the process of analyzing the problems of society as a whole or within the framework of upholding principles of social care and comprehensive development.

These are some general principles that could constitute an acceptable cultural framework that fits into the Palestinian set-up. At the same time, we need to think collectively and have a serious discussion as to what is "the appropriate Palestinian cultural framework".

## **The Developmental Framework**

**In this framework, the Canadian Council for International Development has set up a list of the components that constitute a comprehensive developmental vision. It appeared as follows:**

- 1) Development should focus efforts and give priority to meet needs and respond to the more impoverished and marginalized groups. It should also respond to the actual human rights demands, confront natural environment problems and resolve social disputes through peaceful means.
- 2) Development is not confined to economic achievements: it is a process that involves social, cultural and political aspects.
- 3) Development programs should focus on efforts to support civil society institutions with voluntary organizations playing a prominent role in this process.

- 4) Development: that is a basic right. It should endeavor to respect and maintain human rights and guarantee basic liberties.
- 5) Development should focus on involving people in setting up objectives or in the distribution of returns.
- 6) Development needs to provide assistance to the poor, the deprived and the marginalized allowing them to get organized and improve their political, economic and social conditions.
- 7) Development should secure basic needs.
- 8) Development needs to deal with the core issues of inequality and not suffice by addressing side effects.
- 9) Development needs to be sustainable without affecting the needs and future of coming generations.
- 10) Development needs to enhance social justice through a fair distribution of power, wealth and free access to resources.
- 11) Development needs to reflect concerns, visions and experiences of women allowing them to achieve economic, social, cultural, civil and political rights.
- 12) Development should facilitate full participation of all individuals and marginal groups regardless of sex, creed or age within the economic decision-making process.
- 13) Development needs to respect indigenous people in their right for self-determination and their specific culture.
- 14) Development should honor the spiritual and cultural rights of all citizens.
- 15) Development requires staying away from militarism. Peaceful means should be promoted to resolve violent conflicts whether at the international, national or local levels.
- 16) Development is a global issue finding common interests and issues and needs to be based on a global movement for change.

### **The Institutional/ Organizational Framework:**

**At the Institutional/organizational level, the following components could be traced:**

1. Each situation needs to have an independent active board of administration (trustees) that has easy access to information operating on a non-profit voluntary basis. Clear policy guidelines need to be set for the management, including regular meetings. The board could assign an executive body to fulfill obligations on condition that there is a clear job description. The board needs also to determine the number of personnel that have voting rights. In the case of NGO bylaws in the Arab world, the

personnel or director general or the executive chief usually do not have voting rights even if they attend board meetings on an ex-officio basis.

**2.** The board of trustees needs to endorse clear-cut policies that do not allow for conflict of interest, either regarding members or employees within the institution. Guidelines need to specify over procedures for receiving gifts, relations with suppliers of goods and services that could entail benefits contradictory to the institution.

**3.** The board of administration (trustees) needs to approve general policies and annual programs of the institution.

**4.** The board has to endorse a public policy that does not allow for the exclusion or denying membership to any member on the basis of discrimination according to sex, creed, color or nationality, including mental or physical handicaps (although I agree on this principle there are certain boards where membership is confined or closed, especially in professional institutions such as research centers).

**5.** The board has to endorse policies that encourage providing equal opportunity and participation of minorities.

**6.** The institution has to review objectives, programs and projects in light of changes occurring in the international scene through an ongoing process of strategic planning.

**7.** NGOs have to be clear on the following:

**a)** Vision, value-system, objectives and sense of mission regarding the institution and its policies.

**b)** Mechanisms, work styles and activities undertaken.

**c)** The geographic dimension of operation areas.

**d)** Structures of institution, the way things are run and decision-making.

**e)** Reference body and the level of member involvement with other institutions.

**f)** Financial sources, ways of spending and internal control procedures.

**8.** To provide NGOs with the necessary and appropriate legal cover, including tasks and rights of reference bodies, internal regulations need to be specified and fall in line with the objectives and administrative structure of the institution.

**9.** All matters should be conducted in a straightforward and transparent manner with easy access to information about activities when required from official or non-official bodies esp. funding sources. This does not preclude discretion in personal and classified matters according to regulations.

**a.** The institution has to deal with any misdemeanor or misconduct regardless of whoever is involved in a fair, unprejudiced manner with full

respect to privacy and in discretion.

**b.** The institution has to refrain from any financial malpractice and rectify any flaw at whatever level of administration.

**c.** Through all activities, the institution needs to respect the dignity, value-system, heritage and culture of the local society regardless of race, creed, color, age or sex.

**d.** The administration of the NGO has to be qualified and efficient striving to expand activities and needs to set clear-cut guidelines in the following areas:

\* Active, efficient management in the day-to-day decision-making along clear lines as to responsibilities, rights, accountability with a clear job description and clear division of tasks.

\* Planning of activities, programs and projects.

\* Continuous monitoring, follow-up and review of activities, programs and projects.

\* Evaluation of activities, programs and projects with the participation of beneficiaries, whenever possible.

\* Putting the human potential available within the institution into best use. This includes capacity building, developing skills for all parties within the board, staff, volunteers and beneficiaries. This should be based on the equal opportunity principle for both males and females.

**e.** Fiscal management in civil society organizations needs to be efficient with high professional features seeking to build capacity of NGOs and ensure continuity.

**1.** Proper use of grants with accountability to all relevant parties.

**2.** Auditing accounts yearly through certified, licensed and independent auditors. The financial report needs to follow internationally accepted accounting standards.

**3.** The financial report after being fully audited should be available to any party wishing to review it in part or in full within a specific time period.

**4.** The institution has to implement the budget after approval from the board of trustees. Accountability is needed to trace all grants from moment of receipt, into each phase of spending through implementation. The institution needs to endorse an internal policy for financial control. It is strictly forbidden to use any amounts of the grants in areas that were not clearly earmarked within the projects. It is also forbidden for any members of the board of trustees to receive any money from such grants.

**5.** When negotiating with funders to receive grants, all conditions of con-

tract, procedures, deadlines should be specified and agreed-upon from both sides.

**6.** Grants and contracts need to be in line with the objectives and policies of the institution, keeping in mind that:

\* There should be no compromise on the independence of the institution.

\* There should be no excessive burden that the institution is unable to shoulder or afford.

**7.** It is not advisable to be overly dependent on one source of funding. It is certainly preferable to diversify sources of funding and depend on long-range grants.

**8.** Assuring that efforts of fundraising do not weaken or undermine the work of other NGOs (fundraising is a professional principle rather than a competitive one)

**9.** While preparing budgets and estimating costs, it is important to make sure that administrative and budget costs have been specified clearly and included in the budget within definite items.

**10.** Assuring proper procedures to monitor and review all financial matters.

**11.** Making sure that spending is in line with the destined grants according to the agreements with the donors.

## **Fundraising from the General Public**

**1)** It is of utmost important that fundraising enjoys credibility and the confidence of the local society. The nature of the institution, its objectives, programs and needs have to be clearly defined. The grants should be in response to real needs and managed properly. Excessive pressures to funding sources have to be avoided, as well as disinformation, such as deleting or exaggerating certain information. Any misuse of pictures or attempts to conceal facts from the public will undoubtedly have reverse negative effects. Information that is presented has to be accurate, to the point and in line with earmarked amounts.

**2)** When fundraising from the public, the following need to be observed:

**a)** Donors are fully aware of the role and mission of the institution as well as the way that money will be spent. They know exactly the ability of the institution to use grants efficiently according to targeted objectives.

**b)** The donors are entitled to examine the most up-to-date audited report and the list of the members of management.

**c)** Information that falls under the category of classified should be kept

within the range that is allowed in the law.

### **Managing Human Resources:**

- 1) The Institution needs to adopt efficient and proper management means to fulfill its mission, operations and administrative structures.
- 2) There is a need to have clear-cut, written policies with visible procedures in the work of staff and volunteers.
- 3) The policies need to be defined and promulgated making sure to protect the rights of the personnel and a fair treatment in all matters.
- 4) Workers' allowances and benefits have to be clearly defined and publicized while the institution should make sure that it is able to fulfill all its obligations.
- 5) Equally, the expectations of the institution from its staff and volunteers need to be clearly defined and circulated.
- 6) There is a need to provide equal opportunity between the sexes and assure the rights of minorities in hiring, training and vocational development.
- 7) Attention should be placed to hire people that combine professional skills with adhesion to the mission, values and objectives of the institution.
- 8) All staff should be offered the opportunity to develop in their career.

### **Some Indicators to Good Governance and Proper Management**

To shed light on some indicators concerning governance and proper management, I will adopt the OCAT methodology, that is the Organizational Capacity Assessment Tool. This approach divides the methodology related to NGOs to four phases:

- a) The nucleus phase.
- b) The birth phase.
- c) The phase of growth and expansion.
- d) The maturity phase.

Each phase is determined according to a percentage rate that it scores based on a criteria of indicators concerning the main functions within the institution such as governance, administration, external relations, human resource management, continuity and providing services.

The methodology provides a number of indicators to each principal responsibility through which each phase is assessed. The opportunity does

not allow for me to dwell on all the indicators involved, so I will suffice to mention indicators related to good governance within a given civil society organization.

## **FIRST: GOVERNANCE:**

### **1) Board of Trustees and Governors**

- a)** Do these reference bodies fulfill their role in setting up the general policies and do the general monitoring?
- b)** Do they fulfill their role in ensuring accountability, credibility and transparency of the institution?
- c)** Do they fulfill the main tasks of devising policies, fund-raising, public relations, monitoring and financial control as well as mobilization and lobbying?
- d)** Do they represent dedicated members and reflect the interests of stakeholders?
- e)** Are there adequate messages and mechanisms that allow for the contributions of all relevant parties?
- f)** Do they fulfill their role to uphold the position of the institution within the local society?

### **2) Vision, Message and Objectives**

- a)** Did the civil institution devise a vision with clear-cut objectives?
- b)** Do all relevant parties understand the objectives and mission?
- c)** Do the strategies conform to the vision and mission?
- d)** Should the strategies be clear-cut? How could we achieve that?
- e)** Does the senior administration draft and revise executive work plans and consult relevant parties?

### **3) The Legal Status**

- a)** Is the institution registered according to the Palestinian Civil Society Organizations Law?
- b)** Does it benefit from all privileges provided by the Law?

### **4) Relevant Parties**

- a)** Is the institution capable of defining who are the relevant parties?
- b)** Is there recognition of parties and influential bodies as partners?
- c)** Are the needs of the institution and relevant parties taken into consid-

eration during the process of planning?

