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# Transparency and integrity ambience in the Palestinian water sector

## I-Significance of combating corruption in the water sector

### Introduction

The water sector has various social, political, economical and environmental dimensions, since it is a basic need for life and an incentive of development; especially for agricultural development. Corruption in this sector hinders social and economic development. On the one hand, it contributes to slowing down any development process, social, economic, or political; and on the other, it alters the understanding of development concepts and diverts, those who work in this sector, from achieving intended developmental goals.

More specifically, corruption affects the social dimension as it creates tension between urban and rural areas hence leading to disputes amongst farmers. It also creates resentment, unstable social structures, and increases the gap between rich and poor.

The absence of good management, in general, and in the public water sector in particular, slows the development of attaining sufficient clean water at reasonable costs. Such deficiency in governance, places a burden on society, especially the poor. It also contributes to financial losses for the sectors by making it difficult to collect dues. It also encourages citizens to illicitly acquire water hence infringing on civil and human rights. As a result, public institutions and water suppliers become inefficient, unable to provide quality services.

Public awareness in combating corruption will definitely increase efficiency in related public institutions. Therefore, OECD, the UN and donors have taken initiatives to combat administrative and financial corruption through public awareness campaigns. Recommendations have been made as follows:

1. To raise awareness of the importance of combating corruption in the water sector within the political departments.
2. To integrate anticorruption procedures within the

comprehensive reform process of governmental and non-governmental organizations.

3. To diagnose and specify indicators that monitor corruption in the water sector.
4. To dismantle all elements of corruption; to eliminate networks of personal relationships' which assist in spreading corruption; to build an anti-corruption coalition between the government, the private sector and civil society organizations.
5. To activate preemptive procedures to combat corruption.
6. To activate the legal framework regulating management of the resources, transporting and distribution process; to lift immunities from parties involved in corruption.
7. To focus on the needs of the poor and marginalized segments of society; ensuring their access to clean water a priority.<sup>1</sup>

### I- Theoretical Outline

#### 1.2 Factors promoting corruption in the water sector

Although the definition of corruption varies from one place to another, it is agreed that corruption is the exploitation of public office for personal benefit. Corruption is also a violation of the law and contradicts prevailing moral values in society. Studies conducted in India and West Asian countries indicate that the damage caused by corruption in the water sector is approximately 6- 11% of the national income of those countries.

Water sector management to overcome corruption:<sup>2</sup>

<sup>1</sup> Tamimi. A (2007): The use of economic and social indicators of good governance to the water sector in Palestine, the Palestinian hydrologists, unpublished research

<sup>2</sup> Transparency International (2008) Global corruption report 2008, Berlin, Germany

Administration	Water supply services	Resource management
<ol style="list-style-type: none"> <li>1. Full management by the public sector :                             <ul style="list-style-type: none"> <li>• Resource management</li> <li>• Transport management.</li> <li>• Distribution management.</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. multiple departments selecting size, type, and nature of project required.</li> <li>2. Increased opportunities for bribes (Rashweh) and covering-up errors committed by contractors.</li> <li>3. Public sectors' exercise of favoritism to certain companies' providing in them support for monopoly over contracts</li> <li>4. Unprofessional governmental promotions and nominations due to intervention and pressure by other forces.</li> </ol>	<ol style="list-style-type: none"> <li>1. Weakness in monitoring in general due to overlapping of authorities among the various governmental departments and, at times, conflict in decisions taken.</li> <li>2. Obtaining licenses to explore water sources and resource development through illegal means. Forfeiting the community's rights for the benefit of private companies.</li> <li>3. Conducting promotions and appointments in governmental departments in a non-professional way.</li> </ol>
<ol style="list-style-type: none"> <li>2. Private- Public management.</li> </ol>	<ol style="list-style-type: none"> <li>1. Corruption in public tenders and mechanisms.</li> <li>2. Corruption in managing major projects.</li> <li>3. Inflation in the private sector invoices (in the event tenders are modified).</li> <li>4. Preference in choosing a contractor (favoritism).</li> <li>5. Monopoly over information by governmental departments in favor of certain party from private sector. (conflict of interest).</li> </ol>	<ol style="list-style-type: none"> <li>1. Lenience in applying bylaws.</li> <li>2. Lenience in applying tenders' conditions.</li> </ol>
<ol style="list-style-type: none"> <li>3. Public: (direct beneficiary) state to individual.</li> </ol>	<ol style="list-style-type: none"> <li>1. Favoritism in reading water meters (i.e., monthly water consumption record) at the expense of the public.</li> <li>2. Favoritism in enforcing maintenance conditions.</li> <li>3. Disregard of illegal links and wells (theft of public money).</li> </ol>	<ol style="list-style-type: none"> <li>1. Condone water resource depletion by remaining silent</li> <li>2. Lack of social justice in resources' development.</li> </ol>

### 1.3 General environment fostering corruption opportunities in the water sector.

Reasons for corruption in the water sector differ from other sectors and are enhanced due to specific factors and under certain conditions, some of which are:

- Monopolies over major projects.
- Extensive interference by the public sector in major projects.
- Logistical and technical complication of projects.
- High levels of demand for water, resulting in obtaining water through illegal means hence resorting to bribery and mediation (Rashweh) and (Wasta), two forms of corruption.
- Faltering of relations between water suppliers and consumers.

In this regard, corruption is practiced differently according to the mechanisms of management of water resources, provisional tools, nature of governance, monitoring mechanisms and weakness in applying the Law.

#### Factors promoting corruption in water sector

Countries differ from one to another in terms of their social and economic environments. However, according to international studies, there are similarities of a number of corruption phenomenon when comes to the water sector:

- Exploiting water for personal interests:  
Public position is exploited for personal interests to obtain water, hence encouraging negative prevailing social values among those who have the tendency to take advantage of the of the institutional weakness or lack of application of the law.
- Lack of transparency within related public institutions.  
Lack of transparency in procedures and decisions taken by officials or dominating political parties in water-related public institutions leads to institutional corruption. This includes being silent on monopolization of tendering by not allowing clear and transparent competitions to take place; or stating ambiguous conditions with alternative aims in tender procedures which in turn nurtures and already fertile ground for corruption.

- Culture of tolerance regarding the abuse and waste of public resources

The nature of the social system allows waste and theft of public property. Corrupt behavior is often ignored either due to lack of awareness of the rights or out of fear of conflicting with the party involved in corruption. In a system where corruption acts are not punished and are ignored corruption thrives as the case in this vital sector.

