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Report on the Palestinian Water Authority

February 2008

Introduction

This report will review the work of the Palestinian Water Authority (PWA); legal framework and legislations related; PWA stages of development; and adequacy of this framework for PWA functions and powers.

This report will also examine the Palestinian Water Authority and its operating mechanisms in the provision of services to citizens, and identify its relationship to the various institutions within the Palestinian National Authority (PNA). In addition, the report examines performance monitoring and control mechanisms of the (PWA).

I. Legal Framework

Presidential Decree No. 90, 1995¹

The Palestinian Water Authority was established by the Presidential Decree No. 90 in 1995. The decree's first article provides the formation of the Palestinian Water Authority, while the second article stipulates the appointment of Mohammad Nabil Al-Sharif as its head.

Law No. 2, 1996²: the Establishment of the Palestinian Water Authority

This law states that an institution called "the Palestinian Water Authority" shall be established and shall enjoy independent legal status, exclusive budget, and be placed under the direct supervision of the President of the PNA, who shall appoint its head.

Palestinian Water Law No. 3, 2002³

In accordance with Article 6 of the Water Law, the Water Authority (WA) shall be established as an official public institution with a recognizable juridical personality which budget is included within the PNA general budget. The same article indicates that WA falls under the supervision of the President of the PNA who appoints its head.

Article No. 2 of this law states the objective of the WA as developing, managing and increasing

1 The Palestinian Official Gazette, 5th edition, 1995

2 The Palestinian Official Gazette, 11th edition, 11.02.1996

3 The Palestinian Official Gazette 43rd edition, 05.09.02

the capacity of water resources in addition to improving their quality and preserving and protecting them against pollution and depletion.

In accordance with Article 43 of the Water Law, the Water Authority Law No.2, 1996, was repealed.

Bylaws of the Palestinian Water Authority No. 66, 1997⁴

Articles Nos. 5, 6 and 7 of the Water Authority bylaws set forth its jurisdiction and responsibilities based on the PWA Establishment Law No. 2, 1996. Articles 8 and 9 have further defined the institutional structure of the Authority whereas Article No. (10) has defined the powers and responsibilities of PWA head.

The bylaws are a reflection of the Law on the establishment of Palestinian Water Authority No.(2) of the year 1996 and therefore was repealed in 2002.

Due to the enactment of the Water Law No. 3, and the preparation of new draft bylaws which have not been approved to date by the Water Council, a gap arose in the PWA functions and operations. PWA functions have to reflect and become consistent with the new developments provided by the Water Law No. 3 through the "official" endorsement of bylaws for the Water Authority.

II. Palestinian Water Authority Functions and Powers

Article 7 of the Water Law sets forth the functions and powers of the PWA for the management of water resources and sewage in Palestine, and the development of public water policy.

The functions of the Authority include issuing licenses, utilizing water resources, studying water and sewage projects, rehabilitating and developing water departments in order to provide water to all districts. Its function also include cooperating with relevant agencies to develop plans and programs that regulate water use. PWA is also responsible for overseeing Well drilling and the qualifications of contractors working on water facilities and installations. PWA is also responsible for the preparation of draft laws and regulations and the issuance of instructions.

4 The Palestinian Official Gazette, 18th edition, 04.08.1997

III. Institutional Framework

The institutional structure of the PWA has four levels:

- Policy-making; represented by the president of the PNA (as chairman of the Water Council) and the National Water Council.
- Organizational; represented by the PWA
- Operational; represented by the National Water Undertaking
- Regional; represented by regional water undertakings, municipalities and water-user associations.

1. The NWC (National Water Council) is the policymaking institution which is formed according to Article 8 of Water Law No.3, for the year 2000. President of the PNA Head, and twelve other members that make the council, the ministers of Agriculture, Finance, Local Government, Health, and Planning and International Cooperation in addition to the heads of the Environment and Water Authorities, the Secretary-General of Jerusalem, the representative of the president of the Association of Palestinian Local Authorities, and one representative of the Palestinian universities, water associations and unions, and regional water facilities.

The NWC mandate and functions are as follows:

- Public water policy
- Policy for the development and utilization of water resources for different usages
- Plans and programs aiming at the regulation and counselling on water usage and consumption without wastage
- Tariff policy
- Periodic reports on PWA activities and performance
- PWA regulations
- Bylaws governing PWA management and operations
- PWA annual budget and its presentation to the Cabinet for endorsement
- Appointment of the board of directors of regional water undertakings
- Allocation of funds for investment in the water sector

- Application of PNA financial regulations

NWC meetings are legal only when attended by its head (the President of the PNA, dominated by presidential duties), which minimizes the opportunities for the head to preside over NWC meetings. In addition, NWC members are ministers occupied with their own duties, making it difficult to achieve quorum for NWC meetings.

2. Head of the Palestinian Water Authority

Article 15 of the Water Law specifies the duties and responsibilities of the PWA chairperson, which include the management of PWA and supervision of its employees and directorates. S/he is also tasked with the preparation of the PWA budget and financial reports for submission to relevant PNA parties. The head of the NWC is charged with the execution of NWC resolutions and the signing of related agreements on behalf of the government in accordance with the laws in force. The responsibilities extend to activities aimed at strengthening regional and international cooperation in the field of water and sewage, and the preparation of periodic reports on PWA activities and performance and the proposal of solutions for the constraints and difficulties encountered in the course of work.

