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West Bank and Gaza

Improving Governance and Reducing Corruption



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Abbreviations

ACC	Anti Corruption Commission
AGs	Attorney General's
CTA	Central Treasury Account
CPAR	Country Procurement Assessment Report
CPIP	Country Procurement Issue Paper
EPF	Economic Policy Framework
GPC	General Personnel Council
GoI	Government of Israel
HH	Household
ICT	Information Communication Technology
ICS	Investment Climate Survey
IAD	Internal Audit Department
IMF	International Monetary Fund
ISP	Internet Service Provider
IT	Information Technology
MENA	Middle East and North Africa
MoNE	Ministry of National Economy
MoE	Ministry of Education
MoF	Ministry of Finance
MOI	Ministry of Interior
MTIT	Ministry of Telecommunication and Information
MoPWH	Ministry of Public Works and Housing
NGOs	Non Governmental Organizations
OECD	Organization for Economic Cooperation and Development
PA	Palestinian Authority
PADICO	Palestine Development & Investment Ltd
PALTEL	Palestine telecommunications Co.
PC	Petroleum Corporation
PCSC	Palestine Commercial Services Company
PER	Public Expenditure Review
PFM	Public Financial Management
PIF	Palestinian Investment Fund
PLA	Palestinian Land Authority
PLC	Palestinian Legislative Council
PLO	Palestinian Liberation Organization
POs	Public Officials
PRDP	Palestinian Reform and Development Plan
PP	Paris Protocol
SAACB	State Audit and Administrative Control Board
SBDs	Standard Bidding Documents
TIM	Temporary International Mechanism
UNDP	United Nation Development Program
UNCAC	United Nations Convention against Corruption (UNCAC)
WB&G	West Bank and Gaza
WBES	World Business Environment Surveys
WTO	World Trade Organization

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Executive Summary

Overview

In the past decade, the Palestinian Authority (PA) has worked to strengthen economic governance¹ and combat corruption, both essential to sustained economic growth and improved delivery of public services. This report finds the PA has made significant progress in its public institutions, establishing a strong governance environment in many critical areas. But it also identifies areas where reforms are underway but incomplete or, in some areas, not yet under consideration.

Major reforms have been put in place to strengthen the PA's public financial management (PFM) systems and better manage its equity holdings, two crucial components in the public finance sector. In other important areas, such as public procurement, public sector employment, regulation of the private sector, and the work of anti-corruption institutions, reforms are underway but have not been fully implemented.

While the PA is to be credited for the advances it has made to strengthen governance since its inception in 1994, reforms are needed in a number of important areas, namely management of state land assets, transparency in licensing and business rights, and public access to government information. The PA should jump-start reform efforts in these areas, while solidifying recent achievements and continuing to make progress on reform efforts currently underway.

Consistent with the improvements in Palestinian government institutions are the report's survey results, showing that public sector corruption is not viewed as among the most serious problems facing Palestinians. Moreover, while previous surveys have documented perceptions of corruption in the West Bank and Gaza (WB&G), this study compares perceptions with actual experience. The results show that very few Palestinians experienced corruption when accessing public services. However, perceptions of corruption with respect to these same services are relatively high.

1 The term "governance" is used in a number of different ways which are beyond the scope of this report. We have used the term "economic governance" to refer more specifically to the management of public finances, functioning of core public institutions, and regulation of economic activities. For the remainder of the report the term governance is used to refer to "economic governance."

Methodology of the report

This analysis relies on an understanding of the relationship between good economic governance, public service delivery, and corruption. Studies show a direct correlation between weak governance systems and the quality of public service delivery. Weak governance systems, in turn, provide an opportunity for corruption.

The report does not attempt to investigate specific corruption activities or quantify the economic costs of corruption in WB&G. Its purpose is to provide a comprehensive look at the current state of economic governance in the PA. It is the first report to comprehensively assess governance reforms, ascertain citizens' and officials' actual experiences with corruption in the delivery of public services, identify institutional strengths, and highlight systematic governance weaknesses which could lead to corruption.

Despite the high-profile this issue commands very little analytical work has been done to date. This report fills that gap. Through surveys, case studies, and assessments of legal and institutional frameworks, the report uses both quantitative and qualitative methods. The work includes:

- Two surveys conducted in early 2010; one surveyed Palestinian households and the other Palestinian public officials. The household survey measured the difference between perception and experience, and helped understand weaknesses in the delivery of public services. The public officials' survey was conducted to understand institution-specific manifestations of corruption. While the household survey was conducted in WB&G, the public officials' survey covered only the West Bank as it was not possible to carry out the work in Gaza. The surveys were conducted by AMAN Coalition (the Palestinian chapter of Transparency International) and the Palestinian Central Bureau of Statistics.
- Findings from the World Bank's 2007 Investment Climate Assessment (ICA). This information was used to better understand private sector views on corruption.
- A look at the evolution of governance systems in key areas since the inception of the PA. These areas include public sector services (judicial, health, education), public/private sector relationship, and public sector management (financial management, employment and personnel management, procurement).
- Five case studies to further illustrate governance challenges in certain sectors. These cases were not chosen at random, but were selected based on discussions with a number of knowledgeable Palestinian business, civic and political leaders, and because they represent sectors where many developing countries experience difficulty. We looked at telecommunications, management of import quotas, management of equity holdings, governance of the Petroleum Commission and management of state land.

- An assessment of the legal and institutional framework to combat corruption in the WB&G. This assessment was conducted through surveys and primary research. We examined the strengths and weaknesses of the current legal framework, the institutions responsible for anti-corruption-related activity, and identified outstanding challenges and gaps. The assessment of the legal framework was based on a review of the existing laws and regulations in WB&G pertaining to corruption. The institutional assessment was based on in-depth interviews with all relevant institutions, as well as the household and public officials' experiences with these institutions as documented in the surveys.

Key Findings

Like many young governments in developing countries, the PA has experienced varying degrees of success in establishing good governance frameworks. During much of the first decade of the PA, government systems were fragmented, informal and gave considerable discretion to the office of the president and political leaders. While discretionary control of public funds provided flexibility to the PA leadership, it resulted in wasteful expenditure and leakages of public funds. This led to a great deal of public dissatisfaction with the PA, raising questions about the government's ability to deliver basic services. The PA has undertaken substantial reform efforts to redress these weaknesses.

Where reforms work

The analysis finds that over the past decade, in most Palestinian public institutions, reform efforts have improved economic governance. The most successful reform efforts have come in three areas: management of public finances, government equity holdings, and reform of the petroleum commission.

Public Financial Management

The quality of public financial management is one of the most important components of any good governance assessment. The PA took a major step forward in this area when it consolidated government revenues in the treasury, leading to a number of improvements in expenditure control. This recently was supplemented by developments in the accounting systems that facilitate more robust and timely reporting of government finances.

Reforms in PFM have been somewhat protracted due to two factors; first, the difficulty new governments often have when developing new institutions and, second, various political situations. During the second intifada, which began in 2000, the deteriorating economic situation further weakened governance arrangements. This sparked a round of improvements from 2002 through 2006. Many of these reforms were undone after the election of Hamas in 2006, when donors decided not to channel funds through the budget system. Instead, parallel financing systems were established. This undermined a major achievement of earlier reform efforts; consolidation and management of financial inflows in a transparent manner.

Following the formation of a caretaker government in July 2007, financial inflows were reconsolidated and some of the earlier initiatives completed and extended. Separate control of Gaza raised new challenges, given that some units of the Ministry of Finance were located in Gaza. The PA addressed this issue by establishing new units in Ramallah. As a result of these reforms, considerable progress has been made addressing the core public financial management issues – especially expenditure control, accounting and reporting. The preparation and audit of the 2008 financial accounts was a major milestone in this respect. While lack of a functioning Legislative Council to provide financial oversight is a major limitation, this is a broader political issue. Further reforms are planned to improve the current governance arrangements. These include steps to increase the transparency of the budget, and build on the experience with the audit of the 2008 accounts to further strengthen the accounting and auditing functions.

Management of equity holdings

Equally notable is the PA's work to improve management of its equity holdings at home and abroad. During the late 1990s and early 2000s, the fund managing these holdings lacked transparency and accountability in both management and financial practice, leading to serious governance weaknesses. Managed by the economic adviser to President Arafat and valued at \$345 million, the fund was not audited, its legal standing was unclear, and its finances unavailable even to Palestinian Legislative Council (PLC) members. In addition, its considerable profits were channeled outside the PA budget.

In 2002, a major push was made to reform this system by establishing the Palestinian Investment Fund (PIF). One of the case studies conducted during the course of our research showed that reforms made in the creation and development of the PIF went a long way toward improving accountability and transparency.

The PIF is now financially and administratively independent, with guidelines for regular disclosure of PIF activity and audited financial statements. It is governed by a 7-member board of directors from the private sector and a 30-member General Assembly from the private sector and civil society. Both are appointed by the President for three-year terms. Internal financial reports and investment details are now published on the PIF website.

The case study specifically credits reforms such as independent external and internal auditing, more stringent financial disclosure and conflict of interest rules for board members. However, there is no direct accountability to the PA or the PLC. This is an area that should be revised and formalized in legislation. Consideration should also be given to the role of the PIF as a development agency, as in a small economy the operations of this public fund could quickly dominate and crowd out the development of the private sector.

Petroleum Commission

The Palestinian petroleum commission, established in 1994 as the monopoly supplier of petroleum products in WB&G, was granted exclusive rights to channel and sell petroleum products in the WB&G, and also was mandated to regulate the sector.

Reform of the petroleum commission has been a largely positive development, initially controlling the commission's cash flows and, more recently, improving broader financial management arrangements.

Change, however, was slow in coming, according to the case study conducted in our report. While the Paris Protocol provided the framework for the supply of petroleum to WB&G and set consumer pricing within the region, it did not provide any reference for governing this challenging sector. In 1997, three years after the commission was established, the PLC tried to regulate operations in the sector through new legislation, but the bill was never signed into law. Consequently, the commission operated without a legal or regulatory framework, and was not subject to oversight by external audit or the PLC. This led to financial mismanagement, serious complaints from customers, and exploitive practices in the sector.

The PA launched a series of reforms to address the commission's poor governance performance. In 2003 the PA put the commission and its accounts under the supervision of the Ministry of Finance, changed management, and conducted a full audit of all transactions.

While these steps eliminated monopolistic pricing regimes, increased sales, and dramatically reduced the PA's commercial engagement in final distribution, i.e. fuel stations, they did not bring order to the commission's financial systems. No audits were conducted between 2004 and 2008, and a 2008 audit revealed a number of significant weaknesses.

Since then, the commission has implemented another round of reforms to address outstanding financial issues, and progress has been made. In 2009, the PA undertook a number of measures, such as establishing a new commercial accounting section in the MoF system and conducting regular bank reconciliations. Control of the commission's bank accounts was transferred to the MoF treasury. Reform measures need to continue along this path. In particular, the PA needs to provide specific reports on the financial performance of the commission, establish a more transparent procurement process for purchases of fuel, and a clear governance framework.

Where reforms are underway

Reforms are underway in other areas necessary for an overall good governance framework. The PA has made progress with initiatives in public procurement, public employment, regulation of the private sector, and establishing an institutional and legal framework for anti-corruption activities.

Public procurement

Public procurement is the area of government activity most vulnerable to abuse, involving large, discrete transactions that can be skewed toward a particular supplier. Government procurement processes must be robust, demanding transparency and fair competition.

Our assessment found PA procurement procedures to be reasonably well organized, a conclusion supported by results from the public officials' survey and the 2007 ICA which surveyed private sector businesses. More than 87 percent of those surveyed believed procurement procedures were transparent in their institution. Likewise, more than 95 percent disagreed when asked if bribes influenced contracting procedures, while 75 percent disagreed when asked if personal or family connections played a role. One factor contributing to this finding was that until 2008 almost all development expenditures in the PA were financed by donors, which brought some order to the procurement process from donors who had their own procurement procedures, guidelines and mechanisms.

However, a number of weaknesses with the procurement function have been documented in earlier assessments. In particular, there is no routine reporting of procurement activities and no external body with specific responsibility to investigate complaints by bidders on the procurement process.

The PA concurs with these assessments and is in the process of developing a national procurement policy and enacting a robust procurement law. The importance of implementing these reforms cannot be overstated.

Public Employment

Effective government requires a sound public sector employment strategy, which guides the size and skill-mix of the workforce. Unfortunately, public sector employment can also be used as a political tool by governments, as a source of patronage to garner support. In WB&G, public employment was historically used as a tool to address political and social objectives. While a nascent PA required sizeable recruitment in the initial years, political and economic pressures also led to unsustainable public sector hiring and a steeply rising wage bill.

The main governance concern with the growth in employment has been that hiring and promotion were used to provide benefits to individuals with personal connections to public officials or those linked to political parties. This was apparent in the early period of the PA where employment was used to reward those with links to the PLO, but is also viewed as a key factor in the large growth of employment in 2005 prior to the elections, and in the growth under the subsequent government in 2006 and 2007.

Since 2003, the PA has initiated a number of reforms to improve the legislative framework and administrative procedures through which the civil service is managed, and these have slowly taken effect. The most significant development in the way staff are recruited and managed was the adoption of Civil Service Law No. 4 in July 2005. The new law made the process more routine and transparent, and also introduced a system of multiple approvals to stem unauthorized appointments. Controls were also introduced to provide assurance on the veracity of the payroll. In particular, cash based payments to security personnel were eliminated. However, the security payroll remained outside the control of the MoF, and it was only in 2008 that separate databases for the civil and security sector payroll were consolidated.

The results of the public officials' survey support the view that the PA reforms have improved governance in the area of public employment. The household survey revealed that public employment is still perceived to be the most problematic area of all public services – particularly with respect to the use of personal or family connections (*wasta*). However, the actual experience reflected a much lower incidence of problems.

While the reforms generally decreased the scope for discretionary hiring, more remains to be done. The PA is developing a new Civil Service Law and this should further increase the controls on hiring and promotion – and clarify the role of Ministers in senior civil service appointments. Additionally, the PA should embed in the security sector the same improved recruitment and promotion procedures adopted in the general civil service. A recent development is the introduction of security checks for all recruitment, which creates new opportunities to influence hiring. The PA should review this practice and, if it is to continue, develop procedures to improve the transparency of the process.

Public-Private Sector Interface

Perception of corruption as a constraint to doing business has been on a downward trend since the 1990s. The PA and private sector associations backing anti-corruption reforms should be given due credit, particularly in light of the fact that many more experienced governments struggle to develop effective governance arrangements for regulating the activities of the private sector.

The study finds that the vast majority of firms in WB&G do not make extra-legal payments to public officials for routine business services, and that WB&G ranks very well when compared to other countries in the region on indicators of petty corruption in the business environment.

It also finds that the PA has made improvements in sectors of the economy that have monopolistic features. A case study of the telecommunications sector (see inset) presents the positive steps the PA has made to improve regulation of the sector but also illustrates the need for the PA to complete building independent, transparent, and effective regulatory frameworks.

Considering the regulation of business more generally, the PA should complete work on the draft competition law prepared a few years ago. Developing this law and establishing a competition authority would promote a level playing field for private sector players.

Telecommunications Sector

The telecommunications sector – with its rapidly changing technology, monopolistic features, and large start-up costs – has presented challenges for the PA. It is a difficult sector to manage and an area where governments around the world struggle to find the appropriate regulatory balance. These challenges are further exacerbated by a risky and uncertain political environment that discourages investors in WB&G. In view of these risks, in 1996 the PA provided the first operator with a statutory monopoly. While the monopoly on mobile communications ended in 2001, in practice it continued until 2009 (excluding unauthorized Israeli operators.) The dominance of one operator in the market and the absence of a strong regulator created the potential for “state capture” and a risk that a level playing field for other private sector players would not be achieved.

In recent years the government has opened up the market by awarding more licenses and undertaking new initiatives to attract telecommunications providers. Recent entrants into the telecommunications and IT markets helped reduce the dominance of the incumbent provider.

To strengthen the regulatory regime, a new telecommunications law was passed in 2009 to create an independent regulatory body. However, the law has not been put into effect. Our report suggests that while progress is being made, governance of this sector could be markedly improved by establishing the independent regulator set out in the telecommunications law. The sector still suffers from weak regulation, in part due to insufficient technical capacity and lack of consistent and transparent licensing rules.

Anti-corruption initiatives – legal and institutional framework

Strong legal and institutional frameworks are the cornerstones for successful anti-corruption efforts. When the PA was established, it inherited a complex, divergent legal system resulting from a century of occupation by various political powers.

The PA has worked to harmonize existing laws, and has set forth a number of new initiatives to strengthen the legal framework for fighting corruption. These include the 2005 Illicit Gains Law, and the 2007 Anti-Money Laundering Law. On the institutional side, the Attorney General’s office centralized anti-corruption and economic crime efforts, and the PLC established a complaints bureau to handle complaints from the public on a range of matters including corruption.

Despite these efforts, the legal and institutional arrangements remained fragmented. Moreover, the surveys found that neither Palestinian public officials nor households had faith in the willingness of the government to prosecute corruption cases or enforce rulings. This has made Palestinians reluctant to report corrupt activities.

In view of this history, the 2010 anti-corruption law establishing the Anti-Corruption Commission (ACC) and the Corruption Crimes Court is a major milestone. It broadens the range of offenses defined as corruption and makes the ACC clearly responsible for public information on corruption, and for investigating and prosecuting corrupt activities. The ACC has started functioning and has developed internal regulations, established a dedicated court for corruption cases, and initiated investigations of a number of complaints - some of which have been sent to court.

While this is a significant development, the PA needs to ensure that the commission is able to meet its mandate. Agencies that multi-function as police, regulators, educators and policy advisors are often ineffective, according to several studies designed to measure the efficiency of anti-corruption efforts. Careful consideration needs to be given to the short-term priorities of the ACC. As it stands, its mandate is very broad and the ACC risks trying to do too much too soon. The PA also must establish mechanisms to monitor the extent to which its institutions are effective and fulfill their anti-corruption responsibilities. This is particularly important given that the survey findings reflect limited confidence in the PA's enforcement activity.

Finally, while these initiatives represent important steps, more needs to be done to strengthen both the legal and institutional frameworks. Asset disclosure provisions in the anti-corruption law, which the ACC is mandated to implement, can be improved by requiring more frequent disclosure, verification, and specific sanctions for non-compliance. Establishing effective relationships between the ACC and bodies such as the government auditor and the Attorney General's office also remains a priority.

Where reform is needed

The study identifies some important areas of economic governance where reform has either stalled or not yet been considered, and where the PA needs to increase activity. Three key areas in this respect are land management, transparency in licensing and other services managed by the PA, and access to public information as an element of the anti-corruption legal framework.

Land management

While governance of public financial assets such as equity holdings have improved greatly, as noted earlier, governance arrangements for physical assets such as land remain weak.

Land is particularly important in this region, given its scarcity due to land confiscations, restrictions on movement and access, and limits on its use in area C. Despite its importance, land management has historically suffered from a wide variety of weaknesses. State land was disposed in a non-transparent manner, with little regard for strategic considerations, and no clear criteria for decision-making or monitoring of land use. In both West Bank and Gaza there were a number of problematic practices, including discretionary allocation of land to influential PLO/PA officials, unauthorized swaps between state and private land, and illegal encroachment and utilization of state land for construction or agriculture.

For a number of years, the PA has worked on a land administration reform agenda to strengthen the legal, regulatory and institutional frameworks governing state land. But the case study reveals minimal progress and a number of remaining problems in this area, including:

- Absence of a clear policy framework for land management and allocation;
- Absence of a comprehensive land registry;
- Limited institutional capacity;
- Limited accountability for managing state land;
- Limited access to information on state land management and allocation; and
- Lack of a systematic approach to restitution of state land

The PA's major work on land management, the 2008 National Land Policy Framework, provides a sound basis for reform. While some initiatives to improve land management were undertaken, these need to be institutionalized. Considerable policy work has been completed in this area, but it has yet to be confirmed and implemented.

Management of Import Quotas

The 1994 customs union agreement with the GoI gave the PA the right to manage import quotas on a small quantity of products. The PA manages these quotas by allocating import licenses to insure they do not exceed the Israeli-mandated maximum. Although the value of these quotas is small in relation to the overall economy, the administration of the program needs to be more transparent.

Under the current process, businesses submit applications to the Ministry of National Economy (MoNE). The chief concern surrounding the process is a lack of transparency: the criteria for deciding allocations are unclear, and there is no systematic disclosure of decisions. It is difficult for businesses to get information as to why they were rejected, and no formal appeals process exists.

