
REFORMING THE PALESTINIAN AUTHORITY: AN AGENDA FOR THE NEXT SIX MONTHS

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Report by the

INDEPENDENT TASK FORCE ON
STRENGTHENING PALESTINIAN
PUBLIC INSTITUTIONS

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Strengthening Palestinian Public Institutions in the Post-Arafat Era

I. The Opportunity for Reform

A window of opportunity has opened since the death of Palestinian Authority (PA) President Yasir Arafat for the resumption of the Palestinian-Israeli peace process and for the deepening of Palestinian reforms.

A smooth leadership transition, culminating in the conduct of the presidential election of 9 January 2005, has been followed by signs of reinvigoration of the Palestinian Legislative Council (PLC), which is showing a desire for re-election and serious interest in exercising its oversight and legislative functions. PLC opposition to a proposed cabinet line-up that largely recycled previous governments finally yielded a significantly new cabinet, containing many professionals with good performance records and no vested interest in maintaining the status quo, which was confirmed on 24 February 2005.

In sum, there is now a real opportunity for reform.

However, the window of opportunity is likely to be of brief duration – some six months – a timing determined by the schedule of the planned Israeli withdrawal from Gaza and of the series of Palestinian elections: for local government in April; possible Fateh internal primaries; parliamentary elections in July; followed in August by Fateh's first general conference since 1989.

While many specific aspects of Palestinian reform can be successfully pursued from within the PA, its ability to bring about and sustain a fundamental shift in its overall performance and impact on the conduct of government and on people's daily lives is highly contingent on the external conditions in which it must operate. Here, Israeli policies affecting security operations, movement and economic activity (especially including trade and labor supply) have been a major impediment, and must be rectified if Palestinian reform is to have any lasting significance.

II. The Evolving Political-Security Context

Several factors make a resumption of violence possible. One is continued Israeli colonization activity – settlement construction and land expropriation – and construction of the ‘security barrier’ in the West Bank and East Jerusalem, combined with the ‘closure’ regime and the economic hardships it imposes on the Palestinians.

Another is the potential for Palestinian infighting or loss of PA control over security in Gaza during or following the Israeli withdrawal. A third is Palestinian fear that the Gaza withdrawal will preclude Israeli withdrawal from the West Bank; this is coupled with the related fear that the Gaza withdrawal will not be followed directly by implementation of the next phases in the Quartet’s ‘roadmap’ or by the start of permanent status negotiations.

Such circumstances would lead to a decline of public support for the PA and for the ceasefire with Israel, and would probably enhance the standing of Hamas and militant factions in the coming elections while increasing their incentives to resume armed activity.

The PA clearly faces difficult political challenges. This is highlighted by the strong showing of Hamas in the two rounds of municipal elections held so far, the modest voter turnout of less than 50 percent for the presidential election of 9 January 2005, and continued public belief in the utility of violence as a means of confronting Israel, even while desiring a respite from violence and economic strangulation.

III. Implications for Reform

In this context reform appears to offer an effective means of rebuilding the PA’s tarnished image and restoring its legitimacy, both domestically and internationally. Yet reform could prove equally challenging for the PA, and in all cases is unlikely to be free of dilemmas or costs.

The need to contain public sector employment (if not reduce it) and to make public finances completely transparent, for example, may contradict President Abbas’s political need to ensure Fateh loyalty and to co-opt Hamas by absorbing its armed wing within the PA security services. The need for security sector, electoral, or ministerial reform already meets resistance from those within the security and political establishments with a vested interest in the status quo, but whose support is necessary if the new president is to achieve his immediate political and security objectives in the transitional period until the election of a new Legislative Council and formation of a post-election government.

Externally, it is not self-evident that the international community seeks genuine and deep-seated reform across the board in the PA, not even in the security sector. This is especially true of the U.S. Administration and the Government of Israel (GoI). While U.S. President Bush made the issue of Palestinian reform and democratization a sine qua non for the peace process in June 2002, it seems that reform in the context of the security sector was not intended to go much deeper than the cessation of violence and decisive action against terrorism. In the Quartet's work plan, security sector reform is not dealt with as an integral part of overall PA reform, and is allocated the least attention and resources. Security is also the area in which the least reform has in fact taken place. Now that President Arafat is dead, an electoral process is underway, and the new president is working to deepen the ceasefire and contain Hamas, the international community may no longer regard reform – across the board – with the same urgency nor identify the same priorities as Palestinian reformers.

IV. The Argument for Reform

Why continue with reform, in this case? Is it indeed a necessary and urgent component of ongoing political developments and discussions, between the PA and its domestic and external counterparts?

This memo assumes that reform is essential in order to rebuild the PA's domestic legitimacy and international credibility, at a time when the PA leadership must win support from the general public and the militant opposition for its political program based on non-violent confrontation with Israel, engagement with the GoI's Gaza withdrawal plan, and a return to negotiation and possibly the Quartet's roadmap.

Furthermore, as the local elections to date have shown, public perception of corruption in the PA and Fateh has led to a significant voter swing towards Hamas, which may be replicated in the general elections for the PLC in July. In other words, issues pertaining to governance may alter the domestic Palestinian political landscape in ways that ultimately give increased weight, and possibly a parliamentary majority, to Palestinian organizations that would adopt substantially different attitudes and policies towards Israel and the peace process.