3. Palestinian Water Authority Structure

According to Article 8 of the old PWA internal regulations, the structure of the water authority consists of a head, a deputy, a general director, a public relation committee, a coordination and cooperation committee, and advisory committees.

On 26.04.05, the Cabinet adopted the PWA development plan and organizational structure which introduced amendments to the structure to comprise four administrative departments, as follows:

- Administrative and Financial Affairs
- Technical Affairs
- Management/Organizational Affairs
- Water Resources and Planning
- Water Monitoring
- Planning

- Training

The PWA will create units to fulfill temporary project-related needs, such as the Projects Management Unit supervised by the PWA senior management⁵. This unit was created to separate between PWA functions as the administrator of the public water sector, and its interim tasks, and in response to donor countries objecting to interference between organizational, operational and developmental functions.

According to Article 8, the PWA's additional tasks in the execution of water and sewage projects are not part of its mandate. PWA execution of periodic projects is one of its main functions, and leads to additional financial burdens as a result of salaries paid to project-based contractual employees responsible for implementing water projects.

According to the PNA annual budget for the year 2005⁶, the total expenditures for salaries of PWA core employees in 2004 were 115,000 NIS, compared to 1,830,000 NIS for those with project-based contracts. This indicates that until 2004, most of the staff of PWA was paid by project funding (mainly by Norwegian Funds).

The budget reveals that the total number of PWA core employees were 85, and that PWA suggested raising the number of the core staff to 111 by the year 2005. PWA agreed with the Ministry of Finance to transfer project-based contract employees to PWA core staff as of 2005 (the equivalent then to 130% of PWA staff).

Project-based contract employees are a major problem facing the PWA. Issa Qaraqei⁷, member of the Palestinian Legislative Council, explained in a meeting with PWA staff (on September 22, 2007) that the Council of Ministers decided on January 1, 2007 to include Water Department employees and PWA employees on the payroll of the General Personnel Council. This decision has yet to be implemented.

The West Bank Water Department is covered by the PWA budget since the PWA refused to transfer the staff of the former unless the water wells, which are under the control of West Bank Water

Department, were transferred to its control. This, however, was rejected by the Israeli side.

Nevertheless, PWA pays the salaries of the West Bank Water Department employees, since Israel either adds their salaries to the water bills or deducts them from the taxes due to the PNA. PWA is also forced to add to the salaries of West Bank Water Department employees which are low compared to PWA salaries⁸.

All this disrupts the performance of PWA due to the additional financial obligations to its budget which cannot be met. In turn, this reflects negatively on the performance of its duties and powers granted by the law.

IV. Water Public Policies

PWA's vision is a fair and sustainable management of Palestinian water resources. Its mission is the development of sustainable water sources in accordance with a solid environmental foundation that can be attained through efficient and equitable management and through the protection and preservation of the limited water resources. Generating regulatory tools can help attain healthy environmental and economic development⁹.

The foundation of the water policy is that water resources as public property should be protected from pollution; and that all citizens have the right to good quality of water for personal consumption at affordable prices.

Water management is a responsibility that should be undertaken by one entity, provided that the institutional responsibility for policy and regulatory functions are separated from service delivery functions. In addition, water supplies and waste water management should be integrated at all administrative levels. The current PWA policy leans towards the preparation of a developmental plan based on the separation of the executive level for water sewage infrastructure projects, from the regulatory and supervisory level.

The policy also includes the formation of a unified national water authority as the supplier of bulk

5 www.falesteen.ps

6 Budget of the Palestinian National Authority for the year 2005

7 www.arabic.pnn

8 Interview with Mr. Ahmad Al Hendi, the General Director of Financial and Administrative Affairs in PWA, 22.11.07.

9 Report on Palestinian water sector: structure, policy and strategy.

water. This unified national water authority will be responsible for the maintenance and renewal of supplying networks and its main and sub pipelines, in addition to water production¹⁰.

V. PWA Annual Budget

Financial resources of the Water Authority are composed, according to the provisions of Article 21 of the Water Act, of allocations from the public purse in addition to grants, donations, loans and other resources to the PNA are approved by the Council of Ministers.

However, provisions of Article 11 of the Palestinian Water Authority bylaws stipulate that its budget include fees charged for licensing, water concessions, usage premiums, and any other taxes due to the Authority included in the Water Act No. 3 of 2002.

Until 2005 the general revenue account of water sales of the West Bank Water Department was separate from the unified public treasury account in the Ministry of Finance. After 2005, it became part of the public treasury account, leaving some room for flexibility for water authority expenditures, especially in cases of sudden malfunctions in main water networks.

Operational and capital expenditures increased in 2004 by 261% compared to 2003 budget while in 2005 it increased by 33% compared to 2004 budget.

In comparison with other public organizations, the current and capital expenditures for environmental quality in 2004 increased by 22.2% over the previous year. While in 2005 it comprised around 2% of the proposed public budget.

Based on these comparisons, two observations can be made:

1. Proposed amount of external funding in the 2005 budget is around 35.6 million dollar for projects to be implemented by the water authority.
2. External funding needed for water-authority development projects is estimated at around \$155 million U.S.

VI. Work Mechanisms of the Water Authority

A - Management and Regulation of the Water sector

The Water Authority undertakes the management and regulatory tasks that aim to provide water and sewage services to Palestinian citizens in accordance with its mandate in the Water Law No. 3, 2002. PWA also negotiates with Israel regarding a sustainable water solution in addition to the execution of Article 40 of the interim agreement (Taba 2) through the joint water committee, which includes water purchases, prices, and license for water and sewage projects.