### 1.4 General mechanisms to combat corruption in the water sector<sup>3</sup>

As a result of years of experience, foreign governments who worked on combating corruption in the water sector put forth the following procedures in order to minimize corruption in this sector.

#### Legal reform

Legal and administrative reform should include procedures that minimize the spread of corruption; some of which:

- Reforming of tender systems to become transparent and effective especially since tenders contain gaps that allow for corruption. Therefore, it is important that tender mechanisms be transparent as well as information explaining the language used in tenders be available to all involved. Furthermore, contact information with the government should be readily available. All of the mentioned are important elements in reducing corruption.  
Therefore, tender systems must be developed in coordination with the private sector; and special mechanisms must be in place according to the tender's size and nature.
- Clear and complementary responsibilities of the different governmental departments would prevent corruption and contribute to good governance of water resources and services. Contrary to that, decentralization and fragmentation of programmed legal authorization will lead to an uncontrolled administration of tenders and activities will not be implemented. In other words, in order to limit opportunities of corruption, it is important to have many parties that abide by the law be involved rather than limiting tenders agreements to two parties.

<sup>3</sup> Sohail, M. (2008) partnering to combat WEDC, loughrough university.UK

- Decreased bureaucratic administrative complications that create a corrupted environment.
- Encourage competition opportunities amongst consultants and contractors.

#### • Monitoring and follow up:

Corruption opportunities are increased in institutions due to collusion between contractors and the administrative and technical staff; (i.e. the technical staff overlooks certain technical requirements. Therefore, establishing mechanisms to be used by the different parties to monitor and follow-up activities would be beneficial during implantation or submission of projects. In addition, community monitoring can also contribute to reducing corruption. This can be done by awareness raising of ownership for public property.

#### • Increase and promote economic motives:

Creating a competitive environment on professional

bases cancels monopolization of companies and coalitions. Creating such an environment provides incentives for economic development. And since the private sector is based on competition, the collective market forces and social monitoring will lead to good results.

#### • Human resource development in the public sector:

Developing competencies, qualitatively and quantitatively, of public sector officials and employees is essential; since it will enable them to judge and evaluate the private sector performance. Furthermore it will contribute, in particular, to avoiding hiring the same contractor repeatedly, hence preventing non professional interactions between the parties.

In addition, the development of the International Water Sector System (PACTIV) which is an abbreviation for 'political leadership, accountability, administrative and technical capacity, transparency, good implementation and performance and voice of society

Component	Rationale	Procedures
1. Political leadership	1. Political Will of the importance of good governance and strong political leadership support to combat corruption	2. Avoid bias for a specific party or group 3. Cooperate with political leadership by providing information. 4. Promote political stands of leaders who combat corruption.
2. Accountability	1. Activation of the administrative systems; laws and legislations.	2. Avoid corruption acts for electoral benefits. 3. Create mechanisms to connect the public with political leadership. 4. Monitor relationships between the private sector and politicians. 5. Activate independent financial monitoring.
3. Administrative and technical capacity	1. Increasing public sector efficiency administratively and technically.	2. Recruit educated individuals. 3. Create professional environment of within public departments. 4. refer to scientific and independent studies issued by reputable and transparent sources.

5. Professionalism and Efficiency	1. Promoting reform and ensuring implementation	1. Active monitoring 2. Best use of public positions 3. respect for rule of law
6. Public voice and community monitoring	1. Creating community communication mechanisms with the public departments.	2. Organize meetings between water suppliers and consumers and finding community based organizations. 3. Use of the electoral vote for corruption monitor purposes.

## II- Water Sector in Palestine

### 1.2 Background

The water sector is extremely vital and controversial on the political, economic and social levels. Indeed, it's the most important developmental sector. Upon the return of the Palestinian National Authority (PNA) several attempts were made to review the administration system of the water sector. The PNA was unable to meet the complex needs of the Palestinian people due to administrative and legislative distortion inherited from the Turkish, British, Jordanian and Egyptian eras in addition to the direct interference of the on going Israeli occupation.

Water resources in the West Bank consist of renewable resources of fresh water coming from the mountains, an estimated 650 million cubic meters annually, and the running surface water in the valleys, estimated at 70 million cubic meters per year. Consequently, the costal surface water basin, running northward into Israel, is the sole source in the Gaza Strip and provides all the districts of Gaza with water, an estimated 45 million cubic meters per year<sup>4</sup>.

The Jordan River has a natural ability to provide an annual flow estimated at 1,311 million cubic meters a year. Its banks extend to Lebanon, Syria and Palestine. Palestine's portion of water coming from the Jordan River annually is estimated at 20% of the total annual flow. However, only a minimal amount of this 20% reached the Palestinian territories, due to Israel's diversion of the water flow from the upper section of the river so that freshwater no longer flows into the Jordan River from Lake Tiberias.

The Palestinian Consumption of groundwater in the West Bank is estimated at 120 million cubic meters; 68 million cubic meters (71%) are used annually

4 PHG: Water monitoring report in Palestine 2006. Ramallah-Palestine

for irrigating around 90,000 dunums of agricultural acres. The rest of the water (34 million cubic meters) is used for local and industrial consumption purposes with the industrial sector portion reached 3%.

Water consumption of the Gaza Strip is estimated at 125 million cubic meters a year, 70 million of which were allocated for agricultural purposes. Currently, Israel controls 85% of the Palestinian groundwater and denies Palestinian rights access to the Jordan River and Gaza Valley waters. Hence, the Israeli policies caused extreme water crisis in Palestine, particularly in the Gaza Strip.

Additionally, the continuous control over water by the Israelis in the West Bank and Gaza Strip is accompanied by many restrictions on accessing water. Generally, the process of water provision faces obstacles resulting from technical and political limitations. 30% of the Palestinian communities are excluded from such services altogether. Therefore, predictions of future water needs are not based on current amount of water usage. The above mentioned facts should be taken into consideration when estimating future water consumption, along with natural factors like population growth, social and economic development requirements.

Recently, several studies have shown the existence of a serious gap between supply and demand which will dramatically increase in the next years. Therefore, the issue of Palestinian water rights has become an urgent priority. The PNA must discover new water resources and alternatives to bridge this gap while at the same time it must enhance integrity and accountability within the administration of the water sector.