**d)** Do the relevant parties (particularly within the local society) revise the mission and strategies of the civil society organization?

## **5) Leadership**

**a)** Does the board of trustees and senior management realize clearly their role in overlooking the general courses of the institution?

**b)** Is the leadership model in management based on participation?

**c)** Is the senior management accountable in front of the main relevant parties?

**d)** Is it possible to manage a civil society organization by involvement from all relevant parties?

## **SECOND: ADMINISTRATIVE PRACTICES:**

### **1. Structural Organization and Institutional Cultures**

**a)** Does the civil institution have a clear line of authority and responsibility?

**b)** Are the management policies clear within the implementation procedures of the administrative structure?

**c)** Do the administrative policies reflect the principle of accountability among the staff?

**d)** Are there standard procedures to check the harmony between work ethics and the mission and objectives?

**e)** Are there standard practices for personal involvement in decision-making?

**f)** Does the institution provide policies, procedures for reciprocal accountability among relevant parties?

### **2) Planning**

**a)** Are the contributions of relevant parties taken into consideration during the planning process?

**b)** Do the executive plans reflect strategic plans?

**c)** Is there a regular updating and reviewing of executive plans?

**d)** Are the resources placed and used in a proper manner?

**e)** Is there flexibility in amending plans as a result of follow-up and control?

### **3) Personnel Affairs**

- a)** Are there clear criteria in selecting personnel?
- b)** Is the employment procedure clear?
- c)** Is there a precise job description of personnel?
- d)** Are the employment procedures transparent and allow for fair competition?
- e)** Does the administration encourage reciprocal respect among personnel?
- f)** Are there clear procedures for the work of the personnel?

### **4) Preparing and Developing Programs**

- a)** Is there participation of personnel and other relevant parties in planning, implementation, follow-up and evaluation of programs?
- b)** Does the planning of programs include activities of follow-up, control and evaluation?
- c)** Do the amendments in the programs take into consideration the results of activities related to follow-up and evaluation?

### **5) Administrative Measures**

- a)** Is there a handbook for administrative procedures?
- b)** Is there a commitment to agreed-upon procedures?
- c)** Is there a regular updating of administrative procedures?

### **6) Minimizing Risks - Crisis Management**

- a)** Are there fixed regulations to control organizational and administrative excesses?
- b)** Is there a regular auditing of available assets?
- c)** Is there an annual external auditing of administrative performance?

### **7) Information Systems**

- a)** Are there systems for gathering, analyzing and presenting information?
- b)** Is there training of certain staff to manage information systems?
- c)** Are there regulations to deal and evaluate information?

## **8) Preparing Reports**

- a)** Is the institution properly prepared to issue reports?
- b)** Are there regular reports on progress of activities?
- c)** Are there regular reports seeking to evaluate activities?
- d)** Does the civil organization publish and disseminate reports on its activities?
- e)** Are the report forms flexible, diversified and respond to the various requirements of relevant parties?

## **THIRD: FINANCIAL SOURCES:**

### **1) Accounting**

- a)** Are there clear and transparent financial procedures?
- b)** Are there separate items for various programs (Cost-Center)?

### **2) Budgets**

- a)** Is there a merger in preparing the budget with executive plans?
- b)** Is there a financial unit in charge of preparing, managing and implementing annual budgets?
- c)** Are there annual budget estimates?
- d)** Are annual budgets actually implemented?
- e)** Is the budget controlled on a regular basis?

### **3) Controlling Assets**

- a)** Is there a system to control assets?
- b)** Is there adhesion to the system of asset control?
- c)** Are there clear procedures for contracts?
- d)** Are those procedures properly observed?
- e)** Is there a regular internal auditing?
- f)** Is there a regular external auditing?
- g)** Is there a control of expenditure according to different budget items?

### **4) Financial Reports**

- a)** Is there an audit report prepared by a certified public accountant?
- b)** Are reports prepared to review budget implementation?

- c) Does a financial committee accountable to the Board of Trustees or the administration review financial reports?
- d) Are the reports mentioned in the planning subject to regular review of objectives?
- e) Are the financial reports published and distributed?

### **5) Diversifying sources of funding**

- 1) Does the organization diversify sources of funding?
- 2) Is there a policy for financial independence or cover costs?
- 3) Does the civil society organization have the ability to compete in contracts and projects?
- 4) Does the institution have a plan to diversify funds?

## **FOURTH: EXTERNAL RELATIONS:**

### **1) Relations with relevant/ influential parties:**

- a. Does the organization enjoy credibility with relevant parties?
- b. Is it viewed as a valuable source of expertise, information, contracts, skills etc.?
- c. Is the relation between the institution and relevant parties based on a partnership towards a common goal?

### **2) Relationships with other NGOs:**

- a. Does the given NGO foster networking and exchange information with other organizations?
- b. Does it engage in joint activities with other NGOs?

### **3) Cooperation with the government:**

- a) Does the NGO have contracts with decision-makers?
- b) Is it capable of interacting to influence decision-making through various forms of dialogue?
- c) Is there an exchange of information between the government and NGOs?
- d) Are activities and recommendations of NGOs incorporated in the government's development plans?

#### **4) Cooperation with financing sources:**

- a)** Do the NGOs have multi-faceted relations with funding sources?
- b)** Is the NGO perceived as credible by the funding sources?
- c)** Is the NGO perceived as being a source of experience and relevance by the funding source?
- d)** Does the NGO have a chance to enter in an open, frank dialogue with funding sources?

#### **5) Relationship with the Public:**

- a)** Is the NGO on close relationship with the public?
- b)** Does the public understand the objectives of the NGO?
- c)** Do the public and the relevant parties perceive the NGO positively?
- d)** Is there a dissemination of information concerning the activities of the organizations?

#### **6) Local Sources:**

- a)** Does the civil social organization have a relationship with the private sector to obtain technical expertise and human resources?
- b)** Does the civil social organization get involved in community partnerships?
- c)** Are there structures that enable having contacts with other NGOs?

#### **7) Media:**

- a)** Does the NGO have a strategy of work with the media?
- b)** Does the NGO attract the attention of the media?
- c)** Does the media contact the civil social organization on certain issues?

# REQUIREMENTS OF GOOD GOVERNANCE IN ACTIVATING THE ROLE OF THE PRIVATE SECTOR

Dr. Naser Abdel Karim,  
Birzeit University

## First: Basic Concepts

The economic system of a state determines the type of relationship between the public and private sectors and the role of each within the Palestinian economic life. In the case of adopting a free market policy, there is a relationship of partnership whereby the private sector is the dynamo of economic activity with the government playing a supervisory, monitoring, organizational role seeking to maintain a reasonable balance between the objectives of continued economic growth and comprehensive sustainable development. As such, governmental interventions in economic life take an indirect form through the introduction of legislation, policies, procedures and ground rules. The primary role within the economic sphere is to create a competitive atmosphere that enhances the private sector to play an active role in growth and development. It should be mentioned that a basic element in the competitive atmosphere of the private sector lies in the government's adherence to what became known as good governance.

## Second: The Palestinian Setup

Since its inception, the PNA adopted the system of a free market. However developments in Palestinian areas were not satisfactory despite all the efforts. In this context, we cannot downplay the destructive and negative Israeli role, in addition to subjective reasons. The end of occupation is not the only condition to launch a development process led by the private sector. Furthermore, fostering the principles of good governance within Palestinian institutions is not sufficient as long as occupation continues with arbitrary conditions facing Palestinian economic policies. However due to the maneuverability range to rectify "the subjective factor" compared to external Israeli or other interventions, it becomes pertinent to start a comprehensive plan for good governance that would involve the private and other sectors. The title should be democracy with all what it entails such as pluralism, freedom of expression and belief, separation

of powers, transparency and accountability. Among the most important functions is reform to prevent economic decline.

**\* Requirements and bases for good governance, which include:**

- a) Legal and Organizational framework.
- b) Institutional and Administrative build-up
- c) Developing a secure network to the private sector.
- d) Developing a supportive back-up to the private sector.
- e) Establishing coordination between the private and public sectors.

**\* Responsibilities of the Private Sector:**

- 1) Fostering and developing a "collective-responsibility culture" for those endorsing the private sector.
- 2) Spreading the concepts and applications of transparency and accountability within the private sector institutions.
- 3) Developing work systems within the private sector institutions both administratively and financially.
- 4) Develop mechanisms for the participation of the private sector in drafting policies.



## **Discussion**

First Session

Second Session

## FIRST SESSION

The floor for discussion in the first session was opened with Dr. Majdi Malki of Birzeit University chairing to comment on the papers that were presented. Various topics over the system of rule in Palestine were raised. In the first paper, Mr. Abdel Karim Abu Salah, head of the PLC's legal committee presented the political and legal bases for the Palestinian system of rule.

This was followed by the director of Development Studies in Birzeit University, Dr. Nader Sa'id who addressed the issue of indicators to the Palestinian system of governance. Dr. Ahmad Majdalani, member of the political bureau of the Popular Struggle Front addressed the issue of the role of political parties in enhancing the principles of good governance.

Contributions were of a wide array involving comments, questions and remarks that were quite critical to the system of rule in Palestine particularly in relation to the PNA's performance on the ground.

The bulk of the contributions can be generally summarized as follows:

- 1.** The articles included in the constitution bill concerning liberties and rights were loose and lacked clarity despite phrases like "according to the law". In essence they were open to varying interpretations.
- 2.** The discrepancies are not merely confined to the lack of legal principles only but also in practice and implementation. On the ground the rule of law is undermined due to violations from the part of the executive authority.
- 3.** Normally political parties compete to attain power. In the case of Palestine there are a number of factional forces. It is not clear whether these are political parties with a political vision and a platform that they seek to apply upon having access to power.
- 4.** Clearly there is a dilemma in the system of rule whether at the level of authority or the parties or NGOs. This is largely due to the patriarchal system characterizing the prevailing political culture.
- 5.** Parties within the Palestinian set-up lack applying democratic practices internally. This affects its general performance externally.

**6.** Good Governance is hard to achieve in light of cliental loyalties and lack of understanding to enlightened leadership.

The main positions of the three speakers in the first session can be summarized as follows:

**PLC Member Abdel Karim Abu Salah**

I am glad about this kind of democracy. There is no denial that there is a gap between legislations and practices on the ground. However this does not mean that this can go on forever. There are attempts to improve matters both at the level of the judiciary or applying the law. The PLC worked hard to issue a number of legislations and contribute to reform the political system for years. A number of factors hampered the process. Despite all international pressures on us, reform is essentially a Palestinian demand emanating from our needs to persist while sticking to our basic national principles.