There are several features that constitute good practice for allocating licenses and other rights. These involve the ready provision of information on the process, policies and procedures for assessment by the regulator, and documentation of decisions with a clear appeals process. The private sector in WB&G would benefit from such clarity and documentation not only within PA entities, but also Israeli bodies that have jurisdiction over administrative procedures affecting Palestinian business activity.

Access to Information

Transparency in Licensing and Other Services

There are a number of areas where the PA is responsible for managing and allocating rights which have value to private sector companies. These encompass services across many sectors of the economy, and include provisions such as incentives/tax breaks, allocation of import quotas, and awarding of operational licenses for fuel stations. Absence of transparency over procedures and outcomes for some services managed by the PA creates the potential for preferential treatment based on extra-legal means. The report examined several areas of activity, including the management of import quotas (see inset), to illustrate the nature of the challenges and the reforms the PA should make.

Access to Information

Giving citizens and public officials access to information is one of the most powerful and efficient tools for fighting corruption. Information on how government decisions are made and who makes them is vital to promoting accountability.

It is extremely difficult, if not impossible, for Palestinians to access government information that should be readily available to citizens. There is currently no law in the WB&G that mandates public access to official information. This is a serious weakness. “Sunshine” laws bring government activity “into the light;” they discourage corruption and encourage participation by citizens and community groups. Sunshine laws can also instill confidence in government, proving that the government is indeed working for its constituents. In cases where the release of information can harm security or the national interest, clear exceptions can be made.

Many countries have introduced laws to provide citizens with access to public information. In general, these laws meet two objectives: first, they require information held by public bodies to be accessible to the public, subject to clear, comprehensive, harm-based exceptions and second, they set out clear procedures to manage requests for information by citizens, providing the right to a judicial review when the government refuses to release the information.

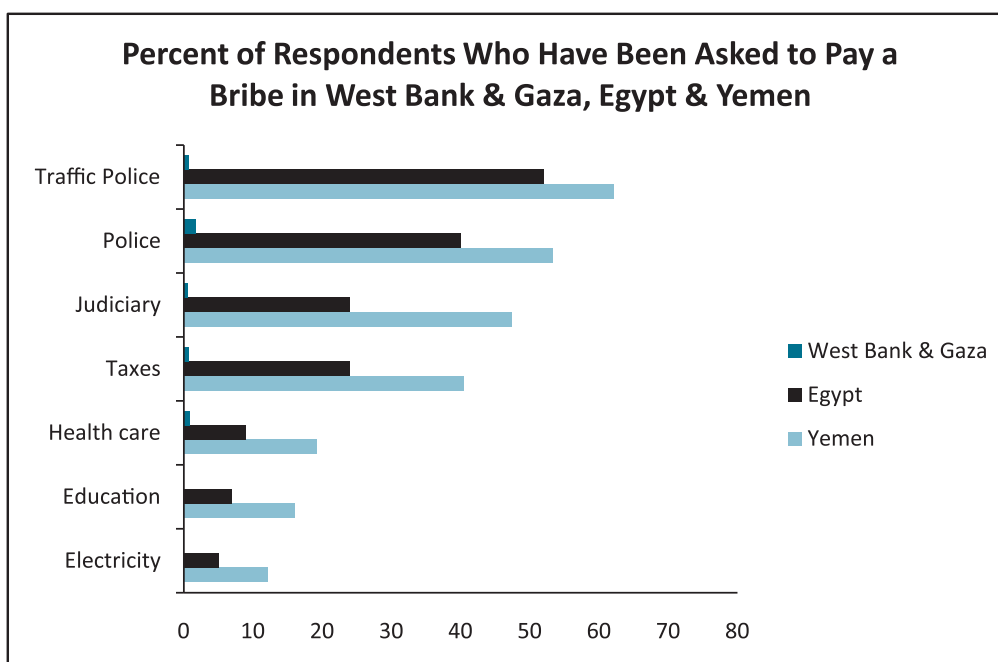
In WB&G, the concept of releasing government information is not well understood. While the enactment of a Freedom of Information law remains a long term goal, in the short term there needs to be an effort to build familiarity with the concept - both within the PA and society generally. This is an initiative where the PA and civil society could usefully cooperate.

Palestinian views on governance/corruption

A number of interesting findings come from the survey work conducted in the course of this report. Consistent with the World Bank’s assessment of PA reforms and improvements, the surveys found that for most public services relatively few Palestinians have actually experienced corruption, and it is not considered one of the most serious problems they face.

In the surveys, which looked for indications of corruption in 23 public services, use of *wasta* stood out as the most common form of perceived corruption. *Wasta* is thought to be particularly problematic when accessing public employment, health services abroad and social services. However, actual experience with *wasta* was relatively low. For example, while 80 percent of those surveyed believed people receive preferential treatment in public employment based on their status or connections, only 15 percent said they actually used their personal connections. When accessing health referrals abroad, 23 percent reported using *wasta*.

Compared to *wasta*, very few respondents perceived bribery as a problem in the public service sector. Even fewer actually experienced bribery. Apart from customs, where the bribery incidence was 5 percent, for all other services less than 2 percent actually used a bribe to access centrally provided public services. As is shown in Figure 1 the experience of bribery for various public services is much lower than in comparable countries, such as Egypt or Yemen.

Figure 1: Regional Comparison: experience of bribes for services

According to the survey, Palestinian public officials also believed that all manifestations of corruption in the public sector have decreased over the past four years. Of the five categories of corruption presented to the respondents, large scale corruption is perceived to be the least prevalent while, again, the use of personal and family connections was thought to be the most prevalent. Interestingly, those surveyed also believed the use of personal or family connections had declined more significantly than any other category of corruption.

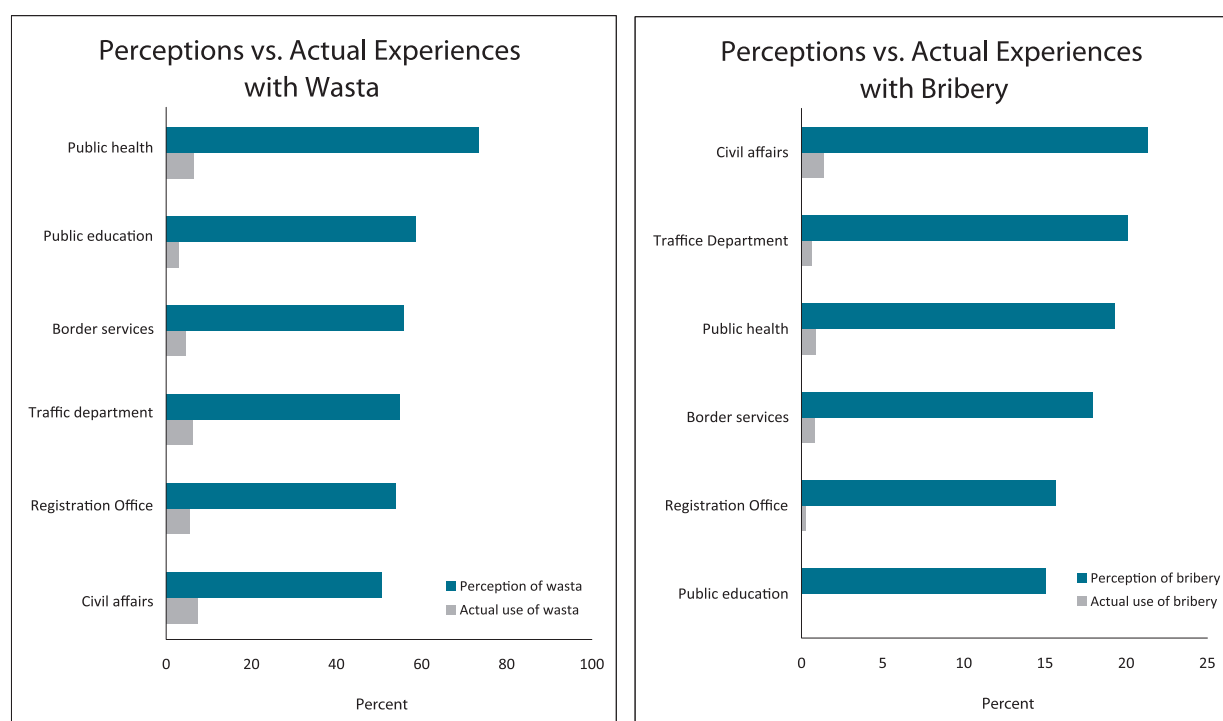
The report also considered the views of the Palestinian private sector. Perception of corruption as a constraint to doing business has been on a downward trend. This can be attributed in part to a number of important reforms the PA made to improve the way in which public-private sector relations are governed. Both the PA and private sector associations backing anti-corruption reforms should be given due credit, particularly in light of the fact that many governments far more sophisticated than theirs struggle to develop effective governance arrangements between the public and private sector.

The vast majority of firms in WB&G do not make extra-legal payments to public officials for routine business services. Out of 401 firms interviewed in the World Bank's 2007 Investment Climate Survey (ICS), 87 percent indicated that no gifts or payments were made to public officials to "get things done" in regard to customs, taxes, licenses, regulations and services. In fact, WB&G ranks top among countries in the region. Only 2 percent of businesses in the WB&G indicated that bribes were expected in the course of tax inspections, compared to 67 percent in Yemen, 61 percent in Syria and 19 percent in Lebanon.

Where perception is greater than reality

The surveys found a large discrepancy between perceptions and actual experiences. Survey respondents were asked identical questions on perceptions of the need for bribery as well as wasta, and their actual experiences with each for major public services. The survey shows that the perception of corruption (sometimes or most of the time) was much higher than actual experience for the vast majority of public services (see Figure 2).

Figure 2: Perceptions versus actual experience of bribery and wasta in services



Note: The figure shows the findings for the six services that were most frequently accessed by those surveyed.


First, there may be a “lag effect,” where perceptions of corruption are based on past practices and do not fully reflect reforms and changes in the system. The delayed impact of reforms is a finding of corruption studies in other regions. Second, there may also be socio-economic conditions at play. Citizens depend on public sector resources, whether employment or public services. If they don’t have jobs or receive inadequate public services, they might well believe the government is corrupt and they don’t have the right family/political connections. In reality, high demand and lack of resources could be preventing their employment and/or access to public services. Hence, poor economic conditions could adversely influence perceptions concerning the prevalence of corruption in government.

Finally, there could be a more general dissatisfaction with government performance and its willingness to punish official corruption. Perceptions of corruption can be high when citizens

have little faith in the integrity of institutions responsible for fighting corruption and protecting those who report it. In WB&G, the majority of corruption cases involving senior-level public officials were never prosecuted. According to our survey data, Palestinians overwhelmingly believed that public and political figures have implicit immunity and can engage in acts of corruption without repercussions.

Generally, the survey data points to a range of ways in which service delivery might be improved. It also highlights high levels of perceived corruption, which should be of concern to the PA.

Three key messages can be taken from the study. First, the PA has made significant strides to improve economic governance over the past decade. Second, reform efforts have achieved varying degrees of success and the PA needs to prioritize and address the ongoing challenges. Finally, the PA should take a more proactive approach to investigating and prosecuting corruption, as well as communicating its anti-corruption activities to build public confidence in government accountability.



Chapter 1: Introduction

Governance weaknesses leading to corruption in the Palestinian Authority (PA) have been the subject of discussion among domestic constituents and the donor community. International negotiations, including the Road Map initiative, were conditioned in part on the PA undertaking major reforms to address systematic institutional weaknesses that created the scope for corruption. Some have also tried to attribute the weak performance of the economy in the West Bank and Gaza (WB&G) to corruption within the PA.² While perceptions of corruption in the PA remain high, officials contend that these perceptions are greatly exaggerated. Despite the prevalence of this issue, little analytical work has been undertaken to comprehensively assess the extent of corruption in WB&G. This study seeks to fill that gap and shed light on the nature and real incidence of corruption in WB&G. It seeks also to identify the institutional weaknesses and strengths of existing anti-corruption mechanisms. The aim is to provide a sound basis for the PA to set priorities for governance reform.

Background to the Study

Since its inception, in 1994, the PA has faced accusations of corruption. As early as 1997, a Palestinian Legislative Council inquiry identified several major problems. These included misuse and mismanagement of public funds, favouritism in awarding of licenses and contracts, misuse of public positions for uncompetitive dealings, and monopolistic uncompetitive practices in certain sectors.³ Institutional weaknesses in public financial management and non transparent practices also contributed to concerns about the potential for corruption. In 1999, the Independent Task Force for Strengthening Palestinian Public Institutions report outlined the main concerns in public financial management. These included non-transparent budget processes, non-disclosure and non-consolidation of all public revenues, inability of the Ministry of Finance (MoF) to control payroll and pensions, and lack of effective external audit institutions.⁴

While the PA undertook some specific reforms under the Economic Policy Framework (EPF) in 1999, it introduced more comprehensive reforms to strengthen public financial management, starting in 2002.⁵ Some reforms did not see fruition and ongoing challenges remained, but there

2 Howard Pack, *Can the Palestinian Areas Become Economic Tigers Again?* May 2009.

3 Palestinian Legislative Council, *Corruption Report*, 1997; summary of proceedings can be found on www.jmcc.org

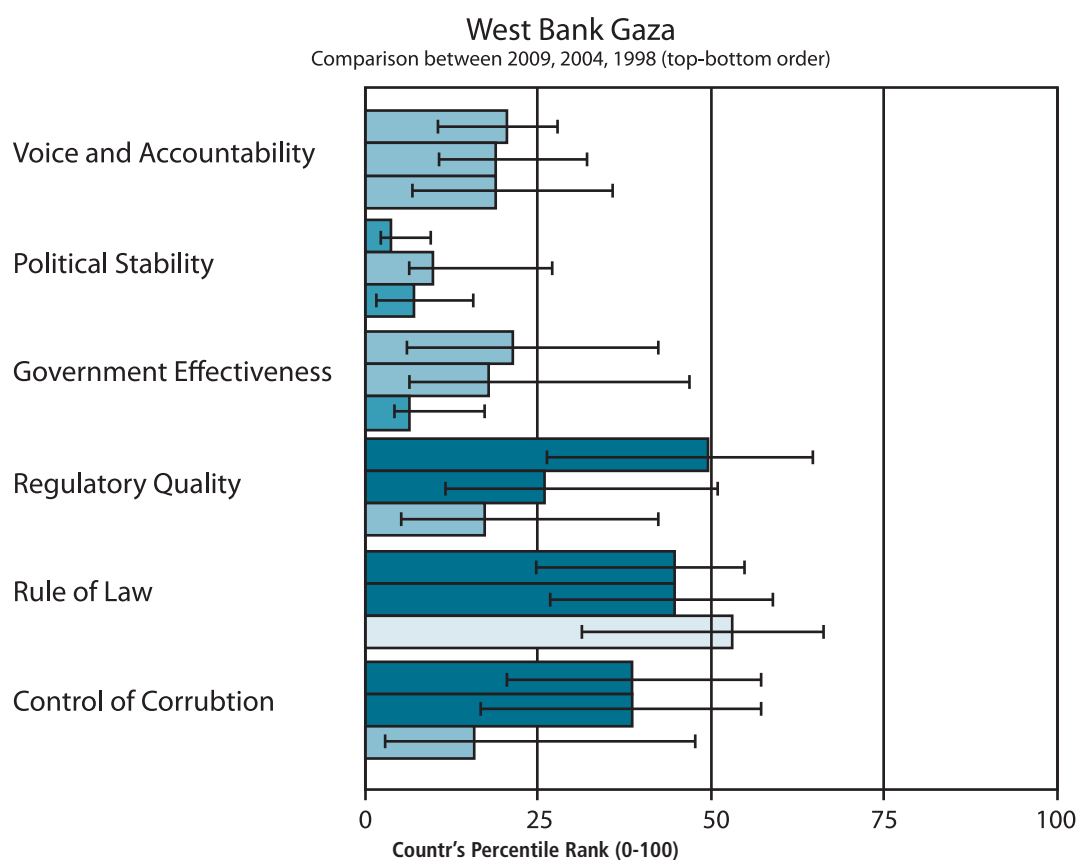
4 Independent Task Force Report, *Strengthening Palestinian Public Institutions*, 1999.

5 International Monetary Fund, *West Bank and Gaza : Economic Performance in Conflict Situation*, op.cit.

was general consensus among PA officials and donors that these reforms significantly improved the integrity of public fund management, particularly with regard to cash.⁶

Despite these improvements, studies show that significant public concerns about corruption persist. The 2007 Public Expenditure Review (PER), which examined a number of surveys of public opinion, found that “public perceptions of the integrity, honesty and performance of the PA remain largely negative, with corruption and nepotism considered significant problems”. Domestic surveys show that public perceptions of corruption in the PA remain high. For example, in the December 2009 survey by the Palestinian Center for Policy and Survey Research, 66 percent of survey respondents believed there was corruption in the PA and 51 percent believed that corruption would increase.⁷

Figure 3: Worldwide Governance Indicators for West Bank and Gaza



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), *The Worldwide Governance Indicators: Methodology and Analytical Issues*

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

⁶ World Bank, *West Bank and Gaza Public Expenditure Review: from Crisis to Greater Fiscal Independence*, op.cit.

⁷ Palestinian Center for Policy and Survey Research, Poll #34, December 2009.

Similarly, in international studies, WB&G does not rate high on governance issues. In the Worldwide Governance Indicators for 2009, WB&G's percentile ranking for five out of six governance indicators, which included "control of corruption" and "voice and accountability", were lower than the regional average (see Figure 3). For control of corruption, WB&G ranked in the 39th percentile compared to the regional average of 49, while for "voice and accountability", WB&G had a percentile rank of 20.4 compared to the regional average of 23.⁸ The 2008 Global Integrity Report rates West Bank as "very weak" in its governance and anti-corruption framework, with a rating of 53 out of 100.⁹

PA officials argue, however, that public perceptions of corruption are overblown compared to the actual extent of corrupt practices. Supporting this view, a number of questions have been raised about earlier survey work. Near East Consulting (NEC) conducted an assessment of corruption-related surveys in WB&G and found that although a large percentage of those interviewed stated that corruption was a problem in the PA, relatively few had personally experienced lower-level corruption or witnessed a corrupt act involving the public sector. The most common reason interviewees gave as to the basis for their belief that corruption was pervasive was "because everyone says the PA is corrupt".¹⁰

Approach and Methodology

The starting point for our analysis is an understanding of the relationship between governance and corruption. Corruption is an outcome, a consequence of breakdowns in the governance system, and a weak governance system provides opportunities for corruption.

Given the fact that corruption is an activity which is concealed and hidden, it is generally difficult to identify specific acts when they occur, or to ascertain the scale of the problem through "observable" indicators. This study does not attempt to investigate specific corruption activities or to quantify the "economic cost of the corruption problem" in WB&G. Rather, the central interest is to ascertain citizens' and officials' actual experiences with corruption in the public sector and to focus on systemic weaknesses in public sector governance – in the legal, regulatory, and institutional frameworks – which could lead to corruption.

The consequences of weak governance and corruption manifest themselves in different ways. In some situations there is direct involvement of citizens in the corrupt activity and therefore a strong recognition of the extent of the problem. In other situations the activity is "upstream" and the consequence for citizens is indirect – such as through higher than necessary prices or taxes. This study treats both situations as important, and takes a broad perspective of the government as provider of services, regulator, and owner. With this in mind, the study focuses on the following

8 http://info.worldbank.org/governance/wgi/sc_chart.asp

9 <http://report.globalintegrity.org/West%20Bank/2008>

10 Near East Consulting, *Corruption in Palestine: Myth or Reality? Evaluating Perceptions of Corruption in the Palestinian Authority*, unpublished, 2006.

areas of PA activity: the provision of public services, the regulation of business activity, the management of expenditures and revenues, public procurement, the management of state assets, and public employment by the PA.

The study was conducted using three approaches with a mix of quantitative and qualitative methods:

1. National-level surveys were conducted with the aim of understanding perceptions of, and actual experiences with, corruption from different perspectives of Palestinian society. The surveys were a critical component of the study as we attempted to move beyond expert opinion and general perceptions in order to provide an assessment of the actual incidence of lower-level corruption in WB&G. A range of surveys was used to gain an understanding from different Palestinian stakeholders. In particular:
 - a. **A households survey** was conducted to understand general perceptions of corruption in WB&G, and governance weaknesses in the provision of public services. This was conducted throughout WB&G in early 2010.
 - b. **A public officials survey** was conducted to understand institution-specific manifestations of corruption, such as bribery, *wasta* (favoritism through friendship or social connection) in employment, discretion/informality within procurement and internal budget processes. The survey was carried out in the West Bank in early 2010. It did not cover the Gaza Strip as no approval was given by the *de facto* authority, despite repeated requests.
 - c. The findings of the **2007 Investment Climate Assessment (ICA)** with respect to governance issues were used to understand corruption concerns of the private sector.