### 2.2 Legislation outline (legal environment)

#### Legislation outline: 1967-1994

The PNA inherited water resources and administration which is governed by the Israeli military occupation since the first day of occupation June 1967. The most famous military order No. 92, of 1967, stated that water resources and related administration are to be subject to the Israeli military authorities. This was followed by another military order, No. 158, which placed further control over the water resources.

As a result of these military orders, which administrated water resources with a political mentality, the Palestinian water sector has been siphoned to serve settlement plans and convert the Palestinian Territories into consumer of a service now provided by Israel.

Moreover, the Declaration of Principles is regarded as the first agreement between the PNA and Israel, signed on Sept 13 1993, stated that: water issues must be discussed during the meeting of the permanent Palestinian/Israeli Committee for Economic Cooperation. Approval was taken on preparing plans for water rights and equal usage for mutual resources. Unfortunately, water rights for both sides were not specified in the agreement.

#### The Gaza-Jericho First Agreement

The Gaza-Jericho First Agreement was the provisional agreement of PNA self governance in Gaza and Jericho, signed on May 14, 1994. Article No. (2) and paragraph No 31 tackled water issues in the Gaza-Jericho areas. Herby; PNA has the authority to control water resources and infrastructure in both areas and can administer water systems in both areas, including digging new wells, without causing damage to water resources. Unfortunately, such agreement did not include any articles on water rights' issues, usage or equal distribution of mutual resources.

#### Article No. (40) of the Oslo Accords 2 on water and sewage, 1995

The provisional agreement on water and sewage was to be used as a foundation to draw plans on water and implement projects during the "transitional stage" until reaching the "Final Solution Agreement". The first paragraph of the water agreement states: "Israel acknowledges the water rights of Palestinians, negotiation will take place and a compromise will be reached regarding different water resources in the "Final Solution Agreement".

5 Oslo agreement between PLO and Israel, Sep, 1995

The main challenge facing Palestinians is achieving full sovereignty and control of water resources in Palestine. The need to find a solution for Palestinian water rights is urgent as is the need to guarantee complete independent administration of water resources – including both groundwater and surface water available in the West Bank and Gaza Strip; and obtaining rights of the Jordan River and Gaza Valleys.

Nevertheless, Israeli dominance over water resources continues, while Palestinian sovereignty over water is considered a basic element for any future economic development.

#### Legal framework upon PNA establishment in 1995:<sup>6</sup>

Despite the fact that the Presidential Resolution No. 90, of 1995, and the Water Authority Establishment Law No. 2, of 1996, and article No. 3, of 2002, determined the legal framework of the water sector<sup>7</sup>, these laws have not been developed. At that time, it was assumed that the transitional stage will end by 1999. Hence these legislations became inadequate when the PNA did not become a state.

Such disturbing issues reflect many points as follows:

- Water resources remained under Israeli control.
- Palestinian plans were restricted by political treaties (especially in 'C' areas).
- Multiplicity of institutional that manage water: *(i.e., the existence of water departments in the West Bank alongside the Palestinian Water Authority.)*

In view of such imbalance and multiplicity, conflict grew between ministries and institutions in the fields of agriculture, local governance, environment and the water authority. Although laws have defined functions and powers of the water authority, law enforcement remained especially limited when related to resources.

Still, some remarks and queries on the Water Law No. 3/2002 are without answers. For example, the legal and institutional relationship between this law and the Law of Natural Resources No 1, 1999, states in article 3 that the task of the Department of Resources

6 Hiba, Hussein. (2006) Palestinian water authority development and challenges: Legal frame work and capacity. Paper presented in the conference: Water in the Middle East – Antalya, Turkey.

7 PLC laws 1996-2002, The PNA official newsletter, issue No. 5, 1995

(according to law) was to conduct geologic research, issuing scientific and technical results, information, resources quantities and types. However, this task was given to the Water Authority. Similar cases took place in the Ministry of Agricultural, Authority of Environment, local governance and municipalities' authorizations.

On the other hand, the legal limbo and inconsistent provisions could be used for administrative corruption purposes that might lead to financial corruption. For that reason, it's necessary to find a legal mechanism to fill the gaps as this contradiction disabled the Water Authority from implementing the law. Therefore they asked the government to revise the law and submit an amended law.

### 2.3 Institutional Environment

Law No.3, of 2002, assigned the central administration of the water sector to the Water Authority and identified relationships with relevant officials and NGO departments and local government authorities within their respective competence and legal authority. As the Water Authority Law is an organized body, its activities' implementation is controversial. The authority separating project organizer, implementer and plans is the golden foundation for monitoring.

#### Relationship with the Cabinet:

The law clarified the relationship between the Water Authority and the cabinet in Articles No. (9, 7, 42, and 15) ----Law which defines the following:

- The Water Authorities role: rehabilitate and develop water departments to provide water on the country level, and identify its responsibilities and tasks according to a resolution to be issued by the cabinet.
- The annual budget ratification of the water council to be submitted to the cabinet for approval.
- Any task commissioned by the water council or the cabinet.

In accordance with the Water Council's endorsement, the law gives the Cabinet the authorization to issue regulations necessary to implement the law.

Upon the creation of the Office of the Prime Minister, entrusted with executive tasks, the Water Authority fell under cabinet command. The Cabinet held the first and only meeting with the water council in 2005, led by Prime Minister Ahmad Qurai'. According to the amended Basic Law the cabinet receives

absolute power to supervise all public institutions; the Water Authority Chairman, assigned by political decree, and the Water Authority became officially subordinate to the Cabinet.

The Water Authority proposed a hierarchal structure beginning with the cabinet presidency at its base. This is followed by the Water Council and then the Water Authority which includes the National Water Department, water users' associations and regional water departments.

In 2006 the Water Authority began submitting periodical reports to the cabinet that oversees the Authority.

A resolution issued by the cabinet stated that the Water Authority is subject to the Ministry of Agriculture where the Minister of Agriculture is to oversee the Authority's affairs. This situation created much confusion in the water sector. Although the resolution was neither canceled nor functioning, it was considered valid.

Following the victory of Hamas in the Palestinian legislative elections of 2006, the Water Authority was re-allocated to the oversight of the PNA President. Currently, the Water Authority reports to and corresponds directly with the Cabinet in the West Bank through the Cabinet General Secretariat.

