



Government Policies and Mechanisms For Managing and Supervising Telecommunications Services in Palestine



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The Coalition for Accountability and Integrity (AMAN) expresses its profound thanks to Dr. Mashhour Abu Daqqah for preparing this report and for Engineers Suleiman Zuhdi and Bashir al-Bardawil for contributing papers to the report. AMAN would also like to thank Dr. Azmi Shuaibi and AMAN's team for reviewing and editing the report.

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When quoting, please cite the report as follows:

The Coalition for Accountability and Integrity (AMAN). (2019). Government Policies and Mechanisms for Managing and Supervising Telecommunications Services in Palestine. Ramallah, Palestine.

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Transparency Palestine



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Preface

States have traditionally applied a multiple set of direct and indirect techniques to manage public utility service providers. Usually, efforts are made to adopt techniques that ensure the smooth, regular and consistent functioning of public utilities and provision of the best possible services to citizens. While commensurate with achieving economic and development goals, these techniques are tailor made to promote and protect citizens' rights to access vital services of adequate quality and at affordable prices. At the same time, good governance requirements are maintained on grounds of a valid legal and institutional framework. Prudent management is provided along the lines of the values of integrity, principles of transparency, and systems of accountability. Regardless of public service delivery mechanisms, States are ultimately answerable to citizens for the policies and techniques they apply to managing public utility service providers.

Telecommunications is one utility service, which the State of Palestine has opted for managing indirectly. To this avail, agreements and concession contracts have been concluded with private companies to provide various telecom services on behalf of the Palestinian government. Meantime, these companies are subject to control and accountability by all relevant oversight bodies to ensure commitment to signed agreements and compliance with citizens' rights of access to services of adequate quality and at affordable prices.

This report examines governance of the telecom sector, with a particular focus on transparency, integrity and accountability. In relation to integrity, the report investigates the working relationship between the public sector and private telecom service providers, including prevention of conflict of interest. The investigation addresses the relationship between the executive branch of government and service providers on one hand, and among large and small telecom companies. With respect to transparency, the report explores how transparent and clear the working relationship is between the government and telecom service providers, starting with the agreements signed between the government and these providers and ending with the service delivered to citizens. In regard of accountability, the report examines if an effective regulatory agency exists to provide control over telecom service provision. It also provides information on available systems of control and accountability for licensed telecom service providers. Finally, the report provides a set of recommendations, which can strengthen immunity against any potential form of corruption in the context of the working relationship between the government and telecom service providers.

To compile this report, three telecom experts with extensive background in government policies were contracted to develop a set of papers, which were combined in this report.

Introduction

All Palestinians have the right to vital and modern telecom services. These services are indispensable for education, development of the full economic and social potential of Palestinian society, and connection between Palestinian communities around the world. Modern and affordable telecom services should be provided to every Palestinian, particularly in the exceptional circumstances of Palestine. As Palestinians are subject to extensive movement restrictions, there is a greater social, political and commercial need for advanced telecom services. A clearly defined and improved policy for the telecom sector will help to use telecom to support the political goal of Palestinian independence and statehood.

Thanks to highly skilled, well-educated Palestinian talents and capacities, the Palestinian people can be a key regional player in the information and communications technology (ICT) sector and in creating an advanced information community. These hopes are not constrained by the national borders of Palestine. Palestinians who live abroad outnumber those inside Historic Palestine. Hence, an advanced ICT sector will help to reconnect Palestinian skills and talents at home with those in the diaspora.

An increasing use of telecom services will enable companies to reduce costs, provide new services, access new markets, and become more competitive. These advantages have a wider impact on national economy. In a recent study, the World Bank examined the impact of various ICTs, including fixed broadband, on GDP growth in 120 developing and developed countries, a 10 percentage point increase in fixed broadband penetration would increase GDP growth by almost 1.3 percent in developing economies. This impact is greater in developing than in developed countries. Fixed telephone connections and mobile subscriptions have a similar impact, albeit to a lesser extent than fixed broadband penetration, on GDP.

Combined with developing the telecom sector, curbing unauthorised operations in Palestine generates short-term financial gains for the Palestinian National Authority (PNA). Additionally, new competitive licence fees and long-term financial benefits can be secured, driving GDP growth and collection of VAT and other taxes paid by the telecom sector and broader economy.

Effective regulation of this important sector ensures that consumers receive optimum service at minimum cost. It also ensures that most up-to-date technologies are applied in keeping pace with the rapid development of the telecom sector. Any delay in the enforcement of modern laws and regulations to regulate the sector will cause hefty losses to both individuals and wider society. This is particularly the case of late installation of modern telecom systems.

Like other sectors, Israeli restrictions have greatly contributed to the underdevelopment of the Palestinian telecom sector. Citing examples of these constraints, this reports presents documented requests submitted by the Palestinian Ministry of Telecommunications and Information Technology (MoTIT) to the Israeli occupying authorities. These requests have involved access to the frequency spectrum, imports of telecom equipment, and cessation of infringements on Palestinian telecom networks, including destruction of telecom infrastructure or flooding the Palestinian market with Israeli SIM cards.

The underdeveloped status of the Palestinian telecom sector is largely attributed to an inadequate legal framework over the past 25 years. In particular, transparent operations are mainly impeded by a slow process of making informed laws to regulate the telecom sector, resulting in a limited capacity to issue telecom licences in an economical and timely manner. The law making process has, therefore, failed to keep up with the rapid growth of the telecom sector both regionally and internationally. While citizens have had to bear high costs, the Palestinian economy has incurred higher cost due to inability to attract vibrant investments and create new employment opportunities to generations of Palestinian graduates.

The internal Palestinian political divide between the West Bank and Gaza Strip has further affected telecom services. For example, many telecom companies which have been licensed in the West Bank after the divide took place cannot operate in Gaza. If they wish to operate and provide internet services in Gaza, these companies have to obtain particular approvals and pay additional fees. The converse is also true. Although licences are issued to telecom service providers in Gaza, these are unable to move automatically into the West Bank market. The Gaza-based MoTIT has issued new licences, which are not available in the West Bank, including utility service infrastructure and broadband over power lines. From the perspective of the West Bank-based MoTIT, these licences cannot operate and initiate commercial activities in the West Bank because they have not fulfilled legal and regulatory processes.

PNA regulation of basic services, including telecom as a model

Many services, particularly traditional utility services, have structures where uncompetitive segments integrate vertically with a potentially competitive segments (i.e. components that are subject to market factors). Therefore, services like transportation (e.g. railways and main roads), post, wired and wireless communications, electricity, natural gas, water supply, education, health, and many other services or industries must be subject to independent regulation.

In this context, a fundamental problem follows from the fact that owner of the uncompetitive segment might have the motive and ability to constrain competition in the competitive segment. It can do so by controlling the terms and conditions, by which competitors can reach out to the uncompetitive segment.

Facilitating competition in the competitive segment is often instrumental. Introducing competition boosts efficiency and innovation in competitive service provision and contributes to diversifying services and products available to consumers. Hence, the regulator’s role should focus on governing the use of common (uncompetitive) segments, including price control. If prices are uncontrolled, the use of these segments often results in failure of the competitive market to provide optimum service at affordable prices. Noncompliance with the regulator’s structure can potentially result in a conflict of interest between governmental staff and telecom service providers. Management and supervision of these utility services require a special regulation, which spells out the roles of government and other stakeholders. Such a regulation will not lose sight of public accountability, namely, the State’s responsibility under its social contract with citizens.

A range of public tools and policies can be utilised to maintain and promote competition in complete segments, including:

- a) Regulating access to uncompetitive segments of the holding company.
- b) Splitting the ownership of competitive from uncompetitive segments.
- c) Introducing joint ownership of the uncompetitive segment by competitors in the competitive part.
- d) Placing the uncompetitive segment under control of an independent entity (“operational” split).
- e) Splitting the holding company into smaller segments to provide telecom exchange services (interconnection agreement).
- f) Avoid exploiting the dominant position to weaken competition.

Examples of services with competitive and uncompetitive segments

Sector	Usually uncompetitive services	Potentially competitive services
Telecom	Provide a telecom networks in local and rural areas	Long-distance calling; mobile phone; added value; local telecom networks for high-level business customers; particularly in highly populated areas; and local network services in areas with broadband networks (e.g. interactive TV and cables
Electricity	High-voltage electrical transmission (local distribution	Power generation, retail sale, or marketing
Post	Door-to-door delivery of time-insensitive mail in a residential area	Postal traffic – delivery of express mail or parcels; and mail delivery to senior clients, particularly in highly populated areas

Like electricity, post and water supply, the Israeli occupying authorities mostly control competitive services, including power generation, international postal traffic, and water sources, such as underground water. The Israeli occupying authorities are in control of international gateways, forcing Palestinian operators to contract Israeli or Israeli-licensed operators.

In spite of Israeli obstacles, many services need to be regulated by independent agencies. These services should be under control to prevent exploitation and encourage competition. For example, independent councils are not in place to regulate post, health care, education to telecom services. While the Palestine Monetary Authority regulates the banking sector, the Palestinian Electricity Regulatory Council and Palestinian Water Regulatory Council manage power and water supplies. These government agencies are affected by inadequate performance to varying degrees, however. A major root cause of this deficiency is an inactive Palestinian Legislative Council (PLC), which is duly elected and plays its oversight role on the executive performance.