The households and public officials surveys were implemented by a consortium of AMAN – the Palestinian chapter of Transparency International – and the Palestinian Central Bureau of Statistics (PCBS). Annex X sets out the methodology for each of the two surveys.

2. The study examined weaknesses in the governance arrangements in various public sector activities that created the potential for corruption, and the evolution of governance systems in key areas since the inception of the PA. This temporal view established a basis for assessing the PA's commitment to addressing governance weaknesses and provides a context for understanding public perceptions. Because the PA has not had effective control in Gaza since mid-2007 the analysis from this time primarily relates to activity in the West Bank.

To further illustrate and highlight the nature of ongoing governance challenges in certain sectors, specific case studies were undertaken, based largely on qualitative research. The sector cases in particular were chosen after discussions with a number of individuals with a good knowledge of the situation in WB&G and are not meant to be generally representative of the economy, but do raise issues with wider application than the particular case. They were chosen because they are known to be problematic or challenging. The five case studies

in the report are:

1. The telecoms sector in WB&G;
 2. Non-transparent management of import quotas, and licenses in the petroleum sector;
 3. Management of equity holdings;
 4. Governance of the petroleum commission; and
 5. Management of state land.
3. The study undertakes an assessment of the legal and institutional arrangements for anti-corruption in WB&G. It examines the strengths and weaknesses of the legal framework to combat corruption, the institutions responsible for anti-corruption-related activity, and identifies outstanding challenges and gaps. This assessment was conducted through the surveys and primary research. The assessment of the legal framework was based on a review of the existing laws and regulations in WB&G pertaining to corruption. The institutional assessment was based on in-depth interviews with all relevant institutions, as well as citizens' and public officials' experiences with these institutions. The latter was examined in the context of the national households and public officials surveys.

Structure of the Report

The rest of the report runs as follows:

- Chapter 2 – Revisits the issue of perceptions of corruption and includes a consideration of what Palestinians consider to be corrupt activity, along with views on changes in the perceived extent of corruption in the PA in recent years;
- Chapter 3 – Examines corruption in the provision of public services. The chapter relies heavily on the survey findings. Alongside a general assessment, there is a particular focus on the education, health and justice sectors;
- Chapter 4 – Looks at the PA as a regulator and focuses particularly on the way that the public sector sets a framework for private sector activity;
- Chapter 5 – Considers governance in public sector management issues. This includes assessing the arrangements for public financial management, public employment, procurement practices, and the management of state assets;
- Chapter 6 – Provides an assessment of the legal framework to fight corruption;
- Chapter 7 – Assesses the institutional arrangements for preventing corruption and prosecuting those charged with corrupt activity.



Chapter 2:

General Perceptions of Corruption

The study examined citizens' perceptions of and experiences with public sector corruption in WB&G, based on surveys of households and public officials. Cognizant of the limitations of past surveys in WB&G, which tended towards very general definitions of corruption or were purely perception-based, these surveys sought to clarify several issues, including: Palestinians' views on the significance of corruption relative to other socio-economic problems in WB&G; specific manifestations of corruption that Palestinians are most concerned about; sectors and services in which corruption is of most concern; and views on whether levels of corruption have changed in the past four years. The surveys also explored societal definitions of corruption. Specifically, they sought to examine a prevailing notion that some acts are not considered corrupt by Palestinians because of “cultural norms” or social practices. Giving respondents 14 hypothetical situations, the surveys elicited responses on whether citizens and public officials believed these acts to be corrupt or not. The two surveys show that:

- Public sector corruption is not perceived to be among the most serious problems faced by Palestinians in WB&G;
- Of all forms of corruption, *wasta*/nepotism is considered to be the most frequent, while bribery is considered the least frequent;
- Corruption is perceived to occur more frequently in the public sector than in the private sector or civil society;
- Manifestations of corruption in the public sector are perceived to have decreased in frequency in the last four years; and
- The commonly held notion that social mores and practices in WB&G do not stigmatize acts of favoritism or *wasta* by public officials as corruption is not true; citizens do regard these and other acts as corruption.

Perceptions of Corruption Compared to Other Socio-Economic Problems

Public sector corruption was not seen as being one of the most serious problems faced by Palestinians in WB&G. Household respondents who viewed it as a *very important problem* ranked it ninth out of 18 factors, and as the tenth *most serious problem* facing the WB&G. Only 1.8 percent of household respondents regarded public sector corruption as the most serious problem, although 66.5 percent did regard it as a *very important problem*. Similarly, public officials ranked public sector corruption relatively low – the seventh most serious problem. Only 4 percent of public official respondents identified it as the *most serious problem* in WB&G.

High cost of living (90.5 percent of respondents), unemployment (85 percent), and internal conflict (Fateh-Hamas fighting, 79.9 percent) were the very important problems mostly cited by household respondents (see Table 1). Over 80 percent regarded 19 of the 20 problems listed in the survey to be important or very important.

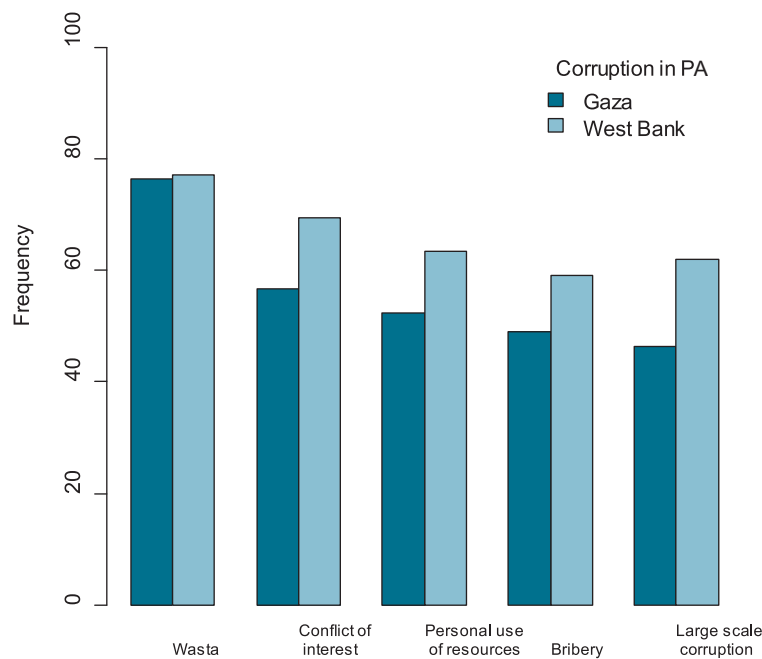
Table 1: Importance of Various Problems Facing Households in the WB&G

Problem	Very im- portant	Important	Less im- portant	Not im- portant
High cost of living	90.5	8.1	1.0	0.4
Unemployment	85.0	12.4	1.8	0.8
Internal conflict	79.9	11.0	4.4	4.7
High cost of education	72.0	21.2	5.3	1.5
Low quality of health care	70.3	22.6	5.0	2.1
Political instability	69.7	22.6	5.3	2.4
Low quality of education	69.0	21.4	6.7	2.9
High cost of health care	68.4	23.9	5.6	2.1
Public sector corruption	66.5	25.0	6.3	2.1
Lack of access to clean water	62.2	24.8	7.3	5.7
Poor leadership	61.4	25.8	8.3	4.4
Safety concerns, crime & violence	61.1	23.9	12.3	2.8
Environmental destruction	60.9	28.3	8.2	2.6
Poor sanitation	60.3	25.6	9.9	4.1
Drug abuse & trafficking	60.2	22.8	11.2	5.8
Housing shortage	55.4	25.2	11.7	7.7
Low quality of roads	54.7	31.3	10.4	3.6
Civil society corruption	49.2	33.1	13.0	4.7
Private sector corruption	49.0	32.5	13.5	4.9
Food shortage	46.3	25.2	16.4	12.0

Perceived Frequency of Different Forms of Corruption in the Public Sector

Use of *wasta* was considered to be the most frequent form of corruption in the public sector, with 77 percent of household respondents saying *wasta* occurs most of the time in the public sector (see Figure 4). This was followed by conflict of interest (65 percent), unauthorized personal use of PA resources (59.6 percent), and large-scale corruption (e.g., stealing money and public property, 56.4 percent).

Figure 4: Household Perceptions of Corruption Frequency in the Public Sector



Similar results were found in the survey of public officials, where 53 percent of respondents believed that *wasta* occurred most of the time. After nepotism, the second most prevalent manifestation of corruption was the “unauthorized personal use of resources belonging to the PA”. Almost 50 percent believed that this happened most of the time. The third-most prevalent form of corruption was “conflict of interest” (46 percent). Diverging from household respondents, only 19 percent of public sector officials believed large scale corruption happened most of the time.

Generally, the findings suggest that households perceive all forms of corruption to be more pervasive than do public officials; household respondents gave higher numbers to every type of corruption than did public officials.

Household respondents saw bribery to be the form of corruption occurring least frequently in the public sector. Nevertheless, 55.4 percent said it occurred frequently. By contrast, less than 15 percent of public officials believed that bribery happened most of the time.

Perceived Prevalence of Corruption in the Public Sector versus Other Sectors

Corruption was perceived to occur more frequently in the public sector than in the private sector or civil society. Most respondents, 55.4 percent, believed that bribery occurred most of the time in the public sector, while less than one-third believed it occurred most of the time in the private sector (32 percent) and in civil society (30.2 percent). Similarly, public sector officials perceived corruption in their sector to be considerably more serious than in the private sector or civil society; 65 percent identified public sector corruption as "very important", with just 43 percent and 39 percent saying the same for civil society and the private sector.

A higher percentage of respondents from the West Bank compared to respondents from Gaza believed that various forms of corruption occurred most of the time in the public and private sector and in civil society. For example, 62 percent of respondents from the West Bank, compared to 46.5 percent of Gazan respondents believed large-scale corruption occurred most of the time in the public sector, and 52.8 percent of respondents from the West Bank, compared to 44 percent of Gazan respondents, believed conflicts of interest occurred in civil society.

Changes in the Perceived Frequency of Corruption over Four Years

Notably, public officials believed that all five manifestations of corruption in the public sector had decreased in frequency over the preceding four years. According to respondents of the public officials survey, *wasta*/nepotism in the public sector had decreased the most: 22 percent fewer respondents said that it now occurred "most of time". The perceived frequency of bribery in the public sector had decreased by 19 percent, abuse of resources by 18 percent, and large-scale corruption by 16 percent (see Figure 5, 6, 7 and 8). The smallest improvement was observed in the conflict of interest category (12 percent).

Figure 5: Perceived Frequency of Bribery in the Public Sector – 2006 and 2010

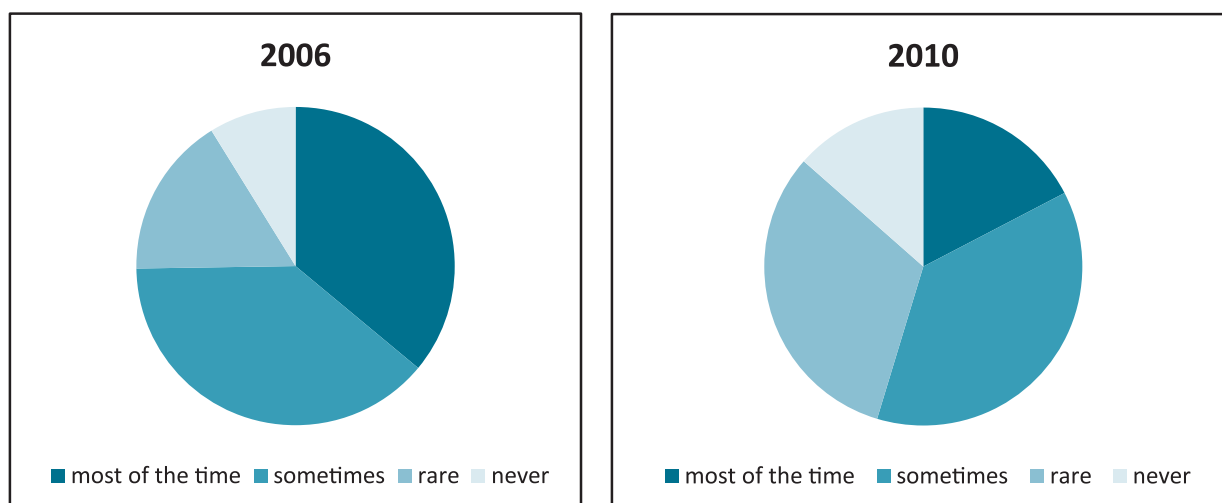


Figure 6: Perceptions of Wasta/Neptism in the Public Sector – 2006 and 2010

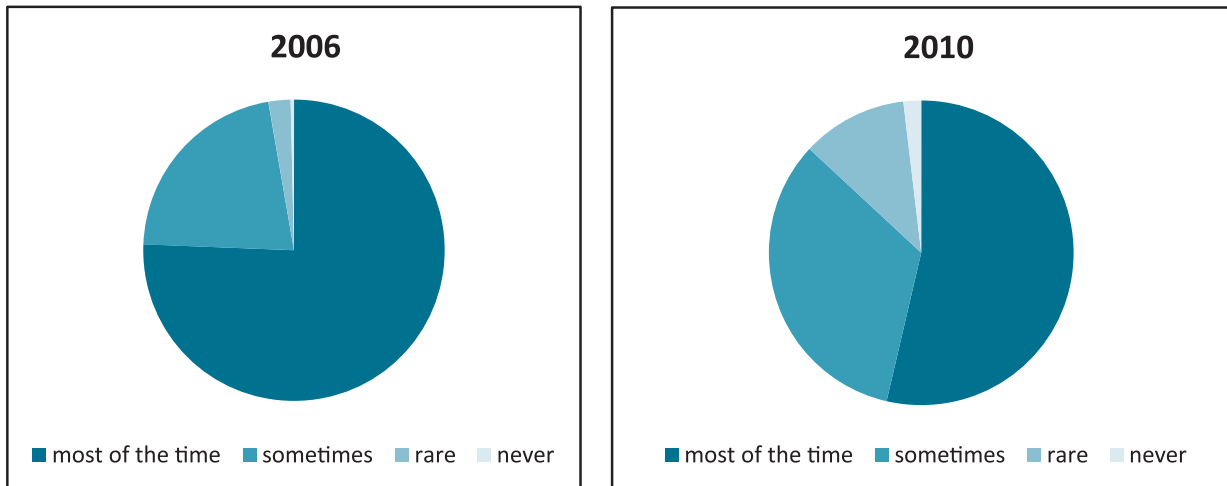


Figure 7: Perceived Incidence of Large-Scale Corruption – 2006 and 2010

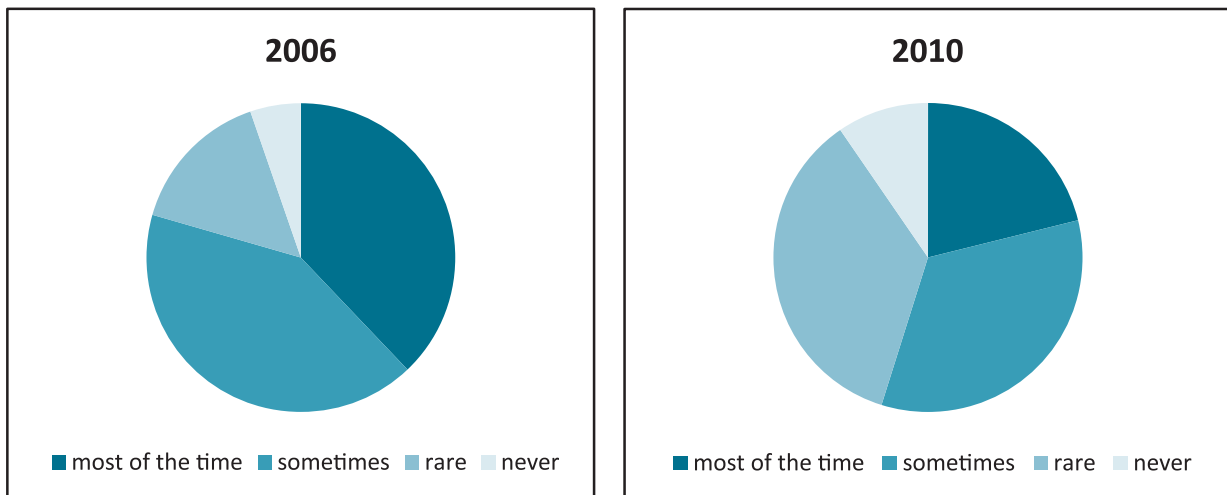
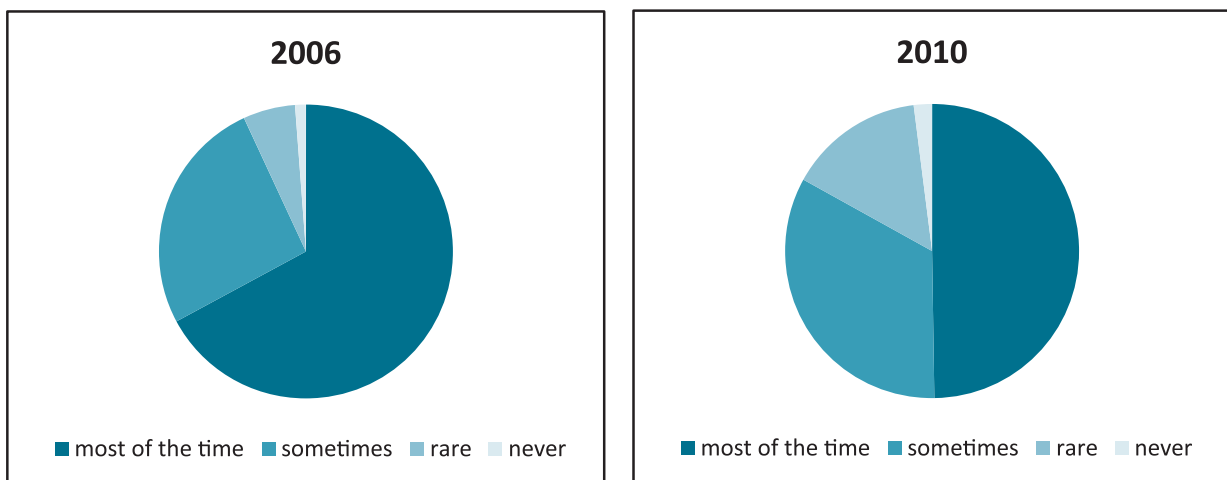


Figure 8: Perceived Unauthorized Use of PA Resources – 2006 and 2010



Views on what behavior constitutes corruption

One notion commonly circulated is that there are certain practices that may be defined as corruption in the "good governance" framework, but which are not considered corruption in the Palestinian social domain. Among the most frequent examples of this is the practice of *wasta* and gift-giving. The survey presented respondents with 14 hypothetical situations involving public sector officials, and asked whether these constituted corruption or not.

The survey results overwhelmingly refuted the conventional wisdom; the vast majority of respondents regarded gift-giving and special favors for public servants as corruption (see Table 2).

Table 2: Views on Whether the Receipt of Money or Gifts is Corruption

	Households	Public Officials
	<i>Percentage of respondents answering "Yes" to the question, "Do You Consider the Following Acts as Corruption?"</i>	<i>Percentage of respondents answering "Yes" to the question, "Do You Consider the Following Acts as Corruption?"</i>
<i>A PA official steals public funds</i>	99.8	99.9
<i>A contractor hands money to a public official in order to be favored in a public contract</i>	99.2	99.5
<i>A public official receives gifts from citizens for providing service</i>	95.1	97.5
<i>A public official uses an official car for personal business</i>	88.6	89.1

Similarly, over 88 percent of respondents perceived the actions described about public employment as corruption, with one exception – significantly fewer household respondents (67.8 percent) agreed that if a person obtained a job for which she or he is well qualified, thanks to a family relationship with a PA official, it constituted corruption (see Table 3).

Table 3: Views on Whether Employment-Related Activities are Corruption

	<i>Households</i>	<i>Public Officials</i>
	<i>Percentage of respondents answering “Yes” to the question, “Do You Consider the Following Acts as Corruption?”</i>	<i>Percentage of respondents answering “Yes” to the question, “Do You Consider the Following Acts as Corruption?”</i>
<i>A person obtains a job, for which other applicants better qualified had applied, thanks to a family relationship with a public official</i>	97.5	98.5
<i>A person is promoted thanks to a family, geographical, or factional relationship with a state secretary or high ranking public official</i>	96.2	96.4
<i>High-level appointments in the PA based on political affiliation or family affiliation</i>	94.5	86.6
<i>A person has special access to information about a job in the PA thanks to a family relationship with a public official</i>	89.0	86.8
<i>A person obtains a job, for which s/he is well qualified, thanks to a family relationship with a PA official</i>	67.8	61.6

With the exception of the first scenario, a higher percentage of respondents from Gaza perceived the situations to constitute corruption. For example, 84.9 percent of household respondents from Gaza believed that the fifth scenario constituted corruption compared to 59.1 percent of respondents from the West Bank. Similarly, 95.1 percent of household respondents from Gaza believe that the fourth scenario constituted corruption compared to 89.9 percent of respondents from the West Bank.