PWA is also responsible for donor follow-up and coordination pertinent to the execution of water and waste-water projects in the Palestinian Territories and the tendering process of water projects. PWA supervises, researches and studies related to water and sewage, follows up on providing services to citizens, issues licenses to water and water treatment projects through the development of a licensing system, and the production of a licensing manual based on the Water Law No. 3, 2002.

PWA has prepared a license manual that the Council of Ministers is yet to officially adopt and publish. The manual covers the license types that should be obtained from PWA, namely: digging and mining licenses, permits and privileges, licensing for the extraction of groundwater and operation of water facilities, license for sewage and waste-water treatment plans, licenses for data collection and hydrological studies. In addition, the manual explains the conditions and requirements for licensing, and how to complete application forms and other necessary documents.

The manual considers the ministries of Agriculture, Health, Environment, Public Works, and Industry as relevant parties to water licensing depending on the nature of the license. However, the manual does not specify neither the types of licensing that needs approval from other ministries nor the different successive stages needed to obtain the license (i.e. whether it starts or ends with PWA). The issue is left for the PWA head to decide upon the sequence of ministerial approval of the license.

¹⁰ Interview with Mr. Ahmad al Hindi, *ibid*.

PWA also monitors water violations and encroachments on water resources as well as the quality of services of water suppliers and their commitment to standards.

B. Water Supply

One of PWA main tasks is to supply all citizens with drinking water in adequate amounts and at reasonable prices. Yet, 11% of citizens in West Bank do not have access to safe and sustainable water resources, and 160 localities have no water distribution networks; however, the cost of installing water networks for them would exceed \$280 million U.S.¹¹

Moreover, PWA determines the water amount specified for the localities according to the number of its inhabitants. Some houses and localities are supplied through buying water from an Israeli company "Mekorot."

In its report dated December 2002,¹² the PWA published data on the amounts of water supplied to different localities during the year. The report's appendices showed a big fluctuation in water consumption rates per person between the different localities, and even between localities in the same district. For example, in Sabastya the daily rate of individual water consumption reached 105 liters, whereas it did not exceed 16 liters in Burqa and five liters in Bazaria. The daily water supply rates per person vary widely even in neighboring towns although water comes from the same resource. For example the rate in Beit 'Ur al Fouqa amounted to 91 liters per person compared to 11 liters in **Beit 'Ur at Tahta** (Ramallah).

One factor behind this gap is the difference in the supply rates of water provided by either PWA or the Israeli water-supply company, Mekorot, through the West Bank Water Department. PWA has no control over water supplies although it is one of its core functions. (Still, these differences in the individual water daily rate also exist in localities supplied by Jerusalem district water undertaking which is under the direct supervision of the PWA). For example, the daily specified amounts in Dura al Qarei totaled 59 liters per person compared to 144 liters in neighboring Ein Sinya and 150 liters in Jifna.

11 Al-Quds newspaper, 25.12.07

12 PWA, Water Supply in the West Bank, December/2002.

C. Water price rate

PWA prepared a unified tariff system/regulation that comprises the equation according to which water consumption prices are determined. The tariff system is comprised of:

- Methodology for the application of tariff system
- Special water policies pertinent to water and sewage tariffs
- The goals of the tariff policy and the strategy of its application
- Application for the approval of tariff amendment
- Data to be provided by water utilities
- PWA procedures of the approved of amendment request

Article 3 of the tariff system shows that water provision and sewage services are under the responsibility of the local councils to which the municipalities' tariffs are applied based on PWA approval. The PWA delegates to the municipalities the responsibilities of setting water tariffs until a unified tariff system is prepared, provided that municipalities refer back to PWA on this matter.

The Applied tariff system in the main municipalities and water undertakings in the West Bank for the year 2002 reveals huge discrepancies in water prices between regions despite the fact that bulk water distribution cost is almost the same. The variance appears in the monthly or bimonthly bills which also show differences in fixed tariffs for maintenance of water meters. As for the currency, some bills are paid in Jordanian Dinars while others in New Israeli Shekels. However, the water tariff system does not include local authorities below the municipality level where some show a gap in prices although they are supplied by the same source at the same bulk distribution cost.

VII. Difficulties and Challenges

PWA faced difficulties and challenges such as the collapse of the waste water collection pools in Um Al-Nasr in Gaza, a disaster that led to five deaths, 20 injuries and the destruction of tens of houses. Many warnings were issued prior to its occurrence. Shortly before the disaster struck, Al-Meezan center organized a workshop under the

title “Environmental crisis in the Gaza Strip,” which was attended by the former head of PWA. Despite admitting that there were problems in wastewater collection plants in Um Al-Nasr, he affirmed that PWA had developed urgent, as well as mid- and long-term plans, and insisted that the real problem is caused by the occupation. As a solution, the PWA is attempting to secure an area of 60 dunums to establish filtering pools and a treatment plants in the eastern area. However, their collapse occurred shortly after this meeting¹³.

The PWA is also challenged by the random digging of wells without obtaining the needed license. In the interview made on 22.03.06, by the International Press Center at the State Information Service, engineer Ribhi Al-Shaikh, the Deputy Head of PWA, revealed that PWA discovered more than 2,000 wells which were randomly and privately dug in Palestine¹⁴.