**Dr. Nader Sa'id**

There is a need to distinguish between perception and application. The theory is not unimportant, but the gap between idealized concepts and application do not exclude the necessity of the theory. In addressing the theoretical aspect of good governance, it does not suffice to dwell on the results. I tried to focus on the interaction and quality evolving around cultural behavioral patterns as well.

**Dr. Ahmad Majdalani**

I stress that political parties, as part of civil society, reflect the needs and desires of societal sectors. Its performance is not determined at election times and the establishing of new bodies but on its ongoing internal relationship and interaction with the public. It needs to be sensitive to the concerns, interests and aspirations of the public and include all of the above in its program of action. This should also connect with the relationship with the leadership and the type of democratic interactions with other forces.

I wish also to stress that for the last three years there has been intense discussions within the Palestinian society for the need to democratize parties. The dialogue continues and deepens paving the way for a new framework of political action in Palestine.

## THE SECOND SESSION

The floor was opened for discussion following the second session where there were the presentations of Dr. Nabil Kassis, Minister of Tourism and member of the Ministerial Committee for Reform on the results of the reform plan. Izzat Abdel Hadi, Director of Bisan Center for Research and Development spoke on the concept and applications of good governance in civil society institutions. Dr. Naser Abdel Karim of Birzeit University addressed the requirements of good governance to activate the role of the private sector. Rana Nashashibe from the Palestinian Centre for Counseling chaired the session.

### **The main ideas focused around the following issues:**

1) There was repeated mention that the papers focused on the theoretical aspects of good governance at the expense of the specific conditions prevailing in Palestine.

2) Some expressed doubt over the seriousness of the PNA's reform process due to lack of proof and proper assessment of the plan that remained largely on the shelf with no concrete results.

3) There were a number of questions about the future of the reform committee in light of the formation of the new government. What would happen to the violations and mistakes committed by a number of PNA officials? What role could the reform committee play in designing ministerial and other structures to control internal relations?

4) Calling upon civil society institutions to endorse principles of accountability and transparency at the internal level, especially concerning certain problems facing some NGOs. The responses came as follows:

### **Dr. Nabil Kassis**

There is a regular evaluation of the reform process. At the same time there are some reservations. The plan is limited to certain areas and does not tackle certain issues like accountability, corruption and squandering public funds. These have not been included in the 100-day plan.

The issues that the plan addressed in reforming ministries require a follow-up from civil society organizations with the PNA. A model structure was

adopted and applied in a number of ministries such as the finance ministry that has taken concrete steps in this respect. There is a need for the dynamic contribution of NGOs in all fields to support the work of the government.

**Mr. Izzat Abdel Hadi**

Transparency is a matter of special importance in civil society organizations. There is a special monitoring to assure maintaining it. However, there is a lack of confidence in this respect between the governmental and non-governmental parties. The General Control Bureau paid several visits to check NGOs. However, it failed to produce any of its reports. To foster transparency in civil society organizations, we suggested forming a financial and administrative review and auditing body. This is a condition for admitting each member into the network that would set standards to all member organizations.

Issues such as transparency and accountability are a cumulative process even if we are in a transitional phase. Sometimes institutions are unaware of having mismanagement or corruption problems. However, there are certain organizations that do not have the political will to rectify its mistakes and overcome problems to move forward.

Furthermore, the European Union, from a political background as well as a sense of responsibility, makes sure to have an auditing system to civil society institutions. If these institutions and the PNA are not following proper procedures then we have a big problem on our hands. We should also be very careful from the spread of rumors and accusations such as the case of LAW as a result of the financial report.

**Dr. Naser Abdel Karim**

I am not an advocate of globalization or a representative of the private sector. However, there is a difference between rejecting globalization and running it properly which is a matter that I support. The PNA chose the free market economy. In light of the spread of poverty and unemployment, this might not have been the best choice. We are still in need of the state to provide economic, health and educational services to the public.



**Gaza Workshop**  
**27.4.2003**



## **Opening Session Speeches**

- 1- PNGO Network.....Mr. Muhsen Abu Ramadan
- 2- Chair of the General Assembly of PNGO.....Dr. Haidar Abdel Shafi
- 3- European Union Mr. Jean Breteche/ Introduced by Mr. Ayman Fathiyeh
- 4- General Representative of Friederich- Naumann Foundation in Jordan and Lebanon, and Director of the "Bunyan" training program Dr. Uli Vogt

## SPEECH OF THE PALESTINIAN NGO NETWORK

By Mr. Muhsen Abu Ramadan

This workshop entitled "Good Governance in Civil Society Institutions" comes within the context of a number of activities held by PNGO network at the Arab level. Undoubtedly civil society organizations that include a number of NGOs have been in the forefront of tackling social and educational problems while promoting liberties and democratic principles. We are grateful to the European Union, Friedrich-Naumann foundation with its Binyan project that made this project possible. Before opening the floor to the speakers, I wish to mention the following:

**First:** The democracy that we seek is a Palestinian national demand. It is crucial for a democratic build-up of resistance against the occupation along the path of achieving the objectives of freedom and independence.

**Second:** We resent all plans for the imposition of democratic regimes with the logic of colonialism like the case in Iraq and before that in Afghanistan in a form that suppresses the will of the people.

Democracy cannot be imposed through Armadas and gun ships. It is closely embedded with the right of people for self-determination and national sovereignty within a spirit of emancipation and liberty.

**Third:** There is an organic interaction between development, prosperity and good governance. We have cases of societies that have large numbers of people living below the poverty line despite the existence of large national resources and others that live prosperously despite lack of such resources. What makes the difference is good governance.

We are in dire need of such good governance at all levels of our society at the governmental and non-governmental levels including trade unions, political parties. Values and standards need to be based on the rule of law, separation of powers and securing fairness and independence of the judiciary. Partisan and nepotistic practices need to be curtailed through mechanisms of control and accountability.

Observing the law is of primary importance with the need for democratic

elections at all levels. We hope that through this workshop we will help in putting our house in order and help crystallize democratic trends at the level of the PNA, trade unions and NGOs.

We appreciate the Friedrich-Naumann Foundation for supporting this important workshop together with all those who made it possible and contributed to it.

## **SPEECH OF THE GENERAL ASSEMBLY PRESIDENT OF PNGO NETWORK**

**Dr. Haidar Abdel Shafi**

We are all aware of the enormous challenges confronting us where the issue is to be or not to be. The way to deal with matters is to mobilize whatever potentials we have. I claim that what we have in this respect is not that bad. However, so far we did not make enough use of our potentials. How can we change that? Very simply I say that the answer lies in establishing order. Nothing can be achieved without order. Unfortunately, we lack even the minimum level of order. I wish I were wrong in this. However, we are living in a great deal of disorder and chaos. This is why we feel embarrassed and un-optimistic. Order is the key together with the democratic system to best achieve that through the distribution of roles and setting up priorities in a manner that would serve the public interest.

Democratic action can be achieved by a variety of means. There is no justification for failing to endorse that. Some could claim that there are many factors preventing us from achieving it. However, democracy is a way of life that ensures the people electing their representatives who are held accountable in front of specific bodies that have been, in turn, elected. We are facing a dilemma as a result of the side effects of the Intifada. This uprising is a result of a spontaneous, emotional outburst, which is not orderly. Our failure to harness its direction and putting order, with all due respect to the Intifada, allowed the Israelis to proceed unchecked in harming us.

The essence of good governance is order that lies in respecting and activating the law-division of labor and specifying responsibilities, setting up priorities and creating models that embody the leadership. Failure to contain the spontaneous nature of the Intifada led to disconcerted political activities with different factions pulling the rope in different directions.

The way out from this mess is clear and we demanded it shortly after the eruption of the uprising. It has to do with establishing a united leadership that includes all political bodies with no exception. This umbrella would set the pace to run all matters. Unfortunately this demand was not heeded leaving each faction function according to its reading of the scene. As a

result, we provided pretexts for Israel to pursue Sharon's brutal ruthless policy and bring us to where we are now.

I say it loud and clear that there is no excuse for this state of affairs and the responsibility lies solidly on the PNA and its President who failed to respond to the demand of concerting our potentials and uniting our stand to regulate the Intifada by containing negative impacts and reinforcing the positive aspects. Actually this might be a point of view: the message of the Intifada is that the negotiating process that lasted for more than ten years has achieved nothing. In fact it paved the way for Israel to intensify its settlement policies in the shadow of negotiations. Since negotiations failed to yield any results, the Intifada's message is to defend our rights through different means. As for armed action, we are clearly not up to the level of a headlong confrontation with the Israelis. Therefore, we should focus our attention on defending ourselves. We could fight against settlement, house demolitions and uprooting trees. This way we could show the entire world that our struggle is in self-defense. The whole world will be with us and we will enable our people to brace up for an extended steadfast struggle.

Our struggle with Israel is not likely to end within a week or a year. This is why we have to prepare our people for a protracted struggle. Our ability of resilience is greater than that of Israel. This is what will make it impossible for Israel to proceed in its current path. Sharon, realizing that Israeli society cannot endure a protracted Intifada endlessly is brutally seeking to suppress the uprising. His failure to do so is bound to reverse the pendulum to a different direction.

## EUROPEAN UNION SPEECH

**Mr. Jean Breteche**

Presented by Ayman Ftiha

On behalf of Mr. Jean Breteche the representative of the European Union in Jerusalem, I wish to welcome you all and thank you for participating in this important workshop. Mr. Jean Breteche would have very much liked to be with you in this workshop. However, he had to attend to previously arranged engagements outside the region.

The workshop addresses a vital issue dealing with good governance in Palestinian civil society organizations and the level of its contribution to general trends and decision-making at the socio-economic levels. It seeks to boost principles of transparency, performance control and accountability. The strategy of the European Union towards Palestinian society focuses in providing continuous support to civil society institutions. We take note that the Palestinian civil society plays a crucial role in the process of change, reform and development. This is because it enjoys legislative and financial advantages that are not as easily available to other counterparts in the region. Clearly the Palestinian civil society has gone a long way in the process of development.

I would like to take this opportunity to assert the European Union's dedicated commitment to continue funding support to all sectors of the Palestinian civil society organizations. This commitment was endorsed in the Barcelona Declaration and followed by other declarations along the same line.