In the telecom sector, the dominant operator may limit competition by restricting network and complicating interconnection processes due to a large number of subscribers to its network and fewer subscriptions to others. As a result, the dominant operator will be in a position to limit the growth of competitors by rejecting equitable terms and conditions of interconnection.

In certain circumstances, the regulator can resort to a structural split of the dominant company in order to promote competition in the telecom sector. This approach generally relies on one or more of the following methods:

- a) Splitting network operators into smaller networks, each connecting a group of subscribers (e.g. an existing dominant company is split into several local companies, each providing local services to a group of subscribers). Binding and transparent instructions are issued on access to the dominant provider's network.
- b) Splitting uncompetitive segments of network operators (particularly telecom service delivery to customers (last mile)) from competitive segments (e.g. city-switchboard operator services).
- c) Splitting network operators based on the technology used to connect subscribers (e.g. split of local copper telecom service providers from those using television cable networks or cellular phone services).

The PNA was partially successful in liberating the telecom market and promoting competition during the exclusive period of the dominant operator. However, a major success was scored after the exclusive operation of the Palestine Cellular Communications Company (JAWWAL) came to an end. A second operator, namely Wataniya Mobile (now Ooredoo Palestine) entered the mobile phone market. In relation to fixed line services, similar successes have not been registered for reasons that are further detailed below.

In most developing economies, regulation covers economic service sectors, whose activity relies on possessing part of infrastructure services, potentially resulting in monopoly or dominance over these services. These countries have regulated service sectors of the economy by creating economically, financially and politically independent agencies, representing a broad cross-section of society, including consumer protection societies and academic experts in finance and economy. In addition to regulating utility service providers, these agencies ensure an optimal implementation of the government policy through fair competition and equitable opportunities for private companies, both large and small.

Segregation of accounting duties and cost accounting in the telecom sector

In a liberated telecom market, dominant companies should allow competitors to access their networks in order to provide services to covered users.

In this case, the holding company might use its dominant position to seize control of ways and mechanisms to access its network in order to protect its own interests in the service market. For example, the company might attempt to allocate most costs to uncompetitive products or services, such as access to network, and minimise the cost of competitive services, including voice calls or internet services. Returns on these services can also be potentially misallocated.

This is why it is necessary that dominant operators are requested to produce organisational accounts, providing a detailed account of regulated and unregulated services. These accounts are developed on the basis of bylaws or guidelines submitted by the regulator. Within the company, costs and revenues are allocated in line with these bylaws, which help to compute cost-oriented tariffs and prevent unfair subsidies.

Corporate compliance with applicable rules should be verified through an independent audit, which is conducted either by or on behalf of the regulator. Any necessary corrections will be made before the regulator approves the accounting system. The approved system will lay the foundation for reporting, which the firm is committed to release on a periodic basis, decision making on regulated prices, and denial of subsidies channelled to competitive from uncompetitive services. The regulator needs to develop a set of guiding principles on organisational accounting and independent verification of compliance with these guidelines.

If segregation of accounting duties fails to improve competition and prevent abuse of dominance, a functional split can be imposed on the dominant company to ensure equitable competition.

Government policy of managing privatised telecom services

Over the past decades, the Palestinian telecom sector has witnessed many transformations. Before Israel occupied the West Bank and Gaza Strip in 1967, the Palestinian telecom sector was managed and regulated by the Jordanian Ministry of Telecommunications in the West Bank and the Egyptian Administration in Gaza. After 1967, telecom was managed by the Israeli occupying authorities. In the West Bank and Gaza, the Palestinian telephone network was operated by Bezeq, Israel's telecom company. While Bezeq processed international telecom, telephone calls between the West Bank and Gaza were treated as national calls.

Until the PNA was established following the 1994 Oslo Accords, the Israeli occupying authorities did not invest in or develop the Palestinian telecom sector. Approximately 30,000 fixed lines were in operation in the West Bank and Gaza. Applications for installing fixed telephone lines were on a waiting list of more than 10 years.

After it settled in the West Bank and Gaza, the PNA established and tasked the MoTIT (formerly known as the Ministry of Post and Telecommunications) to regulate the telecom sector, operate networks, and manage post service. Towards 15 November 1996, the ministry rehabilitated and developed existing telecom networks and installed new telephone lines. A total of 80,000 fixed lines were in operation.

Before the telecom sector had been controlled and managed by Palestinians, the Palestinian Liberation Organisation (PLO) entered into negotiations with the private sector to assign telecom sector management to Palestinian investors. At the time, the Council of Ministers decided to revoke the contract, which had been signed in Tunisia, and to reassign the Minister of Telecommunications to outline conditions for obtaining a licence to establish fixed line and mobile phone networks. In 1995, the minister signed an agreement with Palestine Development and Investment, Ltd. (PADICO HOLDING). The agreement laid out the licence conditions and approved incorporation of a Palestinian telecom company, which would be authorised to put into operation fixed line and mobile telephone networks in Palestine. Following set up, the Palestine Telecommunications Company (PALTEL) signed a memorandum of understanding with the minister, authorising the use, investment, and operation of all assets and equipment owned by the MoTIT. On 15 November 1996, the PNA issued a licence, authorising PALTEL to install, manage and

operate local and international fix line and mobile phone networks for a period of 20 years.

Legal and technical agreements and annexes have not been made publicly available. After it had been elected at the time, the PLC requested that it access the agreement. Significant information was not published with a view to stating the amount transferred to the Public Treasury in return for the concession agreement and use of public assets. Both the PALTEL licence and the Telecom Law No. 3 of 1996 have been controversial, arising public debate over relevant interpretations, powers vested in PALTEL, and role of oversight bodies in the telecom sector. This situation was further compounded by the Palestinian-Israeli agreements in relation to this sector. In particular, Article 36 on Telecommunications of Annex III to the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip deprives the PNA, represented by the MoTIT, of the right to control some ground network components, particularly international gateways and control over the mobile phone frequency spectrum. Dispossessing Palestinians of this right has had a negative bearing on the PNA ability to regulate this vital sector of Palestinian economy.

Israel is in full control of technical components of the Palestinian telecom sector, including digitisation, international gateway, and frequency spectrum. As a result, the margin controlled by the PNA and its national institutions is so limited.

Legislative framework of the telecom sector

Telecom Law No. 3 of 1996

At the time of enactment, the PLC was not yet established so as to approve the Telecom Law No. 3 of 1996. The PLC was elected on 7 March 1996.

Article 5 of the Telecom Law provides that “[t]he Ministry of Post and Telecommunications shall have the duty of setting up, running and operating telecommunications networks in the Palestinian territory and connecting them with the international atmosphere within the Authority’s general political and economic framework.” Article 3 of the Law entitles the Council of Ministers to grant the right of concession or investment in one service or more in the telecommunications sector. According to the Law, the ministry carries out the following duties:

- a) Prepare the PNA telecom general policy and submit it to the Council of Ministers for approval and improvement so as to extend the area covered by telecom networks to meet economic and social development needs.
- b) Elaborate plans for the promotion of investment in the telecom sector and create a competitive environment among service suppliers to ensure cost-effective telecommunications services;
- c) Follow up with the relevant authorities’ fulfilment of the PNA international commitments in the telecom sectors;
- d) Uphold the PNA interests in other countries and within regional and international organisations and relevant telecom federations and committees. It shall equally represent the PNA, in conjunction with the competent ministries and departments, before such regulatory agencies;
- e) Regulate the Authority telecom sector in such a way as to keep up with telecommunications technology development;
- f) Raise awareness of telecom and work towards providing various types of telecom services; and
- g) Protect telecom beneficiaries’ interests, monitor the performance of licensed telecom service providers, and take the measures necessary to bind those suppliers to abide by the license terms, including the service quality and its improvement.

Among other things, the Telecom Law regulates the following:

- a) Conditions for setting up private telecom networks, use of scarce resources, including frequencies, numbers, right of access, mechanisms for issuing licences, and conditions, obligations, renewal, revocation and adjustment of issued licences.
- b) Technical specifications to be fulfilled by telecom devices and mechanism for giving informed approvals of telecom devices.
- c) Terms of subscriber contracts, confidential data, and quality of service provision.
- d) Penalties on telecom offences.
- e) Control over the telecom sector. Most notably, the Law provides extensive control powers. It vests the MoTIT with the right to administrative, technical and financial control over licensees. The ministry staff are vested with judicial duties, allowing them to conduct physical searches of licensee offices.

Shortfalls of the Telecom Law

1. Although it is mentioned three times, the Law does not define concession or concession conditions in the telecom sector neither in the article on definitions nor in any other article.
2. The Law does not set pricing guidelines for telecom services.
3. The Law does not provide for mobile number portability or collection of fees for mobile number portability. This is an indispensably rare resource of the telecom sector.
4. The Law does not impose any fines on violators of the Law or licence agreements. It only provides for revoking the licence after a one-month notice addressed in the event of violation.
5. The Law entitles the minister to issue forth the regulations needed to enforce the provisions of the Law without approval by the Council of Ministers. According to Article 103 of the Law, “[t]he Minister shall issue forth the regulations necessary to implement the provisions of this Law.” Later, the Basic Law was promulgated, prescribing that regulations are duly promulgated by the Council of Ministers.