#### Relationship with the Palestinian Legislative Council (PLC):

There is no relationship connecting the Water Authority with the Legislative Council, as the law did not include the Council's needed approval of the Water Authority's appointed chairman. After the issuance of the Amended Basic Law, the cabinet has since become accountable to the PLC on water policies. Namely, the Legislative Council plays a supervisory role over the Water Authority as it does with other public institutions.

#### Relationship with the ministries and other public institutions:

The nature of the Water Authority's functions and powers intersects and overlaps with many ministries and public institutions as bodies concerned with water and according to the provisions of paragraph 2 of Article No. (7) of the Water Act. Hereby, preparing public water policies, coordinating with relevant bodies and submitting periodical reports on the water situation to the Water Council where relevant institutions are well represented. Accordingly, institutions and ministries are reviewed as follows:

#### A. Relationship with the Ministry of Agriculture:

The overlapping of tasks and responsibilities between the Water Authority and the Ministry of Agriculture created conflict of authority due to lack of clarity in defining roles and duties, especially where it comes to well digging and usage of treated water in addition to other agricultural needs for water.

#### B. Relationship with the Environmental Authority:

The Water Law No.3, of 2002, and the Environmental Law No. 7, of 1999, regulated the relationship between the Water Authority and the Environmental Authority regarding water as follows:

- The Water Authority is fully responsible for the management of the sewage treatment sources. It is also responsible for granting the license to re-use sewage as part of the sewage management. Virtually, the Water Authority has to coordinate with the Environmental Authority which is responsible for the environmental aspect of sewage management.

#### C. Relationship with the Ministry of local governance

Local bodies (municipalities and village councils) are responsible for determining the price of water supplied to the population within the bodies' defined districts and for various uses. However the Water Authority is responsible for determining prices in the framework of its functions relating to the development of a system of water taxes.

Local bodies must follow a system of taxation when determining the prices of water and must also refer to the Water Authority in this matter.

Regarding this, there is some ambiguity in determining the authorization of municipalities on the one hand and the Water Authority on the other.

#### D. Relationship with the Ministry of Finance:

The sixth Chapter of the Water Law No. 3, of 2002, identified the relationship between the Water Authority and the Ministry of Finance through Articles No. (21-23), which include the following:

- The annual budget of the Water Authority is determined by the Ministry of Finance as with the rest of the ministries and public institutions.
- Grants, aids and loans provided to the Water Authority are to be supervised by the Ministry

of Finance.

- Financial collections made by the Water Authority are to be reported to the Ministry of Finance.
- The Water Authority is subject to financial auditing and censorship of the Ministry of Finance.
- The Minister of Finance shall be a member of the National Water Council alongside the membership of the Water Authority Chairman, who is also the Secretary General of the Council in accordance with the provisions of Article No. (8) of the Water Law.

#### E. Relationship with the State Audit and Administrative Control Bureau "SAACB":

The Water Authority is subject to SAACB. The law of SAACB affords it the right to monitor the financial collections and expenditures of public institutions and ministries including the Water Authority. It also has the right to monitor the performance of Water Authority personnel as it should submit a comprehensive annual report of its financial and administrative performance to the Palestinian National Authority (PNA) president, the PLC (Palestinian Legislative Council) and the Cabinet.

#### F. Relationship with the Authority of Natural Resources:

An overlapping of authorizations and tasks took place between the Water Authority and Natural Resource Authority as water is considered a viable natural resource and is therefore subject to the Natural Resource Authority. The Relationship between the authorities can be clarified as follows:

- The Water Authority issues required permits to utilize water resources, including the dissemination of water, while the Natural Resource Authority issues permits to look for natural resources, including groundwater.

#### G. Relationship with the Ministry of Public Works:

According to Law No 6, of 1999, on public tenders for governmental institutions: item B of paragraph 1 of article 7, the Water Authority applies the law that regulates domains where central specialized tender committees must be established; regulating fields for water, irrigation, sewage and dikes.

Moreover, according to the law, the Water Authority

has right to membership in tender committees, whether central, departmental or governorate, and shall participate in technical and financial evaluation, and publishing of the tender in local newspapers.

At times, a conflict occurred between the Ministry of Finance and the Ministry of Public Works on tenders, where the Ministry of Finance considered the project of importing water pipes within its jurisdiction. At the same time the Ministry of Public Works considered it as its own tender because water pipes are to implement a project of water networks supplies. Problems such as these are usually solved by forming special tender committees by the Water Authority, the Ministry of Public Works and the Ministry of Finance.

Again, according to the water law, the Water Authority role is supervision and not an implementer of water supplies projects. Its assumed responsibility is to monitor the commitment of actors to the required specifications

#### H. Relationship with the Ministry of Planning:

The Water Authority's relationship with the Ministry of Planning is about water and sanitation. The main mission of the Planning Ministry is to oversee projects funded by donors and to sign agreements on projects funded by donors. The Water Authority participated in the meetings of the Planning Ministry on projects belonging to the water authority.

#### I. Relationship with Non Governmental Organizations (NGOs) working in the water sector:<sup>8</sup>

Palestinian NGOs' role is still unable to influence public policies and programs funded by international sources. Public policies remain in the hands of funding institutions. Often, this factor contradicts with strategies of Palestinian NGOs. Therefore, it is too early to talk about the NGOs role in holding others accountable since it has taken upon itself to be an implementer with little effect on public policies. Moreover, Palestinian NGOs suffer from paralysis where it comes to having an effect on policies and an unhealthy and unprofessional competition at work. Other institutions lack hierarchical structure and its role is no different than a consultant.

### 2.4 Israeli Occupation:

For more than 41 years, the occupation has played a key role in depleting Palestinian water resources and infrastructures, depriving Palestine from

<sup>8</sup> PHG. Data Base

development and confining social and economic development opportunities.

Although the leaders of the Israeli occupation signed the Oslo Accords with the Palestinian people, their dominance over 85% of Palestinian resources is ongoing. The occupation created structures and inactive committees under the pretext that water is one of the final solution issues; the committees were the main obstacle hindering progress during "the transitional stage."

Therefore, the creation of a so-called "Mutual Committee" and supportive technical committees gave Israel the right to veto any project. It was connected with Israeli political decisions as well as developments of the peace process. Of the 417 projects submitted to the mutual committee, only 236 urgent developmental projects were approved; 143 projects are suspended; i.e. 34% of projects and 10 % are not approved or approved without implementation.