Clearly there are indicators that protecting the change within the Palestinian civil society institutions is moving in the right direction. The effective relationship of the PLC with the executive authority has improved. For instance, the budget was approved on time by the PLC that had a role in the various ministerial formations and in the separation of powers as well as other positive indicators. In this context, it is important to have a balanced view as to the relationship between the civil society and the PNA. The former is demanding the authority to stick to the principles of accountability and transparency. The same mechanisms apply to civil society organizations that are actively advocating democratic practices and call for the holding of elections that boost legitimacy and popular engagement. All this needs to be held within a legal framework.

Finally, I wish to point out that the development process is a comprehensive, indivisible process, which is based on the complimentary partnership among all sectors of Palestinian civil society. I would like to express my deepest gratitude to all those who organized this workshop.

## BUNYAN 2 PROGRAM SPEECH

**Dr. Uli Vogt**

General Representative of Friederich- Naumann Foundation in Jordan and  
Lebanon

Director General of the "Bunyan" training program

I wish to share with you some information about the Bunyan project. Some years ago I was here within the framework of a Bunyan project workshop. This is part of Arabic regional mechanisms to enhance good governance. It might be useful to inform you about our regional program that seeks to foster good governance and participation in public trends. There is no unified expression to these concepts. Every Arabic country has its own translation.

The Bunyan program covers nine Arab countries. During the first phase in 1997 we focused on the Arab Middle East (Lebanon, Syria, Jordan, Egypt and Palestine). In 1999 we added Tunisia, Yemen, Algeria and Morocco. There is a reference group from all those countries with representatives of civil society organizations.

Good Governance is a technical term. Governance in certain Arab countries is a delicate matter that is confined to the government. Since our focus is on civil society we had to opt to the term of proper management.

The Bunyan program is a Euro-Arab project conducted by the German Friedrich-Naumann institute. We have offices in Jerusalem, Cairo, Tunisia and Rabat. Our direct Arab partner is the International Institute for Management and Training in Lebanon with support from the European Union. PNGO network is another partner like the ones we have in Morocco and other regional networks and civil society organizations.

In the Bunyan 1 program we dealt with 150 institutions in the Arab world. This involves networking, facilitating exchange of expertise and experience among organizations. Focus is made for capacity building, supporting networking among the various groups with European Union support. The evaluation phase was in 1999.

With Bunyan 2 in 2002 we set up consultation mechanisms to update the program. This phase ends in June 2003. We asked the European Commis-

sion to extend the program till the end of 2003 due to the difficulties of circulation from one area to another.

**The Objectives of the Bunyan project:**

- \* Promoting principles of Good Governance.
- \* Participation in public trends and dialogue in each country.
- \* Supporting networking in the Arab countries. Representatives of the networks paid visits to Palestine, Lebanon and Morocco.



### **First Session Papers:**

1- Legal outlook to the Palestinian Constitution Project

Dr. Abdel Rahman Abu El Naser- Head of the Lawyers Union

2- Requirements for the independence of the Palestinian Judiciary within the Palestinian set-up

Dr. Ibrahim Al Dughma, head of the Palestinian Legislation and Fatwa Department.

3- The independence of the Judiciary between Theory and Practice

Mr. Raji Sourani, Director, Palestinian Center for Human Rights.

4- Palestinian legislation and its role in enforcing the rule of law and the independence of the judiciary

Mr. Abdel Karim Abu Salah, Chair, the legislative committee of the PLC  
Presented by Tarek Al Dirawi

## A LEGAL OUTLOOK TO THE PALESTINIAN CONSTITUTION PROJECT

By Dr. Abdel Rahman Abu El Naser,  
Lawyer's Union

When we refer to the bases of governance and the foundations of the regime, it is inevitable to talk about the constitution and the associated principles that regulate the relations between the powers. In a region engulfed by turmoil, the role of the citizen is so marginalized. We often claim that if the beautifully drafted constitutional texts in several Arab countries were actually implemented, things would have been much better. Palestine has often been the harbinger for things to come. Despite all hardship, Palestinians manage to pull their act together and move on with creative strategies that would define the relationships within the society. As such, the constitution is the legal framework separating the powers and describing the foundations and responsibilities of each party. During the French Revolution there was a saying that "a country with no constitution is a country with no freedom". People in the past and in the present attached importance to the issue of the constitution.

As Palestinians we are not different in this respect. It started with our declaration of independence in 1988, which is a historic document that certainly can be considered a constitutional document to be applied and honored.

With the issue of ending the interim phase accords, a constitutional committee was formed through the Palestinian Central Committee, which acts as a bridge between the Palestinian National Council and the Executive Committee. The target was to prepare a constitution bill to the independent Palestinian state at the end of the interim phase in May 1999 and fill up the legal void. However, the succession of events and the outburst of the Intifada changed the course of things. While I cannot be responsible for the timing, the constitutional committee continues to operate and prepare the ground. This is a matter of utmost important. Constitutional foundations determining relations need to be applied. The recent meeting of the Central Committee authorized extension to the work of the Constitutional Committee to complete its work. There has been a legal and political argumentation about the timing. A lot of brainstorming is needed over such issues. We need to be alert during these times of uncertainty. However, there are questions whether the Basic Law's com-

ing into effect could fill the gap of the need for a constitution. From a legal point of view, I do not believe this can fill the gap regarding the independent Palestinian state since it was designed to deal with the interim phase. Therefore, it should be viewed within the political context. In addition, the Basic Law was approved only by the PLC without a public plebiscite. With all due respect to the bulk of the text, we should keep in mind that the Basic Law did not get the approval of the people and is in effect until the endorsement of the constitution. I do not wish to dwell upon the shortcomings that the Basic Law has in being among the powers or in external relations.

If we probe into the principles binding the constitutional bill, there is a minimum level of basic liberties that cannot be undermined. These have been mentioned in the Basic Law. However, there is a need to provide mechanisms and tools that guarantee such rights. This is what is needed in Arab societies at large and in Palestine.

Furthermore, there is a need to move away from generalized texts into detailed ones specifying gender equality. At the level of practice, there are flaws in this aspect as well as in the powers of the state. The need for a constitution increases to preempt any non-representative party claiming to represent the Palestinian people and act on political and strategic issues.

We need to stick to the Palestinian inalienable rights. The Law of Return is crystal clear. As for the borders, there are two positions: either the 1967 borders or to leave the matter open. While the Central Committee has to deliberate on the two options, I feel more inclined to leave the matter open since most constitutions do not mention the issue of borders. However, there is a need to respect opposite positions.

In this context we could place the 1967 borders as the final position without surrendering a bit of that. It represents the minimum position. As for the issue of refugees, we have to stick to International conventions, particularly UN resolution 194. Jerusalem must become the capital with undiminished sovereignty on all Palestinian lands. As a constitutional committee we should never undermine those principles.

**As for the powers of the state, the constitution divided them into four sections:**

a) The general foundations that separate powers and define strategic

matters. It mentions that the Palestinian nationality is the right of every-one born in the country according to the prevailing laws before 1948 and could pass on either from the father or mother.

**b)** Rights and obligations with mechanisms to protect and implement.

**c)** Separation of powers with the legislative body having 150 members. The Executive is based on a democratic parliamentary system with a prime minister next to the President with checks and balances. The cabinet is held collectively responsible in front of the legislative. The judiciary authority has to be independent with a constitutional court as stipulated in the Basic Law. A more elaborate definition of this court is included in the constitution.

**d)** Procedures to alter or amend the constitution with the definitions of how the Central Committee grants the authority to the constitutional committee to carry on with its work.

There is a drafting committee that receives all suggestions related to the constitution. It broadly asserts mechanisms and liberties. The draft needs to be presented to the PNC as a bill and not a constitution. This becomes possible only after a public plebiscite. Questions arise as to whether this needs to be done before or after independence. There is a lot of discussion about this within the Central and National councils.

# REQUIREMENTS FOR THE INDEPENDENCE OF THE JUDICIARY WITHIN THE PALESTINIAN SET-UP

Dr. Ibrahim Al Dughma

Head of the Legislations and Fatwa Department

## Introduction

The PNA had to cope, from the outset, with serious obstacles and complications emanating from the extended Israeli occupation that left the Palestinian structures in shambles. This does not exclude the legal and judiciary set-up that is unique of its kind in its being of a dual system between the West Bank and the Gaza Strip. In addition, there are still five laws from the Ottoman era that are in force together with an amalgam of British and Egyptian laws in Gaza and Jordanian laws in the West Bank. On top of all that, there are the Israeli military orders. As such, we cannot talk about a unified judiciary system in Palestine when the scene was subject to the specific circumstances prevailing in the country.

With the establishment of the PNA, the Legislation and Fatwa department set up a plan to rectify matters within the legal and judiciary framework. It sought to unify legislation by bringing about a single legal system that applies on all areas under Palestinian control and nullify all military orders that contravene with the law.

To grasp the situation, there is a need to refer to the judiciary situation before and after the establishment of the PNA.

## The Judiciary System in Palestine before the PNA

The Jordanian army moved into the West Bank on May 18, 1948 declaring military rule that was replaced by a civil administration on November 12, 1948. By 1950, the East and West banks of the Jordan were merged under the rule of the Hashemite Kingdom of Jordan. This step implied the emergence of new political, socio-economic and legal circumstances that led to the endorsement of a new Jordanian constitution that was introduced in 1952. The legal system was unified on both flanks of the Jordan and there was an active pace of legislation that involved stepping away from the Anglo-Saxon legal system and the adoption of the Latin system.

## **Text of the Jordanian Constitution concerning the formation of Courts**

1) Regular Courts that deal with all civil and punitive cases, including those raised by the government or against it. These courts include the following:

**a)** Conciliation Courts that tackle all matters and violations stipulated in the punitive law. This includes cases dealing with liberties, commerce, transferable and non-transferable assets.

**b)** First Instance Courts that deal with all criminal cases outside the jurisdiction of the conciliation courts.

**c)** Courts of Appeal that look into the appeals following the verdicts issued by the conciliation or first instance courts.

**d)** The Supreme Court that has the final say following complaints against the courts of appeal. Since 1967, this court did not function in the West Bank since it is based in Amman.

2) Religious (Shar'ia) Courts that look into the private affairs of Muslims.

3) Religious Congregational Councils that deal with the private affairs of Non-Muslims.

4) Special Courts, chiefly courts for land settlement and appeals on income tax.

5) State Security Court to deal with the military or with civilians charged with crimes affecting state security externally or internally.