Regulations, instructions and decisions issued in reference of the 1996 Telecom Law

1. Decision of the Minister of Post and Telecommunications No. 1 of 1996 concerning the Regulation on Telecommunications.
2. Decision of the Council of Ministers No. 81 of 2007 concerning the Approval of Instructions on Interconnection.
3. Instructions No. 1 of 2011 on the Protection of Competition in the Telecommunications Sector.
4. Instructions No. 1 of 2009 on the Registration of the Data of Subscribers to Cellular Telecommunications Services.
5. Law by Decree No. 15 of 2009 on the Palestinian Telecommunications Regulatory Commission.
6. Decision of the Council of Ministers No. 6 of 2018 on the Regulation of a Package of Incentives for Enterprises in the Information and Communications Sector.

7. Several other ministerial decisions were issued on approval of telecom service prices and terms of service provision.

1. Decision of the Minister of Post and Telecommunications No. 1 of 1996 concerning the Regulation on Telecommunications

On 21 July 1995, this Regulation was issued forth in reference of Article 103 of the 1996 Telecom Law, which entitles the minister to issue forth the regulations needed to enforce the provisions of the Law. The Regulation was stillborn, however; it has never been put into effect or enforced. It has not been approved by the Council of Ministers, particularly after the Basic Law was promulgated.

Most importantly, entitled “Provisions on Granting Concession to Telecommunications”, Title 1 of the Regulation construes concession as a usufruct for a maximum period of 20 years. When this period expires, all fixed installations established by the concessionaire, including ground or above-ground telecom stations or phone networks, will devolve to the ministry without any consideration or compensation.

Instead of proposing regulations to be issued by the Council of Ministers for enforcement of the Telecom Law, the ministry just issued forth ministerial instructions and decisions.

2. Decision of the Council of Ministers No. 81 of 2007 concerning the Approval of Instructions on Interconnection

On 15 November 2006, the exclusive period granted to PALTEL to provide fixed line connections expired. With respect to mobile phone services, this period would end on the expiration of five years or with the number of JAWWAL subscribers reaching up to 120,000. Additionally, the Council of Ministers issued a decision on opening the telecom market to competition and engaging a second mobile network operator. Against this background, instructions were needed to regulate interconnections between operator networks. Accordingly, subscribers could access services provided by the other operator. In 2007, these Instructions were approved by the Council of Ministers with the aim of:

1. Making clear interconnection arrangements and service provision among licensees.
2. Making clear mechanisms for resolving disputes arising from interconnection.
3. Emphasising that all licensees are treated impartially and without discrimination.
4. Encouraging good practice by licensees, developing and providing high-quality telecom services to subscribers, and ensuring technical and economic efficiency.
5. Clearly articulating the MoTIT policy on interconnection between the networks operating in Palestine.
6. Encouraging licensees to participate both on site and in infrastructure.

The 2007 Instructions also seek to bind licensees to offer and deliver interconnection services in line with adequate terms and conditions. These will provide the grounds for a reasonable interconnection agreement based on mutual negotiations between interconnected licensees.

The basic thrust of these Instructions is to put forward technical and commercial standards to be applied by the dominant licensee in the context of preparing the Reference Interconnect Offer (RIO). This document defines a number of technical, commercial and standard terms, by which the dominant licensee offers interconnection services to other licensees. The RIO is based on the dominant licensee's offer of contracting other parties through an interconnection agreement.

The Instructions stipulate that interconnection terms and conditions do not discriminate between licensees, dominant licensee's operations, and other licensees' operations. Interconnection fees should be reasonable, transparent, and cost-based. The Instructions also show the baseline of interconnection fees.

The Instructions provide technical details and commercial aspects, including cost-based pricing and contractual terms to conclude interconnection agreements between licensees. They also provide a detailed account of dispute resolution mechanisms, ensuring that service provision to subscribers is not affected by any dispute or conflict between licensees.

From time to time, the ministry is allowed to revise the Instructions, which may need to be upgraded to keep pace with technological advancements in telecom network and service industry.

Of particular note, in addition to interconnecting operator networks, the Instructions introduces Bit Stream Access (BSA), which disconnects internet from asymmetric digital subscriber line (ADSL) services in the local access network. Consequently, more than 10 companies were incorporated to provide BSA service in the West Bank and Gaza.

3. Instructions No. 1 of 2011 on the Protection of Competition in the Telecommunications Sector

In the context of opening the market to competition and allowing access to new service operators and providers into the telecom market, there has been a dire need for instructions to protect competition against any competition-harming practices. In particular, these Instructions prevent dominant service providers from exploiting their incumbent position to harm new service providers. The Instructions have been in force since 2011.

These Instructions are a critical component of the subsequent regulation needed to govern and protect competition. To this end, the Instructions provide for a reform mechanism, which the MoTIT will apply against violations committed by any licensees, who harm or undermine competition in the market. Penalties range from warning, termination of the harmful act, fines, to compensation to the parties affected by such an act.

The Instructions on the Protection of Competition outline the acts which compromise or weaken competition and jeopardise new service providers or subscribers to telecom services. The Instructions also authorise the MoTIT to include any new acts that harm competition. Harmful acts include:

1. **Predatory pricing:** Selling services at prices below cost with the intention of driving new service providers out of the market and then raising the prices once again.
2. **Price discrimination:** Selling the same service to customers at different prices or under different conditions.
3. **Service bundling:** Forcing a subscriber or service provider to buy a service bundle, which they do not wish to buy, so that they get the service required. Bundling harms competition if bundled services are not provided to subscribers separately by other service providers.
4. **Price squeeze:** The dominant licensee reduces retail prices, but raises the rate of interconnection services with the aim of weakening competition and putting competitors out of the market.
5. **Refusal to supply and refusal to deal:** Refraining from providing a necessary service to, or refusing to deal with, another competitive service provider.
6. **Complicity:** Including agreements between licensees or competitors, such as price fixing agreements, bid rigging, and geographic market segmentation among competitors.

7. Uncompetitive mergers, acquisitions and strategic consortiums: The impact of these acts is determined by the regulator based on market surveys, which explore relevant effects on competition in telecom markets.

Transparent enforcement of these Instructions will support the regulator's oversight role and improve competition in telecom markets. A competition and anti-trust law will further corroborate these Instructions as well as the regulation process.

4. Instructions No. 1 of 2009 on the Registration of the Data of Subscribers to Cellular Telecommunications Services

These Instructions were issued on 18 October 2009. At the time a second mobile network operator entered the market, a large number of SIM cards were widely in circulation. However, SIM card owners' data were not registered, resulting in countless domestic disturbance and threat calls. It was difficult for competent authorities to track down these calls. Against this backdrop, these Instructions require that mobile operators:

1. Register minimum data of subscribers to cellular telecom services and take a copy of subscribers' personal identification documents (ID cards).
2. Minimum data to be registered include the subscriber's full name, ID card or passport number, place of residence, workplace, and data and place of birth.
3. At their own discretion, licensees may register other subscriber information in addition to minimum data.
4. Licensees must validate and register manually subscriber data until the MoTIT approves any other proposed electronic authentication techniques.

The Instructions also provide that licensees make all reasonable efforts to ensure the privacy and confidentiality of subscriber data, which are accessed for the purposes of implementing the Instructions. Any subscriber information can only be disclosed in accordance with applicable regulations.

In addition, licensees should keep all subscriber data and information in registers in safe places throughout the period, during which subscriber SIM cards are active. Subscriber SIM card records may only be damaged with the MoTIT approval.

5. Decision of the Council of Ministers No. 6 of 2018 on the Regulation of a Package of Incentives for Enterprises in the Information and Communications Sector

The Council of Ministers granted a package of incentives to ICT enterprises, including income tax exemption for a period of four years, as well as customs incentives for equipment and production inputs. Investors are also encouraged to contribute to financing ICT research and development initiatives. These contributions will be deducted from investors' taxable profits. All incentives are associated with the volume of manpower to be employed or retained during the benefit period.

However, these incentives might not be sufficient in light of investment risks in Palestine. The exemption period should be more than four years, particularly for ICT incubators and software. The telecom sector should also benefit from these incentives. Throughout Palestinian embassies abroad, the government should help to promote products of Palestinian telecom companies and facilitate participation in international expos and training centres.

6. Law by Decree No. 15 of 2009 on the Palestinian Telecommunications Regulatory Commission

As mentioned above, the Telecom Law No. 3 of 1996 was incompatible with recent advances in the telecom sector regulation in view of significant and rapid ICT developments. It was, therefore, necessary to enact a new telecom law, which fulfils modern regulatory needs and creates a financially and administratively independent regulatory agency. This has been reflected by the establishment of an independent Palestinian Telecommunications Regulatory Commission (PTRC). It is noted that most countries have been ahead of Palestine by over 20 years in this practice.

The MoTIT started developing a PTRC Law well before 2003. Through the World Bank, the ministry recruited Gilbert and Tobin, an international consulting company, to review the PTRC Law. To further deliberate the draft regulation, the MoTIT organised several workshops, which brought together private sector firms, academics, and the Bureau of Legal Counsel and Legislation in the West Bank and Gaza. In 2005, the draft Law was presented to the first PLC and rolled out to PNA ministries for comments. Having been approved in a PLC first reading, some amendments to the Law were requested. However, it was not approved due to the internal Palestinian political divide. Finally, the enactment was promulgated in the form of a Law by Decree in 2009.

As the PTRC Law by Decree has entered into effect, telecom sector regulation shifts from the MoTIT to the PTRC. The MoTIT is competent of telecom policy making and regulation of the Palestinian post and ICT sectors.