There was less agreement as to what constituted corruption in service delivery. Respondents were asked whether they considered the following five situations involving service delivery activities to be examples of corruption (see Table 4).

Table 4: Views on Whether Service Delivery-Related Activities are Corruption

	<i>Households</i>	<i>Public Officials</i>
	<i>Percentage of respondents answering "Yes" to the question, "Do You Consider the Following Acts as Corruption?"</i>	<i>Percentage of respondents answering "Yes" to the question, "Do You Consider the Following Acts as Corruption?"</i>
<i>The absence of standards for the correct and proper performance of public functions</i>	95.1	86.8
<i>A person is having difficulty obtaining a travel document. In order to obtain the document faster, a person pays the PA official some money. The official had not asked for money, but s/he accepts it</i>	88.8	98.1
<i>A friend of a PA official applies for a permit, and the official transacts his friend's applications ahead of others who had applied before</i>	84.9	82.3
<i>A person is able to secure a health referral abroad by using his family or friends in the health ministry</i>	62.3	74.9
<i>A person is having difficulty obtaining a travel document. In order to obtain the document faster, a person calls a friend/family member familiar with the official to request that the service be expedited</i>	59.5	47.2

While the majority still considered the use of *wasta* or connections for access to services as "corruption", they appeared to make a distinction where the use of *wasta* was perceived to not directly hurt someone else.¹¹ A smaller percentage of respondents (< 68 percent of households and 62 percent of public officials) regarded *wasta* as corruption when it was used to secure employment for which the applicant was well qualified, involved a health referral, or to expedite travel documents. In all other cases, more than 84 percent of household respondents regarded it as corruption. Interestingly, respondents perceived the absence of standards for performance of public functions as corruption, when strictly this relates more to mismanagement.

¹¹ This is a perception that someone else is not directly hurt, when in reality it does give rise to unfair advantage for one person over another.

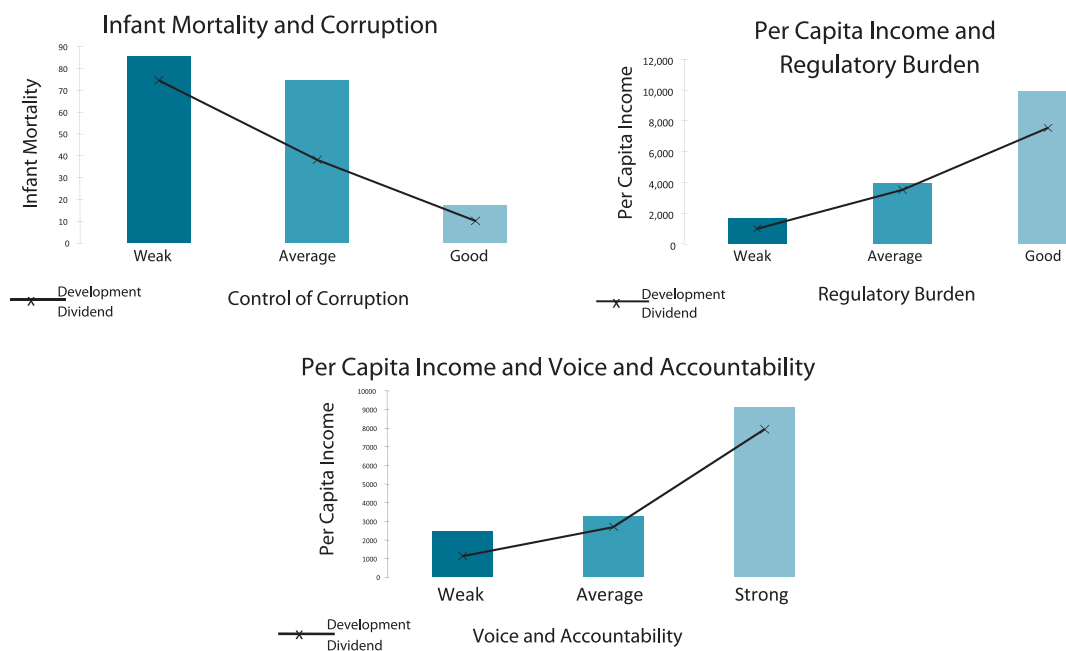
Chapter 3:

Public Sector Services

Corruption in public service provision can be one of the most detrimental forms of corruption, imposing direct costs on citizens. While there are many forms of corruption in public services, petty corruption in the form of bribery and preferential access to services based on connections are among the most common. These forms of corruption can penalize particularly the poorer segments of society, making services more costly and even rendering needed services inaccessible. Where they relate to the services used by the business community they can also create a significant barrier to growth.¹²

Control of corruption, on the other hand, improves service delivery outcomes. Studies show a positive correlation between control of corruption and other good governance indicators to several socio-economic indicators (see Figure 9).¹³

Figure 9: Good Governance and the Quality of Service Delivery



12 *From Privilege to Competition - Unlocking Private-led Growth in the Middle East and North Africa*, World Bank, 2009.

13 Drawn from *Governance and Anticorruption: An Approach for the MNA Region*, November 2010 (presentation by Guenter Heidenhof, World Bank). Original source of data: World Bank, World Development Report, 2004: *Making Services Work for Poor People*.

This study examined the scope of corruption in public service provision in WB&G by conducting national households and public officials surveys. Households were surveyed in their role as users of public services to ascertain the prevalence of lower level corruption – in particular bribery and wasta/favoritism/preferential treatment – in public services. The survey sought to elicit not only citizens’ perceptions, but also their actual experiences with corruption when accessing 23 public services. In addition, more detailed questions were asked for three sectors commonly utilized by citizens – education, health, and judiciary. Public officials were asked for their perceptions of the integrity of major public institutions and on the presence of petty corruption in service provision.

The findings show that:

- In general, corruption is not regarded as the most serious problem in various public service delivery organizations, although it is perceived as problematic;
- Bribe payments are seen as relatively unusual for the vast majority of public services;
- Preferential treatment based on one’s connection or status is perceived to be a more frequent problem than bribery when accessing public services, especially as regards access to public employment, health services, and social solidarity services;
- While perceptions of corruption in some PA institutions are high, actual experience is notably less so. For most services, the vast majority of respondents neither made bribes nor utilized wasta. Although it is common to find that perceptions of corruption are higher than actual experience, the gap in the households survey is remarkable;
- The actual experience of bribes is also much lower than in either Egypt or Yemen, the MENA countries for which comparable benchmark data were available;
- While the findings on perceptions are broadly in line with other surveys this is the first time in WB&G that a survey has questioned respondents on their use of bribery and wasta;
- The wide gap between perceptions and actual experience of corruption in the public sector is difficult to explain. It may be that perceptions of corruption are exaggerated by experiences in the early years of the PA, or a more general sense of dissatisfaction with the performance of the PA. While actual experience may be underreported in the survey, this does not satisfactorily explain the wide gap between perceptions and experience.

The remainder of the chapter presents the results of the survey focusing first on respondents' perceptions of corruption in a range of public institutions followed by their actual experience. Annex 2 contains similar assessments for each of the judicial, health, and education sectors.

Perceptions of Corruption in General Public Services

Comparison of Services

In general, corruption is not viewed to be the most serious problem in various public service delivery organizations. Respondents were asked what they regarded as the most serious problems in service delivery in 20 organizations. The highest percentage of respondents (48.6 percent) ranked corruption in public employment as the most serious problem. This was followed by police services, where respondents ranked corruption as the second most serious problem, with 17.5 percent of respondents indicating that it was the *most* serious problem (see Table 5).

Table 5: Rank of Corruption Relative to Other Service Problems in Public Institutions

Service	Rank of corruption compared to six other problems	Percent who ranked corruption as the most serious problem
Public official employment services	1	48.6
Police	2	17.5
Judiciary and court	4	9.1
Civil Affairs	4	4.9
Social Solidarity Services	5	11
Traffic Department	5	5.5
Business professional work license	5	3.3
Public education	5	2.5
Sanitation	5	0.5
Borders	6	4.6
Public health	6	4.1
Taxes	6	2.6
Registration Office	6	2.3
Customs	6	1.6
Property (other than real estate)	6	1.3
Electricity	6	0.5
Street lighting and paving	6	0.5
Housing permits	6	0.4
Garbage collection	6	0.2
Water	7	0.4

For the other services, fewer than 10 percent of respondents viewed corruption as the most serious problem. Relative to other problems, corruption was the fourth most serious problem in the judiciary and court-related services and in civil affairs. For the rest, corruption was ranked as the fifth or sixth most important out of seven problems, and even the least important.

In general, fewer respondents viewed corruption as the most serious problem in municipal services compared to central services. It was considered to be most significant in sanitation services, but even in this service, corruption was seen as only the fifth most serious problem, with only 0.5 percent of respondents considering it to be serious.

Perceptions of Bribery

The likelihood of bribe payment was perceived to be most prevalent in public employment, in borders services, and civil affairs. For all other centrally provided services, bribe payment was not perceived to be frequent. One-third of respondents believed bribery was common within public employment services – 21.4 percent of respondents said that households like their own were likely to be asked to pay bribes for "border services", and 20.1 percent said households like their own were likely to be asked to pay bribes for civil affairs-related services sometimes or most of the time. For all other centrally provided services, less than 20 percent of respondents believed they would be asked to pay a bribe.

There was considerable variation in perceptions of corruption within the various services, and between centrally provided services and locally provided services (see Figures 10 and 11).

Figure 10: Perception of Bribery in PA Service Delivery

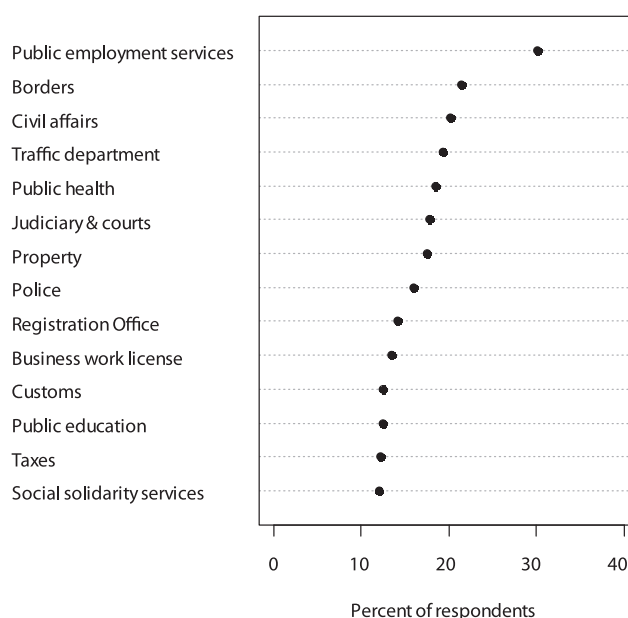
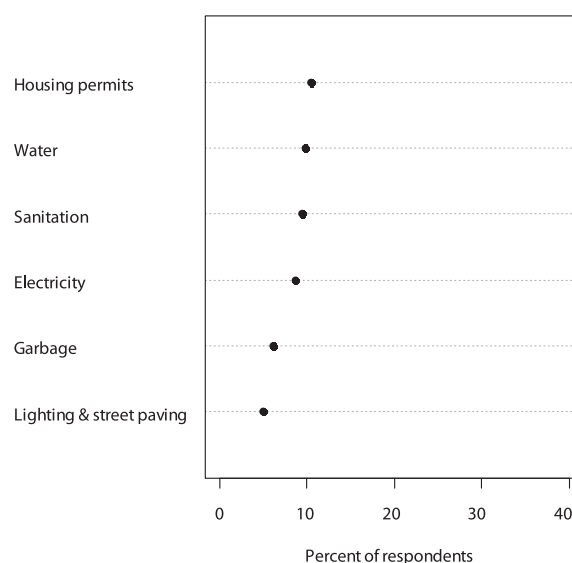


Figure 11: Perception of Bribery in Municipal Service Delivery

In general, more respondents saw bribery to be more common in centrally provided services than in municipally-provided services. Of the municipally provided services, 10.4 percent believed that households like theirs were likely to be asked to pay bribes for housing permits and 9.4 percent believed that households like theirs were likely to be asked to pay bribes for sanitation services. Only 5 percent believed that households like theirs were likely to be asked to pay bribes for lighting and street paving services.

The vast majority of respondents' information about bribery in service delivery came from personal experience or from the experience of household members. Of the respondents who tried to obtain the services and believed that households like theirs were asked to pay bribes for services most of the time, 61.5 percent said their perception was based on personal experiences or those of household members, and 35.9 percent claimed that their perceptions were based on information from friends and other relatives.

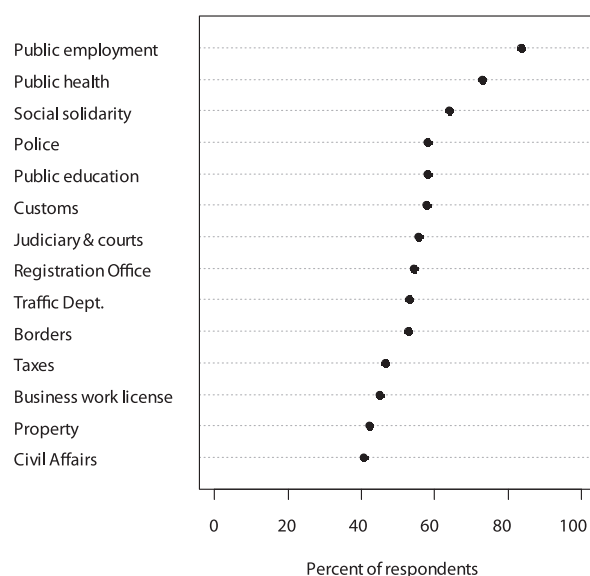
Most public officials did not believe that bribery in service provision was pervasive. When asked if their colleagues would ask for a bribe to provide services, only 3 percent agreed while 91 percent disagreed. Only 3 percent working directly with the public and 4 percent working indirectly with the public also agreed or strongly agreed that their colleagues would ask for a bribe when providing services.

Perception of Wasta

In general, preferential treatment based on one's connection or status was perceived to be a more frequent problem than bribery when accessing public services. It was seen as particularly problematic in access to public employment, health services, and social solidarity services.

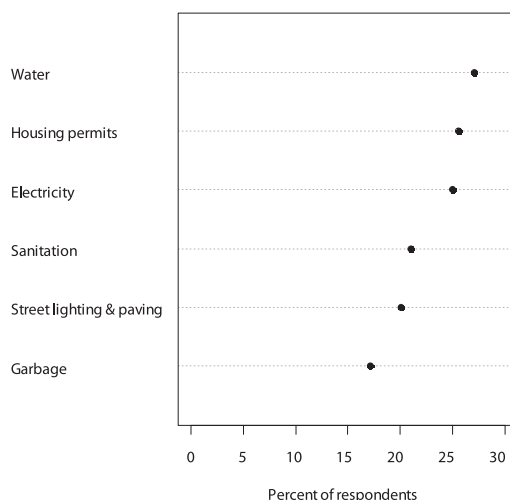
A high percentage of respondents believed that citizens received preferential treatment for access to services depending on their connections or status. Over 80 percent of respondents believed that people received preferential treatment in public employment depending on their status or connections, while 72.9 percent believed that there was preferential treatment in public health services sometimes or most of the time, and 65 percent held the same to be true for social solidarity/assistance services. Respondents believed that preferential access was least common in civil affairs services and property services (see Figure 12).

Figure 12: Perception of Wasta in PA Service Delivery



A substantially smaller percentage of respondents believed that preferential access to municipally-provided services was common. The general perception was that preferential access occurred most frequently in the water sector, with 27.1 percent saying it occurred sometimes or most of the time (see Figure 13).

Figure 13: Perception of Wasta in Municipal Service Delivery



The vast majority of respondents' information about *wasta* in service delivery came from personal experience or that of household members. Of the respondents who tried to obtain the services and believed that preferential treatment for access to the services based on connections or status occurred most of the time, 65.2 percent said that their information about *wasta* came from personal experience or that of household members. Just 31.2 percent of respondents claimed they received their information about *wasta* from friends or relatives, and 2.6 percent of respondents said they learned about *wasta* from local media.

Nearly one-half of public officials indicated they believed their colleagues to be influenced by favoritism/*wasta* when providing services, with 46 percent agreeing and 50 percent disagreeing with the statement, and 32 percent agreeing or *strongly* agreeing that service provision was not based on fairness and equality. These results did not vary significantly between institutions dealing directly or indirectly with the public. Among officials, 46 percent of those who worked directly with the public and 45 percent of those working indirectly with the public felt that their colleagues were influenced by favoritism/*wasta*.

Wasta/favoritism was perceived to occur at all levels of the bureaucracy. According to the public officials survey, 44 percent working at the highest level felt that their colleagues were influenced by favoritism/*wasta* when providing services, whereas 43 percent working in mid-level positions and 49 percent working in low-level positions felt similarly.

Experience of Corruption in General Public Services

While perceptions of corruption in some PA institutions were high, the findings on actual experience were far lower. Very few respondents reported having been asked to pay a bribe for centrally- and municipally-provided services. Use of *wasta* to access employment and some services was higher than bribe payments, but still relatively low; just 15 percent of respondents indicated actually using *wasta* for any of the services.

Experience of Bribery

For most centrally-provided services, fewer than 2 percent of respondents who accessed the services in the preceding year indicated that they or a household member had been asked to pay a bribe. For those who accessed the service in the last year:

- Customs, with a 5.6 percent prevalence, was the only service in which asking for a bribe was identified as a feature by more than 2 percent of respondents;
- Just 1.8 percent were asked to pay a bribe for police services; 1.4 percent were asked to pay a bribe for civil affairs services; and 1.1 percent were asked to pay a bribe for property services other than real estate;

- Fewer than 1 percent were asked to pay a bribe for public health, border control, taxes, traffic department, judiciary and court, and the registration office; and
- No one reported having been asked to pay a bribe for public education, social solidarity or business licenses.

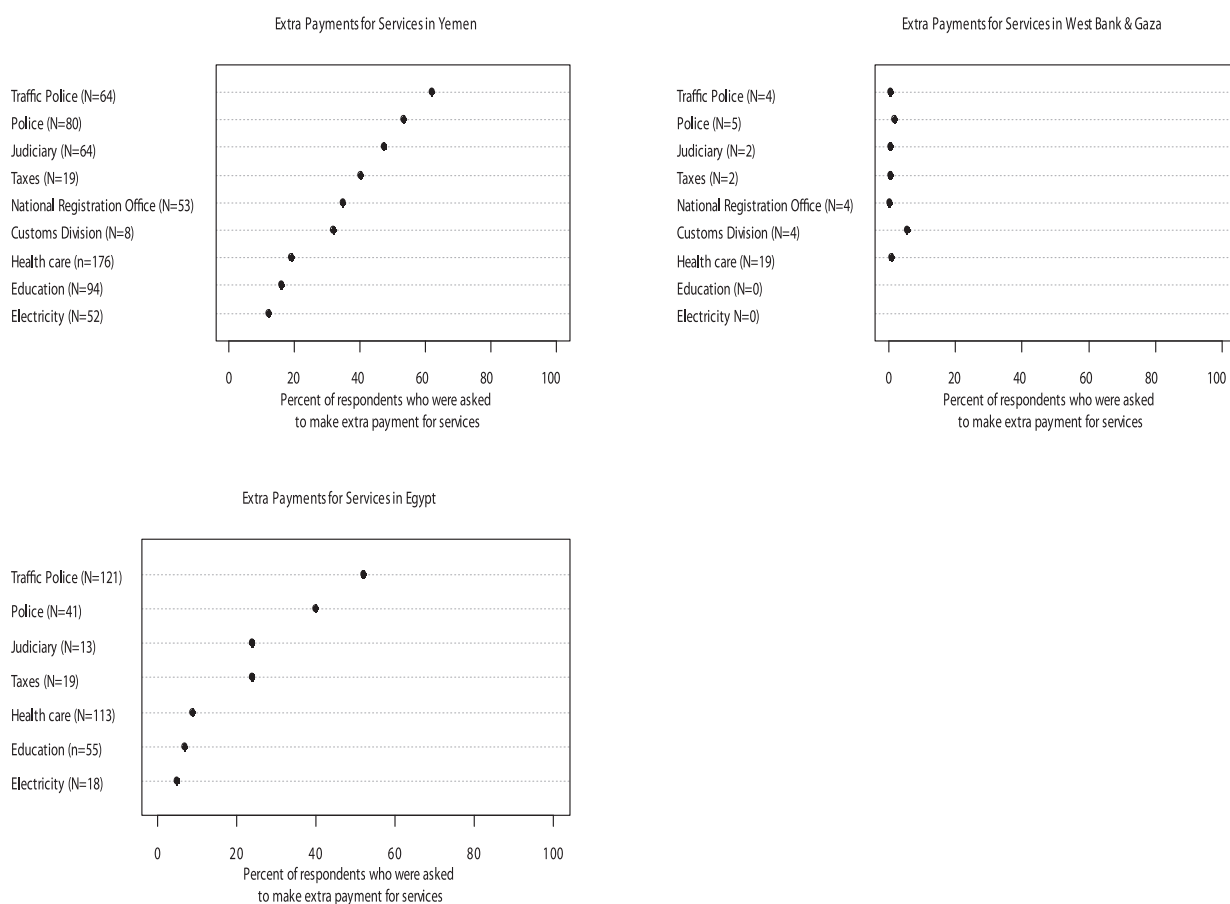
Of the respondents who had contact with municipally-provided services in the last year, very few were asked to pay a bribe. Specifically, three respondents were asked to pay a bribe for water, two for sanitation, and one for street lighting and paving. No one was asked to pay a bribe for electricity, garbage collection or housing permits.