Most projects ceased in 2001-2002, the first years of the Second Intifada. In other words, the rejections or cancellations were used for political reasons, as part of Israel's collective punishment policy.

The role of the occupation went beyond technical approval of projects; it was about interference with donors and priorities' specification, it benefited from the weak partnerships between Palestinians and the donors.

Further, the occupation strove to connect Palestinian infrastructure with Israel so as to become a consumer of desalination technology or to take advantage of Palestinian sewage. Still, there's resistance by the Water Authority and the civil society against such attempts. However, some donors exert pressure as the Palestinian ability within the decision making positions is unpredictable in the face of financial challenges. Therefore, the World Bank urges the building of four water departments (three in the West Bank and one in Gaza) in the northern, the middle and southern areas.

A paper proposed by the Israeli ex-Water Commissioner, Samwael Tal, stated that Israel will gain 3,000 million cubic meters of un-needed water in 2010, therefore they look forward to utilizing the Palestinian market. Currently, there are 12 Israeli desalination stations distributed in the north, middle and south of Israel.

A memorandum of understanding was signed (signed initials) by the Palestinians in the presence

of the Americans. This memorandum stipulated the provision of water from Khodira station to Palestine. Another agreement stipulating provision on the Gaza Strip; with five million cubic meters of water from the Ashkelon station was obstructed due to Hamas' control of Gaza. Simply, the water plans of the Israeli occupation are clearly documented. Many efforts have been exerted to turn the Palestinian territories into a market of Israeli water technology and infrastructure has been created to serve such purpose. The Israeli political plans served the Israeli economic target to convert the west Bank into three cantons, as proposed in the project of the Bahrain Canal, so as to integrate the Israeli private sector with Middle East economies and the Arab States. The Israeli sector is highly qualified, experienced and supported by the Jewish world capital.

In view of the PNA's attempts to lessen Israeli dominance and its impacts on legislative framework, it issued the Rushed Law on the Establishment of the Water Authority No 2, of 1996, and Law No 3, of 2002, by the presidential decree No 90, of 1995. These laws were made a priority because many Arab States have rules regulated systems only. However, all of those laws faced several obstacles due to the Israeli control over resources, private property, and all agricultural water. Moreover feudalistic systems further compounded the problem. Additionally, conflict erupted with other laws and strategic visions of ministries, donors and the institutional and legal framework, such as internal regulations of services, councils, and structures.

In this manner, many questions still need answers. Particularly, what is the extent of community participation in structure-building, what are the actual aims of the occupation, and what are Israeli interests? Are those structures representing transitional stage for dedication? What is the role of the public sector in structures' management?

In case negotiation proceeds on water as a final stage issue, it's significant to put in place new criteria and reference to connect water issues with other topics, such as refugees, boundaries and Jerusalem.

### 2.5 Funding:

Funds dedicated to the water sector in the Palestinian territories have been estimated at 2 million dollars. The profit gained by such money is equal to the sum but without proof. 30% was spent on useless studies and foreign consultations, where they could have taken advantage of local expertise.

The role of some, though not all, donors was the misapplication of public money. Accordingly, obvious examples are shown as follows:

- Donors' agendas held contradictions and conflict of interests.<sup>9</sup>
- Agenda contradiction defaults the comprehensive complementary planning and leads to sector fragmentation; many deals were made directly with municipalities beyond the central authority's control.<sup>10</sup>
- The inability of the PNA to monitor and hold accountable foreign companies and NGOs; information about their activities and funds remained secret and many projects have unclear budgets.<sup>11</sup>
- Projects conducted jointly with Israel lack transparency and a national mechanism for auditing.

#### International commissions, NGOs and UN bodies:

Although the agenda and nature of projects by international organizations differ from one to another – such as infrastructure projects versus agricultural water programs or capacity building projects – it's important to note the following:

1. Working expenditure generally amounts to 40-60% out of project budget total.
2. There is a drastic increase in fees paid to foreign experts and consultants compared to that paid to local experts who have the same level of experience.
3. Local expertise, especially the Water Authority's, is generally not involved and the role of authority appears defunct.
4. Budgets don't fit the projects, or include analysis (such as costs and profits) and a severe imbalance of benefits of these projects is evident.

<sup>9</sup> Example: the project between Halhol Water tank and the south wells, where two parallel lines passing through the territory of the village of Sair, funded by the German government and another funded by the U.S. government, was implemented without coordination between them.

<sup>10</sup> Example: Jerusalem Governorate Water Authority case

<sup>11</sup> As the case when the French and the American companies worked in Gaza strip (1995-2002)

5. A number of international civil institutions are functioning without the needed experience or knowledge of the nature of social and economic relations of the target groups. This has created social problems and an imbalance in the mechanisms of implementation.
6. UN bodies operating in the Gaza Strip are functioning without monitoring or accountability. The Gaza Strip seems to be under the total guardianship of the United Nations (i.e., the Palestinian Water Authority is non-existent in the Gaza Strip.)

## 2.6 Challenges:

### A. Social and economic challenges

Regarding national water policies, water has a significant social, environmental and economic value. Therefore, this resource must be managed in a viable economic way, in terms of qualitative and quantitative approaches; and adopt a policy of taxation to ensure the effective use of water and the preservation of water sources. At the same time, the taxation policy must take the social conditions of the citizens into account, including their ability/inability to pay a reasonable price.

### B. Institutional Challenges

The prevailing roles and responsibilities in the Palestinian water sector have been characterized by fragmentation and dispersion. After more than 40 years of occupation, the situation has resulted in non-coordinated administration. Therefore, there is an urgent need to re-structure the water sector so as to regulate, monitor and control the administrative, technical and financial performance on the national, regional and local levels.

To meet this need and according to Law No. 2, of 1996, the Palestinian Water Authority has been delegated the management of the water sources so as to implement water policy, to supervise and monitor the water projects, and to proceed in cooperating with the various bodies affected by water management.

In accordance with the same law, the National Water Council was founded. It is composed of the PNA President as its president alongside the membership of water related ministries and the Palestinian Water Authority as the General Secretariat of the Council. The main objectives of the Council are to approve

water policies and support the efforts exerted by the Palestinian Water Authority.

It is very important to develop the Palestinian Water Authority rapidly in order to hold officials accountable and to manage the follow-up and coordination of special projects on re-structuring the water sector institutions.