PWA encounters another difficulty caused by civil society organizations not obtaining PWA approval for the implementation of water services and sewage projects. Mr. Fadel Ka’wash, head of the PWA, reported serious violations committed by civil society organizations and appealed for cooperation and coordination with PWA and a respect for its rules and regulations.¹⁵

The Water Authority is required to obtain approval first from the Joint Water Committee (JWC) on the water and sewage projects in zone (C) areas, then another complicated approval from the Israeli military¹⁶. This negatively affects the ability of PWA to function especially in relation to the provision of direct services to citizens. Also, Israeli control over these areas prevents the proper follow-up on the violations and infringements on water resources and networks¹⁷. Losses resulting from violations on major and sub-water networks in one year are estimated at about five million cubic meters of water.¹⁸

Projects Management and Execution

PWA executes water and sewage projects funded by donor countries. In many cases, the donor

tender project themselves and select companies for their execution. PWA along with the Ministry of International Cooperation participates in meetings related to the project implementation and the PWA also supervises implementation mechanisms and adherence to the specifications and standards. PWA usually participates in project tendering due to its membership in the Central Tenders Committee, and takes part in the determination of standards, conditions, technical specifications and value of the project. The Tenders Committee advertises the tenders in newspapers along with the conditions and specifications.¹⁹

The implementation of water and sewage projects by the PWA leads to overlaps in powers and mandates. According to the Water Law, the PWA’s main tasks are to supervise and control water and sewage projects implemented by other parties rather than taking part in the implementation. Therefore, a conflict of interest may occur if PWA is executing such projects.

VIII. PWA Relationships with PNA Institutions

A. Relationship with the President of the PNA

Article (6) of the Water Law states that the PWA is subordinate to the President of the PNA. According to paragraph 1 of Article 10 of the Water Law, “the Council convenes upon the invitation of its President at least once every six months. An urgent meeting could be held upon the request of the head of the Council or of four members if such a meeting is necessary. The session shall be headed by the president or the vice-president in case of his absence.”

Though the President of the PNA is supposed to head the meetings, the Water Council has not held a single meeting since the PWA was founded,²⁰ pointing to an obvious under-performance. Since the President has not fulfilled his role, the water council meetings and legal tasks have been consequently impeded²¹.

13 www.mezan.org

14 www.hewarat.com

15 www.maannews.net

16 Fourth annual report of PWA, 2000, p. 1

17 Interview with Ahmad al Hindi, ibid

18 Interview with Ahmad al Hindi, ibid

19 Al Barghouthi, the General Director of Project Management Unit, PWA, October 29, 2006

20 Interview with Ahmad al Hindi, previous source

21 Interview with Ahmad al Hindi, previous source

This has limited the performance of PWA, the fulfillment of its mandates and improvement of its functions, especially in relation to issuance of internal regulations and bylaws and the approval of the tariff policy. The PWA has prepared nine regulations and systems although none has been officially endorsed²².

As a result, PWA's periodic reports were not submitted to the PNA President or the Council of Ministers. This would also imply the absence of the monitoring role played by the National Water Council, as specified by the law, which also negatively impacts on the performance of the PWA.

Following the efforts made by the PWA for convening NWC periodic meetings, ministers were addressed to nominate their representatives to the meetings of the Preparatory Committee. The purpose of which is to draft bylaws in order to reduce time and overcome any obstacles that may prevent NWC from convening for its official memberships²³. The Preparatory Committee met on October 31, 2007 in order to plan for the official NWC meeting to approve its bylaws, regulations and tariff system, in addition to the amendment of the water law and the approval of national water strategy and policy. The preparatory committee was scheduled to meet again on November 12, 2007.²⁴

The overlapping authority between the office of the President and the Council of Ministers negatively affects the performance of PWA, despite the fact that PWA is subordinated to the President as stipulated by the Water Law. However, Article 9 /69 of the Basic Law granted the Council of Ministers full powers in supervising public sector institutions including the appointment of their executive managers in addition to other authorities given to the Council of Ministers.

B. Relationship to the Council of Ministers

The Palestinian Water Law described the relationship between PWA and the Council of Ministers in Articles 15, 42, 7 and 9 which,

respectively, dictate:

- Rehabilitation and development of water departments to provide bulk water supply to all governorates since they are considered national water facilities, which responsibilities and duties are defined by a regulation issued by the Council of Ministers for this purpose;
- Approval of the PWA annual budget (by the NWC) prior to submission to the Council of Ministers for endorsement;
- Any task assigned to the head of the PWA by the NWC or by the Council of Ministers;
- The Council of Ministers shall, upon recommendations from the NWC, enact regulations as deemed appropriate in order to apply the provisions of this law.

Conflict over mandates and authority between the President and the Council of Ministers in relation to the PWA was exacerbated following the creation of the position of Prime Minister and the ensuing duties entrusted to him.²⁵

The Council of Ministers assumed its oversight role over the PWA on the basis of the draft law which envisioned the subordination of the PWA to the Council of Ministers. Accordingly, the NWC held its first and only meeting in 2005 that was chaired by Ahmed Qurei, then the "Prime Minister".²⁶ The Amended Basic Law grants the Council of Ministers absolute power to supervise all public institutions. In this manner, the PWA subordination to the Council of Ministers started to take effect even while the appointment of the PWA head remains to be made upon a presidential decree.