The Law by Decree comprises two main components: (1) establishment of the PTRC, and (2) telecom regulation.

7. Law by Decree No. 15 of 2009 on Establishment of the Telecommunications Regulatory Commission

This Law by Decree regulates and provides for establishing the PTRC. In addition to the PTRC Chairman, a board of directors of the Commission consists of six members with experience and competence in the telecom sector. The Law by Decree also outlines the conditions to be met by board members, who are appointed by the President of the State upon a recommendation from the Council of Ministers. An executive director is also appointed by the President as recommended by the PTRC board. The board's term is four years. To be issued forth by the Council of Ministers, a regulation sets conditions of the expiry of the term of membership and determines the salaries of the PTRC board members and staff. While outlining the Commission's financial resources, the Law by Decree also defines the tasks and powers of the PTRC as well as of the PTRC board, chairman, executive director.

The Law by Decree identifies the MoTIT functions and powers after the PTRC has been incorporated. Most notably, the ministry develops the telecom policy in Palestine.

The Law by Decree addresses and rectifies many shortfalls of the Telecom Law No. 3 of 1996. Of particular importance, the Law by Decree provides for:

- a) Regulating competition. Entitling the PTRC to issue instructions for the protection of competition, the Law by Decree outlines many competition-harming practices.
- b) Vesting the PTRC with the right to amend the regulation on licences and selecting the appropriate licensing system for the Palestinian market based on public consultations.
- c) Setting the conditions and criteria for licensing telecom networks and services, as well as technical terms and criteria of telecom networks and quality services.

- d) Regulating access to telecom networks, conditions of interconnection, and factors of determining dominance in the telecom markets.
- e) Developing and implementing technical principles of health and environmental safety to be applicable to the installation and operation of telecom networks.
- f) Monitoring telecom sector performance and operation, ensuring proper decision making and processes, and imposing penalties on noncompliance with the provisions of the Law by Decree. To maintain performance bond requirements, the Law by Decree also seeks to prevent monopoly, speculations and encroachments within the telecom sector.
- g) Contracting scientific institutions, consultants, experts and other specialists to provide services and studies on the PTRC goals and objectives.
- h) Establishing an inclusive service fund for the purposes of equitable service delivery to users.
- i) Publishing telecom service cost-based pricing guidelines.

Impact of financial and administrative independence on the PTRC functions

PTRC financial and administrative independence wards off governmental bureaucracy, particularly in the rapidly developing telecom sector, which needs prompt decision making. Independence helps the PTRC to access required international consultancies in a timely fashion and without having to wait for government red tape, which would take years to provide needed budget allocations. An independent financial apparatus also allows the PTRC to recruit highly qualified and experienced staff, remotely from the government payroll procedure. This assists the PTRC to maintain highly efficient performance and timely decision making.

Controversy over the PTRC Law by Decree No. 15 of 2009

1. The Law by Decree is blamed for a split regulation of telecom and ICT sectors. While telecom regulation is assigned to the PTRC, ICT regulation is a responsibility of the MoTIT. In view of the convergence between both sector, some are of the view that both telecom and ICT sectors should be regulated by a single agency. By contrast, many believe that ICT is beyond the mandate of the PTRC regulatory functions. ICT addresses content and software that have nothing to do with telecom. As far as the PTRC is concerned, this is a convergence of networks and does not detract from the Commission's mandate.
2. Some provisions of the Law by Decree provide an extensive set of details. These should have been left for regulations so that they do not become an impediment to regulatory and technological advancement.
3. Some licensees are concerned that the Law by Decree runs counter to the rights granted to them under licence agreements.

Suspension of the PTRC Law by Decree No. 15 of 2009

After it was promulgated, the Council of Ministers initiated legal procedures for enforcing the PTRC Law by Decree No. 15 of 2009 and nominating the PTRC board members. Suddenly, however, formation of the PTRC board was suspended without stating reasons.

Draft Telecommunications Law by Decree of 2018, presented at the Council of Ministers' Session No. 237 on 15 January 2019

In spite of some amendments and new provisions, this Draft Law by Decree is not substantially different from the PTRC Law by Decree No. 15 of 2009. Most notably, this Draft Law by Decree tasks the PTRC with regulating the ICT sector as a whole, rather than telecom component alone.

Still publicly debated, the 2018 Draft Law by Decree is subject to amendment, addition and deletion. More importantly, several stakeholders do not favour that an independent regulatory agency be established. Others do not want a modern, clear and robust telecom law for the following reasons:

1. The MoTIT is not rigorously pursuing approval of the law, which needs to be followed up with relevant authorities.
2. Some licensees prefer a weak regulatory framework, including laws, regulations and instructions, to a solid law that ensures a more effective regulation.
3. Conflict of interest within the sector drives each licensee to pursue their own interests under the law, while at the same time declining anything else.
4. Distrust between licensees and the PTRC renders agreement or consensus over the provisions of the law untenable. For example, if the law provides that the PTRC sets instructions on service fees, many private providers refuse and demand safeguards that they would not be harmed by these directives.

This is why an active PLC is all the more important. The PLC passes laws that ensure balance between conflicting parties and put citizens first.

Until a new PLC is elected, the following process can be in place:

1. In the first place, the government must demonstrate the will to approve the law. Government follow-up will be maintained until the law is enacted. It is not credible that the law is submitted to the Council of Ministers, and then presented for consultations or amendment. As a result of government reshuffle or replacement of the minister, the law was left without follow up for five years. It was then resubmitted to the Council of Minister by another minister.
2. A clear and time-bound mechanism will be set up for public consultations. Accordingly,
 - a. The MoTIT organises and invites to workshops all stakeholders, including licensees, academics and specialised civil society actors. In these workshops, specialists in telecom and legal matters explain the provisions of the law.
 - b. A specific period of time is allowed for stakeholders to send their comments on the provisions of the law.
 - c. A small drafting committee is established, including representatives of relevant sectors and a staff member of the Bureau of Legal Counsel and Legislation or Ministry of Justice. The MoTIT chairs this committee.
 - d. The committee holds hearing sessions with stakeholders, who sent their comments on the law. The committee discusses these comments following a specific timetable, which also determines the date for completion of the committee tasks.
 - e. The MoTIT provides a written reply on stakeholder comments, stating approval or refusal of these comments.
 - f. Based on relevant reasoning, the MoTIT approves any amendments, additions or deletions and prepares the final draft of the law. The ministry's decision is final. The law is then resubmitted to the Council of Ministers.

Presidential Telecommunications Committee

In 2008, the President established a Presidential Telecom Committee to put in order and regulate the working relationship with PALTEL. Membership on the committee included the Telecom Minister (as chairman), Minister of Transportation, MoTIT Undersecretary, Advisors to the President, Legal Advisor to the Ministry of Transportation, an Legal Advisor to the President. The committee reached the conclusion that a new telecom law should be enacted. An independent telecom regulatory agency also needs to be in place.

PLC

At the request of the Palestinian Information Technology Association of Companies (PITA), the PLC Economic Committee handled the PITA complaints against the MoTIT, which imposed a new licence and fees on Palestinian internet service providers. The MoTIT also permitted a specified grace period for these companies to regularise their status. The committee recommended that the MoTIT procedures be suspended and highlighted the need for establishing an independent board for regulation of the telecom sector.

In February 2006, the MoTIT presented the draft PTRC law to the first session of the PLC. For unknown reasons, however, the PLC removed the draft law from its agenda.

The Ministry of National Economy (MoNE) also intervened in the telecom sector. In 2006, the MoNE proposed a project for Zain Kuwait to purchase a share in PALTEL.

Institutional framework of telecom regulators

According to the Telecom Law, the responsibility for regulating the Palestinian telecom sector rests with the MoTIT. However, powers overlap between the MoTIT and other line ministries and non-ministerial government bodies. For example, following privatisation, the PALTEL licence agreement was signed by the Minister of Finance and approved by the President. The Advisor to the President negotiated the privatisation and licence procedures. Also, radio and television broadcasting licences require the approval of three line ministries, namely, the MoTIT, Ministry of Interior, and Ministry of Culture. Fees and returns accruing from operator licences are paid directly to the Ministry of Finance (MoF). According to the Telecom Law, these charges should be paid to the MoTIT, which deposits them in the MoF account.

Implementation of telecom projects also requires approvals, other than by the MoTIT. This requirement is articulated by the licence agreement, which provides for compliance with other relevant laws. In practice, licensees face key challenges in telecom infrastructure construction by municipalities and other government bodies. In addition to different procedures, fees levied on required permits or licences sometimes vary. Some municipalities charge fees on the installation of mobile communication towers, but others do not. This is also the case of permits and licences of ground and wireless networks. This is indicative of inadequate coordination between relevant ministries and government bodies in managing the telecom sector and services.

International experience in telecom sector management demonstrates that independent telecom regulatory agencies need to be created. This is confirmed by the International Telecommunication Union (ITU), World Bank, Organisation for Economic Co-operation and Development (OECD), World Trade Organisation, and many other international actors. Importantly, regulation needs to be separated into an agency independently of policy making and planning. The latter tasks remain within the purview of the government, represented by specialised line ministries. Titled The Role of Competition Policy in

Regulatory Reform, an OECD report highlights the potential role of independent regulatory authorities:

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

According to the PTRC Law by Decree, the PTRC was supposed to be established in 2009. However, it has not so far seen light of the day or activated. The PTRC board was not set up, nor have any technical, administrative or financial decisions or regulations been issued forth to govern and enable functions of the Commission. The main problem lies in failure to establish the PTRC and to put in place needed decisions and regulations. Mainly through the MoTIT, the government continues to supervise and control companies, which provide telecom services to citizens. These large companies have been granted telecom concession licences. Most notably, since 1996, PALTEL has been providing fixed line and mobile phone (JAWWAL) services. PALTEL's licence was renewed in 2017. Wataniya Mobile (now Ooredoo Palestine) has been providing cellular phone services since 2009.