## **The Judiciary System in Gaza prior to the PNA**

In the aftermath of the 1948 war, Egyptian troops entered into the Gaza Strip. On June 1, 1948, the Egyptian commander issued an order declaring the validity of all the laws prevailing under the British mandate. This was a blend of Ottoman and British mandatory laws and regulations. Unlike the West Bank, the Egyptians did not annex Gaza to Egypt. Instead, an Egyptian military ruler governed the Gaza Strip. This was the case until the promulgation of the Basic Law for Gaza in 1955 with the formation of a legislative council. The Basic Law was amended on March 5, 1962 granting the legislative council the authority to legislate. Throughout this period, the judiciary system continued to operate along the British mandatory laws. Following are the courts that functioned at the time of the Israeli occupation in 1967:

**1) Regular Courts:** that include:

- a) Conciliation Courts that deal with all crimes and violations as stipulated in the 1936 Palestinian punitive laws and reviewing legal and commercial cases with movable or immovable funds that do not exceed a certain amount of Palestinian pounds.
- b) The Central Court that handles all criminal cases outside the authority of the conciliation courts as well as appeals on verdicts issued by the conciliation courts.
- c) The Supreme Criminal Court dealing with prison terms that exceed seven years up to death sentences.
- d) The Supreme Court which is the highest level of courts in Gaza.

**2) Religious (Shar'ia) courts** that look into the private affairs of Muslims as well as Waqf endorsements.

**3) The Orthodox Religious Court:** that looks into the congregation's private affairs and managing the endowment properties.

**4) Military Courts:** that were established by the administrative governor general to look into crimes related to the internal and external security, beside looking into the security of the Egyptian military forces.

## **The Israeli Occupation of 1967**

Following the six-day war and Israel's take-over of the West Bank and the Gaza Strip, the Israeli military commander issued a number of military orders following his assuming of all legislative, executive and judiciary powers. East Jerusalem was excluded in this respect. Over 1400, military orders were issued in the West Bank and 1100 in Gaza. The occupation authorities forbade the Palestinian courts to look into any cases that involve or apply existing laws on Israeli parties. Special military courts were established to deal with security and public order matters including punitive cases falling within the jurisdiction of local courts.

Following the formal annexation of East Jerusalem, by placing it under Israeli sovereignty and enforcing Israeli law, the conciliation and first instance courts were canceled while the court of appeal was moved to Ramallah.

## The Judiciary System in Palestine after the PNA

As mentioned earlier, the legislation and Fatwa Committee sought to merge and develop Palestinian legislation. A set of priorities was placed to achieve such an objective and ensure having an efficient and independent system. A number of legislation packages related to the judiciary were drafted and approved by the PLC. These include:

- 1) **Law #2** for 2001 concerning the bases of civil and commercial courts.
- 2) **Law #3** for 2001 concerning punitive procedures.
- 3) **Law #4** for 2001 concerning proofs in civil and commercial items.
- 4) **Law #5** for 2001 concerning the formation of regular courts.
- 5) **Law #1** for 2002 concerning the judiciary authority.

Finally, the amended basic law was approved constituting a form of a constitution for the interim phase. Within the six chapters of the law, the judiciary has been placed as the third authority in the Palestinian political system. Article 97 specifically stresses the independence of the judiciary authority with the role and level of the various courts and the way they are formed. Article 100 of the amended Basic Law refers to the establishment of a Supreme Judiciary Council while article 102 deals with the formation of courts that deal with commercial disputes and disciplinary cases. The following article 103 refers to the formation of a Supreme Constitutional Court that deals with the legal validity of laws and regulations as well as interpreting the Basic Law and other legislations. Article 104 assigns the Supreme Court to temporarily handle all matters related to administrative courts and the Supreme Constitutional Court.

**According to the regular court formation, following are the courts in Palestine:**

- 1) Conciliation Courts.
- 2) First Instance Courts.
- 3) Courts of Appeal
- 4) The Supreme Court that includes the court of **rescindment and the Supreme Court.**

According to the amended Basic Law courts for administrative and constitutional matters should be formed to deal with the stipulated matters. Each of these courts is an independent judiciary authority that is not dependent on the Supreme judiciary council. The formation of administra-

tive courts would be a substitute to resorting to the Supreme Court. This is a significant step within the Palestinian court system. With all the importance of the Supreme Court, it is not a position to respond to the needs of the administrative judiciary from two angles:

**First:** The rulings of the Supreme Court are final, irreversible and binding. Therefore, administrative cases should not be handled at such a level.

**Second:** The Supreme Court does not handle all aspects related to administrative cases. Rather it determines the legality or illegality of a certain administrative decision. Neither does it handle the amount of compensation resulting from a faulty administrative decision. This requires recourse to a different level of courts. The administrative courts that would be established will have two levels with the right of appeal to a senior administrative court and dealing with compensation cases.

I did not mention the State Security Court since it clearly contravenes with the Basic Law while the military courts are merely the concern of people in uniform.

**In general, we can state that, theoretically, the judiciary system in Palestine is fully independent. However, on the ground, the picture is not that rosy. There are certain requirements to bridge the gap between theory and practice. They can be summarized as follows:**

### **First: The need to implement the judiciary authority law**

The Judiciary Authority Law #1 for 2002 was issued specifying the ground rules and procedures related to judges, the Supreme Judiciary Council and the Attorney General. Article 32 elaborated to specify salaries and benefits entitled by all levels of judges with two tables annexed to the law. Despite the passage of almost two years, several significant aspects still await implementation. These include:

- a) Lack of implementation of clause 3 of the judiciary law that requires the Supreme Council to present its budget request to the minister of justice as a prelude to incorporate it within the general budget.
- b) The rulings of clause 32 that specify salaries and benefits to judges at various levels according to the annexed tables have not been honored.

- c) Article 34 of the law preventing a judge to stay in office after attaining the age of 70 was not observed.
- d) Article 37 related to the formation of a Supreme Judiciary Council was not observed.
- e) Article 37 entitling the Minister of Justice to supervise the court administration was not observed.
- f) No inspection department to the performance of judges was formed as required in article 42.

From what preceded, it becomes clear that there are many major rulings of the judiciary authority law that have not been observed. With the Supreme Judiciary Council overlooking the implementation of the law there is a discrepancy that affects the credibility of the independence of the judiciary.

## **Second: Experience and Efficiency**

The judiciary authority law and the law of the formation of courts stated the establishment of a supreme court that handles cases of an administrative nature that have been transferred from courts of appeal. In addition, the amended Basic Law called for the establishment of a constitutional court to determine the validity and legitimacy of interpreting texts of the Basic Law and other legislation. It also called for the formation of administrative courts to deal with management of disputes and disciplinary cases.

These constitute the highest level of courts and are the backbone of the judiciary authority in Palestine. It carries serious political and legal dimensions and requires a high level of expertise and efficiency. With all due respect to my colleagues among the judges, the conditions that prevailed in Palestine did not allow for obtaining proper experience and efficiency. Furthermore, we did not previously have rescindment, constitutional or administrative courts. This makes it even harder to carry on with the job properly.

There is also the need to consult with senior judges in Egypt and Jordan that would enable Palestinian judges to acquire further experience and know-how.

In addition, an institute to upgrade the judiciary has to be established to improve the formation of judges, prosecutors, legal advisors in the legislative and Fatwa committee as well as the various ministries. Such an

institute would provide qualified personnel to cater to the judiciary system and introduce new generations of judges.

### **Third: Adhering to the principle of the Separation of Powers**

The Basic Law in Palestine has specified the existence of three powers. The elected legislative and monitoring body performs its tasks as stipulated while the executive carries on the programs approved by the legislative. An independent judiciary authority functions through the various levels of court. None of these powers are allowed to encroach upon each other. Article 98 of the Basic Law asserted the full independence of judges within the confines of the law.

As such, the legislative and executive powers are not entitled to interfere with the work of the judiciary authority in any way. Otherwise, there will be a serious discrepancy in the independence of the judiciary and lack of justice. The item requiring the legislative council to approve the appointment of the head of the supreme judiciary council and the Attorney General as mentioned in the draft of the constitution needs to be rescinded. It clearly violates the principle of the independence of the judiciary and is an encroachment that needs to be checked. Direct or indirect interference in the work of the judiciary authority could include:

- a) The executive authority's refraining from implementing court sentences.
- b) Non-implementation of the punitive procedures' law.
- c) Various encroachments on the authority of the judiciary.
- d) Lack of equality in front of the law and the judiciary.

### **Fourth: Court Buildings**

With the establishment of the PNA, the focus was largely directed to the security organs at the expense of the judiciary. Not a single court building was constructed. As such the existing premises for courts are inadequate and undermine the prestige of the judges. Instead security buildings were constructed in every Palestinian town. This situation needs to be rectified in order to render the judiciary the respect that it deserves.

### **Fifth: The Judges' Club**

All over the world there is a tendency for the judges to have their own club where they meet in their spare time to hold various activities. In ad-

dition to the social aspects, such clubs help communication among various functionaries in the judiciary system such as legal advisors and prosecutors. It spreads awareness to legal issues at various levels. I feel there is a need for such a club.

Finally, let us not forget that the Israeli occupation is the main impediment obstructing the development of the Palestinian judiciary system through imposing the siege, the closures and the continuity between judges and defendants. I wish to take this opportunity to thank all of you and PNGO network for holding this workshop in order to enhance the principles and applications of good governance in Palestine.

## THE INDEPENDENCE OF THE JUDICIARY BETWEEN THEORY AND PRACTICE

**Mr. Raji Sourani**

Director, the Palestinian Center for Human Rights

I would like to start with a quote from Edward Said that the rule of law as an idea is undefeatable regardless of time and place. It is not an issue of concern that is confined to academics and intellectuals but rather an issue of what kind of society we need. Do we want the law of the jungle or the rule of law? On the eve of the Declaration of Principles a decade ago I was rather optimistic. Regardless of the positions taken on the Oslo accords between those who approved and those who opposed, these accords have legally come to an end on May 14, 1999. Many concerned parties have warned from the implications of missing deadlines in implementing accords. As a result, we are in a serious crisis. The PNA's legality is under question.

The Basic Law related to the constitution is null and void since it is addressing in essence the interim phase that actually ended. If we are in the process of having an open-ended interim period on the part of the PNA, then we are dealing with an extremely dangerous matter.

What kind of elections are those that are held only once? The new government is awaiting the approval of the PLC whose term has expired and has no legal validity.

The issue of the rule of law is not a matter of double-talk. Either it is there or it is not.