There are no statistically significant differences in the prevalence of bribery within the West Bank or Gaza, with the exception of public health. In Gaza, 1.2 percent of respondents were asked to pay a bribe for public health services compared to 0.3 percent of respondents in the West Bank. This could be due to the fact that public health services in Gaza are subject to more shortages and pressures.

The mean cost of bribes paid was highest for customs services and the median cost was highest for judiciary and courts. Of the respondents who paid a bribe for a service, the average cost of bribes paid to customs officials was 2,267.75 ILS (US\$581.73) and the median cost was 850.00 ILS (US\$218.09). The average and median cost of bribes paid to courts was 1,000.00 ILS (US\$256.52). The cost of bribes was lowest for borders, where the average and median cost of the bribes was 65 shekels (US\$16.67).

The vast majority of respondents who paid a bribe believed it brought faster service delivery. Of the respondents who paid a bribe for customs services and to the traffic department, 75 percent believed that it resulted in faster quality and 25 percent believed that it resulted in better quality services. Of the respondents who paid a bribe for the following six services, there was a consensus that it brought faster service quality: judiciary and court services; registration office; property other than real estate; borders; taxes; and water. There was less agreement on the impact of bribes among respondents who paid bribes for public health, civil affairs, and police services.

Comparisons with two other countries in the MENA region, namely Egypt and Yemen for which recent comparable data exist, shows that frequency of bribery is much lower in WB&G. The frequency of bribe payment is consistently and significantly lower in WB&G than in Egypt and Yemen across a range of public services (see Figure 14).

Figure 14: Comparison of Bribery in Service Delivery – Yemen, Egypt, WB&G

Experience of Wasta

A higher percentage of respondents reported using wasta instead of bribery for some centrally provided services, but overall the actual experience of wasta is relatively small.

A higher percentage of respondents reported that they used wasta to obtain police services (14.7 percent), public official employment, and civil affairs services (7.3 percent) than any other services. Fewer respondents reported using wasta for taxes (2.4 percent) and public education (2.8 percent) than any other service (see Figure 15 and 16).

Figure 15: Experience with Wasta in PA Service Delivery

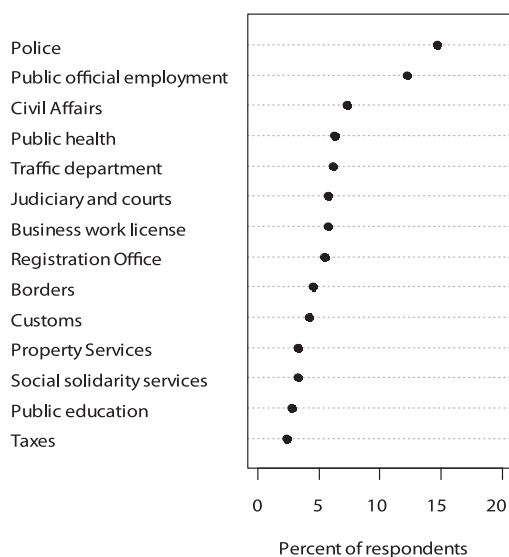
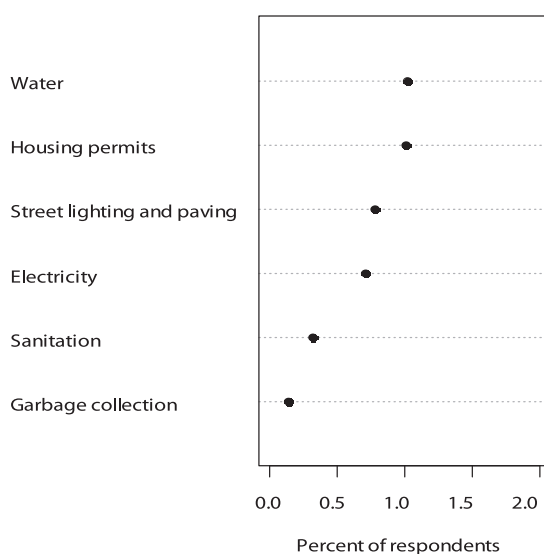


Figure 16: Experience with Wasta in Municipal Service Delivery



More respondents used wasta for centrally-provided services than for municipally-provided services. Of the respondents who tried to obtain municipally-provided services, less than 1.1 percent reported using wasta for such services as water and housing permits.

The vast majority of respondents who used wasta for centrally provided services believe that it resulted in faster service delivery. Of the respondents who used wasta to obtain customs and property services other than real estate, there was a consensus that the wasta led to faster service delivery. Of the respondents who used wasta in dealings with the registration office, public health, traffic department, taxes, business professional work license, borders, judiciary and courts, and police, most believed that it led to faster service delivery. There is less agreement on the usefulness of wasta in public education, civil affairs, and social solidarity services.

Relationship between Perceived and Actual Experience of Corruption

One of the most striking results from the survey is that perceptions of corruption, in the form of bribery and preferential treatment, in the public sector are significantly greater than actual experience. While the findings on perceptions are broadly in line with other surveys, this is the first time in WB&G that a survey has questioned respondents on their use of bribery and wasta. Correlations were made between perceptions of bribery and wasta in the public sector and actual experiences, and in most cases, results show a weak correlation. Specifically:

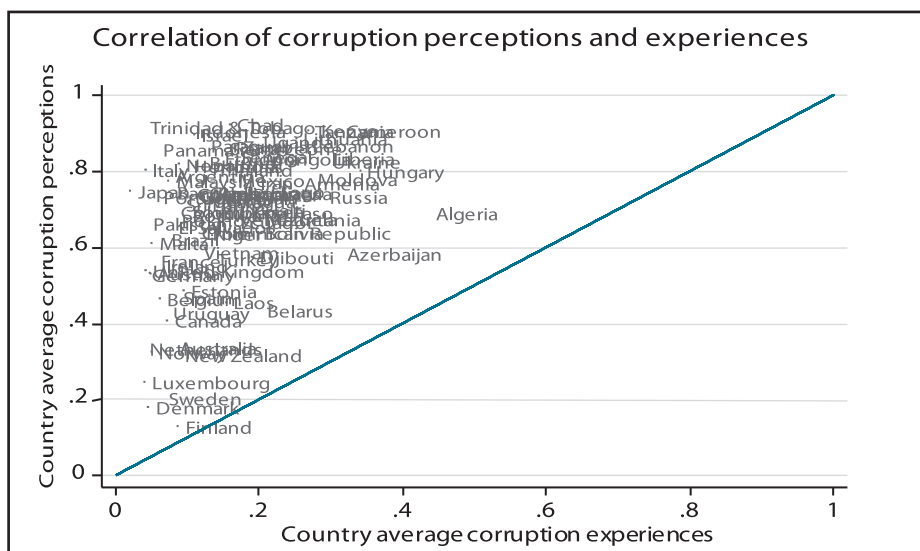
- The correlation between perceptions of the frequency of bribery in the public sector and experiences with being asked to pay a bribe for service delivery is extremely low.¹⁴ These results suggest that respondents' perceptions of bribery in the public sector correspond very little with people's experiences with bribery.
- The correlation between experiences with wasta in service delivery and the perception that wasta is prevalent in the public sector is also weak, no more than 0.12. The highest correlation, 0.11, is between respondents who used wasta to obtain a business professional work license from the PA and respondents who perceive wasta to be prevalent in the public sector.

It is common in surveys around the world for people to more readily believe that corruption is widespread than if they have actually been involved in it. In a graph derived from corruption surveys in 108 countries (see Figure 17, below) the reported experiences of corruption, on the horizontal axis, were compared with the perceptions of corruption in those countries, on the vertical axis. All countries sampled returned correlations above the 45-degree line, indicating that average corruption perceptions were higher than average corruption experiences in all the countries surveyed.¹⁵

However, in WB&G the size of the gap between perceptions and actual experience of corruption in public service delivery in WB&G is exceptionally large and difficult to explain. A number of factors need to be considered when interpreting the difference between perception and experience in WBG. One factor is that respondents tend to underreport experience with corruption, and are likely reluctant to admit they used wasta or bribery to get public services

¹⁴ The bivariate correlations do not exceed 0.04.

¹⁵ This graph and analysis are taken from a Policy Research Working Paper "Corruption and Confidence in Public Institutions: Evidence from a Global Survey" by Bianca Clausen and Aart Kraay (World Bank), and Zsolt Nyiri (German Marshall Fund). January 2010

Figure 17: Correlation between Corruptions Perceived and Experienced

Source: Gallop World Poll, 2008 - covering over 78,000 respondents in 103 countries

delivered. While studies have found underreporting of the order of 15 percent of respondents,¹⁶ the gap between perception and experience in WBG is so large that underreporting does not fully explain the discrepancy.

There are a number of reasons why perceptions of corruption may be unrealistically high. First, there may be a “lag effect,” where perceptions of corruption may be based on past practices and may not fully reflect the reforms and changes in the system. The delayed impact of reforms is a finding of corruption studies in other regions.¹⁷ Second, there may be socio-economic conditions at play. Citizens depend on public sector resources, whether employment or public services. If they don’t have jobs or receive inadequate public services they might believe the government is corrupt and they don’t have the right family/political connections. In reality, high demand and lack of resources could be preventing their employment and/or access to public services. Nonetheless, poor economic conditions could adversely influence perceptions concerning the prevalence of corruption in government. This is an explanation encountered by AMAN the Palestinian branch of Transparency International, which has been working in WB&G since 2000.

Finally, there could be a more general dissatisfaction with government performance and its willingness to punish official corruption. Perceptions of corruption can be high when citizens have little faith in the integrity of institutions responsible for fighting corruption and protecting those who report it. In WB&G, the majority of corruption cases involving senior-level public officials were never prosecuted. According to our survey data, Palestinians overwhelmingly believe that

¹⁶ World Bank, *Does Respondent Reticence Affect the Results of Corruption Surveys? Evidence from the World Bank Enterprise Survey for Nigeria*, Clausen, Kray and Murrell, 2010.

¹⁷ See World Bank, *Anti-Corruption in Transition 3: Who is Succeeding ... and Why?* 2006, for a discussion.

public and political figures have implicit immunity and can engage in acts of corruption without repercussions. This is discussed further in Chapter 7.

The household survey also examined in-depth three sectors: justice, health, and education, which are all crucial in the delivery of public services. Respondents were asked for their perceptions of corruption in these sectors, and alongside this, those who had recently accessed public services were asked to comment on the actual experience. The main findings are presented in Annex II. In brief, the findings show that:

- While corruption is not perceived as the most important obstacle in the judiciary, wasta was perceived to be important in court decisions by more than 50% of respondents. However, actual use of wasta by those who used the courts is reported to be low.
- Costs associated with bribe payments are perceived to be the least important obstacles to using the health system in WB&G, while wasta also ranks relatively low. For those who accessed services, very few reported paying a bribe. However, higher percentage of respondents reported having to use wasta, particularly for medical referrals abroad.
- Similar to the other services, perceptions of corruption in the education sector are greater than actual experiences. Favoritism and wasta ranked (in perceptions) as the fourth most important obstacles in accessing the education sector, however few respondents reported using wasta. 9.6 percent reported using wasta to obtain a scholarship.

Improving Governance within the Provision of Public Services

The survey results indicate a strong household perception that bribery or wasta are necessary to access public services. However, they also point to very limited use of bribery, and relatively low levels of wasta in practice. The explanation for this dichotomy is not entirely clear, but it appears to be at least partly due to an exaggerated perception of bribery and wasta levels within the WB&G. This suggests two courses of action:

1. The PA should continue to take steps to address the areas where the survey suggests problems remain, even if the extent of the problem is less than perceived. In particular wasta in public employment (which is discussed in more detail in the following section) and the systems for health referrals, and;
2. In view of the gap between the perception and actual experience of corruption, the PA could also be doing more to communicate its efforts to improve the governance environment. It should take a more proactive approach to communicating its anti-corruption efforts to the public in order to increase awareness of the steps it is taking and its resolve to address the remaining problems.

While corruption appears to be a limited concern, the survey results point to a range of problems faced by Palestinians accessing public services. Improving the quality of public service delivery remains a priority.



Chapter 4: Public-Private Sector Relationship

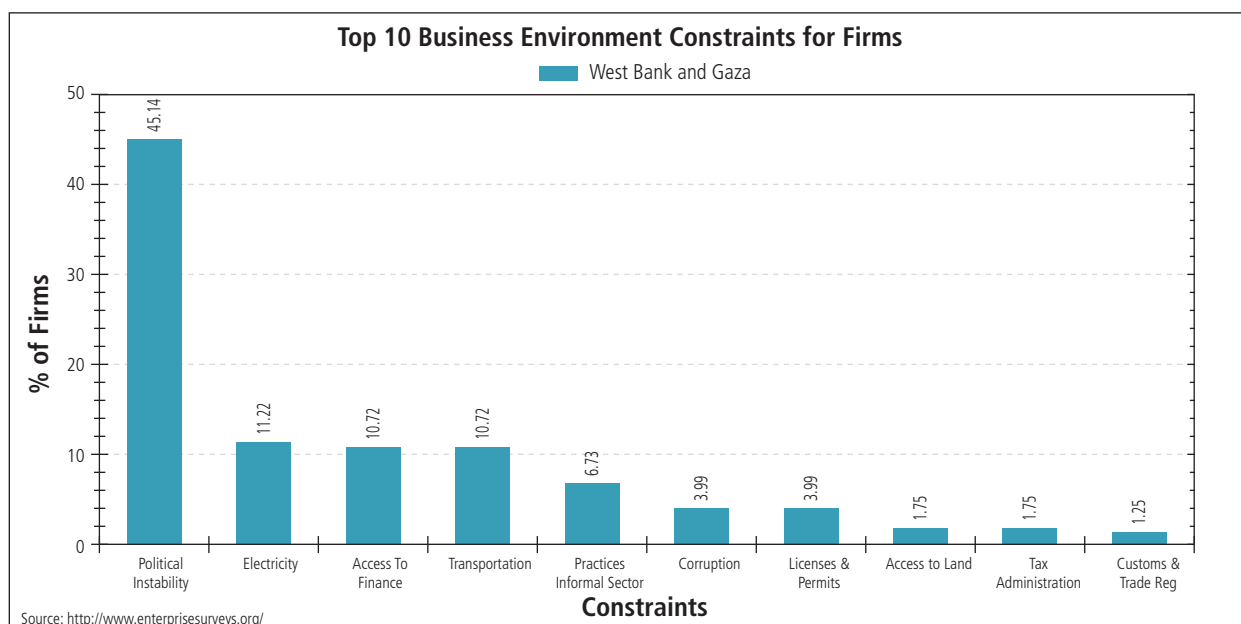
This chapter looks at the PA as a regulator and focuses particularly on the way that the public sector sets a framework for private sector activity. It first considers the views of the Palestinian private sector on corruption and finds that corruption is not considered to be a major obstacle in the investment environment in WB&G. This can be attributed to historically low levels of petty corruption in WB&G, as well as governance reforms the PA has implemented since the early 2000s. This progress is reflected in improved perceptions of the business environment based on surveys conducted since 1996.

Notwithstanding the progress made, a number of key governance challenges remain. These create scope for and raise concerns about discretionary decision-making, and potential corruption. In view of these the PA should:

- Establish an independent regulator for key sectors of the economy;
- Develop a competition law and establish a competition authority; and
- Improve transparency in the management of licensing arrangements.

Private Sector Views on Corruption in West Bank and Gaza

The most recent survey of the private sector, in 2006, showed that corruption is not identified as a top constraint in the investment climate in WB&G. The Investment Climate Survey

Figure 18: Top Ten Business Environment Constraints for Firms in WB&G

(ICS), conducted by the World Bank, asked respondents to identify their top three constraints in doing business in the WB&G. Their top constraint was political instability. Corruption ranked relatively low, with only 4 percent of businesses citing it among their top three business problems (see Figure 18).¹⁸

Perception of corruption as a constraint to doing business appears decreased since 1996. While it is not possible to directly compare the results of the ICS survey of 2006 with those of the World Business Environment Surveys (WBESs) (of 1996 and 2000) because of differences in survey methodologies and questions, some striking trends can be observed.¹⁹ For instance, there was a decline in the proportion of companies regarding corruption as a major constraint. In 1996, it was seen as fourth-most serious constraint to doing business in the WB&G, with 85 percent of companies considering it a “major or moderate problem”. By 2000, 71 percent of respondents identifying it as a “major or moderate problem” (just 24 percent considered it a “major problem”), although they ranked it as the second-most important constraint.²⁰ In 2006, the ICS indicated that corruption was no longer regarded as a major impediment to Palestinian businesses: it ranked sixth, with only 4 percent of firms identifying it as the most serious obstacle in the investment climate.²¹

18 Enterprise Survey webpage, <http://www.enterprisesurveys.org/>, World Bank.

19 2006 ICA survey asked respondents: “Please tell me the three [constraints] that you think are currently the biggest problem, beginning with the most difficult obstacle of all”. In contrast, the 2000 WBES survey asked respondents: “Please judge on a four point scale how problematic are the following factors for the operation and growth of your business. (Please do not select more than 3 obstacles as “major”)”.

20 Governance and Business Environment in West Bank/Gaza, World Bank, 2000.

21 Enterprise Survey webpage, <http://www.enterprisesurveys.org/>, World Bank.

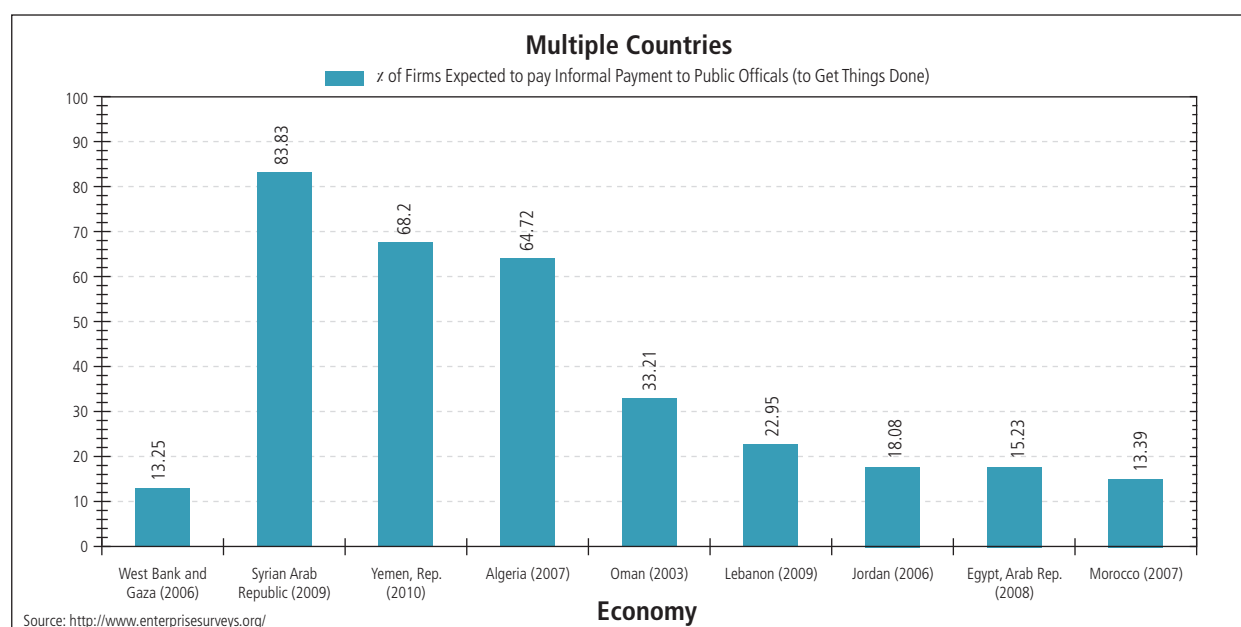
In the 2006 period, Israeli movement restrictions were at a peak, and hence corruption issues may have been perceived to be relatively less important. However, the improvement in perceptions from 2000 to 2006 may also reflect a positive response to a number of important reforms the PA had made to improve the way in which public-private sector relations were governed. Despite this general improvement, a number of weaknesses in governance have not been fully addressed and remain issues to this day.