Several years after the PTRC Law by Decree has been promulgated, the PTRC has not been established on the ground. This is apparently due to the following reasons:

- Internal political reasons, as indicated by the MoTIT Information, Communication Technology Sector Strategy 2014-2016.¹
- Disputes over the PTRC structure between centres of influence on presidential decisions have disrupted establishment of the Commission and, by consequence, enforcement of the relevant Law by Decree.²
- Disagreement over the candidates nominated by the Council of Ministers to form the PTRC board of directors.³
- Some attribute the reason to bureaucratic procedures, political conditions, and lack of clear grounds for detaching the telecom sector from the political context.⁴
- Others contend that the PTRC can only operate in a liberated market (open to competition). It cannot perform effective functions without liberating the ICT market.⁵

The prima facie grounds mentioned above might be admitted at an early stage of enactment of the PTRC Law by Decree. However, they do not in any way justify the government's failure to address and remove obstacles to the ICT sector development. An effective and independent regulatory agency should be in place to enhance this sector and protect telecom service users. Telecom is now an indispensable service to everyone. For years, the government has not addressed legal, political and economic barriers to establish the PTRC. This indicates the absence of a real will to create and introduce the PTRC into the institutional structure of the telecom sector, maintaining the status quo in a significantly accelerating field. **The question remains: Whose interest does failure to establish the PTRC until this day serve?**⁶

1 MoTIT Information, Communication Technology Sector Strategy 2014-2016, <http://www.mtit.pna.ps/ar/cp/plugins/spaw/uploads/files/2014.pdf> (Arabic) (last accessed, 31 May 2017).

2 Al-Hadath, Open Networks: Right of Way and Right of Access, <https://bit.ly/2tLQk4L> (Arabic) (last accessed 22 May 2017).

3 Al-Iqtisadi, http://www.aliqtisadi.ps/ar_page.php?id=10620fy1073679Y10620f (Arabic) (last accessed 23 May 2017).

4 Tucker, Tremaine (2012). The ICT Sector in Palestine: Current State and Potentials, Palestine Economic Policy Research Institute, p. 31, <https://www.mas.ps/files/server/20141911100654-1.pdf>

5 http://www.alhaya.ps/arch_page.php?nid=68887 (Arabic) (last accessed 23 May 2017).

6 Al-Barghouthi, Mu'in (2017). Governance in the Public Service: Electricity, Water and Telecommunication Monitoring Councils. Ramallah: AMAN.

Issues to be resolved

1. Mobile number portability

This regulatory process permits portability of mobile phone numbers. It allows customers to keep their mobile phone numbers when they change the service provider.

Mobile number portability (MNP) promotes consumer choices and supports effective competition by removing barriers to switching between service providers. A subscriber's ability to keep their mobile phone number may affect their decisions to change service providers. Having implemented all necessary regulatory procedures and steps, the MoTIT has recently made a decision to apply MNP within three months. The ministry informed both operators (JAWWAL and Ooredoo Palestine) of its decision and requested that both service providers make all necessary technical arrangements for implementation.

2. Fibre optic networks of electricity companies

In March 2011, the MoTIT granted a conditional permit to the Jerusalem District Electricity Company (JDECO) (and later to other electricity companies) to install fibre optic networks. JDECO is the largest energy supplier to its areas of concessions, namely, Jerusalem, Ramallah, Bethlehem and Jericho. To improve the electricity supply, JDECO was permitted to establish a fibre optic network and create its own telecom company by expanding command and control of this network. Based on a recommendation to the Council of Ministers, the permit stipulated that JDECO receive a licence from the MoTIT to provide telecom services through the fibre optic network. JDECO is required to fulfil licence conditions, mainly, incorporating a telecom company that is structurally separate from JDECO.

Using its fibre optics, JDECO provides service to as many as 225,000 subscribers. JDECO is the only company, which has a contiguous fibre optic network that can be effectively used by internet providers.

JDECO installs a fibre optic network across the electricity grid to manage, control and regulate electricity distribution throughout the JDECO concession areas. Fibre optic cables are used for purposes other than direct telecom; they are utilised to manage, monitor and control electricity distribution. Therefore, the MoTIT found it necessary to allow licensed telecom companies to use the right of access to the JDECO fibre optics after fulfilling required licensing procedures. Accordingly, the MoTIT gave JDECO a temporary permit until such time a telecom company is incorporated, including installation of infrastructure for all electricity companies operating in the PNA territory.

To this end, the MoTIT designed a licence for providing infrastructure utilities. According to this agreement, a licensee is authorised to establish, maintain and manage telecom infrastructure utilities, including any facility or base component that can be used to build physical infrastructure of the telecom sector. The process involves construction, maintenance and management of multimedia telecom networks and communication towers to provide connection, access and/or telecom utility services to other licensees. A licensee can also provide wholesale service to others. Later, JDECO submitted a licence application to the MoTIT to use its fibre optic network to provide infrastructure services. The JDECO application, which was referred to the Council of Ministers, is still pending, however. Operator licensing falls within the purview of the Council of Ministers. The MoTIT prevented internet providers from using the network until legal procedures for JDECO licensing are complete. Disputes between the former Prime Minister and JDECO Board chairman disrupted the licensing of a fibre optic company to use the infrastructure of electricity companies.

3. Authorisation vs. licensing

In addition to a mature and complete legislative framework, independent law enforcement reflects positively on parties to transparent and clear licence agreements. Developed countries, including EU member states, apply an authorisation, rather than a licensing, system in the majority of telecom services. Sometime, authorisation only requires that a licensee be registered with the regulatory agency. No licence agreement with dozens of pages is needed. A licensee has to review and apply relevant laws and regulations by themselves. The regulatory authority monitors the application of these enactments. In this case, regulatory intervention is minimal. Licensing requirements are clear and encourage investment. These countries do not set a limited or specific number for licensees. On the other hand, the legislative framework is immature and short in many third world countries, including Palestine. Here, the applicable system involves individual and class licences, each sometime comprising a hundred pages. To make clear parties' rights and obligations and protect consumer rights, the regulatory agency is obliged to delve into all details, not provided by relevant laws and regulations. Additionally, these countries often limit the number of licensees in the market for each service. While protecting existing investments, the countries in question are concerned that the market would not accommodate a large number of licensees, potentially resulting in market speculations that negatively affect all licence holders. In the Palestinian context, it is so difficult to introduce an extensive number of licensees, particular in the telecom sector which needs a frequency spectrum or digits. Therefore, due to unavailable frequencies, the Palestinian regulator cannot bring in a third mobile operator or operate 4G or 5G mobile technologies. The frequency spectrum is under control of Israel, not the Palestinian regulator. This specific situation of Palestine also reflects on all telecom services as a result of the Israeli restrictions and investment risks, which have been on the rise since the detestable internal Palestinian political divide took place. For example, while 3G mobile service is operable in the West Bank, Israel does not allow the provision of this service in Gaza.

4. Internet exchange point

An internet exchange point (IX) is the physical infrastructure through which users can exchange internet traffic between their local networks. IX users can enhance the frequency spectrum and avoid additional costs due to the exchange of local data. The IX is, therefore, a key factor to developing local internet traffic exchange. Users in the same city can exchange local internet traffic without having to be delivered via their upstream transit providers in Paris, London, or even New York. IX improves the quality of internet traffic exchange in its local area.

One of the benefits that can be derived from IX is that it increases the number of potential service providers, consequently motivating local supply and competition. IX also maintains the high number of internet service providers.

This internet infrastructure attracts foreign companies (in high-tech and network technology industries) that use IX. It also attracts companies that seek to benefit from IX to purchase bandwidth.

IX helps IT start-ups to develop working relationships with research and training organisations.

In Palestine, some internet service providers established IX. The Palestine Internet Exchange Point (PIX) is run independently and impartially. However, PIX was disrupted by large internet service providers, however. As a regulator, the MoTIT could not force these companies to join PIX, rendering it irrelevant. Due to raising internet cost, small companies could not compete with dominant providers.

Issuance of telecom, internet and mobile phone licences

1. Broadband licence

The MoTIT has requested that potential broadband investors submit applications for licence qualification in line with publicly announced qualification criteria. These mainly assess technical and financial capacities of the applicants. Having been qualified, eight companies received broadband licences on 31 December 2007.

Broadband licence fees were set by the Council of Ministers at JD 20,000 for the three-year term of the licence.

Distinguished by the breadth of its scope, the broadband licence allows licensees to install all types of wired and wireless networks and deliver all broadband and added services directly to subscribers, with the exception of voice calls and international gateway services. This broad scope of the licence allows competition between networks and contributes to developing telecom services across Palestine. At the time it was introduced, the licence stipulated the coverage of at least two governorates by broadband networks. Hence, World Bank experts commended the licence, which outpaced some licences issued in Europe. However, more than 10 years later, the MoTIT goal of building a telecom network and infrastructure did not materialise. During this time, licensees only provided internet services via BSA or free local 2.4 MHz and 5.8MHz Wi-Fi.