First we know that the judges are bad even having in mind the saying that "if the Judiciary lacked legs, then we should provide it with artificial wooden legs". Although we had a professional team quantitatively and qualitatively in the West Bank and Gaza we went into a process of tearing the system down until we reached a dead end. I do not wish to address the issue of texts that several colleagues referred to.

I just want to mention that there are three ways to come up with constitutions. We did not resort to any of them. Instead we improvised a fourth way. I do understand that my colleague Abdel Rahman Abu Naser in-

tended to contain even a greater damage by resorting to the fourth way.

However, the tragic situation we are facing requires concentrating information and seriously moving to get out from the current mess. Otherwise, this place will become unlivable.

The state security courts are shameful and scandalous. Its existence even for one second is a conscious crime. I wish the minister of justice Abdel Karim Abu Salah was here to face this. No self-respecting system could accept such a state of affairs. Talk about merging the state security court with the Attorney General is a ploy that is shamefully ridiculous.

There should be an end to this tragedy that has been warmly praised by Al Gore when as Vice President he visited Jericho in April 1995 and met Arafat. Every single experience of state security courts anywhere in the world produced bad results. We are no exception to that. Bush and Sharon keep speaking about the need to establish the rule of law and maintain the independence of the judiciary. However their positions are full of contradictions and stand opposed to all what the human rights groups have been advocating from the outset.

Rulings are there to be implemented. The judges are not a bunch of intellectuals exchanging ideas and dialogues. They have binding verdicts that have to be implemented from top to bottom. Otherwise they are irrelevant. There was a concrete case of testing only a few days of the declarations of Sharon and Bush. I was involved with two others in this when the case of Ahmad Sa'adat came up. We had no illusion that Sa'adat would stay in prison. However we had to take a position that asserts the rule of law whether it was at the level of security establishments or otherwise. When a security branch decides on behalf of the people to confiscate basic rights we have a problem.

The Attorney General is referred to as the conscience of the nation. How can he sign detention orders in an arbitrary manner? We started with political detentions and ended up with detention for personal reasons. The Chief Judge is supposed to be the symbol of the independence of the Judiciary. How can he give his seal automatically to a presidential decree? My purpose is not to attack the judiciary but, as I said in the beginning, to give it artificial limbs in case it doesn't have the original ones.

I seriously hope that the situation will be rectified with no further delay. Otherwise the problems will keep aggravating. We are not the only ones that face such problems. I could bring scores of examples where Israel violates the independence of the judiciary.

Prisons that are shelled create a situation whereby detainees are not safe and no more can handle the responsibility. This was the case when Gaza's Central prison was shelled together with the Nablus prison and others. Obviously the restraints on movement whether between Gaza and the West Bank or among towns is an extremely serious problem for judges, lawyers, defendants, prosecutors etc. We can hold Israel responsible for so many problems but let us first deal with our internal situation in Palestine and try to rectify matters before it is too late.

## PALESTINIAN LEGISLATIONS AND ITS ROLE IN ENHANCING THE RULE OF LAW AND THE INDEPENDENCE OF THE JUDICIARY

Mr. Tarek Al Dirawi

Director, Legal Department, PLC

*Mr. Dirawi presented the paper on behalf of Mr. Abdel Karim Abu Salah, Head of the legal committee of the PLC.*

It is important to look at the role of PLC through the legislations that were approved in order to enhance the independence of the judiciary.

The PLC sought from the outset to support the judiciary authority in emerging as the third power within the rule of law. It stressed the need for the separation of the three powers. In response to Mr. Ibrahim Al Dughma, it is the PLC that endorsed the judiciary authority law. It did not wait for this to come from the ministry of justice. The judges themselves called for passing this law. In fact they came to the PLC with the draft. Their main concern was that the budget and administration are under the control of the Supreme Judiciary council with the Chief Judge in charge of management.

In the process of presenting the general budget there is need for a supervisory role for the Minister of Justice. The PLC was concerned with upgrading the judiciary authority.

### **The PLC was concerned at two levels:**

**\* The financial level:** - with an independent budget to the judiciary authority that is presented and managed through the Minister of Justice in his capacity within the executive body.

**\* The administrative level:** -. The PLC saw the need for a supreme judiciary council. This was included in the Basic Law and the judiciary authority law. However the head of the Supreme Judiciary Council failed, so far, in setting up the council.

The PLC was concerned with raising the professional quality of judges. There was a clear text calling for the establishment of an institute that specializes in training professionals within the judiciary system. This has not been achieved so far.

Our intention was not confined to train judges. It also included preparing

prosecutors and legal personnel attached to the security establishments to improve performance. Such steps were included in the Basic Law and the judiciary authority law. Unfortunately, it was the judges themselves that did not observe the judiciary authority law. They were the ones who drafted the text that 70 is the retirement age and did not honor it.

The PLC sought in conjunction with the ministry of justice to prepare a package of laws that would support the judiciary authority law. It included the procedures to form courts and reshuffling the system to improve it. Also, promotion procedures were introduced stressing the importance of seniority over qualifications. The guidelines determining the functioning of lawyers was also intended to boost the judiciary authority.

The Lawyers Union had an instrumental role in reaching to the approved laws. Unfortunately, there is no party that is defending the laws pertaining to it. The Constitutional court and the Ministry of Justice prepared a bill that awaits the approval of the PLC. A package of laws came into effect such as the procedures for civil and commercial courts with the punitive laws almost completed in the PLC. The law for criminal procedures falls within the focus of stressing the independence of the judiciary and the freedom of the citizen.



## **Second Session Papers**

**1-** The Role of Civil Society Organizations in activating the Reform Process

Mr. Abdel Karim Ashour, Director, Agricultural Development Society.

**2-** The Role of the PLC in the Reform Process

Ms. Jamila Seidam, member of PLC

**3-** The Role of the Private Sector in the Reform Process

Dr. Mou'in Rajab, Dean of the faculty of Economics and Management,  
Al- Azhar University.

# THE ROLE OF CIVIL SOCIETY ORGANIZATIONS IN ACTIVATING THE PROCESS OF REFORM

Mr. Abdel Karim 'Ashour  
Rural Development Society

There was a great deal of discussion on the issue of reform recently. Due to the political circumstances facing Palestinian society, scores of workshops and meetings were held with many articles and analyses discussing the issue. There is a risk that reform would become a slogan that will be used here and there since it is catchy and attractive. Without the procurement of internal pressure mechanisms, all our efforts to introduce reform will be meaningless.

I have been involved with civil society organizations and NGOs for the last 15 years and I am familiar with the priorities and concerns of this sector. This is why our presentations as a whole are based on the conditions on the ground rather than hypothetical, academic premises. Before coming to the core of the subject, I wish to clarify certain points that I consider important:

**i.** Let us admit that the existing deficiency is part of an overall deficiency affecting our life. The level of the seriousness of the problem varies from one area to another. As such, reform should be addressed on a comprehensive basis covering all sectors; NGOs as well as the Palestinian Authority.

**ii.** Let us also make it clear that the occupation continues and that the Oslo accords have not changed what has been going on for the last 35 years. Talk of independence and wishful thinking was an illusion. In fact occupation policies have become harsher and more brutal, shattering the hopes of moving into a peaceful course. We should also take note that occupation is an important factor in the spread of corruption that could be later exploited politically.

**iii.** My reference to the negative role of the occupation does not, in any way, exempt us from our own responsibility for the deterioration on the ground and our failure to establish a democratic system, which is subject to accountability. We failed to provide a good model that would help us to achieve our rights and act on the Arab and International level to end the occupation and build our state.

**iv.** Reform has many intertwined facets in the political, economic, and social levels. All are independent and require a political will under extremely complicated circumstances.

**v.** Let us agree that elections at all levels of society are a form and a tool of democracy. Elections need to be accompanied with the existence of a modern set of laws that respond to the needs of society. The socio-economic circumstances need to be appropriate so that the public will have faith in the relevance of elections. Our concept for reform concerning civil society organizations revolves around the following points:

- \* Putting an end to the one-man show. There is a need to activate administrative and general bodies to involve them at all levels.
- \* Enhance participation of beneficiary groups within the NGOs in decision-making.
- \* The need to stress the NGOs' role in development and influencing public policies and social issues. Its role is not confined to provide services.
- \* Dealing with external funding in a manner that responds to the needs and priorities of the Palestinian society.
- \* Re-structuring the operation of NGOs geographically and according to sectors so that it will respond to the actual needs of the public.
- \* Focusing on the role of NGOs as grass-root groups seeking to spread democratic values and provide models for accountability and transparency.
- \* Ensuring the NGOs' abiding by the law, advancing the common good and independence.

#### **Trade Unions and Syndicates:**

- \* What prevents trade unions and syndicates to apply their basic laws that have been approved by its general assembly?
- \* Why are there no elections? For some of these NGOs no elections were held since 15 years.
- \* The need for the unions and syndicates to represent the interests and needs of their members and not the contrary as was the case in several instances.
- \* Seeking to activate the professional and syndical aspects independently from the executive authority.

## **Political Parties:**

- \* Practically the political parties are at the core of civil society striving for the transfer of power through a comprehensive platform.
- \* The political platform of parties requires regular updating and attracting public involvement. There is a problem if half of the society is not interested in participating in public life.
- \* Regular updating is needed with internal elections at various levels within a tolerant atmosphere that allows fresh blood to assume responsibility.

## **Finally, the Palestinian Authority**

Since the government is usually at the center of the political and developmental process, no reform is possible without its fulfilling its role. Reform within the PNA is an impetus for NGOs to move in a similar direction and put matters in order. Conducting decision-making and managing public funds in a secretive manner cannot go on. There is a need to follow a clear line of responsibilities without marginalizing the PLC. Among the issues that need to be addressed are:

- \* Putting an end to monopolies and adopt an open market economy with the encouragement of the private sector.
- \* Promoting fairness, transparency and accountability in all programs and structures of the PNA.
- \* Equality and freedom of assembly and participation.
- \* Building up democratic institutions is a prelude required for self-determination and independence.

This will be a model for neighboring Arab states and will attract political support and investment capital in the process of building an independent state.

Finally, I would like to stress that the process of reform is not confined to technical matters but is a political choice and challenge that require courage. We have no shortage of human resources or research material or even funds. All we need is the will to have the following:

- \* A modern constitution or basic law.
- \* An active PLC.
- \* A transparent unified financial system that is subject to accountability.
- \* Security establishments that are under the command of civil rule.