Where Corruption is Not Considered a Problem

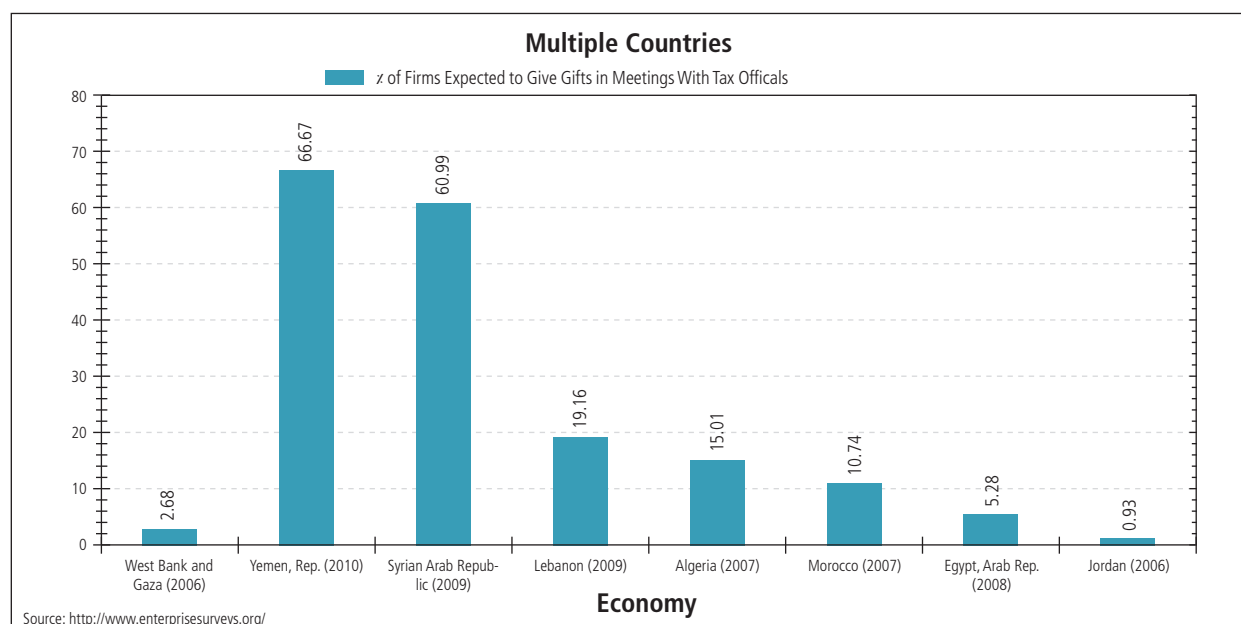
Unlike in many developing countries, lower-level corruption – in the form of public servants using their positions to engage in petty rent-seeking activities – is not a significant problem in WB&G.

The vast majority of firms do not make extra-legal payments to public officials for routine business services. The WB&G is the top-ranked country in the region in this regard (see Figure 19). Out of 401 firms interviewed in the ICS, 87 percent indicated that no gifts or payments are made to public officials to "get things done" with regard to customs, taxes, licenses, regulations, and services. Out of 325 firms in the manufacturing sector, six firms made payments, averaging 1 percent of the value of sales.

Figure 19: Percentage of firms expecting to pay informal inducements to officials



According to the 2006 ICS, public servants do not impose unnecessary regulatory requirements on businesses and rarely demand bribes. For example, only 2 percent of businesses in WB&G indicated that tax officials expected bribes in the course of tax inspections, in comparison to 67 percent for Yemen, 61 percent for Syria, and 19 percent for Lebanon (see Figure 20).

Figure 20: Percentage of firms expected to give gifts in meetings with tax officials

Likewise, the vast majority of firms who reported having applied for a service in the last two years never had to make bribe payments for services such as electrical connection, water connection, and construction-related permits. Similarly, of the firms that applied for an import license in the last two years (N=29), none reported having to make an informal payment for the license. Of the firms that applied for an operating license in the last two years (N=51), only 1 reported having to make informal gift or payment for the license.²²

The relative insignificance of petty corruption has been a long-standing feature of the WB&G business environment. The 2000, the WBES showed that petty bribery in the form of informal payments to officials was not a frequent phenomenon: 79 percent of respondents in WB&G indicated that they seldom or never made informal payments to government officials to get things done, and a further 11 percent of respondents said that they made such payments only occasionally.

A key explanation for this feature is the fact the WB&G business environment is not burdened by overregulation and administrative barriers, which can create scope for lower-level corruption. Licensing of business activity, permits and inspections, which are commonly cited concerns for businesses in many countries, were not mentioned as obstacles to doing business in WB&G. In addition, taxation is also not an obstacle to doing business in WB&G. The tax regime aims to encourage investment and is not considered to be burdensome by entrepreneurs, but tax laws also tend to be poorly enforced.²³ As will be discussed later, a major exception in this regard is the exports and trade regime.

²² The data in this paragraph refer to firms in the manufacturing sector (N = 325) – a subset of the full survey.

²³ West Bank and Gaza Country Economic Memorandum, World Bank, 2006.

Where Corruption is Considered More Problematic

While petty corruption is not a significant feature of the WB&G business environment, there were certain forms of corruption and areas of the economy in which corruption has historically been of significant concern. These concerns were raised by the PLC and other institutions in the late 1990s, when the PA institutional apparatus was still nascent. Broadly, these issues related to non-transparency in the operations and financial management of commercial enterprises in which the PA had an equity stake, conflict of interest and misuse of public positions by officials who simultaneously had direct or indirect affiliations with commercial activities, and non-transparent awarding of operational licenses, allocation of import quotas, or granting of special privileges in key sectors. The PLC's 1997 Corruption Report detailed these practices, and private sector concerns in some of these areas were identified in the 2000 WBES survey. In addition, independent studies also examined the impact of economic relations and physical and administrative barriers arising from the implementation of the Paris Protocol (PP) and the PA's policy directives. They identified incentives and opportunities created for non-transparent deal-making and preferential access to business deals and trading activities for those with connections.²⁴

Since 2000, the PA supported by the donor community has embarked on a range of reforms, aimed at improving governance and reducing the scope for corruption. These reforms, detailed in other sections of this report, included consolidating all PA commercial operations within an audited and more transparent entity (PIF); reducing public sector involvement in commercial enterprises (e.g., downstream petroleum sector operations); introducing conflict of interest and asset disclosure legislation; improving public procurement systems; automating certain procedures in ministries, such as the Ministry of National Economy (MoNE), which interface with the private sector.

These reforms were important strides towards addressing the governance concerns held by the private sector in WB&G. The differences between the private sector survey results of 2000 and 2006 are indicative of some of the positive achievements the PA made. The fact that businesses perceive corruption as among the least important obstacles in the 2006 survey can be interpreted as a reflection of improved confidence following the major reforms the PA undertook after 2000. Anecdotal evidence, based on interviews with the private sector and civil society institutions, also suggest that the corrupt practices identified by the 1997 PLC investigations are less pronounced and frequent.

Notwithstanding these improvements, governance weaknesses remain and further reform by the PA is warranted. The next sections of the report examine some of these in more detail using case study examples. These relate to anti-competitive practices and ineffective regulation in some key sectors, as well as non-transparency in decision-making in the awarding of licenses and quotas. These give rise to the scope for preferential and discretionary treatment by public

24 Mushtaq Khan et. al, *State Formation in Palestine*, 2004; Markus E. Bouillon, *The Peace Business: Money and Power in the Palestine-Israeli Conflict*, I.B. Taurus 2004; Peter Lagerquist, "The Corruption of Occupation", MERIP, 2003.

institutions and officials with respect to the private sector. As mentioned earlier these cases were chosen because they are considered to represent areas of the economy which are particularly problematic or challenging. For this reason the findings are not representative of the economy generally although there may be relevance beyond the specific case. For example while the case of quotas, only reflects a relatively small part of the economy, it does have application to other situations where the PA is allocating rights or benefits.

Market Power and “State Capture”

As mentioned earlier, the World Bank’s 2006 (ICA) revealed that in general corruption is not a major problem faced by businesses. However possible abuse of market power and dominance by some powerful business groups, and close personal ties between large businesses and public officials are identified by the private sector as the main corruption related concerns they have. In addition, the assessment identified unregulated monopolistic operations, namely in the telecommunications sector as a key problem.²⁵

The main institutional weaknesses, which underpin these concerns, are the absence of an effective legal and regulatory framework to ensure a competitive market. There are no independent regulatory agencies, nor has the PA enacted a competition law. In addition, there is a lack of transparency in the PA’s decision-making process when it makes regulatory decisions.

These institutional shortcomings are particularly highlighted in markets that have features of monopolistic supply. Because there is a potential for large economic rents to be captured by operators with a dominant position, there are governance risks associated with the regulatory framework and the way it is implemented. Where the regulatory framework is not strong, there is potential for “state capture” and there is a risk that a level playing field for other private sector players will not be achieved.²⁶ State regulatory agencies are said to be captured when they regulate businesses according to the private interests of the regulated as opposed to public interest for which they were established.²⁷ To address these risks, it is important that a sound regulatory framework is established and transparently implemented. In addition, a strong legal framework (laws and bylaws), open tender and licensing processes, and open consultation processes, also contribute to reduce the risk of abuse of dominant position.²⁸

The following case study examines these issues with reference to the telecommunications sector in WB&G. The sector was until recently characterized by the presence of a private monopoly²⁹,

25 Investment Climate Assessment: Unlocking the Potential of the Private Sector, World Bank, 2007; West Bank and Gaza Country Economic Memorandum, World Bank, 2006.

26 Source: Anti-Corruption in Transition: A Contribution to the Policy Debate, World Bank.

27 For a discussion on the connection between monopoly or dominance abuse in infrastructure, and governance issues, see Rossotto, Wellenius, Lewin, Gomez, Competition in International Communications, World Bank, 2004.

28 For a discussion on the role of regulations in sector development see: Wellenius, Smith, “Strategies for Successful Telecommunications Regulation in Weak Governance Environments”, World Bank, 1999.

29 Monopoly existed in fixed-line segment; for the mobile segment, there was also unauthorized competition in the market by Israeli operators prior to the entry of a second mobile company in 2009. A monopoly continues to exist in the fixed-line segment and an effective monopoly in the ISP segment.

which gave rise to particular governance challenges for the PA. As in all countries, natural or statutory monopolies are in a position to charge higher prices than would be justified by the costs of supply due to an absence of competition.³⁰ In order to protect consumers, it is standard practice for the government to regulate prices and encourage competition in the market, wherever possible. The nature of the telecommunications industry, in particular, allows for more room than other utilities to introduce effective competition.

A number of significant improvements to policy in the sector have been made in recent years, which have opened up the telecoms market to new players. In addition, a new telecom law was passed in 2009 to create a transparent and independent regulatory body. However, the law has not been put into effect and the sector still suffers from weak regulation and inconsistent application of open, transparent rules in licensing.

Case Study One: The Telecoms Sector in West Bank and Gaza

Palestine Telecommunications Co. PLC (Paltel), a subsidiary of Palestine Development & Investment Lt (PADICO) – one of the major conglomerates that established itself in West Bank after the Oslo Accords – was awarded the license to operate in the WB&G Information Communication Technology (ICT) sector in 1996. The company was awarded a 20-year license for operations in all ICT market segments, with a 10-year exclusivity arrangement for the landline segment and 5-year exclusivity for the mobile segment. In the context of a highly risky and uncertain political and economic environment in WB&G, the PA followed the rationale that awarding a statutory monopoly for some years was necessary to promote private sector investment. While a statutory monopoly on mobile communications ended in 2001, in practice a monopoly over mobile communications lasted until 2009 (excluding the unauthorized Israeli operators).

However, the process by which the license was awarded to Paltel, and the payment terms associated with the license, was not transparent. The license was awarded without a tender process, since the PA was still a nascent body and had not developed formal bidding systems. An initial license deal brokered with another company was retracted and subsequently an agreement was signed with Paltel. According to the main body of the license, the company was required to make a down-payment of US\$20 million (\$10 million for “services” and \$10 million for infrastructure), subject to a valuation that was to take place and identify the final payment. The final valuation assessed the assets at US\$30 million and required a license fee of 7 percent of operating revenues. With this amount, Paltel acquired ownership of the existing IT infrastructure, as well as operational licenses and frequencies. It is not known what amount Paltel paid specifically for operational licenses as well as frequencies, since there was no fee separation in the license agreement.³¹

30 Natural monopolies exist in markets which have high fixed operating costs that create a natural barrier to entry – a particularly common feature in utility markets. Statutory monopolies are created where the legislator provides an operator with protection from competition.

31 MTIT correspondence with the World Bank, November 2010.

The annexes of the license were themselves not made available to even senior policy makers in the PA and Ministry of Telecommunications and Information Technology (MTIT) until 2008.³² According to MTIT, however, the main body of the license provided the information on terms and obligations needed for MTIT's regulatory work. The lack of transparency associated with the payments made by Paltel to the PA for acquiring the license and non-disclosure of the annexes of the license left room for speculation on the relationship between Paltel and the PA.

The telecommunications law of 1996 was signed by then-President Arafat one month prior to the establishment of the PLC. The law stipulated that the MTIT was to act as the policy-making and regulatory body overseeing the telecommunications sector. Also, the law was supposed to be endorsed in the first session of the PLC, which has not happened to date.

From its inception, the capacity of MTIT to effectively regulate the sector has been restricted by several factors. On the one hand, the PA and associated institutions were nascent bodies – while all the relevant data on the networks was held by Paltel. Therefore, MTIT faced an asymmetry of information and lacked the technical capacity and experience to adequately oversee the practices of the private monopoly and govern the sector. MTIT was also constrained by the terms of the Oslo agreement, which did not give to it full spectrum management rights, a standard tool of control available to a regulator. Rather, most regulatory matters (e.g., radio spectrum, import of telecommunications equipment, permits to build infrastructure) had to be managed in coordination between the Palestinian and the Israeli authorities.³³

As the section to follow discusses, although developments and reforms in some areas have led to improvements, MTIT's regulatory efficacy and the sector's overall governance face challenges. These primarily relate to:

- Weaknesses in regulating pricing due to the lack of proper cost accounting and technical cost modeling skills;
- Paltel's use of dominance in the fixed line market to drive out competition on internet services;
- The unclear and uneven licensing arrangements in the mobile phone market, and
- Non-implementation of the new telecoms sector law, which is calling for an independent regulator with day-to-day responsibility in the above areas.

32 This created a problem in 2005, when the annex allowed the PA to amend the license fee in view of changes it was making to the tax rates. This did not occur at the time – presumably because the provision was not known about – and the problem was only resolved through negotiation and a payment of US\$37 million by Paltel in 2008.

33 The Oslo agreements leave important regulatory decisions to the works of a joint technical committee, including specialists from both sides.»Future needs for frequencies shall be agreed upon by the two sides. To that end, the Palestinian side shall present its requirements through the JTC which must fulfill these requirements within a period not exceeding one month. Frequencies or sections of frequencies shall be assigned, or an alternative there to providing the required service within the same band, or the best alternative thereto acceptable by the Palestinian side, and agreed upon by the GoI in the JTC” – Annex III, art. 36 C. 2 of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (“Oslo 2” – 9/28/95).

Pricing

MTIT is responsible to oversee and approve the pricing policy of Paltel in order to prevent abuse of its dominant position, but in practice MTIT faced challenges in regulating Paltel's pricing policy. Some of these challenges continue. One key constraint is MTIT's lack of capacity to undertake proper cost modeling to determine the appropriate pricing structure. In practice, it has adopted a simple regional benchmarking model to oversee pricing. MTIT is also constrained by the absence of industrial cost accounting practices by operators in the sector. The absence of proper industrial accounting makes it difficult to determine competitive pricing structures and is an obstacle to the development of cost-based interconnection regulations. In the absence of industrial cost accounting and accounting separation, there is no way for the regulator to determine whether there is cross-subsidization of services. This may give rise to anti-competitive behaviors, such as price dumping and price squeezing.

While the public voiced some concerns over Paltel's pricing policies in the past, current data shows that Paltel's prices in fixed and mobile segments fall squarely in the middle when compared to regional prices³⁴ (see Table 6). That the price of mobile operation is similar to that in Israel is not surprising as the market is subject to active competition from Israeli mobile operators that are able to operate an extensive network throughout the West Bank. However, the data suggest significant room for improvement in WB&G in terms of affordability and access to Internet services compared to most of the other countries listed (i.e., cost of Internet at US\$15.7/month is higher than most other countries, except Afghanistan and Israel, and Internet users per 100 people is lower than all countries except Afghanistan). Similarly, available data also suggest that Paltel is able to charge relatively high tariffs for international calls due to its dominance in the market. A 2007 World Bank analysis on the telecommunications sector estimates that the cost of a call to the US should be 4c/min, but Paltel charges retail prices of 20c/min.³⁵

34 In 1998, for example, concerns were voiced by the public that Paltel was charging international rates for calls from the WB&G to Israel, including for calls within the same area code and calls to Jerusalem. The company subsequently adjusted its tariff. Source: Markus E. Bouillon, *The Peace Business: Money and Power in the Palestine Israel Conflict*, I.B. Tauris & Co, London, 2004.

35 World Bank, *Introducing Competition in the Palestinian Telecommunications Sector*, January 2008.

Table 6 : Benchmark Countries with Long-distance Sector Unopened to Competition

Country	Price Basket for Internet Service (\$/Month, 2009)	Internet Users Per 100 People (2008)	Monthly price basket for residential fixed line (\$, 2007)	Monthly price basket for mobile (\$, 2007)
Afghanistan	24.0	2	17.8	5.6
Algeria	5.7	12	28.3	7.4
Egypt	4.3	17	3.7	4.2
Israel	24.2	48	15.1	10.3
Jordan	<i>11.1</i>	27	<i>10.0</i>	<i>6.9</i>
Lebanon	<i>10.0</i>	23	<i>15.0</i>	<i>20.1</i>
Morocco	15.6	33	22.3	19.8
Syria	<i>13.7</i>	17	<i>2.4</i>	<i>10.0</i>
Tunisia	11.6	27	3.0	6.6
Turkey	<i>10.9</i>	34	13.5	<i>12.7</i>
West Bank and Gaza	<i>15.7</i>	9	7.5	9.6

Sources: «ITU; and World Bank. 2009's The Little Data Book on Information and Communication Technology. Prices in italics are for latest data available from previous years.»

Market Dominance and Anti-Competitive Practices

For the past 15 years, Paltel, which includes companies in all the main sectors of the telecommunications and information technology (IT) market, has dominated the ICT sector. It controls a high market share in all relevant market segments and is the only company able to operate in a wide range of segments.³⁶ Paltel is a privately owned, vertically integrated network operator, and includes a mobile subsidiary (Jawwal), data operator and internet service provider (Hadara), IT company and network integrator (Hulul), and media and digital content company (Palmedia).

The absence of competition in the sector and the use of anti-competitive practices by the dominant operator have been key problems in the sector. A notable example of the latter was Paltel's entry into, and subsequent dominance of, the Internet Service Provider (ISP) market. Even prior to the Oslo agreements, there were multiple ISPs licensed to operate in the data communications segment in WB&G. However, by utilizing the fact that they controlled the underlying infrastructure, Paltel acquired complete dominance of the ISP market. This is inconsistent with good policy goals, in which the regulator should aim to promote competition in this segment.

³⁶ World Bank, *Introducing Competition in the Palestinian Telecommunications Sector*, January 2008.

Among the tactics claimed to be utilized was a process of “cherry picking” major institutions, which were receiving leased-line services from the existing ISPs, and providing the services at a cheaper cost, which was possible due to their ownership of the infrastructure; and the offer of subscription free internet service, a process carried out in a manner that marginalized existing ISPs as the main service providers.³⁷ Paltel also created Hadara, by purchasing the three strongest ISPs in WB&G. In this process, Hadara and other ISPs became resellers of ADSL provided by Paltel.³⁸ The creation of Hadara, in fact, should have been reviewed by MTIT from a competition standpoint to determine whether Paltel – with control over infrastructure – should have been allowed such dominance in the ISP market. However, according to MTIT, the agreement in the license gave Paltel the exclusive rights to provide all telecoms services, including ISP, and this restricted the ministry’s ability to intervene in this issue.