In this context, the Authority has been entrusted with the task of monitoring the performance of the Water Department of the West Bank; in order to ensure substantive improvement on the technical and financial levels.

The Water Authority will establish regional associates in the West Bank and Gaza Strip, which have independent administrative and financial functions, and will start activities on the basis of the principles of cost recovery. In the long-run, the strategy will encourage private sector participation in the implementation of specific projects with the possibility of involving the private sector in the service management contracted through such associates.

### C. Health and environmental challenges:

Water has clear and potent environmental characteristics that are essential for survival and shall therefore maintain acceptable health standards. However, it is possible that water can act as a conductor for the transmission of serious diseases. Therefore, providing safe and adequate water sources is a necessary condition for the well-being of the population and the maintenance of an appropriate level of public health.

As local water sources have defects in terms of quantity and quality, this does not only threaten public safety but also strains economic commitments needed within the community by placing an increased burden on health and social service facilities. In general, it is not possible to provide safe high-quality water sources without sewage treatment. Therefore, the integrated management of water and sewage would be an ideal solution for the efficient administration of safe water.

## III. Analysis and recommendations

### 1.3 Legislative and political levels:

Official documentations of the Water Council indicate

that it is the institutional and policy reference for the Water Authority. The law identified missions and authorizations delegated to the council: public water policies, development and utilization of water, plans and programs, tariffs' policy, administrative reports' review, authority regulations and the annual budget.

If the mentioned tasks were in fact delegated to a council that held only one meeting, then it's justifiable to wonder; who approved the ratification of the programs, plans, budgets and the water policies?

As long as those tasks are not approved by legal official authority, any side or individual could contest and question it. Depending on the implantation body of the plans, the largest political reference would be marginalized (i.e., the monitoring and accountability body).

Besides, the West Bank Water Department, that's legally, institutionally and financially subordinated to the Israeli civic administration, constitutes a gross legal violation of the law No. 3/2000; where nothing justifies such institution duplication, especially when both are subjected to contradicting administrations and political strategies.<sup>12</sup>

Furthermore, the authorities of local governance and municipalities that manage, monitor, and organize water recourses in cooperation with Water Authority sometimes, have no defined legal reference; disputes between municipalities and Water Authority erupted and effected the complementary and main administration of water sector.

A number of water departments, such as (Jerusalem water undertaking, Bethlehem, Bait Jala, and Bait Sahor), operate independently and have their own boards of trustees. These bodies are subject to municipalities that share membership with boards of trustees for the abovementioned departments. This affects the water sector particularly in appointing high ranks in such departments.

Thus, 80% of the water services' sector is not directly controlled by an authorized body as stated in the Water Authority law; and no comprehensive review of water policies is undertaken by the water council.<sup>13</sup> Based on the abovementioned, it is easy to see the

<sup>12</sup> The meetings of the Israeli-Palestinian committee indicated problems in the representation, as noted, by the Palestinian technical side, the head of the water civil administration, for some time.

<sup>13</sup> This problem still exists about the powers of this department and the legal authority to pursue the Palestinian water from the de facto

flaw that allows for corruption, and in particular, administratively on the operational level.

## 2.3 The working level:

The working level of the water sector is a reflection of its legal and institutional framework. The relationship between the working level and the citizen is governed by uncontrollable working methods legally and administratively. For example, municipalities practically control tenders, appoint high rank personnel, and determine water prices without accountability and integrity. Unfortunately, the current Palestinian split ( Hamas take over of the Gaza Strip) played a great role in marginalizing or enlarging several municipals' councils for political and parties' purposes.

Further, there are many projects implemented separate from the Palestinian developmental reform plan; where approval, mechanisms and funding are made by municipal councils' decisions or by water departments without referring to the Ministry of Planning as a central reference.

### 1.2.3 Tenders:

The local and international expertise, particularly in developed countries, stated that tenders are used for administrative and financial corruption on the individual and institutional levels. The most possible prominent forms of corruptions mentioned are:

1. Conflict of interest and business relationships connecting between public sector officials and private sector investors.
2. Unclear institutional mechanisms to clarify conflict of interest; the companies' owners must announce the tenders they obtain.
3. Unclear mechanism showing that completed activities are in compliance with the original tenders. The committee responsible for projects must be non-biased and efficient. An absurd case was noted, in the tenders' sector, that the body who approved the technical implementation of the project is the same body who offered the tender.
4. Weakness in documentation: the new municipalities suffer from weakness in documentation which is due to weakness in technical skills.

### 2.2.3 Consultations:

Foreign consultants seem to have monopoly over that field. Foreign consultants are paid large sums of money for their work. However, their knowledge of the local culture in general, and other specific intricacies of the society remain limited and often are not taken into consideration. Other related issues include conducting studies and reports that have already been written for the sake of satisfying certain donors.

### 3.3 At the local governance level:

It is well known that many municipalities manage water recourses and services in their areas independently. These bodies, in addition to being unable to conduct good governance in management, and do not have sufficient technical knowledge, it does not base its prices for water on an official reference.

Factors which helped to spread corruption:

- Some local institutions do not have a separate account showing revenues and expenditures.
- There is no clear mechanism or legislation used as a reference for what is called "minimum charges".
- Turning a blind eye to forged receipts.
- Water for home use is charged the same price as for other uses?
- Condon random wells-digging that violates the rights of present and future generations.
- Lack of financial monitoring and auditing by an independent body or by the Ministry of local governance. No periodical monitoring is conducted, only rarely and on occasions.
- Favoritism for tribal, factional and political party is often exercised when distributing services.
- Lack of providing complete and cumulative local plans with a vision for future projects for municipalities, hence contradicting the national plan and squanders public funds. A comprehensive plan was drawn for a city three times during 10 years. it goes without saying that any plan should serve for a minimum of 25 to 30 years.

## IV. Results and recommendations:

In light of the last review on the water sector, the following conclusions have been made as follows:

### 1.4 Legislative Outline:

At first, regulations, laws and administrative instructions were not applied. Although the Palestinian National Authority (PNA) president is also the Water Council president, the council held only one meeting during a workshop organized in 2005. Furthermore, the monitoring body of the water sector remains unknown until today. This absence of the Water Council's role allows the Water Authority to be the manager and the implementing body, thus replacing the Council.