The PWA has started to follow the same management trend by suggesting a new hierarchical structure that starts with the Prime Minister on top, followed by the NWC, and the PWA below. The PWA branches into the National Water Undertaking, the Associations of Water Consumers and the Regional Water Utilities.²⁷ As of 2006 the PWA has submitted its periodic reports to the Council of Ministers, which assumed the supervision of the PWA.²⁸

25 Ibid

26 Report on the Palestinian Water Sector: Structure, Policy and Strategy

27 Interview with Mr. Youssef Ouais

28 The official Palestinian Gazette, 47th edition, October 30,

22 Ibid

23 www.wafa.ps

24 Al Barghouthi, previous source

The Council of Ministers had made a decision (unpublished in the official gazette) directing the subordination of the PWA to the Ministry of Agriculture. When Hamas won the general elections and formed the Palestinian government, though, the mandate over the PWA was restored to the President of the PNA. However, the PWA currently reports to the Council of Ministers through the Council's Secretariat.

C. Relationship with the Legislative Council

Currently there is no legislation regulating the relationship between the PWA and the Legislative Council. The Water Law has neither assigned any role to the Legislative Council in the approval of the assignment of the PWA head, nor provisioned such appointment to the Confidence of the Council. However, after the amendment of the Basic Law, the Council of Ministers became responsible for the water policy before the PLC although the latter's role in the oversight over the PWA, along with other public institutions, is far more critical. The remainder of this report will shed more light on this issue in the section dedicated to the discussion of oversight of the PWA.

D. Relationships with Ministries and Other Public Institutions

PWA authority and functions greatly overlap with those of many other ministries and public institutions with competence in water affairs in accordance with paragraph 2 of Article 7 of the Water Law. The aforementioned article stipulates "the preparation of water public policies and their execution in coordination and cooperation with relevant parties, and submission of periodic reports on the status of water to the council (i.e. the National Water Council, comprised of representatives of relevant institutions)."

Palestinian public institutions and ministries with responsibility or relevance to the water sector are:

1. **The Ministry of Agriculture:** based on its jurisdiction over the regulation of water usage for agricultural purposes, the Ministry is responsible for the development of water

plans and strategies for the agricultural sector in cooperation with the PWA as stipulated in Article 54 of the Law on Agriculture.²⁹ This law regulates the formation of a number of legal bodies that strive for the sustainable development and utilization of agricultural resources, including use of water in agriculture. The law relegates to the PWA the right to draw water plans and public policies, and obligates the Ministry of Agriculture to refer to the PWA in matters related to the execution of projects which entails the use of water for agricultural purposes including water harvesting projects.

The Ministry is also responsible for the determination of water usages for agricultural purposes specified by the PWA. Furthermore, the digging of water wells for the same purposes also require prior license from the PWA which should also be supervised by the PWA.

Some overlapping functions and duplications exist between the PWA and the Ministry of Agriculture especially in the area of water wells licenses, use of treated water and any other agricultural usages, given that such functions have not clearly been defined by the regulations of both institutions. The existing conflict in mandates and functions is further complicated by the Council of Ministers' decision on PWA's subordination to the Ministry of Agriculture.

2. **The Environmental Quality Authority (EQA):** the Water Law No. 3, 2002 and Environment Law No. 7, 1999, structure the relationships between the PWA and EQA regarding the water environment in the following manner:
 - a. The PWA is fully responsible for waste water management and the issuance of licenses for the (re)use of waste water including waste water treatment and use. The EQA is required to coordinate with the PWA in setting environmental standards and specifications since the latter is one of the competent parties responsible for water management.
 - b. The PWA shall undertake functions and mandates pertinent to water use licensing including water prospecting, whereas the

EQA sets forth the proper environmental conditions for prospecting activities in coordination with the PWA.

- c. The PWA shall exercise its authority and mandates through participation in setting water quality specifications for various usages including potable water. The EQA is the competent authority that determines the standards and characteristics of potable water with assistance from the PWA which entails that the EQA is required to coordinate its work with the PWA.
- d. The PWA has the authority to inspect any water resource if a contamination is suspected. Therefore PWA inspectors enjoy the status of judicial police officers while EQA can conduct routine inspections on water facilities, including water resources, to ensure compliance to the standards of environment protection and prevention of contamination.

3. Ministry of Local Government

Water Law No. 3, 2002 and the Palestinian Local Authorities Law No. 1, 1997 both govern the relationships between PWA and the Ministry of Local Government pertinent to the management of water resources and sewage as detailed below.

- Local authorities have the jurisdiction over the management of water and sewage services since they are responsible for supplying their populations with water for various uses. Their management responsibilities extend to water distribution and pricing. This means that while the PWA is responsible for the management of water resources, sewage, water supply, and water resources in general, the local authorities are tasked with the management, regulation, transport, and distribution of water to the populations within their boundaries.
- Local authorities have the mandate to manage sewage services within their boundaries while the PWA has full responsibility over the management and control of sewage projects. This means local authorities need to coordinate with the PWA within the same local borders.
- Local authorities are responsible for pricing water services for various uses while the PWA

sets forth the water tariff system to which local authorities should refer.

Mr. Fadi Kuoosh, head of the PWA, indicated that the responsibility for developing local infrastructure for water and waste water facilities falls under the mandate of the local authorities themselves as well as under other ministries and governmental institutions rather than the PWA.³⁰

4. Ministry of Finance

- a. Chapter 6 of the Water Law No. 3, 2002, particularly through Articles 21-23, drew the relationships between the PWA and the Ministry of Finance as follows:
 - i. The PWA annual budget is determined by the Ministry of Finance as is the case with other ministries and public institutions.
 - ii. The Ministry of Finance oversees PWA donations, loans, grants and any financial aid provided to PWA.
 - iii. PWA revenues and incomes are transferred to the account of the Ministry of Finance.
 - iv. The Ministry of Finance carries out financial controls and audits of the PWA.
- b. In accordance with Article 8 of the Water Law, the Minister of Finance is a member of the NWC while the head of PWA acts as its secretary.