In its scope, the broadband licence is equivalent to PALTEL's, with the exception of voice call services. Licence fees (currently considered low) were estimated at the time on the basis of encouraging companies to invest in the telecom infrastructure. Most revenues generate from voice call services. However, due to IT breakthroughs, mobile phone services now give subscribers unlimited local voice minutes at nominal prices. These also include over-the-top (OTT) applications, such as Viber and WhatsApp which are used in international calls free of charge. Revenues made from these calls have been exterminated. Hence, returns on voice call service are negligible. For the same reason, most companies that used to operate the Voice Over Internet Protocol (VOIP) service have been driven out of the market. Hence, based on analysis of the Palestinian telecom market, an ITU expert recommended that the amount of the licence fee be raised.

Low fees and broad coverage of the broadband licence have encouraged many licensees to keep their licence despite the fact they do not use it. Some even tried to sell and commercialise their licence.

Reasons for reluctance to use the broadband licence to put in place telecom infrastructure and default of licensees include:

1. Inadequate capital invested by broadband companies.
2. High cost of investment in fixed broadband networks.
3. Investment risks in Palestine, including ban on excavation works in Area C, denial of entry of telecom equipment and devices, and inadequate frequency spectrum for wireless networks.
4. Weak return on investment against the invested capital, particularly during the start-up phase. As a result, while three companies were off the market, another two did not provide broadband services or renewed their broadband licences.
5. Inability to compete with PALTEL.
6. Mobile phone companies' competition with broadband services, especially when 4G or 5G mobile technologies are provided by these companies.

2. VOIP licence

Using the same mechanism, the VOIP licence was issued in conjunction with the broadband licence with a view to launching competition in international telecom services. The VOIP licence achieved the goal for which it was granted. The prices of international telecom services largely dropped. However, IT advancements in mobile phone apps and smart devices have made international calls free of charge and unbilled. Consequently, the majority of VOIP companies were driven out of the telecom market.

3. BSA licence

BSA is the first step towards local loop unbundling. By separating internet access from ADSL, internet service is provided through a BSA provider. On the other hand, the fixed line network operator provides the ADSL service.

In mid-2010, following agreement on the technical model of the BSA service with PALTEL, the MoTIT announced the qualification of BSA service providers. In addition to the broadband companies authorised to provide BSA service, almost eight companies were licensed. These licensees launched their commercial services on 10 October 2010.

The BSA licence has contributed to creating real competition in internet service provision in terms of both speed and price. At first, the minimum broadband speed was 0.5 Mbps at ADSL price of NIS 54, equivalent to that of 4 Mbps now. At the time, the maximum ADSL speed was 4 Mbps. Currently, ADSL speed is up to 100 Mbps. This is the case of internet prices and broadband speeds.

Initially, BSA companies were challenged by high prices of the internet service purchased from PALTEL or broadband companies. Later, a ministerial decision was issued, allowing BSA companies to purchase internet from outside the Palestinian market in order to provide service to relevant subscribers.

4. Other class licenses

The MoTIT issues other class licences, including added services, Wi-Fi, and trade in telecom equipment.

Unified licence

ICT and telecom advancements have reflected on service provision in both sectors. Multiple new services have emerged, each requiring service regulation and licensing, thus increasing the number of licences issued by the regulatory agency. As a result, service providers are requested to obtain more than one licence to provide services, entailing an additional administrative burden on both the regulatory agency and the service providers.

Against this background, most regulatory agencies and ministries have unified and standardised licences into one or two templates to alleviate burden on regulatory bodies and service providers. With unified terms and obligations, licences have been more credible, transparent and equitable to licensees. This unified licence authorises respective dealers to provider all or any telecom services. Of these, a mobile network operator can provide fixed telephone connections and vice versa. They can do after they notify the regulatory agency, pay any due fees, and comply with the service provision terms and conditions as set by the regulatory agency in accordance with relevant laws, regulations, and instructions.

Advantages of the unified licence

Besides its significance, the unified licence encourages licensees to operate new services, inject new investments, and attract new investors to the telecom sector. It contributes to improving competition and reflects positively on prices and quality of services provided to citizens.

How can the unified licence be applied in Palestine?

Simply, all class licences issued by the MoTIT can be streamlined into a single licence, which includes general terms and conditions of the licence. An annex can be provided for each service, setting the terms and conditions of service provision and fees.

In the Palestinian context, it is difficult to apply individual licences due to the lack of a frequency spectrum. All that is required is to have a general framework for a unified licence.

Class licences

These licences authorise the provision of telecom services, which do not need frequencies or numbers. Class licences of telecom services began to be issued with the expiration of PALTEL's exclusive period at the end of 2006. Then, the Palestinian Council of Ministers issued its Decision 04/28/CoM/S/2007, providing for opening the telecom market to competition. The goal was to create competition in the fixed line and broadband service market. In this context, broadband and VOIP were the first licences to be issued by the MoTIT.

Individual licences

Individual licences are issued to operators of fixed line and wireless networks, including mobile phone networks. As mentioned above, this system is applied when the legislative setting is immature, forcing the regulatory agency to bridge any gaps in laws and regulations. To this avail, an agreement is reached with the licensee on the licence terms, conditions and obligations which are not provided for by, but are consistent with, relevant laws and regulations. Most notably, individual licences involve many details and terms to avoid any ambiguity or confusion in the interpretation of these terms and conditions. In particular, matters without relevant provisions under applicable regulations are legalised by agreement of both parties.

Individual licences issued by the MoTIT, as a regulatory agency, to the Palestinian telecom sector include:

PALTEL Licence

On 15 November 1996, PALTEL licence was issued for a term of 20 years. The licence involves the provision of all the telecom services known at the time. These include services that are not available in Palestine, such as mobile communications. For 10 years, PALTEL would individually provide fixed telephone connections, including international gateway services. The company would also provide cellular phone (JAWWAL) services for a term of five years or until the number of subscribers reached 120,000.

PALTEL licence terms and conditions set licence renewal and commitment to develop and expand coverage of the telecom network across the Palestinian territory. Subject to the minister's approval, PALTEL would provide international connections and set charges of service provision. The licence prescribed quality service standards, set a 3 percent guarantee of PALTEL's capital to ensure quality

services, and outlined conditions of network connections, customer service, subscriber data confidentiality, financial and technical reporting, and dispute resolution. However, some terms sparked particular controversy, including use of frequencies free of charge, occupation of the MoTIT offices and equipment during the licence period, and operation of JAWWAL based on PALTEL licence, rather than its own.

PALTEL and JAWWAL licence renewal

On 15 November 2016, PALTEL licence, covering fixed line and cellular phone (JAWWAL) services, expired. PALTEL submitted an application for renewal one year ahead of the licence expiration. PALTEL also presented a report of achievements, which the minister approved. The reports outlined the company's fulfilment of obligations, compliance with regulations and instructions, progress towards providing licensed services in line with the expired agreement. To this end, the Council of Ministers established two ministerial committees, one chaired by the Minister of Finance to set licence fees, and another led by the Telecom Minister to supervise negotiations over the licence conditions. Heedful of a transparent process and based on a bid solicitation process, the MoF and assigned PricewaterhouseCoopers International (PWC) to set the licence fees and supervise the preparation of a new licence agreement in line with the best international practice.

Since it initiated the PALTEL licence renewal process, the MoF made sure to avoid any vague or ambiguous clauses of the agreement and to address any shortfall under the old licence. Most notably, the MoF issued two separate licences for PALTEL and JAWWAL. A key parameter was the Wataniya Mobile licence, which was used as a guiding framework in this context. Accordingly, no company would have discriminatory terms and conditions. In line with ITU recommendations, technological neutrality was adopted in the licence. Due to telecom and IT convergence, the fact that many telecom concepts changed was taken into account as well. Main points of focus in the new PALTEL licence included:

- I. Legal obligations:
 1. Issue two separate licences for fixed line and cellular phone networks, subject to the provisions of the effective Telecom Law, any amendments thereto, the regulations issued forth in accordance with it, and any other law enacted for regulation of the telecom sector.
 2. Comply fully with any regulatory instructions or decisions issued by the ministry, such as instructions on interconnection and competition.
- II. Financial obligations (licence fees):
 - a. Licence fees are determined by the Council of Minister through an international consulting company specialising in market analysis and estimation of fixed line and cellular phone licence fees.
 - b. PALTEL and JAWWAL pay annual fees for the frequencies used as per the prices approved by the Council of Ministers, which both companies were exempted from during the period of the expired licence.
 - c. Fees for PALTEL's rent or access to government buildings and installations.
 - d. Seven (7) percent of net revenues will be paid to the MoTIT.
 - e. Fees for digital distribution, if approved under any new law or amendment to the effective law.