**Recommendations:** 1. To review all relevant Water Laws and issue regulations that define authority. 2. To activate the Water Authority's role as that of an organizing body not an implementer.

### 2.4 Water policies' outline:<sup>14</sup>

The water policies are characterized by the hesitation and respond to priorities of donors hence these policies are diverted from the strategic objectives set by Water Authority. Important aspects of this are illustrated as follows:

1. Water policies are incomplete and lack vision for the future. They also do not coincide with strategic objectives of the Water Authority. In addition the internal political split of 2006 ( Hamas control over Gaza) and the control over Jerusalem by the Israelis have made it even more difficult to have a comprehensive plan that would include the West Bank, Gaza, and Jerusalem given the fact that there are three different legal and political structures to deal with.
2. There is no clear relationship between consumers, especially consumers of drinking water and those for agricultural use. Though the law states that water is public property, water sources in the agricultural sector are monopolized by few individuals. For example, the well owner sets the price of water and controls the quantity and tools used.
3. There is no connection between the PNA's

<sup>14</sup> Water Authority: Report on Policy and Strategy which was submitted to the first meeting of the National Water Council 2005

political and economic vision or plans; nor is there any mechanisms for implementing policies of the Water Authority.

4. No Water Authority budgets were approved by the National Water Council. It's noted that the budget is flexible and responds to the projects' size and funds available.
5. Although the Water Authority's concept paper notes community participation, there have not been any community discussions about water policies. For example, the public was not consulted regarding the potential advantages/disadvantages of the construction of four service authorities in addition to the National Water Department. The proposed suggestion did not provide any answers to the question: Is there any connection between the creation of such departments and the Israeli water policies and Israeli vision on administering water resources in Palestine?
6. Water policies did not withstand the political changes and responded to the public's pressure without a comprehensive plan that is based on participation.<sup>15</sup>

**Recommendation:** To activate the Water Council and form technical committees to support the implementation of the Palestinian water policy.

### 3.4 Performance Monitoring of the Water Authority:

According to current legislations, the Water Authority is monitored by several PNA institutions, such as:

#### • The National Water Council:

The National Water Council has a monitoring role on the Water Authority represented by the approval of periodical reports on the authority's activities and according to provisions of paragraph 6, of Article No. (9) of the Law on tasks and authority of the National Water Council. Also, the National Water Council has been delegated to impose the financial system on the Water Authority, according to the provisions of paragraph 9, of Article No. (9), of the Water Law regarding tasks and power of the National Water Council. However, the council did not hold periodical meetings which weakened its entrusted monitoring role<sup>16</sup>. While the Water Authority has succeeded in

<sup>15</sup> As in the case of Al-Bahrain project, where the executive authority was confused in taken a decision due to the absence of a reference for the water sector  
<sup>16</sup> This Council held only one meeting since the adoption of the law, and this is an example of non-applica-

establishing technical committees, it has failed in holding council meetings in order to approve the recommendations.

#### The Cabinet:

The cabinet was assigned to be the monitoring body over the Water Authority and its public institutions, as stated in the Amended Basic Law; making it mandatory for the Water Authority to submit periodical reports regarding activities to the cabinet just like other ministries and public institutions. On the contrary, the Water Authority did not submit periodical reports to the cabinet.

#### • The Ministry of Finance:

The Ministry of Finance is authorized to monitor the Water Authority according to the provisions of paragraph 3, of Article No. (23) of the Water Law and investigate the Water Authority's bank accounts, incomes and expenses; this is according to the act's provisions #63 of the Public Budget and the Financial Affairs Law.

It also defines tasks for the internal controller, assigned by the Ministry of Finance, serving in ministries and public institutions including the Water Authority. This is according to provisions of paragraph 3, Article No. 146 of the financial system No. 43 of 2005 that states: "Monitoring departments' expenditures that are funded by the public budget and or donors is subject to the Ministry of Finance"

In Gaza also, the Water Authority has an internal auditor that is assigned by the Water Authority and approved by the Ministry of Finance and the State Audit and Administrative Control Bureau.

In addition, another financial auditor works for the Water Authority and is subject to the Department of Financial and Administrative Affairs at the Ministry of Finance. This position audits all the finances of the Water Authority. Additionally, there is an external auditor assigned by donors who monitors and audits the projects implemented by the Water Authority and submits periodical reports.

#### • State Audit and Administrative Control Bureau SAACB:

The SAACB monitors the Water Authority's revenues and expenses as well as performance of internal auditors. It also has absolute power to inspect and question all administrative, financial and technical

tion of the law.

systems in accordance with the provisions of Article No. 23 of the SAACB Law. Further, Article No. 26 of the same law SAACB is required to submit quarterly reports to the PNA president, the Cabinet, and the Palestinian Legislative Council (PLC) on the performance of the Water Authority.

**The PLC:**

The provisions of the Basic Law and the PLC Bylaws grant the PLC authorization and capabilities to be an effective monitoring body. According to Article No. 57 of the PLC Bylaws, the council can demand information and clarification about any minister or official in the PNA as it relates to issues discussed by PLC special committees. Water issues are the responsibility of the Natural Resource Committee according to the provisions of Article (z), paragraph 1, act 48 of the PLC Bylaw.

At the same time, the appointment of the Water Authority President does not need a decree by the PLC. The PLC also does not have the right to exercise the Vote of No Confidence on the Water Authority president.

Resolutions issued by the PLC on the Water Authority:

1. Resolution No.1/7/46 of June 5-6, 1996, which states in paragraph 4: that the General Monitoring Commission shall audit the all of Water Authority's accounts and the sewage departments accounts based on recommendations submitted by the PLC's Natural Resources Committee.
2. Resolution No. 3/17/355 of Jan 6, 1999, regarding water pollution in Ein Bait Maa' Camp in Nablus, which demanded that the Water Authority and Municipality of Nablus conduct a study on water provided to the mentioned area to preserve methods for providing safe drinking water.
3. Resolution No. 8/1/630 of Oct 25, 2003, which calls for organized supervision of the water sector in accordance with the Water Law No 3/2002. The PLC also called for aiding the "Jerusalem Water Undertaking" in developing its systems. The Water Authority is to practice its role in supervising the water sector according to the Law's provisions, prevent problems affecting water distribution, ratify water taxation system and establish a fund to compensate for the differences in prices.