5. Administrative and Financial Control Bureau

PWA is a public institution monitored by the Financial and Administrative Control Bureau which is stipulated by law to control incomes and expenditures of ministries and public institutions, including the PWA. The Control Bureau may submit a comprehensive annual report on their financial and administrative performance to the President of the PNA, the Legislative Council and the Council of Ministers. The Control Bureau has the right to control PWA revenues and expenditures,³¹ as well as the performance of its employees.

6. Natural Resources Authority

The mandates and functions of both PWA and

³⁰ The Palestinian Gazette 53rd edition, February 28, 2005

³¹ The Palestinian Gazette, 28th edition, March 13, 1999

Natural Resources Authority (NRA) overlap in some aspects since water is one of the non living renewable natural resources that falls under the PWA jurisdictions. But as a natural resource, it falls within the mandate of both authorities, which may help explain the existing relationship between them:

- a. The PWA regulates and oversees water-related research and studies in general, and NRA carries out scientific studies and research on natural resources including water, in accordance with the Natural Resources Law No. 1 for the year 1999.³²
- b. The PWA issues licenses for use of water resources including water prospecting permits and for the prospecting of natural resources including ground water as a natural resource.

7. Ministry of Public Works:

The relationship between the PWA and the Ministry of Public Works (MOPW) is shaped by the needs of the former like any other ministry or public institution that needs coordination with PWA each in its area of expertise. Hence, the PWA adheres to the Public Tenders Law for Public Works regulating the fields in which specific central tenders committees, such as water, irrigation, sewage and dams as stipulated in Paragraph 1.b of Article 7 of the Public Works Law No 6, 1999.³³

According to Item 1.d of the same article, the PWA can appoint two representatives to the Central Tenders Committee for the execution of its own projects. In addition, Item 1.b of Article 8 of the Public Works Law reiterates the same privilege for the head of the PWA in appointing two representatives to the Department Tenders Committee when the tender in question is related to the PWA. The PWA head can appoint a representative of the Regional Tenders Committee according to Item 1.d of Article 9 of the Public Works Tenders law.

According to the law, such membership and participation in public tenders committees should be at all levels (i.e. at the central, departmental or regional levels), including taking part in the technical and financial appraisals after

the publication of the invitation to bid in local newspapers. Sometimes, both ministries of Finance and Public Works disagree on which entity should assume responsibility over the bid. For example, if a project requires the procurement of transporting pipes, the Ministry of Finance claims that it is the competent authority for such purchase tenders, while the Ministry of Public Works perceives the same tender as a public works one endue to the fact that the water pipes be eventually used for water networks project. Problems of this kind are usually solved by forming Special Tenders Committee of representatives of three relevant institutions (i.e. the PWA and the ministries of Finance and Public Works³⁴).

Moreover, in accordance with to the Water Law, the PWA is responsible for the oversight and supervision of water networks projects rather than being an implementing agency itself. More specifically, the PWA should monitor the implementer's compliance to specifications and standards.

8. Ministry of Planning

The relation between the PWA and the Ministry of Planning is relegated to water and sewage projects given the fact that the Ministry of Planning is the public institution that signs agreement with donor countries and oversees the implementation of donor-funded projects. PWA and the Ministry hold joint meetings concerning water projects under implementation by the PWA.

However, it seems that cooperation mechanisms are more effective in Gaza than in the West Bank. In Gaza, a joint committee between the PWA and the Ministry of Planning is formed which is responsible for follow up on PWA projects at all stages including those prior to execution.³⁵

IX. Control and Oversight of PWA Performance

In accordance with Palestinian laws in force, the performance of PWA is monitored and controlled by many PNA institutions:

32 The Palestinian Gazette

33 Interview with Ahmad al Hindi, ibid.

34 Interview with Ahmad al Hindi, ibid.

35 Palestinian Official Gazette, 59th edition, September 27, 2005

A. National Water Council

Paragraph 6 of Article (9) of the Water Law states that the NWC is responsible for monitoring of PWA performance through the approval of its periodic progress reports in accordance with Paragraph 6 of Article (9) of the Water Law on the tasks and authorities of the National Water Council. Legally speaking, the provision entails that the PWA shall be monitored and supervised by the Council. However this role has been weakened by the lack of periodic meetings between the two institutions.

B. Council of Ministers (Cabinet)

The Amended Basic Law has placed the PWA under the mandate of the Council of Ministers which oversees all public institutions. According to this legislation, the PWA is obliged to submit periodic reports to the Council of Ministers similar to all the other ministries and public institutions. Currently, however, the PWA does not report to the Council of Ministers on a regular basis.

C. The Ministry of Finance

Paragraph 3 of Article 23 of the Water Law authorizes the Ministry of Finance to carry out financial audits on PWA accounts given that the ministry is one competent party that is entrusted with such a mandate. The Ministry can also inspect the PWA's revenues and expenditures records and accounts of PWA as stipulated by Article 63 of the Law on the Regulation of General Budget and Financial Affairs.

Paragraph 3 of Article 146 of the Financial Regulation No. 4, 2005, delineates the tasks of internal auditors whom the Ministry of Finance seconds to the PNA ministries and public institutions, including the PWA. This paragraph states that "controls shall be exercised over the expenditures of the departments, whether funded from the PNA's general budget or by grants."³⁶ In Gaza, the PWA appointed an internal auditor to audit its own accounts but who has also become recognized by the Ministry of Finance as well as by the Financial and Administrative Control Bureau.