# THE ROLE OF THE PLC IN THE REFORM PROCESS

PLC member Ms. Jamila Seidam

## Introduction

The establishment of the PNA following the Declaration of Principles was a turning point in confirming the Palestinian right for statehood. It initiated the change away from armed struggle into a peaceful process with Israel in negotiations that were supposed to lead to an independent state.

This significant transformation that was opposed by some required the leadership to transform itself from a revolutionary mentality to state building. A number of national institutions were established forming, as a whole, the PNA. Prior to the election of the PLC, a number of old laws were adopted in light of the absence of binding laws.

The PLC has failed to fill the gap. With the accumulation of mistakes and the PLC's inability to exercise its role there was a clear deterioration at the political level. As a result, there was a situation of Palestinian impotence both at the internal and external levels. Repeated calls for internal reform went unheeded. The voices calling for a change were weak, including within the PLC.

The escalating tensions with the current uprising provided Israel with the pretext for claiming lack of reform to justify winning time in order to pursue plans, create facts and impose new political maps. The dream for establishing the Palestinian state was deferred indefinitely. However, external and internal pressures for administrative reforms met to bring us to the quickly unfolding events that characterize our current political scene.

## Performance of the PLC

The first Palestinian elections in 1996 were held in an exciting atmosphere. Over 75% of those with the right to vote went to the polls in a festive mood that was supposed to herald Palestinian democracy. Hopes were high that a new legislative body was coming to life with the role of rectifying mistakes internally and providing the ground for a better political performance.

However, there were two serious challenges ahead. On the one hand, there was a vast array of obstacles internally and externally with the usual Israeli undermining of the PNA at all levels. On the other, there was a problem that is not less important. It had to do with how to balance the usual improvising style of the leadership with a PLC that has to regulate and control performance through a set of laws.

At the first level, the PLC faced the usual Israeli procrastination and stumbling blocks undermining the political process. Settlements continued to expand within a systematic scheme of demographic and geographic alterations that will create new facts on the ground by the time final phase issues come about.

The Palestinians failed to produce a concerted strategy to confront the Israeli plans and measures. This, in turn, undermined the PLC's second test. As a result, there was a mood of clear popular frustration with increasing mistakes and violations with no proper restraints. Reports of the General Control Bureau over corruption went unheeded and the role of the PLC was largely marginalized. There was a clear retreat in putting matters in order or having balanced mechanisms to control the situation.

The dismal performance at the executive and judiciary levels extended to the judiciary level within the PLC. With Israeli disregard to time schedules and frameworks, new facts were created on the ground. This was accompanied with a deliberate, systematic disruption of the PLC while blocking the implementation of its legislations, including the control of the executive authority.

The eruption of the new uprising has further weakened the role of the PLC. The role of the legislators became confined to providing relief, personal assistance to their compatriots within their residence area. The PLC was not capable to convene in a plenary manner to manage the crisis or cope with the situation. The only exception was the Intifada's guidance committee that was formed from the PLC and representatives of political parties and factions.

The election of Sharon exacerbated matters since there were clear indicators that the new Israeli government is determined to eliminate the PNA and all its institutions. This has equally undermined the PLC with the exception of handling some trifle internal affairs and some Intifada issues.

With renewed talk of reform, the role of the PLC started to resume. This involved approving the National Reform plan followed by the leadership's announcement on May 15 that the intended implementation is in effect. A new cabinet was formed and the Basic Law was approved together with the law concerning the independence of the judiciary. With the U.S. declaring that adopting the road map is conditional to the introduction of the first Palestinian prime minister, work was underway at the PLC to approve the matter and endorse legislation necessary for that.

## **The Role of the PLC in Reform**

The PLC shoulders the main burden in providing the atmosphere and legal basis needed for proposed reform. This is based on the plan that has been approved last year. Although the plan contains all points and measures concerning the reform, setting up the priorities could be altered depending on changes that could occur locally or internationally. Therefore, priorities should be set up according to current needs.

### **1) The New Cabinet**

- \* The formation of the new cabinet requires the Prime Minister to stress on reform and present the new team for approval by the PLC.
- \* Calling upon the cabinet to present its reform program with specific time frameworks for phases of implementing reform.

### **2) Legal and Procedural Measures**

- \* Securing the presence of legislation needed to support the government's reform program for administrative, economic and security reforms.
- \* Discussing the legal position of bodies and authorities formed during the previous ministerial reshuffle in full coordination with the new Cabinet. Making sure that the measures for implementation have been fulfilled would follow this.
- \* Making sure that approval legislation such as the Basic Law, the Civil Service Law and the Law for the Independence of the Judiciary are in effect.
- \* Urging the new government to activate the Supreme Judiciary Council, unifying the judiciary system and complete forming the court system according to the Judiciary Law.
- \* Reviewing the General Control Bureau law while discussing the legal framework for the Personnel Department. This would entail deciding

whether it will act as an independent body or merged with given ministries.

- \* Making sure that the General Budget is implemented accurately and completing the process of unifying PNA funds with the ministry of finance supervising all public revenues.

- \* Developing legislation that guarantees the community's participation in society-building and the rehabilitation of potentially productive sectors.

- \* Urging the government to assume its role in making sure that private and non-governmental organizations are managed properly within the overall comprehensive reform.

### **3) General Elections**

The success of the PLC in advancing reform requires pushing for general elections within a short time span from the new government's assuming office. The legal mandate of the PLC has expired since years. Presidential and local elections should be held to replace the policy of appointments that has been, so far, the case in municipal and local council formations.

### **4) Control**

The PLC needs to activate its role in control and accountability constantly with government and other bodies regarding performance and output. Various PLC bodies have to seriously review reports, problems, and complaints in a concerted manner to come up with appropriate measures with no delays.

The PLC has a crucial role in regularly assessing government performance and making sure that it is in line with the adopted platform and reform policies. With the sensitive position and the urgency of reform issues, the PLC needs to have a close connection between the sessions held and the regular review of government performance. This would be coupled with proposing steps for improvement and development.

Regarding the peace process, the PLC needs to be well informed of all plans, moves and implications. It needs to confirm that the political process is in line with the national position and the government's policy.

### **5) Liberties**

The PLC is required to confidently push the executive authority to en-

hance general democratic principles. This entails honoring liberties, securing political diversity and endorsing democratic practice within the rule of law in a manner that does not diminish from the freedom and welfare of others.

## **The Needs of the PLC**

The PLC has specific needs in order to be able to fulfill its role with no disruption or delay in advancing the reform process. These include:

**a) Independence:** The PLC clearly needs to be fully independent from the executive and judiciary authorities. It has to stay away from being dependent on any political hegemonic group or faction and be able to carry out its work free from any extortion or negative pressures.

**b) Real Authority:** is needed for the PLC in being one of the three powers. Its role should not be taken lightly or in a secondary manner. It has the full power to take up the executive if approved legislation or special measures are not honored including issues related to civil society and all other sectors.

**c) Public Awareness:** Since the PLC is a reflection of the public opinion; popular awareness is an important component as to the rights and obligations. Alertness on behalf of the public to issues such as reform is instrumental in keeping a close eye on the work of the PLC and its performance.

**d) Parliamentary Immunity:** This is required for the creation of an atmosphere without theat or violence. This became clear when certain members were humiliated or even assaulted physically. Needless to say that the process of reform is a full-scale operation that needs the mobilization of all sectors in society. All groups should come together to make it effective.

# **ECONOMIC REFORM AND THE ROLE OF THE PRIVATE SECTOR**

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## **First Part: Reform and Advocacy**

### **1. The Concept of Reform and its Development**

The term reform applies on various aspects in life such as politics, economy, administration, law and so on. It implies rectifying a certain deficiency or altering a course of action. In the economic field it entails financial or administrative reform. In certain institutions, it occurs by introducing new policies or amending ruling bodies to respond to needs for changes in one direction or another.

In general, it is a term that seeks, in a comprehensive manner, to set the records straight. Reform is not confined to a certain country and is relevant to both developed and developing countries. When the Soviet Union adopted the socialist economy, it made many serious mistakes and ultimately had to go through repeated reviews to change its course through reform programs.

In Egypt, the term was more commonly used in the aftermath of the 1952 coup d'état. The agricultural reform decree of 1952 sought to rectify land ownership patterns through putting a maximum limit for private or family properties. All additional plots of land exceeding the permitted maximum were to be distributed to agricultural workers and peasants transforming them into landowners. The objective was to curtail feudal control and improve the level of the lower classes to narrow gaps in a drive for social justice.

In our case, the term became current following the establishment of the PNA. With a series of violations and scandals that were exposed by various monitoring reports, calls for reform spread.

## **2. The PNA's move towards Reform**

### **\* President Arafat's speech at the PLC on May 15, 2002**

The speech referred to the internal situation and the political system in Palestine. It stressed the need for a comprehensive review of all aspects of national life. The purpose was to support the existing political system and the civil administrative structures. Success in such steps would allow efficient leaders within various institutions, unions and popular organizations as major tools for the building of the aspired civil society based on democracy and the liberties ensured by the law.

### **\* The Reform Document presented by the PLC to President Arafat on May 16, 2002**

*The Document included the following:*

- \* Asserting the need to implement all decisions and legislation endorsed by the PLO in order to develop and activate PNA institutions. This includes upgrading structures and assessing deficiency areas with the principle of the separation of powers and the enhancement of the principles of transparency and accountability.
- \* Ensuring the endorsement of the Basic Law and its being honored by all institutions and bodies.
- \* Welcoming the endorsement of the Judiciary Authority Law and putting it into effect together with all other PLC legislations.
- \* Calling for the establishment of a constitutional court with a special legislation specifying its role approved within the PLC.
- \* Demanding the setting of a date for legislative and presidential elections with a review of the general elections law based on actual experience.
- \* Securing public liberties and basic rights as mentioned in the Declaration of Independence, the Basic Law and International conventions.
- \* Ensuring that ministers are selected according to merit and experience rather than merely for being members in the PLC.
- \* Ensuring the importance and centrality of the ministry of finance and putting an end to the redundancy of decision-making sources while regulating and monitoring revenue collection.
- \* Re-structuring public security forces. Clearly the program of reform endorsed by the PLC was comprehensive covering constitutional, executive and judiciary aspects. The formation of new ministries involves many of those responsible for such a reform.

**\* The Draft of the Road Map received by the PNA on December 22, 2002:**

According to the road map draft, there are implementation phases and reciprocal action steps for both sides in political, security, economic and humanitarian fields including institution-building under the sponsorship of the Quartet leading to the final status that would put a complete end to the Israeli-Palestinian conflict by the year 2005.