**Recommendations:**

- *The Water Authority's annual report should be approved by the PLC.*

- The Cabinet should conduct periodical reviews of mutual water committee meeting-minutes with Israel to avoid signing memorandums of understandings without the government's acknowledgment and in order to prevent what happened in the sewage project of Tulkarm and the desalination station of Khodira.

**Legal framework:**

- Before the issuance of the Amended Basic Law in 2003, the Water Authority was not supervised by PNA President, the Cabinet and the Minister of Agriculture. In practice, it was depending upon its own president.
- Due to the absence of clear legislative policies that define boundaries for the three powers, responsibilities and jurisdictions remained ambiguous. Furthermore, the Palestinian Basic Law of 2003 was amended to allow the creation of the Prime Minister's Office in the PNA. It also allowed transfer of the executive power from the president to the Cabinet. However, all of these efforts failed to make a difference since other laws were not amended to comply with the changes mentioned above hence causing confusion.
 

For example, Article (63) of the Basic Law states that the executive and administrative powers belong to the Cabinet, where the Water Law states the Water Authority is subject to the PNA president.
- There is an imbalance between the Water Authority Bylaws of 1996 which are a reflection of the Water Law No. 2, of 1996 (and considered void) as well as the Water Law No. 3, of 2002. In other words, the development of the Water Law did not parallel with the development of the Bylaws, which caused incoherence between legislations and the system by which the Authority is operating .

**Recommendation:** *To re-review the Water Authority bylaws.*

**4.4 Monitoring of the Water Authority (WA):**

Due to the National Water Council's lack of meetings, the monitoring process of the Water Authority's activities was near zero, since the Council is considered its main monitoring body. Moreover, it provided opportunities for lack of transparency in procedures.

**Institutional Structure of the Water Authority:**

The lack of commitment on behalf of the National Water Council to meet regularly violates the Water Law which stipulates that the council is required to meet at least once every six months. Ramifications of this violation reflected negatively on Water Authority's capacity to do its job properly, especially as it relates to having clear regulations to follow.

**Water Authority power and tasks:**

Several problems confronted the Water Authority's capacity in the monitoring of violations committed to the main water lines and resources; obtaining required permits to dig wells; and utilizing water resources. Part of the problem is caused by the presence of the occupation and the PNA's lack of control over the Palestinian Territories.

Additionally, the undertaking of water and sewage projects by the Water Authority comes at the expense of the Water Authority's basic role, which is to manage and supervise the water and sewage sector as well as to monitor the utilization of water resources. According to the provisions of paragraph 1, Article No. (7) of the Water Law, the Water Authority is in charge of managing the sewage network. Therefore, the Water Authority bears part of the responsibility for not following up on the sewage basins in the Um Naser area of the Gaza Strip, which led to the sewage overflow and a great humanitarian disaster. Taking this into consideration, the Water Authority previously knew about the possibility of the collapse of the UM Naser's sewage network.

The Water Authority has neglected to monitor the different water prices that are applied in the various areas of Palestine. This conflicts with its responsibility to adopt a unified system for all communities.

Although the Water Authority was delegated to provide citizens with equal and sufficient quantities of water, there was a great inequality of dedicated water quantities for individuals, as differentiated from one area to another.

**Relationship with ministries and other institutions:**

The ambiguity of determining the relevant bodies for issuing permits might create contradiction amongst the Water Authority, ministries and relevant institutions as well as confuse citizens. Finally, this

matter contributes to the increased number of violations.<sup>17</sup>

**The Palestinian Legislative Council:**

The Water Authority's reliance on donors for project implementation might produce negative results in the long run. Any unexpected withholding of funds by donors will create a sudden cessation of services so that great negative results and financial losses will occur.

**Budgets:**

The Water Authority was not committed to the Public Budget Organizational Law by keeping private accounts for the institution. In the past, it also did not cooperate with the treasury unified account at the Ministry of Finance, which existed until 2005.

Regarding significant services provided, the Water Authority's annual budget is humble compared to other public institutions, especially when compared with the vital and important services it provides. This is reflected in the Water Authority's performance and capacity to implement tasks and missions according to the law. Moreover, the Water Authority faces difficulties in covering salaries of the West Bank Water Department's employees as no control is legally practiced.

**Recommendation:** *The Water Authority should be under the jurisdiction of the Prime Minister who should be accountable before the PLC.*

**Summary:**

There is no doubt that the activation of an effective Water Council would create an active policy-making environment and would facilitate the Water Authority's mission in becoming a well organized sector.

On the one hand, the absence of the PLC and the unaccountability of institutions subordinate to the cabinet have weakened the monitoring process, and on the other hand, it contributed to the loss of the concept of transparency in that sector. Therefore, community monitoring is even more significant.

If international institutions and UN bodies continue

<sup>17</sup> Such flaws caused misunderstandings in monitoring mechanisms on projects and studies; a water strategy was accomplished by PECDAR, another by the World Bank, and a third by the Water Authority. In addition, American companies conducted several studies concerning this issue.

to be unaccountable to the Palestinian government - and if the Water Authority is incapable of monitoring the performance of those institutions - large parts of this sector will be monopolized by these institutions. It is worthy to note that many of the international institutions pose questions in the minds of Palestinians due to their coordination and cooperation with the Israeli civil administration (i.e., occupation forces).

Despite its political, social and economic importance, decision-makers including the government do not coincide with the importance of the water sector. Therefore, proper mechanisms must be established to elevate this sector; mainly, the activation of the National Water Council.

## Coalition for Integrity and accountability – AMAN

### Vision

A Palestinian society free of corruption

### Mission

Building a National Integrity System

### Objectives:

Promote a popular Palestinian culture that supports anti-corruption initiatives in public institutions

Promote anti-corruption practices among Leaders and public service employees that harmonize with values of integrity, principles of transparency and accountability systems.

3. Contribute to the building of effective institutions, initiatives, and legislations capable of combating corruption at the local level.

4. Improve AMAN's performance to ensure achievement of its mission and vision.

### AMAN's Coalition members

The Palestinian Initiative for the Promotion of Global Dialogue and Democracy-MIFTAH, Ramallah

Arab Thought Forum, Jerusalem

Palestine Trade Center- PalTrade, Ramallah

Palestinian Institute for the Study of Democracy- Muwatin, Ramallah

Al-Mezan Center for Human Rights, Gaza

Palestinian Council of Foreign Relations, Gaza

.This report was written in a "gender-blind" style to simplify reading

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