³⁶ Mr. Muhammad Al-Barghouthi, PWA Accountant, October 29, 2006

A second financial auditor controls all PWA financial accounts that is appointed by the General Directorate of Administrative and Financial Affairs at the Ministry of Finance before being seconded to the PWA. In addition, donor agencies employ an external auditor to audit the accounts of donor-supported projects under implementation by PWA and to prepare and submit periodic audit reports to donors.³⁷

D. Administrative and Financial Control Bureau

According to Article 23 of the Bureau Law, PWA revenues and expenditures, as well as the work of internal auditors, can be monitored by the Bureau, which enjoys absolute authority to inspect and investigate defects of all financial, administrative and technical systems.

Article 26 requires the Bureau to submit quarterly reports on PWA performance, or upon specific requests, to the President of the PNA, the Council of Ministers and the Palestinian Legislative Council.

E. Palestinian Legislative Council

The Palestinian Legislative Council (PLC) is seen as an effective tool of oversight based on the powers entrusted to it by the Palestinian Basic Law and the PLC own internal bylaws. According to Article 57 of the internal bylaws, the PLC, through the heads of its specialized committees, can inquire and request information and clarifications from any minister or senior PNA officials about any matters related to those committees. According to Paragraph 1.J of Article 48 of PLC internal bylaws, water is one mandate of the Natural Resources Committee.³⁸

Nevertheless, the appointment of the head of PWA does not require the approval of the PLC against whom the Council could not pass a vote of no confidence. The PLC had used these authorities and issued series of water related decisions including:

1. Decision No. 1/7/46 dated 5-6/6/1996, which states in Paragraph 4 that "The PLC could

³⁷ Interview with Ahmad al Hindi, *ibid.*

³⁸ The Palestinian Official Gazette, 46th edition, August 16, 2003

request from the Administrative and Financial Control Bureau to audit all financial accounts of the PWA based upon the recommendations from the Natural Resources Committee.”

2. Decision No. 1/11/68 dated 4/7/1996, which invites the head of PWA to meet the members of the Natural Resources Committee to discuss the citizens’ recurring complaints of water shortage.
3. Decision No. 3/17/355 dated 6/1/1999 in relation to water contamination in Ain Bait Al Ma’a Refugee Camp in Nablus district. The PLC demanded from both the PWA and the Municipality of Nablus to carry out a comprehensive study on water supplies in the aforementioned area, and a similar research on means for the protection of potable water from contamination.
4. Decision No.8/1/630,dated 25/10/2003,which calls for the regulation of the water sector supervision as specified in the Water Law No 3, 2002. The same decision calls for:
 - Provision of assistance to Jerusalem Water Undertaking in the development of its systems;
 - Extension of support to the PWA in order to fulfill its role as an oversight agency over the water sector, in accordance with the law;
 - Prevention of issues affecting water distribution to the populations;
 - Acceleration of the approval of the water tariff system;
 - Establishment of a special fund for the coverage of gaps in water prices and their unification.

PWA under the authority of the Council of Ministers, the latter has not fulfilled its legal requirements for supervising the PWA. The National Water Council was held only once and the subordination of PWA to the Minister of Agriculture has not been institutionalized but continues to be dependent on the head of PWA.

2. The lack of clarity regarding the authority and responsibilities between the ministries and other public institutions has exacerbated the absence of a legislative policy capable of establishing a clear separation of powers, particularly in the aftermath of the Basic Law amendment in 2003 (i.e., the introduction of the post of Palestinian Prime Minister to the PNA, entailing the transfer of executive powers from the President to the Council of Ministers). The remainder of laws have yet to be harmonized with these amendments, leading to conflict between provisions of the law and between the three powers. While Article 63 of the Basic Law states that the executive and administrative powers are the prerogative of the Council of Ministers³⁹, the Water Law has positioned the PWA under the President of the PNA. In addition, there is no consistency between the provisions of the laws and their applications⁴⁰
3. The PWA bylaws, 1996, are based on the repealed Water Law No. 2, 1996, and appear to largely converge in the provisions of the successive Water Law No. 3, 2002. In other words, the development in the water law was not mirrored in the development of the PWA bylaws thus creating a huge legal inconsistency between the two legal texts.
4. Overlapping mandates and authorities exist between the PWA, the ministries and other relevant public institutions, particularly in the issuance of water licensing.

X. Findings and Conclusions

1. Legal Framework:

1. The PWA was not under presidential supervision even when it was subordinated to the President of the PNA prior to the amendment of the Basic Law in 2003. After the amendment took effect and placed the

39 Article 63 of the Amended Basic Law states: «The Council of Ministers (Government) is the highest executive and administrative tool, which shoulders the responsibility of implementing the program that has been approved by the Legislative branch. Except the executive jurisdictions of the President of the National Authority as specified in the Basic Law, the Executive and administrative powers, shall be the jurisdiction of the Council of Ministers”.

40 Ouais, *ibid*.

2. Oversight of Palestinian Water Authority

Although the National Water Council is one of the most important control tools, it had convened only once which contributed to the weakening of the control over PWA, and encourages a lower level of transparency in its operations.

3. PWA Institutional Structure

The non-adherence to periodic meetings for the National Water Council violates the provisions of the Water Law which stipulates for holding regular meetings at least every six months. The negative consequences are manifested in the PWA's inability to carry out its functions and authority, particularly in the devising and application of clear regulations governing its functions.