The settlement would involve the establishment of a viable, independent Palestinian state that would live side-by-side with Israel and the rest of its neighbors. This will be according to the principles set in Madrid based on the principles of land for peace and UN Security Council resolutions 242 and 338 and 1397 as well as previously agreed-upon accords between the two sides as well as the Saudi initiative.

The road map that was supposed to be implemented in its first phase by May 2003 included building Palestinian institutions on strong democratic and parliamentary foundations. The process would include appointing ministers with the mandate of conducting basic reforms that would ensure an effective performance at the level of the judiciary and administration based on the principles set up by the group dealing with economic reform.

**\* Among the Reform attempts at the PNA:**

Financial reform is one of the forms that has been adopted by the Ministry of Finance through the budget plan for 2003, it included the following:

- o Adopting a unified budget for the treasury for all incoming funds provided by the donors.

- o Conducting all public financial transactions through banks.

- o Re-organizing all commercial and investment activities of the PNA within the framework of the Palestinian Investment Bank that was established in August 2002.

- \* Completing work to develop and activate the role of the General Control Bureau and internal monitoring through updating the financial auditing.

- \* Updating the policy of employment in the public sector.

- \* Preparing a modern retirement system.

- \* Improving the system of administering revenues.

- \* Compelling all PNA institutions to apply the procedures for tenders and bids.

**Second Part**  
**The Role of the Private Sector in Reform  
and the impediments**

**1. The importance of the Private Sector**

The private sector is the integral counterpart to all aspects whether economic, social or political. It has a crucial role to agricultural, commercial and industrial enterprises in making initiatives, selecting projects, allocating funds and venturing in order to make profits. It has an endless potential in economic development with a positive yield. The private sector sustains all losses in case of failure. The advance of capitalist countries proves how the private sector makes all the difference in terms of progress.

As such, facilitating the role of the private sector becomes pertinent with the need for legislation that would facilitate its contribution. It is not accidental that there is a tendency to resort to the private sector when there are cases of failure on the part of the public sector.

In many capitalist countries, there are trends towards privatization of economic activities to curtail losses in public sector projects where governmental interventions have failed. There are many cases when privatization became necessary in the face of failures of public enterprises. However, there is a need to set up active supervision mechanisms to keep up the morale of those who are involved.

**2. The PNA's stress on the role of the Private Sector**

The PNA demonstrated an understanding to the importance of the private sector in the decision-making process. This is reflected through the following:

\* Issuing a number of laws to enhance the private sector such as the law #1, April 23, 98 to encourage investment. It included tax exemptions on private projects of local and foreign investors to encourage economic activity in Palestine. The law was intended to protect investments and prevent nationalization or blocking funds without judiciary procedures. No real estate confiscations were allowed other than for the public good according to the law while ensuring a fair compensation when that happens. Furthermore, transfer of funds to the outside was ensured at all levels.

\* According to the law, the private sector participates actively in the Public Body to Encourage Investment through five members out of thirteen indicating involvement in serious decisions.

The same pattern applies on various economic councils stressing the role of the private sector in providing the treasury with revenues through various taxes. It also contributes in providing jobs to the production lines.

### **3. Impediments facing the Private Sector**

The Private Sector still faces a number of serious impediments that include:

#### **a) The Weakness of the Palestinian Judiciary System:**

In a workshop held recently by the Centre for Developing the Private Sector in Nablus, the issue of the negative aspects of the deteriorating judiciary system came up. There are serious flaws in the legal systems that do not secure the basic needs for an active economic system and providing an adequate investment atmosphere. Merchants and lawyers point out to several negative trends that include extended delays in resolving disputes causing enormous losses. In addition, there are no implementation mechanisms when decisions are made. This includes the non-effectiveness of relevant parties such as the PLC, the union of lawyers, the Ministry of Justice and the Supreme Judiciary council. The weakness of the judiciary reflects negatively on the performance of various economic institutions such as banks and businessmen that lack the active legal and judiciary cover and guarantees.

#### **b) Negative elements resulting from excessive legislation:**

The same report indicated that the new laws are a cause of frustration and hamper economic activity.

#### **c) Lack of protection to local procedures in face of imported foreign products:**

A recent study prepared by Dr. Muhammad Naser and published by MAAS in Ramallah indicated that the industrial private sector faces various impediments such as lack of credit facilities, use of licensing mechanisms and the drowning of Israeli goods in the Palestinian markets together with the burden of imposing taxes.

**d) Problems of the private sector in the agricultural activity:** The agricultural sector has not been safe from the damage that has affected the

rest of the Palestinian society. The losses estimated by the ministry of agriculture on the private sector refer to a billion dollars since the last quarter of 2000. It included massive destruction, deprivation of agricultural activity and messing up with fields, wells etc. Compensations were totally insignificant leaving the sector in shambles. This could totally destroy the role of the private sector in agriculture.

However, the Palestinian private sector has tremendous potential in terms of human resources, managerial skills and capital means that need to be concerted with the PNA in order to activate external commerce and international trade.

Despite the steps taken to activate the private sector within the framework of political and societal reform, many measures are needed to address problems facing the agricultural sector. These include the protection and providing guarantees to compensate for losses that are incurred for reasons beyond control.



## **Discussion**

First Session

Second Session

## FIRST SESSION

Discussion followed the presentations of the first session that was chaired by Mr. Karim Nashwan from the Center of Democracy and Workers' Rights. Following is a summary of the points that were raised:

\* Questions concerning the appointment of the Supreme Judiciary Council and the Attorney General. Who should be entitled to nominate them? Why is the judiciary confined to men with no women chairing the judiciary?

\* When the constitution is endorsed, is it applied on all Palestinians and how can that be done for those who are outside the areas of immediate Palestinian rule? What are the authorities of the President? If our lands have no borders then how can we apply the constitution? Is it viable, in the first place, to have a constitution under the current circumstances?

\* The Oslo accords were signed with the PLO. How is it that the PNA is ruling now? When will the negotiations resume and who will represent the Palestinian people?

\* Death sentences have not been applied due to pressure from human rights centres.

\* What is your position concerning the alleged corruption within the various institutions and how would we take those implicated to the courts?

**The Responses can be summarized as follows:**

### **Dr. Ibrahim Al Dughma**

Stressed the need to attain justice pointing out that there are officials who are corrupt and there is a serious ethical problem that needs to be addressed. However, we should understand our position: Are we a state or not? We followed the illusion that we are a state. We need to know where we are and issue legislations accordingly.

### **Mr. Raji Sourani**

Stressed that the crisis we are facing is not just a legal one but it is political and has to do with the various political groupings. As for human rights organizations, we are clearly for the principle of the rule of law including capital punishment for which many of us have their reservations. The U.S. leads the world in practicing capital punishment, unlike Europe, while

Saudi Arabia leads the Arab world in this area. The bottom line is applying the punitive philosophy with no relation whether the sentence is implemented or not. As for the issue of PLO and Oslo, we would fall in Sharon's trap if we ever lose confidence in the PLO.

### **Dr. Abdel Rahman Abu Naser**

Preparing the constitution bill came as a result of external intervention. The PLO remains the sole legitimate representative while the PNA comes to an end with the end of the interim period. We, in the Palestinian society, must have a stand on all issues related to the rule of law, which must be at the core of all our internal relations. Dr. Ibrahim Al Dughma reiterated that the separation of powers means that the PLC should have no say in the appointment of the judiciary. This is the domain of the judiciary authority. As for women judges, there are currently four of them and the judiciary is open for both men and women.

## SECOND SESSION

A number of suggestions and questions were presented at the end of the second session that was chaired by Mr. Isam Younes, member of the PNGO network coordinating committee. It included:

\* Demanding officials to be accountable for their possessions with monitoring mechanisms for embezzlement or corruption in state and NGOs alike. Institutions need to make sure that proper auditing procedures are applied.

\* No state can function without a constitution and the rule of law. Otherwise, it will be the law of the jungle. Is the deficiency a result of the PNA or the occupation?

\* Can the private or public sectors fulfill their role as defined in the "Paris Protocol"?

**The Responses can be summarized as follows: -**

### **PLC member Jamila Seidam**

The principle of the separation of powers is far from being there. However, the PLC tried to apply it. In fact, the Council did choose a number of ministers. The defect cannot be merely placed on the occupation. We have many mistakes that need to be addressed. So far the PLC approved 47 laws while 62 other are at various levels of reading. However, there is a clear problem between the legislative and executive bodies. The judiciary authority has also its problems.

### **Abdel Karim Ashour**

Although the approved laws are modern and developed, there are serious obstacles in implementation and procedural matters that have blurred the spirit of the Basic Law. Some NGOs fail in the assessment of results. This is a general problem in the third world and needs a concerted effort to put matters in order and avoid deviations.

### **Dr. Mou'in Rajab**

The investment law was issued twice by the PNA. The private sector was involved in its drafting. There is a collective responsibility to any deficiency.

Reform is an ongoing way of life that should not be ignored. We need to carefully diagnose the situation in order to reach to proper solutions. Public participation at all levels is needed in the comprehensive reform plans.

## RECOMMENDATIONS

- 1) Activate and implement the principle of the independence of the judiciary with respect to court decisions and the immunity of judges.
- 2) Maintaining separation of powers with no encroachments whatsoever.
- 3) Discussing issues related to the constitution.
- 4) Enhancing principles of accountability and transparency.
- 5) Stressing the need for elections at all levels.
- 6) Putting an end to one-man shows.
- 7) Separating policy makers from management in the NGOs.
- 8) Enhancing participation of marginalized groups.
- 9) Maintaining independence of civil society organizations.
- 10) The PNA needs to regulate the work of the NGOs through setting up professional and ethical standards.

### Recommendations regarding the role of the PLC

- \* Implementing the Reform program.
- \* Proceed in legislation.
- \* Activate monitoring rule with accountability of the PNA.
- \* Drafting sets of laws that secure healthy relations in society.

### Recommendations regarding the role of the Private Sector

- \* To be a full participant in the process of development with no intervention of the executive authority parties in the market.
- \* Act to apply laws and regulations approved by the PLC to provide an atmosphere that is adequate for investment.
- \* Putting an end to monopolies.
- \* Encourage free competition.
- \* Not replacing a private monopoly by a government one.
- \* Activate the judiciary as a tool for solving disputes.
- \* Involve NGOs in playing a role to influence legislations with networking and creating mechanisms that would ensure active participation in the overall development process. The involvement needs to contribute as well to problems of poverty, unemployment and other economic issues.