Reform is therefore crucial if the PA, and Fateh, are to project a new public image and to start demonstrating a real difference in actual policies and performance. The PA needs badly to revive and improve delivery of public services in a number of domains, and also to undertake considerable administrative and policy initiatives in order to improve the environment for economic activity and thus help a population battered by armed conflict and siege conditions.

In short, the PA needs to rebuild institutions that are capable of delivering on commitments made towards the GoI and international community on the one hand, and on the other hand of improving Palestinian social cohesion and political dialogue as the PA engages in a complex and difficult process of negotiation and contestation with the GoI even as the latter continues to colonize the West Bank and East Jerusalem.

V. A Reform Agenda

The PA faces a broad reform agenda, but it should prioritize those areas that will have the greatest positive impact on actual performance and public perception in the coming few months. Considerable progress has already been made in achieving reform in a number of areas, not least in public financial management. Other areas, such as developing and applying new organizational plans and job descriptions for PA ministries and agencies, should be continued but do not represent equally urgent priorities.

Accordingly, reform priorities for the coming period should be:

- 1. Anti-corruption measures:** The PA should implement without delay a basket of measures designed to demonstrate its seriousness in tackling corruption and poor governance in the public sector. Most important are:
 - a)** Appointment of a new Attorney General with a reputation for integrity and professionalism, and supported by a competent staff. The Attorney General's office must be able to function independently of the executive branch and the security services, and must have a clear and sufficient mandate to examine all cases of corruption and other serious violations of the law in a timely manner. The prime minister should moreover instruct ministers, particularly the ministers of interior and finance, to refer cases of corruption and violation of the law to the Attorney General's office.
 - b)** Appointment of a new chief of police with a reputation for integrity and professionalism.
 - c)** Appointment of a new Comptroller General. The Comptroller General and his office should be made directly accountable to the PLC. The Comptroller General's office should submit to the PLC, and make public, all previous annual audit reports that had been presented to the office of the PA president.
 - d)** The PLC should allocate sufficient funds to allow for the smooth and effective functioning of the Attorney General's and Controller General's offices.
 - e)** The PA should moreover take immediate steps to upgrade the judiciary and to ensure its independence from the executive branch. (See below.)

2. **Security sector reform:** The PA must proceed firmly with security sector reform in order to restore its ability to deliver public law and order domestically, while ensuring its ability to comply with its agreed obligations under the Quartet's roadmap. It must therefore:
- a) Submit a unified draft law to the PLC for legislation, instead of the four separate and contradictory laws that were submitted by the previous cabinet, defining the mission statements, structures, chain of command, and powers and responsibilities of the security services.
 - b) Rationalize the number and structure of the existing security services, reducing them to three main branches and bringing them all under the direct control of the Minister of Interior and the Council of Ministers.
 - c) Ensure the accountability of the security services to the PLC, by requiring the Minister of Interior to submit policy, budgets, and performance reports for parliamentary discussion.
 - d) Subject the security services' finances to standard accounting and auditing procedures, including external audit by the Comptroller General's office.

3. **Judiciary reform:** A capable and independent judiciary is essential in ensuring the rule of law and enhancing public perception of equality before the law. To be effective, the justice system requires the cooperation of the Attorney General and of security agencies that have the will and ability to enforce court orders. Judiciary reform is therefore a sub-set of, or complementary to, anti-corruption measures and security sector reform.

It is also badly needed in order to help the PA address daily needs of the Palestinian public and restore public confidence in PA institutions, assist economic recovery by resolving disputes and guaranteeing the enforceability of contracts, and ensure that PA action in meeting its security obligations under the Roadmap is in conformity with the law and serves rather than subverts it. In the immediate sense, the PA should:

- a) Resolve the relationship between the Ministry of Justice and the Supreme Judiciary Council and clarify the division of powers and responsibilities between them, and take any further steps necessary to ensure the independence of the judiciary from the executive branch.
- b) A draft Judiciary Law containing the necessary modifications is already under consideration by the PLC, but the PA should move far more resolutely and expeditiously in finalizing it. The new cabinet should communicate a clear and unified stand on what it wants and pursue the legislation more actively, the PLC should also expedite its deliberation, and the Supreme Judiciary Council should not be allowed to exert undue influence on the process.

c) One of the most serious problems facing the judiciary has been the lack of responsiveness of the law enforcement agencies in enforcing court decisions. The new chief of police should work closely with the Attorney General and the courts and show no hesitation in implementing decisions issued by these authorities.

4. **Electoral reform:** The amendment of the Elections Law should be completed in the next two months if the Central Elections Commission is to organize the scheduled July elections in a timely manner.

The amendment would lead to a more inclusive process and thereby encourage the integration of political forces such as the Islamists, who have so far been excluded from, or preferred to boycott, PA political institutions. This in turn, is essential if the PA is to acquire the political legitimacy and authority to deliver on its security obligations under the Roadmap and to resume permanent status negotiations on the most contentious issues with Israel.

On a related issue, though independently of the PA, it is advisable that Fateh conduct its own primaries and internal elections as soon as possible, in order to select representative candidates for the coming local and parliamentary elections.

5. **Executive reform:** The offices of the PA president and prime minister should take steps to ensure that their division of powers and responsibilities accords with the amended Basic Law.

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