4. PWA Functions and Authorities

The PWA faces great challenges in monitoring and following up with transgressions on main water lines and water resources which is partially due to the weak referral to the PWA to obtain needed licenses for new wells and usage of water resources. And partially explained by insufficient control of PWA over all Palestinian regions.

As PWA continues to implement water and waste water projects, though an additional task was imposed by the interim period, it undermines its primary role as a regulator and supervisor of the water and sewage sector affairs in addition to supervising and ensuring compliance to its specifications and standards, while monitoring the usage of water resources.

The PWA bears some responsibility for the collapse for sewage collection pools in Um Al Nassr in Gaza Strip since due to the PWA failure to attend to the issue despite being forewarned of the likelihood for such collapse. The PWA is fully responsible for sewage management according to Paragraph 1 of Article 7 of the Water Law.

The PWA is not fulfilling its responsibility for water pricing, which differs from region and even one town to another, even though the adoption of a singular tariff system for all localities is one of PWA primary responsibilities.

The PWA encounters another challenge in the significant variance in daily water consumption rates per individual throughout the West Bank. This is an indicator of the PWA inability to carry out another key function, mainly the provision of even and sufficient amounts of water to the citizens.

5. PWA Relationships with Ministries and other Public Institutions

The licensing manual lack of clarity in specifying which relevant parties had a role to play based on the type and nature of the requested license hence contributes to the confusion between the role of PWA on one hand, and those of the Ministries and public institutions on the other, which in turn confuses the public and unnecessarily complicates the process of obtainment of water licenses.

6. Public Policies of Palestinian Water Authority

The continued dependence of PWA on donors for projects could lead to negative impacts in the long run. Any sudden halt to the inflow of donor funds would result in a sudden interruption of PWA services and other significant negative consequences and financial losses ensuing such interruption.

7. PWA Financial Affairs

The PWA does not adhere to the Law on the Regulation of the General Budget as represented in using PWA's own accounts rather than the unified public budget account at the Ministry of Finance which continued until 2005.

The PWA annual budget is very modest compared to other public institution, given the nature and vitality of the services it provides. This also impedes the PWA satisfying its original mandated functions, or the new emerging ones.

It is also problematic for the PWA to pay salaries of the employees of the West Bank Water Department without exercising control over the wells they operate.

XI. Recommendations

Recommendation Pertinent to the Legal Framework:

1. To request that the Palestinian Legislative Council ensure consistency between the Palestinian laws and the Amended Basic Law ensuring the separation of powers.
2. To differentiate between the political and executive levels with regards to the subordination of PWA. This may entail that the President of the PNA retain authority for water negotiations. It is also necessary to amend the Water Law to place the PWA under the authority of the Council of Ministers.
3. To develop and enact laws and regulations related to the functions of PWA for a better fulfillment of PWA duties and in accordance with the Water Law.

Recommendations Pertinent to Institutional Structure

1. The National Water Council should convene periodically as stipulated by the Water Law to carry out its duties in the endorsement of PWA-devised policies, programs, and bylaws, thus enabling the PWA to fully assume its responsibilities. In addition, the inclusion of representatives of the private sector would also help in the diversification of the composition of the National Water Council.
2. The application of the PWA privatization plan should be accelerated and a managerial and financial system created to ensure its efficient performance.
3. The formation of the National Water Undertaking, "the executive arm of PWA," and the creation and development of the four regional water utilities in the coastal, central, northern, and southern regions should be finalized.

Recommendations Pertinent to PWA Functions and Authorities

1. To find suitable solutions to the additional tasks undertaken by the PWA in contradiction to its primary functions as an oversight body over the water and waste water sector to ensure its efficiency and effectiveness.

2. To speed up the process of approving the unified water tariff system to resolve the pricing gap between the Palestinian localities and regions based on the PLC decision No. 8/1/630 dated 25/10/2003 for the coverage of pricing gaps ensuing from the diversity of water suppliers from the PNA General Budget.
3. The PWA should eliminate discrepancies in water allocations to each individual in the Palestinian localities.
4. The PWA should assume its responsibilities in addressing, by all possible means, the many transgressions on water supply networks and the digging of random wells, in coordination with the relevant executive authorities.

Recommendations Pertinent to the relationship with Ministries and Other Public Institutions

To specify the areas of authority of the PWA, the Ministries and other public institutions with regard to water sector licensing, responsibilities for supervision and execution, and resolution of all overlapping and contradictions in mandates and functions.

Recommendations Pertinent to the PWA Oversight

The PWA should submit periodic reports to the President of the PNA, the Council of Ministers and the Palestinian Legislative Council.

Recommendations Pertinent to PWA Financial Affairs:

To increase PWA annual budget in proportion to its functions, and prepare a contingency annual budget that covers any financial shortage in case donor funding suddenly dries up.

Recommendations Pertinent to Water Public Policies:

To prepare and adopt a plan that aims at the gradual development of the PWA into an independent institution that provides services to citizens without reliance on foreign aid, to the point where PWA sustainability is achieved rather than threatened by the sudden halt of the influx of donor assistance.

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

Management of Public Finances: Citizen’s Rights for Accountability

The enforcement of the principles of transparency and the right to access information by the public and civil society institutions in relation to the management of public funds, on part of the executive authorities, and the monitoring of the Palestinian National Authority through the publication of its reports on its website and the opening of discussion on such issues in cooperation with both parties (official agencies and public institutions).

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