There are other anti-competitive practices, which are problematic for the private sector. These include Paltel’s bundling of mobile and ADSL services, making it difficult for other ISPs to compete and for cross subsidization, due to the fact that operators are not subject to the implementation of cost accounting.³⁹ A positive recent development is the 2010 issuance of an ISP license to Hadara, which stipulates full account separation from Paltel’s account.⁴⁰

Competition in the sector was also restricted by the fact that for a number of years, MTIT did not award licenses for new operators. This applied to mobile services as well as at the infrastructure level for data segment.⁴¹ According to MTIT, it was unable to award licenses earlier due to Paltel’s exclusivity arrangement as part of its license, although the exclusivity arrangement ended in 2001. Paltel attributes the delayed entry of a competitor to the difficult economic and political circumstances facing WBG following the start of the second intifada in 2000. However, there is experience of competition developing in very difficult markets if the conditions are right – for example, Somalia, Bosnia, Afghanistan and Cambodia.

Positive steps have been taken in this respect. A mobile license was awarded to Wataniya WB&G in March 2007, and after significant difficulties in obtaining frequencies from the government of Israel (GoI), it has commenced operations. Wataniya is a consortium of Wataniya Qatar and the Palestine Investment Fund (PIF), the independent, state-owned Palestinian investment company which aims to stimulate the economy with strategic investments. The bandwidth made available to Wataniya by the GoI, though, is less than the amount they were tendering, and hence, places a limit on the company’s expansion. In addition, in 2008 multiple broadband and VoIP licenses were also licensed. With these new licenses, some of the operators have the right to build infrastructure, which allows them to bypass Paltel. In 2010, MTIT launched the Bit Stream Access service which allows 10 companies to provide internet services.⁴² From the perspective of fair competition, this can be seen as a positive step forward.

37 Palestine Information Technology Association, Statement made in Al Quds Newspaper, 2/1/2004

38 MTIT correspondence with World Bank, November 2010.

39 Introducing Competition in the Palestinian Telecommunications Sector, World Bank, January 2008.

40 MTIT correspondence with World Bank, November 2010.

41 Introducing Competition in the Palestinian Telecommunications Sector, World Bank, January 2008.

42 MTIT correspondence with World Bank, November 2010.

But, the private sector continues to contend that MTIT is not sufficiently promoting competition in the sector. One of the points of contention has to do with interconnection with Paltel infrastructure for those operators who require this. For example, while Wataniya has an interconnection agreement with Paltel, it believes that the terms are highly unfavorable to it as a new entrant.⁴³ Moreover, Wataniya contends that the pricing structure adopted by Paltel for calls from Jawwal to Wataniya are anti-competitive, and that the regulator should enforce more competitive terms on Paltel. In reality, these matters cannot be interpreted purely in terms of whether the regulator is following principles of fair competition or not; there are a range of complex technical issues to be worked through in determining appropriate interconnection rates and one of the constraints facing the regulator is a lack of technical capacity and information. MTIT recognizes the importance of cost-based modeling to determine appropriate interconnection pricing⁴⁴, but it lacks the internal capacity and skills to undertake such an exercise. In the absence of this capacity, it has resorted to regulating prices based on regional benchmarks.⁴⁵ Beyond internal regulatory issues, there are also externally imposed constraints on the sector, stemming from the GoI, which influence the ability of operators to compete freely.

Uneven Playing Field and Terms of License

Differential license obligations are placed on operators in the telecoms sector. The PA's original license agreement with Paltel was vaguely worded, stipulating that the company would have the right to operate wired and wireless technologies. With this one license, Paltel established a number of companies, including the mobile operator Jawwal. Jawwal went on to operate in and dominate the mobile market, without its own separate license, even though it was registered as a separate corporate entity.

While this has been acknowledged as a long-standing problem by key players in the sector, the issue has come to the fore particularly in light of the fact that a new operator, Wataniya, has entered the mobile segment. Wataniya, a consortium of Wataniya Qatar and the PIF, participated in a tender process in 2007. It was selected, and paid US \$355 million for its license. The Wataniya license is an 85-page document stipulating in detail all rights and obligations to which it is subject.

This gives rise to an unfair playing field and raises governance concerns. The new entrant Wataniya, which is subject to obligations under its license, is competing with the dominant operator, Jawwal, which references the original Paltel agreement. As such, it does not have the same terms and obligations as Wataniya. According to MTIT, the ministry has made a commitment to Wataniya that any new agreement signed with Jawwal or any new licensee will not give the latter “more favorable terms and conditions than [Wataniya] has in [its] license”.⁴⁶

43 According to the interconnection agreement, Jawwal must pay Wataniya 7.3 cents exclusive of tax for calls from Jawwal to Wataniya. Wataniya must pay Jawwal 6.1 cents for calls from Wataniya to Jawwal. Wataniya believes the price differential should be higher, in order to facilitate competitiveness of the new entrant relative to the incumbent player.

44 A position strongly reflected by the CEO of Paltel in an interview with the World Bank.

45 MTIT correspondence with World Bank, November 2010.

46 MTIT correspondence with World Bank, November 2010.

In addition, Paltel was granted approval for a five-year extension of its existing license by the Cabinet. This extension was agreed by the PA at the time of the proposed merger between Paltel and a major telecommunications company two years ago. The proposed merger did not go through. Subsequently, Paltel decided not to accept the renewed license and the PA has agreed to repay the \$100 million it received for the extension. In the course of this negotiation with the Ministry of Finance, it was also agreed that Paltel would receive a 3G license for \$30 million as a partial offset on the refund that was due.

From a governance perspective, information should have been released publicly on the basis on which the decision to extend the license was reached, and the subsequent reversal of this decision. Furthermore, it would have been preferable for the PA to conduct an open tender for the 3G license to ensure that it received a market price for this right, and creating a possibility of more competition in the market.

Absence of an Independent Regulatory Authority

One of the major weaknesses in the governance framework in WB&G is the absence of an independent regulatory authority in sectors characterized by natural or statutory monopolies.

In the telecoms sector, for example, some positive reforms were recently initiated on this issue. A new sector law was enacted in August 2009 that contains the principles of good regulation and competition, and called for the establishment of an independent regulator. The new law provided the MTIT with responsibility for sector policy (in IT and telecom) and development of the IT industry. According to the Law, an independent regulator would be in charge of regulating the day-to-day activities in the telecommunications sector and the issues among operators. The establishment of an independent regulator was expected to occur by mid-February 2010, but progress on this has stalled. The regulatory body has not yet been established – apparently because of disagreements on who should be on the board of directors. The absence of this body puts at risk the improvements being sought in the sector.

"Gatekeepers", "Tolls" and Preferential Access to Business Opportunities

Controls on trading activities emanating from arrangements under the Paris Protocol (PP) as well as PA policy directives historically created governance challenges. Broadly, these systems of control created the opportunity for "gatekeepers" to engage in rent-seeking activities by allocating business opportunities and incentives on the basis of connections or influence. The controls entail complex bureaucratic procedures as well as a licensing regime for market entry or allocation of quotas. While in many areas the PA has taken steps to reduce these controls, they continue to remain in some areas. The lack of transparency associated with their management remains a concern for the private sector.

The Nature of Controls

The PP establishes controls on trade in selected markets. Under the PP, a quasi-customs union arrangement was formed between GoI and WB&G. The former controlled external borders and hence trade from WB&G. Palestinian traders had to contend with a complex double layer of bureaucracy as well as restrictive practices for physical movement of goods (internally and at the borders), which raised transactions costs. The costs imposed by multiple layers of bureaucracy (for approvals) and movement restrictions (at the borders and internally) create incentives for Palestinian traders to find extra-legal methods to reduce costs. Moreover, they provide opportunities for those who control these processes to engage in discretionary practices. This applies to both the Palestinian and Israeli officials. While bribery does not appear to be a significant constraint in this respect, the role of *wasta* or connections in expediting services are the most commonly cited concern by the private sector. However, there has been some evidence of bribery connected to the movement of cargo through crossing points. For example, in 2005, the border crossings in Karni (for cargo flows from Gaza) had attracted large scale corruption. Palestinian shippers were known to be paying Palestinian border officials bribes to move trucks up in the queue at crossing points, as well as Israeli officials with illicit payments estimated to be between \$2,000- \$6,000 for the movement of a single truck.⁴⁷

Other controls emerged from trade policy. For example, under the PP, the WB&G was allowed to import a certain quantity of specified goods exempt from Israeli import policy from neighboring countries as well as European and US markets (A1, A2, B lists). In 1997, an agreement was reached regarding quotas on agricultural imports from foreign markets that were exempt from the GoI's tax regime. The allocation of these import quotas, as well as the A1, A2, and B lists, was to be managed by the PA.

The PA also established its own policy directives, which introduced controls in the market. Chief among them were the establishment of import monopolies as well as sole Palestinian agency requirements. The latter specified that Palestinian businesses would not be allowed to import certain products from Israeli agents directly, but rather had to buy them either through a Palestinian agent or import them directly from international suppliers. The PA had its own economic rationale for introducing such directives – in the case of some import monopolies it was a response to a de-facto Israeli monopoly control over sale of certain commodities (namely petroleum and cement) to the WB&G market. By establishing a single buyer market (monopsony) in WB&G, the PA hoped to gain some rents, which would otherwise have accrued to the Israeli supplier. Likewise, the agency law was introduced in an attempt to reduce fiscal leakage arising from the fact that GoI was unwilling to direct tariff and VAT revenues to the PA from "indirect" imports, i.e., imports purchased by an Israeli agent for subsequent sale in the Palestinian market. While such directives had some economic rationale, they also created bureaucratic interference in the market mechanism and raised governance risks.

47 World Bank, *Investment Climate Assessment: Unlocking the Potential of the Private Sector*, 2007

While WB&G has a unique political and economic context, which gives rise to particular mechanisms of interference and constraints in the market mechanism, it is not uncommon for governments to have some form of regulation in market entry and operations. Of importance is how these regulations and controls are managed, how clear, transparent, and consistent they are in application, and the extent to which they are streamlined so as to not impose excessive costs on business activities. The following case study highlights the governance challenges brought about through non-transparency in management of import quotas and petrol station licenses.

Case Study Two: Nontransparent Management of Import Quotas, and Licenses

The private sector identified four major complaints in respect of the non-transparent management of some services (e.g., quotas, licenses, and incentives):

- Absence of clear or known criteria for decision-making;
- Absence of clarity on procedures;
- Absence of independent appeals process; and
- No transparent disclosure of outcomes, particularly in cases related to incentives or special quotas.

The absence of transparency gives rise to concerns about potential favoritism and preferential treatment for those who are well-connected.

The Case of Import Quotas and Fuel Stations Illustrates the Nature of Concerns

As discussed earlier, the customs union agreement in 1994 with the GoI gave the PA rights to import certain products (specified in A1, A2, and B lists) that were exempt from Israeli import policy (including tariffs, standards, customs surcharges, etc.). For the items on lists A1 and A2, a principle of maximum quantity applied; for Palestinian imports above these quantities, Israeli import regulations prevailed. The PA manages these quotas by allocating import licenses so as to ensure that quantities actually imported respected the maxima. The value of the quota is small in relation to the size of the overall economy. The Ministry of National Economy (MoNE) noted that estimates of about 1 percent of GDP had been made, but it considered these to be inflated.⁴⁸

The system to manage these quotas is as follows. Businesses can submit applications to the MoNE, subject to meeting certain requirements and documents. A quota committee, made up of five individuals, reviews the applications and recommends allocations to the MoNE. The quotas are granted during four periods of the year (January, March, June, and September). According to the MoNE, the committee membership changes annually.

⁴⁸ World Bank interview with the Ministry of National Economy, 2010.

The chief concern among businesses relate to the non-transparency in criteria for deciding allocations, disclosure of decisions, and lack of independent appeals process. If applications are rejected, it is difficult to get information as to why they were rejected. The MoNE contends that the system they have in place for managing these quotas is identical to the Israeli one. According to the MoNE, newspaper announcements are made as to which businesses can apply for these quotas. They indicate that their criteria for allocation are based on “equitable distribution”. However, this criteria and further details on how “equitable distribution” is implemented are not known to businesses. There is also no high-level strategy guiding quota allocation, nor an independent mechanism for oversight over the decision-making process. Furthermore, there is no disclosure of the actual decisions and allocations. The MoNE states that businesses have the right to report complaints to the ministry’s Complaints Department. The first appeal goes to the Minister and if the complainant is not satisfied, then it can go to the High Court of Justice. According to the MoNE, no complaints have been received.

The private sector, which is asking for more transparency in the entire process, suggests that meeting minutes be made public so that interested parties can know how decisions were reached and who was granted the quotas.⁴⁹

The licensing of fuel stations in the petroleum sector is another case in which the preferred response of the authorities may be to eliminate the market entry restrictions imposed by the public sector. The Petroleum Corporation (PC), located within the MoF, controls entry into the retail segment of the petroleum sector (i.e., fuel stations). Fuel stations can only be established with licenses authorized by the PC. The PC allocates licenses to new entrants based on their determination of local supply and demand, among other criteria. In considering new applications, they take into account the presence of nearby gas stations and the potential revenue impact of a new station on these existing stations. A six-member committee comprised of representatives from the PC and other relevant ministries evaluate applications based on site visits and against a set of economic and environmental criteria. According to the PC, this committee makes the final determination for acceptance or rejection of applications. In the past two years, 17 new licenses have been issued.

While the PC in principle has formal procedures and criteria for the licensing process, the consideration procedures are not transparent and the restrictive regime creates governance challenges. The PC acts as a “gatekeeper” for entry into this market, and its decisions impact not only potential new entrants, but also the revenues of existing stations. The latter have incentives to want to restrict new entrants close to their locations. The lack of transparency in the regime creates opportunities for bribery, favoritism, and other forms of interference in the decision-making process. The private sector has concerns that *wasta* plays a role in the issuance of gas-station licenses.⁵⁰

49 World Bank interview with Paltrade, 2010.

50 AMAN, The Petroleum Commission: Between Evaluation and Reform, 2010 (original in Arabic).

Although the procedures for allocating licenses could be made more transparent, the fundamental issue to be examined is the rationale for current entry restrictions. The opportunity exists to open this segment of the sector to a competitive process subject to regulation on the environmental and safety issues. In a competitive scenario, entry would be based on the private sector's own determination of economic viability.

Further Improvements to the Governance of Private Sector Activity

The Palestinian private sector does not perceive corruption to be a major obstacle in the investment environment in WB&G. This can be attributed to historically low levels of petty corruption in WB&G, as well as reforms the PA has undertaken since the early 2000s to improve the governance environment. The PA as well as private sector associations championing reforms are to be given due credit for these improvements, particularly in light of the fact that many governments far more developed than the PA continue to struggle in developing effective governance arrangements vis-à-vis the relationship between the public and private sector.

This progress, notwithstanding, there are a number of areas where there continues to be scope for discretionary decision making, and potential corruption. The cases examined in this chapter highlight a number of problems in some areas. These include the absence of clear policies and requirements applied uniformly on private sector players; lack of transparency in some key areas of decision-making; and market entry restrictions lacking clear rationale. In view of this there are several opportunities for improving the governance of private sector activity:

1. **Establishing an independent regulator for key sectors** – One of the major causes for poor governance stems from the absence of an independent regulatory authority in sectors characterized by natural or statutory monopolies. As discussed in the telecoms case study, introducing an independent and effective regulator in this sector is a priority. The new law, which was enacted in August 2009, stated that an independent regulator would be in charge of regulating the day-to-day activities in the telecommunications sector. The establishment of an independent regulator was expected to occur by mid-February 2010, but this has not happened. The PA should give priority to implementing the new law.
2. **Completing the development of a competition law and establishment of a competition authority** – Currently, no competition law or regulations exist in WB&G, although a number of draft laws and regulations were developed prior to 2006. In 2009, the MoNE specified the development of a competition law as one of the objectives of its 100-day plan. But, no significant progress was made. A sound competition framework of laws, regulations, and oversight authorities is crucial to curbing uncompetitive conditions and anti-competitive practices, as seen in the telecommunications sector. The PA should revisit its earlier plans and give priority to completing this area of reform.
3. **Improving transparency in management of licensing and other services** – While specific systems will need to be tailor-made depending on particular licenses and services, there are several features that constitute good practice in this area. These principles need to be borne in

mind when upgrading existing systems or developing new ones⁵¹:

- a. Businesses should be able to obtain, in an easy and timely manner, clear and comprehensive guidance material and well-designed forms. They should also be informed of the steps involved and the time likely to be taken for assessing and responding to their applications.
- b. Regulators should assess and respond to applications for licenses in a timely manner, and follow relevant policies and guidelines.
- c. Decisions should be fully documented and subject to a clear and credible appeals process.
- d. Internal processes should minimize scope for conflict of interest and corruption (such as review of decisions by a higher authority and judicial review).

The private sector in WB&G would benefit from such clarity and documentation not only within PA entities with whom they deal, but also Israeli bodies that have jurisdiction over administrative procedures affecting Palestinian business activity.

4. **Eliminating unnecessary or onerous market entry and trade restrictions** – Minimizing bureaucratic controls over market operations and business activity will reduce the scope for discretionary and corrupt practices. A more detailed examination should be conducted in sectors or areas where market entry controls are in place, in order to evaluate their rationale and potential for streamlining. Some areas identified in this study include:

- Export and trade procedures, to be handled by PA ministries, where the private sector associations in WB&G have called for “one-stop shops”, to prevent procedural overlaps between various ministries; and
- Easing of market-entry restrictions, such as those applied to the ownership of fuel stations.

51 Points a-d excerpted from World Bank, How to Reform Business Licenses, June 2010. See report for further guidelines on best practices.



Chapter 5:

Public Sector Management

This chapter examines the arrangements through which the PA manages the provision of goods and services, and its fiduciary responsibilities – therefore the management of revenues and expenditures, assets and liabilities, and public employees. The chapter is structured around the following four interconnected sections:

1. Public Financial Management (PFM), focusing on revenue and expenditure management;
2. Public Employment and Personnel Management;
3. Procurement practices; and
4. Management of Public Assets

A common theme runs through each of the four sections. The systems and procedures in the first years of the PA suffered a range of governance weaknesses – at least in part attributable to the development of new institutions by the fledgling authority. Following the second intifada, the economic and fiscal environment deteriorated significantly, with the effects exacerbated by the weak governance arrangements in place. The deterioration proved to be a catalyst for changes previously advocated by domestic reformers and the international community, and in 2002 the PA started to implement a program of reforms. In most areas significant progress has been made. This is particularly apparent with PFM and the management of public assets, where the reforms are now well advanced. Progress in personnel management has been more measured, while procurement practices have seen little change, though approval and implementation of the draft law has the potential to significantly improve governance arrangements in this area.

The chapter assesses the developments in these areas. Where relevant, the findings of the households and public officials surveys are presented, recognizing that the views of public officials on the systems they manage need to be treated with caution. The section on the management of public assets also uses two case studies to reflect on progress in this area. For each of the four sections, the report identifies opportunities for further improving the governance arrangements.

Public Financial Management System

The quality of the PFM system is an important component of any assessment of the anticorruption environment, as it must ensure that revenues are collected and that expenditures provide value for money and accord with the law. Public officials are charged with executing the government's objectives, overseen by the parliament. In the absence of good systems, Ministers or public officials may seek to manage the procedures for collecting revenues or make expenditures for personal gain, such as unwarranted expenditures, payment of excessive prices, redirection of revenues or the failure to collect due taxes.

Strengthening Public Financial Management

A range of assessments have documented the weak PFM systems that were in place during the early years of the PA.⁵² In part these problems were a natural element of the PA building new institutional capacity, but as noted in various studies there were a range of political dynamics at work, which in the early years appear to have influenced the PA towards informal arrangements and against establishing transparent and accountable systems. The main weaknesses emerging from the PFM assessments were:

- Non-transparent management of revenues;
- A weak budgetary system;
- A lack of systems for expenditure control; and
- Limited oversight by public institutions.

The PA has followed an extensive program of PFM reform over the last decade, which focused on addressing the above problems. While there was a first wave of reforms in 2000, the major initiative started in 2002. Between 2002 and 2006 a range of improvements were made to the PFM system, but with the decision by donors not to channel support through the budget following the election of Hamas, a number of the reforms were unwound. Parallel financing systems were established, with external financing directed through the President's Office and through the Temporary International Mechanism (TIM). These inflows, outside of the Central Treasury Account (CTA), undermined a major achievement of earlier reform efforts to consolidate and manage financial inflows in a transparent manner.