- III. Regulatory obligations:
 - 1. Comply with the instructions on interconnection and obligations of the dominant licensee.
 - 2. Quality of service provision, including:
 - a. Network coverage and service inclusion.
 - b. Relationship with the service end user, mainly, signing quality service level agreements with users.
 - c. Directory information.
 - d. Technical network standards and specifications.
 - e. Emergency services are provided free of charge to subscribers.
 - f. Technical conditions and health and environmental safety conditions for the use of frequencies.
 - 3. Pricing of services, including:
 - a. Competitive services, the prices of which are subject to market forces.
 - b. Uncompetitive services, subject to the ministry's regulation.
 - 4. Uncompetitive practices:

These are specified under the ministry's instructions. Most importantly, the dominant licensee may not use its position in the telecom market to weaken or prevent competition.
 - 5. Reports:
 - a. Financial, technical and quality service reports.
 - b. The ministry's technical and financial control over the licensee.
- IV. Contractual obligations and conditions:
 - 1. Licence amendment or revocation.
 - 2. Change of the dominant share and conveyance.
 - 3. Emergency plan.
 - 4. Privacy and confidentiality.
 - 5. Dispute resolution.
 - 6. Force majeure.
 - 7. Use of the right of access and entry into properties.
- V. Installations of the ministry and municipalities: Restore the government installations, which the company obtained the right of use over the past 20 years, but were owned by the government or municipalities, with the exception of buildings that harm the company and service buildings (e.g. switchboard operators), provided that these are used in return for rent payable to the government or municipalities.

8. Performance bond (guarantee)

This is a financial guarantee deposited with the ministry to ensure quality service provision, coverage obligations, and prevention of any competition-harming practices, or any fines owed by the company.

Under PWC and ministerial committee's supervision, the ministry team finalised the licence agreement in negotiation with PALTEL. PWC reviewed all licence terms and conditions. Contrary to the Telecom Law No. 3 of 1996, the negotiation process was transferred to a presidential committee, which would approve renewal upon a recommendation from the minister. However, the presidential committee did not intervene in the licence terms and conditions. Negotiations mostly addressed financial matters, such as tax and licence fees. The latter were assessed by PWC to avoid any conflict of interest that might arise from negotiations or overlapping powers between relevant ministerial committees. On 15 November 2016, PALTEL licence expired before the presidential committee finalised its mandate. Therefore, the Telecom Minister had to renew the licence for one month, ending on 14 December 2016. The renewed licence would take effect on 15 November 2016.

No particular details were released about the presidential committee's functions or members. Apart from the joint statement by the MoTIT, MoF and PALTEL, neither the licence nor any financial details of licence renewal were made publicly available. The following was published in the local media:

The MoTIT and PALTEL Group signed the PALTEL licence renewal agreement for US\$ 290 million for a period of 20 years. The agreement was signed by Allam Mousa, Telecom Minister, Shukri Bishara, Minister of Finance, and Ammar al-Aker, PALTEL CEO, in the presence of Hasan al-Ouri, Legal Advisor to the President, at the MoTIT offices in the El-Bireh city.

It was agreed that PALTEL pay half the amount of the contract renewal (US\$ 145) upon signing the agreement. The other half will be paid in four instalments, one every six months over a period of two years.

The Telecom Minister confirmed that the licence was renewed in reference of the Telecom Law No. 3 of 1996. The best international regulatory practices were implemented in consultation with experienced global companies. The licence was approved by the Council of Ministers.

While the 1996 Telecom Law does not involve any such process, the MoTIT complied with the mechanism for licence renewal as outlined in the expired licence agreement. Other international standards were applicable to the licence renewal. In this context, the MoTIT received the following guidance from EU telecom regulators:

1. A report on operators with expired licences (i.e. PALTEL), compliance with granted licences, and regulator's instructions (i.e. MoTIT). In case of compliance, they are allowed submit a tender for renewal. The converse is true.
2. Tenders are invited for fixed line and mobile phone services, giving precedence to current licensees (if allowed to apply for renewal) to first negotiate after tender envelopes are opened and tender guarantee fees, which are commensurate with the tender amount, are received. The 1996 Telecom Law provides for such precedence.
3. In case of failure to reach an agreement between operators with expired licences and the ministry, other tenderers are considered.
4. The tender is awarded.

Shortcomings of the renewed licence

The government and MoTIT maintained the best international practice in the process of PALTEL licence renewal. However, failure to make the renewed licence publicly available has given rise to doubts, particularly amongst telecom sector stakeholders. The renewal process lacked required transparency.

Wataniya Mobile (Ooredoo Palestine) licence – the second mobile network operator

With the expiry of JAWWAL's period of exclusive provision of mobile phone services, in 2005, the MoTIT prepared an international bid solicitation for a second mobile network operator in Palestine as a strategic partner of the Palestinian Investment Fund (PIF). In 2006, the bidding process was initiated. Tenders were submitted by two companies: Wataniya International (then owned by Kuwait before reverting to Qtel) with a JD 251 million bid, and Mobinil Egypt with a bid of JD 20 million. The new Wataniya Mobile Palestine's share structure included 40 percent for Wataniya International as a strategic partner, 30 percent for PIF, and 30 percent for initial public offering.

The MoTIT prepared the licence agreement, negotiated it with the new company, and signed the licence on 14 March 2007. The company received a letter of assurance from the Telecom Minister, stating that no new 2G and/or 3G mobile operators would be licensed in Palestine for four years as of the licence date.

According to Wataniya Mobile data and as audited by an international auditor, US\$ 140 million has so far been paid of the licence fees.

This matter has been deliberated on several occasions by the Council of Ministers. It was proven that US\$ 80 million was paid by Qtel (Wataniya Kuwait at the time), as a strategic partner, for the tender award. The PIF share (US\$ 60 million) was set-off with previous debt owed by the MoF to the PIF. According to the latter, the US\$ 60 million, which the PIF transferred to the Public Treasury during the blockade imposed on the Palestinian government after the 2006 elections, was part of the licence fees. The PIF contended that it had to pay US\$ 140 million out of a total US\$ 354 million – the licence fee.

Wataniya Mobile justified that the remaining amount (US\$ 214 million) was not paid because the company did not access needed frequencies on time in both the West Bank and the Gaza Strip. Wataniya Mobile incurred hefty losses as a result. In addition, the company was not able to operate in Gaza for 10 years. According to the official government position, the delay was expected, announced and recognised by the bidders. The Public Treasury was not liable for Israeli obstacles, which had already been divulged. As at the time of writing, the ministry continues to claim US\$ 214 million from Wataniya Mobile as the remaining amount of the licence.

Challenges to Wataniya Mobile

1. Launch of the 2G mobile service was delayed for two and a half years.
2. Ten years from the licence date, the company was only able to launch the 2G mobile service in Gaza after network equipment were allowed to enter Gaza. Equipment continued to be withheld in Israeli ports during that time.
3. Israel continues to prevent the company from providing 3G mobile service in Gaza to date.
4. Launch of 3G mobile service in the West Bank was delayed for ten years after the licence date.
5. The exclusive period granted to the company to provide 3G mobile service in line with the minister's letter of assurance expired, without any gains.
6. Frequencies needed to operate the 2G mobile network services were released on 900 MHz and 1800 MHz bands, increasing network cost in comparison to a single band.
7. Illegal competition facing Palestinian cellular companies by four Israeli service providers, which offer modern technology (4G mobile) in the West Bank.

Measures taken by the government, represented by the MoTIT and Council of Ministers, to address challenges to, and preserving investments of, Wataniya Mobile

1. The MoTIT has done everything it could to liberate frequencies from Israel and enter network equipment during meetings of the Joint Technical Committee with the Israeli side. The ministry also placed pressure on Israel with assistance from the Quartet, EU and US Administration. These efforts culminated in 2G and 3G frequency allocations in 2009 and 2017 respectively. The MoTIT continues to make efforts to allow Wataniya Mobile to provide 3G services in Gaza.
2. The MoTIT shifted the effective date of access to 2G services from 2007 to 2009.
3. Based on a recommendation from the ministry, the Council of Ministers extended the Wataniya Mobile's licence for five years, from 15 to 20 years.
4. The Council of Ministers exempted the company from annual returns (7 percent) for a period of five years.
5. The Council of Ministers rescheduled the remaining licence fees to be paid in manageable instalments.

Examining the effectiveness of government policy of privatised telecom service management

The working relationship between licensees and the MoTIT, as representative of the government, is governed by the law, regulations, instructions, and licence agreements, which lay out the rights and obligations. Factors that disrupt this relationship, undermine the regulator and perhaps increase burdens on licensees is the enormous and rapid development of the ICT sector, incessantly introducing new, modern and advanced services. These result in an increasingly widening regulatory gap between rapidly emerging systems, programmes, applications and concepts with new and multiple telecom services on one hand, and government bodies' capability and timely action to enact laws, regulations, bylaws, instructions and decisions to govern these services on the other. Along this vein, the vast majority of countries around the world have established independent agencies to regulate the telecom sector. Thanks to their flexibility, efficiency and timeliness, these agencies focus on, and are capable of developing their own tools and methods to monitor, regulatory aspects of the sector. It has, therefore, become urgent to make timely regulatory decisions to keep pace with those evolving developments and start at once to create an independent regulatory agency of the telecom sector.

The environment of integrity in functions of telecom sector regulators

PALTEL licence renewal

The 1996 Telecom Law and first PALTEL telecom licence (expired in 2016) set the requirements for licence renewal. However, neither the Law nor the outdated licence provide for the mechanism for renewal. As mentioned above, international standards are applicable in this context. A public tender process is pursued, giving priority to PALTEL for negotiation. The licence was renewed by a presidential committee, whose members were not identified. No information was publicly available on the criteria this committee applied to set the appropriate price for licence renewal. It was only released that PWC was appointed to set the market value of the new twofold licence (fixed line and mobile network operation).

Issuance of other licences, e.g. broadband, is announced through predetermined and transparent mechanisms. These licences are subject internal and external controls and audits. The MoTIT has applied a friendly and publicly known policy for granting radio frequency licences given the ongoing

conflict between Israeli settlers and Palestinian operators over occupation of the frequency spectrum of FM radios.

Publication and disclosure policy in functions of telecom sector regulators

Legal and technical agreements and annexes relating to the PALTEL licence have not been publicly available. This licence authorised PALTEL to install, manage and operate local and international fixed line and mobile phone networks. After it had been elected at the time, the PLC requested that it access the licence agreement. However, significant information was not published, stating the amount transferred to the Public Treasury in return for the concession agreement or use of public assets, including telecom infrastructure and previous subscriptions to Bezeq before the PNA was established. Both the Telecom Law No. 3 of 1996 and the PALTEL licence have been controversial, arising public debate over relevant interpretations, powers vested in PALTEL, and role of oversight bodies in the telecom sector. This situation was further compounded by the Palestinian-Israeli agreements on the telecom sector. In particular, Article 36 on Telecommunications of Annex III to the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza deprives the PNA, represented by the MoTIT, of the right to control some underground network components, particularly international gateways and control over frequencies of the mobile phone network. Dispossessing Palestinians of this right has had a negative bearing on the PNA ability to regulate this vital sector of Palestinian economy. Furthermore, the terms and conditions of the new licence of PALTEL were not published, neither was the licence of Ooredoo Palestine.

Mechanisms for control, accountability and audit of telecom service providers

As guaranteed by telecom laws, control over the telecom sector is one of the most important tasks and powers given to regulators. By this control, regulators can achieve the following goals:

1. Make sure that licensees comply with the law, regulations, and licence agreements.
2. Make sure that service provision is up to the quality service requirements in line with pre-defined service quality standards.
3. Protect consumers against any exploitation at the level of quality of service provision or prices, and prevent abuse of the dominant position in the telecom market.
4. Ward off any uncompetitive practices in the telecom market.
5. Make sure that telecom systems in operation satisfy required technical specifications and do not harm the environment or the population.
6. Protect telecom markets from the entry of terminals or telecom devices for the State without informed approval and in line with applicable specifications.

Oversight of telecom in Palestine

As mentioned above, the Telecom Law in force entitles the regulator to exercise technical, financial and administrative control over licensees. The MoTIT staff are vested with judicial duties, allowing them to access any information, data or documents of the licensees in order to deliver oversight tasks. In Palestine, oversight bodies review technical, administrative and service quality reports of licensees. They also carry out field visits to the offices of licensees. However, telecom oversight can only be highly effective if up-to-date oversight tools are used, including:

1. Using devices for remote measurement and monitoring of quality service provision by licensees.
2. Accessing licensees' systems and devices.
3. Upgrading instructions on competition in response to developments in the ICT sector and services.
4. Raising awareness of and encouraging subscribers to report any service failure through the Complaints Unit.
5. Encouraging consumer protection societies to control service markets and protect consumers from any exploitation by service providers. These societies should be licensed and operate impartially and transparently on grounds of the Competition Law. They should not have any private interests with any licensees.

As long as a telecom regulatory agency is lacking, oversight and accountability of the telecom sector will continue to be mediocre and limited. For example, all technical reports which make clear how compliant PALTEL was with the terms and conditions of the first licence should have been publicly accessible before renewal.

Challenges

Factors that adversely affect Palestinian telecom sector development are twofold:

I. Subjective factors

- The internal divide between the West Bank and Gaza and its consequences.
- Failure to upgrade the legal framework and reliance on outmoded legislation.
- Unavailable regulation-based oversight tools.
- Failure to draw a line between regulatory framework, policy making and planning functions in the telecom sector.
- Lack of sustainable and adequate capacity building programmes at relevant government institutions with a view to scaling up required duties.
- Insufficient financial resources and inadequate specialised expertise of regulatory bodies in spite of increasing needs to regulate a rapidly developing and changing sector.
- Weak transparency and disclosure within the telecom sector and failure to publish many agreements between the PNA and other parties in relation to this sector.

II. Objective factors:

1. Israeli measures designed to cripple the telecom sector and maintain a digital gap between Israeli and Palestinian service providers. These include:
 - a. Disabling Palestine from building its own international gateway.
 - b. Full control over the electromagnetic (frequency) spectrum.
 - c. Full control over digital distribution.
 - d. Full control over construction works of telecom networks across Area C.

- e. Full control over crossing points, consequently manipulating all telecom devices, systems and equipment entering Palestine.
 - f. Granting permission, encouragement and assistance to Israeli companies to operate in the Palestinian territory, using better technology at more competitive rates.
2. Unjust siege on the Gaza Strip.
 3. Cut off or dwindling technical assistance provided to Palestine by international institutions.
 4. Decreasing financial aid provided by the donor community.

Recommendations

The legal setting and regulatory agency

- The Council of Ministers needs to fast-track the establishment of a telecom regulatory agency in accordance with the Law by Decree No. 15 of 2009 on Regulation of the Telecommunications Sector. The MoTIT and government also need to implement a clearly defined policy to ensure a clear-cut separation between policy making and regulation (between the MoTIT and PTRC roles, while at the same time ensuring PTRC independence and representing consumers on the Commission).
- Expedited action needs to be taken to approve a contemporary general law, allowing adequate resilience for the government and MoTIT to keep pace with the rapid growth of the telecom sector.
- The new telecom law needs to prescribe penalties and fines in the event telecom service providers are not comply with the terms and conditions of respective licences. The current law provides for punishing any person who encroaches on telecom networks. It does not impose penalties on telecom companies if they impinge on citizens' rights.

Governance

- The MoTIT must ensure a full and vertical structural split of the dominant company (PALTEL).⁷ Uncompetitive segments, e.g. final leg of the telecom network (last mile) and main internet exchange points, are separated from competitive segments. Alternatively, a full (financial and administrative) split will be in place between PALTEL, JAWWAL and Hadara Internet Services.
- The MoTIT should separate the fixed line network, which is not subject to market competition factors, and competitive ADSL service provision.
- The MoTIT should develop oversight policies and mechanisms to keep away from technical dominance, ensure technological neutrality, facilitate interconnection between operators, and avoid imposing further financial burdens on new operators.
- The MoTIT should adopt a fair competition policy and allow room for new operators with a view to encouraging innovation, investment in the telecom sector, and reduction of prices.
- The MoTIT must adopt a policy of universal policies for all regions, including cities, villages, refugee camps, and rich and poor areas.
- The government must ensure an optimal use of the telecom infrastructure, adopting a technique of partnership and participation. The government needs to impose the right of access and right of entry to infrastructure and exchange points. Prohibiting duplication or repetition of existing services, the government will set the price for using every infrastructure utility. This will be based on the cost price + reasonable profitability to set-off the amount of depreciating capital (long-run incremental cost (LRIC) model or any other agreed accounting system to ensure transparency and equality between the dominant service provider and operators). This is known as the open networks policy. The prices of network interconnection, particularly mobile phone networks and backhauling, will also be reduced.

⁷ Splitting the company into segments that can be competitive with separate boards and technical managements.

Transparency

- All agreements signed between the PNA and other parties in relation to the telecom sector should be disclosed and made publicly available. These include legal and technical agreements and annexes concerning the PALTEL licence.
- The MoTIT should publish all technical reports on network development, particularly fixed line networks. As provided by the previous PALTEL licence, the final report will be released as a prerequisite for licence renewal.
- PALTEL board members should adopt a policy of disclosure, including with respect to the amounts they receive as fees for membership on the PALTEL board.
- Acquisitions by large companies of small telecom service providers should be disclosed in advance. Necessary approvals must be obtained from the MoTIT. Strengthened or further dominance over the market will not be allowed.

General recommendations

- Allow licensed companies to use the fibre optic network infrastructure provided by electricity companies without discrimination. The fibre optic network may not be exclusive to any particular telecom or internet service provider.
- Ensure optimum use of natural resources, such as the frequency spectrum and telephone numbers, by the MoTIT. Citizens will enjoy the right to mobile number portability, further increasing competition between operators and reducing cost.
- The so-called empowerment line in its current form needs to be suspended by the MoTIT. Otherwise, all internet service providers should be allowed to access this line.
- Pay the remaining amount of the licence fee by Ooredoo Palestine (Wataniya Mobile).
- Adopt open-source technologies, which do not need use permits to be purchased, by the MoTIT. The ministry will also allow innovation, local development, and construction of open networks based on equitable participation.
- Use internet exchange points, whenever possible, with a view to reducing the cost of traffic, download, and overall use of the internet.
- Revoke all open-ended and unused licences by the MoTIT. These should particularly include broadband licences offered for sale in contrariety with the law. New licences will be issued in line with a new policy. Licences may not be traded.

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AMAN
Transparency Palestine



The Coalition for Integrity and Accountability (AMAN) which was accredited by Transparency International (TI) as a national chapter in Palestine since 2006 - established in 2000 by an initiative of number of CSOs working in the field of democracy, human rights and good governance towards reaching its vision of Palestine free of Corruption.

The Coalition is keen to create and lead a social movement against corruption and to contribute in the production, transferring and localization of the necessary knowledge in anti-corruption at the local, regional and international level.

The Coalition is also keen to play its monitoring/watchdog role on the National Integrity System through focusing on community participation, activating the role of civil society institutions and media in monitoring management of public money and affairs, and creating a work environment that contributes to unclose corruption crimes and restrict its spread.

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