A fresh effort started following the formation of the caretaker government in July 2007. Much of the focus was on re-consolidating financial inflows, and completing and extending some of the earlier reforms. However, the separate control of Gaza raised some new challenges, and this effort also involved establishing structures in Ramallah that previously had been part of the MoF Office based in Gaza.

52 For an example of this see, A. Bennett, K. Nashashibi, S. Beidas, S. Reichold, and J. Toujas-Bernaté, 2003, *West Bank and Gaza, Economic Performance and Reform under Conflict Conditions*, Washington D.C. The International Monetary Fund.

As a result of the reforms, considerable progress has been made in addressing core PFM weaknesses. The following sections discuss in more detail both the problem areas identified in the earlier period, and the status following the various reforms. Table 7 provides a timeline of the PFM reforms between 2002 and 2005, and Table 8 covers the period between 2007 and 2010. The identification of weaknesses and the subsequent reform agenda has focused on expenditures rather than revenues. This largely reflects a judgment that in general the revenue systems were in better shape, but also the greater priority the PA gave to expenditure issues because of the importance of these reforms for donors providing budget support. A recent IMF mission looking at tax administration reforms concluded that there had been limited development of the tax system in the past seven years.⁵³

Table 7: A Timeline of Key PFM reforms 2002 - 2005

Period	Reforms Introduced
June 2002 -2003	<ul style="list-style-type: none"> • Consolidation of all PA revenues into CTA • Transfer of income / dividends from PA commercial activities into CTA • Consolidation of all PA commercial activities into PIF • Consolidation of expenditure management in WB&G: unifying the accounting system, treasury, and submitting West Bank expenditures to budgetary approval • System of quarterly and then monthly fiscal reports was introduced – although the information in the reports was collected from disparate sources. • Steps taken to prohibit ministries from incurring advances from commercial banks. • Shift to direct deposits into bank accounts for some security personnel salaries instead of cash payments – although payroll remained with the security services. • Donor financed activities included in the presentation of the PA budget • Limit set for net public employment • Enhanced transparency by meeting the budget calendar and including supplementary fiscal information with the budget

⁵³ T. Story, W. Crandall, D. Jenkins, 2010, *West Bank and Gaza, Completing the Foundations of Modern Revenue Administration*, Washington D.C. The International Monetary Fund, Pg 10.

2004	<ul style="list-style-type: none"> • Salary payments of PA security personnel directly deposited into individual bank accounts instead of being paid in cash – although the payroll remained with security service • The first annual report of the PIF was published • A procurement department—the Department of Supplies and Tenders—was established at the MoF assuming full jurisdiction over all purchases made by PA ministries and agencies, including the security. • A new Internal Audit Department (IAD) was established at the MoF. • Financial controllers reporting to the MoF were appointed to each cost center – although minimal expenditures were executed outside MoF at this time. • preliminary statements of the 2003 budget accounts were approved by the Council of Ministers and submitted to the PLC • PLC passed law creating a new national audit institution, the State Audit and Administrative Control Bureau (SAACB) – to ensure independence, submission of regular reports to the PLC, and comprehensive coverage of all PA institutions
2005	<ul style="list-style-type: none"> • New financial regulations for ministries and public establishments approved based on Law No. 7 of 1998 • Payroll for security personnel shifted to the MoF

Table 8: A Timeline of Key PFM reforms 2007 - 2010

Period	Reforms Introduced
July 2007 – 2008	<ul style="list-style-type: none"> • Palestinian Reform and Development Plan prepared • New MoF budget department established in Ramallah • Accountant General’s department established bringing together the treasury, accounting, and payments departments • New PA accounting system developed by MoF in Ramallah – first time that budget control, payments and accounting are integrated into a single system • CTA for revenues re-established • Monthly reports on fiscal performance resume based directly on data from the accounting system. • Payroll database of civilian and security personnel integrated and linked to the accounting system. • Financial controllers become responsible for checking the payroll • Access controls and separation of duties upgraded for the accounting system

-
- Program structure introduced for budget presentation
 - Budget preparation involves MoF and Ministry of Planning and Administrative Development working with line ministries in integrated teams
 - Line ministries are linked to the accounting system and responsibility for payment processing starts to be devolved from MoF
 - CTA extended to cover expenditure accounts through the use of zero balance accounts for line ministries, and the closure of all other accounts except if required by donors.
 - Line ministry expenditure from donor resources are subject to same controls as budgetary expenditures.
- 2009
- Cash planning and debt management department established in MoF
 - Petroleum commission linked to the accounting system using an accrual based module
 - Donor financed activities increasingly executed through treasury system
 - 2008 Financial Statements prepared using cash based International Public Sector Accounting Standards (IPSAS) as a base
 - Bank reconciliation process regularized in the course of preparing the financial statements.
 - Procedures manuals developed for the budget execution functions linked to the accounting system.
-
- 2010
- Palestinian National Plan prepared
 - Budget module developed as a component of the accounting system
 - A new chart of accounts was introduced for preparation of 2011 Budget based on international standards
 - Full devolution of the responsibility for the payments process to line ministries
 - Commitment control module introduced in accounting system to control expenditures on the basis of quarterly financial orders
 - Internal audit function devolved to line ministries on a pilot basis
 - New procurement law prepared that brings legal framework into line with international practice
 - New web based donor reporting system introduced
 - Debt management records included in regular monthly reports
 - Start made on building a comprehensive register of PA assets
 - 2008 Financial Statements audited by the SAACB
-

Consolidating Revenues into a Central Account

Until 2000, PA revenues were not consolidated under one account nor were they fully controlled by the MoF. Most notably, petroleum, tobacco, and alcohol excises were channelled to accounts outside the control of the MoF. The International Monetary Fund (IMF) estimates that a net of US\$591 million of excise tax revenues was diverted from the MoF during 1995-2000⁵⁴. The situation with excise revenues also applied to revenues of line ministries. Revenue generating line ministries maintained revenues in their own accounts and would expend from these accounts at their own discretion, even beyond their budgetary allocations. As a result, expenditures financed by these revenues were not subject to the controls of the expenditure management systems, and were not subject to the formal oversight mechanisms (i.e., parliament or external audit). This meant that there were no formal mechanisms to stop the revenues being directed to the personal gain of those in charge.

The Reforms

From 2000 the revenue accounts started to be consolidated and from 2002 all revenues – including petroleum, tobacco and excises have been paid into the CTA. As a result of these steps all expenditure from PA revenues was subject to the expenditure management systems and oversight. Since 2009, the consolidation of cash has been further extended to expenditure accounts. Line ministries have bank accounts for transaction processing but (except for donor related accounts) these do not hold cash balances. Along with the consolidation of expenditure accounts, the MoF ensured that expenditures by line ministries from donor resources are also governed by the PA expenditure management systems. This addressed the final gap in the coverage of expenditures by the PA.

Strengthening the Budget Process

Although the budget is the main mechanism through which the executive is held accountable in a parliamentary democracy, for several years immediately after Oslo, the PA did not publish or formalize a budget. It was only in 1996 faced with pressure from the PLC and others that this occurred. Even then there were frequently long delays in submitting the budget, and in addition, as described above, key revenue sources, such as the profits from PA owned commercial enterprises and excise tax revenues, were not included in the budget. Poor coordination between donors and the PA also meant that the PA budget did not reflect donor financed public investment.⁵⁵

The budgets that were prepared also had major technical weaknesses. Budgetary allocations were developed using incremental changes to the prior year, and were in effect an estimate of the funds required to maintain the staffing levels and operating expenditures at line ministries and other institutions. They did not reflect an assessment of the PA policy objectives with the expenditures. As a result, it was not possible to hold serious cabinet level discussions on various policy issues or

54 International Monetary Fund, *West Bank and Gaza: Economic Performance in Conflict Situation*, 2003.

55 International Monetary Fund, *West Bank and Gaza : Economic Performance in Conflict Situation* , op. cit., pg.94

their medium term implications, nor for the PLC to assess these issues in exercising its oversight role. Without a clear link with the policy objectives, it is more difficult to assess whether the expenditure is being made for the right reasons, creating more opportunity for expenditure to be used for personal gain or political purposes.

The Reforms

Since 2002 a range of improvements have been made to the budget process. As discussed above, a key area of progress has been to extend the coverage of the budget by consolidating revenues in the CTA. Donor financed activity has also been included in the development budget since that time – although the information on development projects is not very detailed. At first, most of the development expenditures were executed directly by donors outside the MoF treasury and the inclusion in the budget document was largely for presentation purposes – and not for expenditure control. This has changed since 2008 as the PA has become more involved in executing development projects, either financed specifically by donors, or financed from general revenues in the case of the community development projects. The payment control procedures are now applied to these expenditures within an aggregate budget authority.

At a technical level the strategic basis for the budget and the quality of budget information has improved significantly. The PA prepared the Palestinian Reform and Development Plan (PRDP) in 2008 and this established strategic priorities over the subsequent three year period.⁵⁶ The preparation of the budget is also guided by a medium term fiscal framework prepared at the start of each cycle. With the development of the PRDP, a major effort has also gone into creating a program structure for the budget to provide a link between the budget allocations and the plan. To date the programs have only been used for presentation purposes and it is not possible to monitor execution of the budget at the level of programs. The introduction of a program based budget is a reform that has taken decades in other countries and the PA can expect to be making further improvements in the years ahead.

Improving the systems for expenditure control

In the early years of the PA, the Minister of Finance had only partial control over PA expenditures. There were multiple spending centres in WB&G and treasury checks were issued and transfers made without approval of the minister. The President retained tremendous personal discretion on spending, but this also extended to ministers who could make expenditures beyond that allocated on their budget. Systems for internal audit and payment control were very weak. With few checks and balances, there were opportunities for Ministers and officials to use expenditures for personal gain.

The lack of adequate systems to manage public finances led to significant arrears in unpaid bills to suppliers. By March 2000, arrears reached US\$370 million. In addition to the lack of

⁵⁶ An updated plan – the Palestine National Plan is about to be finalized to cover the period 2011 – 2013.

expenditure control the payment procedures raised a number of other governance issues. First, MoF had to determine which of the bills to pay, and could make payments to suppliers on a preferential basis. Checks were also issued in the absence of sufficient funds.⁵⁷ This resulted in a loss of treasury credibility, but it also meant that when suppliers went to banks to cash their treasury issued checks, the commercial banks had the discretion to decide which checks would be cleared and payments made.

The Reforms

By consolidating the revenue flows, the PA was able to implement a number of reforms to improve the control of expenditures. This initially involved centralising the payment process and ensuring that all payments were subject to intensive verification. A system of internal audits was established and financial controllers were placed in all budget agencies from 2004.⁵⁸ Since 2008, a new accounting system has been developed, which has significantly improved the capacity for financial management. With all line ministries linked to the system, the MoF has devolved responsibility for payments back to line ministries, subject to approval by the MoF's financial controllers.

In spite of the new controls, expenditure arrears have remained a problem, largely due to the uncertainty of donor funds. To address the governance concerns surrounding the payment process, some additional measures were introduced. From 2003 there were procedures in place in the MoF to ensure that payments are made on a "first in first out" basis, however exceptional treatment is given to some items including (but not limited to) wages and debt servicing. With the payments process devolved to line ministries, the link between funding and payment decisions has also been further devolved – although MoF monitors the payment of bills to try to ensure that they are paid in a non-discriminatory manner. A new system of commitment control has been introduced in 2010, which coupled with new cash forecasting procedures is aimed at minimising the arrears problem. This is a welcome extension of focus from the point at which the payment is made to the earlier point at which expenditure obligations are incurred. However the new controls will take time to be fully effective, and while arrears remain a feature of the accounting system, private sector suppliers will continue to question whether they are being discriminated against when the PA prioritises the payment of bills.

It should also be noted that the expenditure control procedures focus primarily on compliance with budget appropriations and regulatory procedures. There has been less attention paid to whether the expenditure is justified or provides value for money. This point has been emphasised by the recent decision of the PA to restrict the use of vehicles for private use which has highlighted weaknesses in controls on who receives a vehicle and what expenditures on the car are to be covered. The decision has at first only applied to mid level officials in the civil service, but it is intended to eventually include the security services where the largest number of vehicles has been provided⁵⁹.

57 International Monetary Fund, *West Bank and Gaza: Economic Performance in Conflict Situation*, op. cit.

58 However at that time a limited proportion of payments were processed by the line ministries.

59 In October 2010 the decision was challenged in the courts and it was not clear it would be implemented.

Establishing Oversight Mechanisms

Oversight by the parliament provides an important independent check on whether expenditures are justified and being made at least cost – as well as the formal compliance with the law. This discipline can reduce the scope for abuse of expenditures by both Ministers and officials.

In the early years of the PA oversight of expenditures was limited in two ways. Firstly, there was not a credible external audit institution that could support public oversight over the management of government finances. Though a formal external audit institution, the General Audit Institute, was established in 1995, in fact it lacked independence and capacity to perform its functions. Formally, it reported to the President, and was not accountable to the PLC. Moreover, the President had the power to exempt any public institution from audit. There was only one report from the Institute that was made public, and this occurred in 1996. As the World Bank noted in the PER, the external audit institution “had no discernable effect on public accountability”.⁶⁰

Secondly, the limited external audit capacity coupled with the lack of fiscal reporting constrained the PLC in overseeing the executive. This exacerbated problems that the PLC itself was facing in developing capacity. The challenges for both the PLC and external audit body are addressed in more detail in the chapter of this report on institutional issues.

The Reforms

To address the weaknesses in oversight, the PA initially engaged a private sector auditor to conduct an audit of the 2003 financial statements. The audit identified a range of problems with the accounts, which was not surprising given the weak financial management arrangements at that time. The PA also took steps to establish an internal audit function in part to address the lack of credibility attached to the oversight role of the General Audit Institute. While these were partial steps, a key development occurred in 2004 when the PLC passed legislation for the creation of a new external audit body – the State Audit and Administrative Control Bureau (SAACB). The legislation had a range of provisions to improve the link with the PLC, and increase its independence and effectiveness. While the SAACB was established in 2006, the chaotic financial situation during 2006 and subsequent separation of Gaza in mid-2007 meant that this process in effect restarted in early 2008.⁶¹ From that point the SAACB has been conducting regular audits of PA institutions, municipalities and Non Governmental Organizations (NGOs).

An important recent development for the PA was the preparation of the 2008 financial statements, which were audited by the SAACB with support from Deloitte in 2010. These were the first financial statements subject to audit since 2003. The preparation and audit of the 2008 statements was a learning experience for both the MoF and the SAACB. While a range of weaknesses in the

⁶⁰ World Bank, *West Bank and Gaza: PER*, 2007, Volume 2, page 49.

⁶¹ As a result of the separation of the Gaza Office the SAACB had only 20 staff in Ramallah in early 2008 but through active recruitment of new graduates quickly expanded to almost 150 staff.

statements were identified in the SAACB report, some of these were due to the lack of prior year audits, and others have either already been addressed by MoF or are part of the MoF's reform plans. For example, the MoF is now in the process of adopting international accounting standards to provide a firmer basis for future statements. The SAACB relied heavily on Deloitte's guidance during the audit; however the capacity of the SAACB is expected to develop with the start of a major capacity building project financed by the European Union.

While progress has been made improving the quality of budget documentation, expenditure control and audit, the effect of these reforms has been undermined as the PLC has not been functioning since mid-2006. Because the governance arrangements for public expenditure are predicated on a central role for the parliament, this is a major weakness. The PA has taken some steps to address the weakness including through presenting the budget at an annual seminar organised by a local NGO, but this is a poor substitute for the full oversight by the PLC.

Survey Results on Governance in Public Financial Management

To gauge whether the reforms discussed above have had an impact on the integrity with which financial management is conducted by the PA, the issue was raised in a series of questions in the public officials survey. Most public officials (82 percent) who expressed an opinion agreed or strongly agreed that budget administration decisions were made in a transparent manner. Likewise, the vast majority agreed that budget decisions were subjected to regular audits by internal control unit (85 percent) and to regular external audits (88 percent). Consistent with these figures is the fact that an overwhelming majority dismissed a suggestion that budget administration decisions were based on *wasta*/favoritism (81 percent) or the payment of bribes (95 percent).

Most officials also agreed that the budgetary decision-making policies are well documented, easy to understand and well supervised: more than 93 percent responded that they "strongly agree or agree" and 85 percent agreed that policies are easy to understand and are well supervised. Slightly fewer respondents felt that the budgetary decision-making policies were strictly enforced (74 percent either strongly agreed or agreed).

There was an overwhelming consensus that the budgetary policy process protocols were maintained and followed: 98.2 percent strongly agreed or agreed that original receipts were kept for auditing purposes, while 94.0 percent strongly agreed or agreed that payments to suppliers were based on clear regulation.

Although more than 30 percent believed that it was possible to informally influence the amount of the budget assigned to the institution in which one worked, almost 70 percent denied that was the case. Moreover, almost 90 percent believed that fraud and embezzlement in budget management was rare or never occurred. Similarly, most believed that decisions of budget

administration (policies, guidelines and regulations) were well supervised – managers make sure that rules are followed – and were strictly applied so that non-compliance would lead to negative consequences.

Finally, it should be noted that the survey results for budgetary management issues were stronger than those of both the procurement and public employment areas, reflecting the strong focus given to PFM by the PA in the past decade.

Further Improvements to Governance in Public Financial Management

From a very weak position in 2000, the PA has made considerable progress in establishing a sound PFM system. This is a major achievement. Where there are remaining weaknesses these are largely in areas where an existing reform program is already under way. From a governance perspective the priority areas include:

1. **PLC oversight needs to return.** As mentioned earlier the role of the parliament is critical to providing assurance on the quality and probity of financial management – through challenging the allocation of resources in the budget, monitoring the execution of the budget, and reviewing the financial statements. While more could be done to try to compensate for the lack of a parliament this will never fully address the gap.
2. **Budget processes require further strengthening.** Although good progress has been made in improving the process through which the budget is prepared by the PA, the link between policy and finances remains weak. The initial steps towards a program based budget need to be extended and the reform strengthened, and the capacity to use the new approach for policy monitoring and evaluation needs to be developed. These steps would improve the quality of oversight both by the parliament and within the executive, and reduce the risk of governance problems stemming from significant quantities of arrears.
3. **Transparency of fiscal information needs to continually improve.** The new accounting system provides an opportunity to substantially improve the transparency of fiscal reporting. This opportunity needs to be taken with priority given to areas of discretionary expenditures. An important example is the selection and execution of development expenditures financed by general revenues – such as the community development projects.
4. **Better management of the payment of arrears.** The PA has taken positive steps to improve cash forecasting which coupled with the new commitment control procedures should reduce the buildup of arrears. However, arrears are likely to continue to be a feature of the system given the volatility of donor flows. In this environment more should be done to increase the transparency of payment decisions to address private sector concerns that there is discrimination in determining the order with which bills are paid.

5. **Accounting and auditing must be strengthened.** The preparation and audit of the 2008 financial statements was a major advance. However, the accounting policies need to be institutionalized and a regular cycle of auditing by the SAACB established. The capacity of the SAACB also needs to be further improved.

Public Employment and Personnel Management

Overview of Public Employment in West Bank and Gaza

The employment of staff is one of the major expenditure commitments of any government. From a governance perspective, the main concern is that human resource and personnel decisions (e.g., hiring, and promotions) can be used to support individuals with personal connections to public officials or those linked to political parties, as opposed to being purely merit-based.

In WB&G, public employment has been used as a tool to address political and social objectives. When the PA was formed, it had 20,000 civilian employees it inherited from the Israeli Civil Administration. High initial growth in public expenditures and staffing was expected as a new central government apparatus was to be set up basically from scratch. In practice, the increase in staffing went beyond initial expectations, and by 2000 public employment had increased to 103,500 at a cost of \$622 million. One factor behind this growth was the use of jobs to provide political favors to placate supporters (such as returning members of the Palestinian Liberation Organization, or PLO) or to co-opt members of competing groups. A number of PA positions were filled by under-qualified personnel, often through patronage appointments which rewarded political loyalty.⁶²

From the start of the second intifada in September 2000, political pressures further exacerbated public sector hiring and the wage bill. On the one hand, economic deterioration in WB&G due to closures and movement restrictions led to a decline in private sector employment by 25 percent. Moreover, while before September 2000 there were around 146,000 Palestinians working in Israel (23 percent of the workforce), this number declined by 90 percent.⁶³ In response to these events, the PA further increased public employment to cushion the fall of private sector employment. In addition to hiring increases, civil servant salaries also increased significantly (by an average of 20 percent) due to the implementation of the new Civil Service legislation in 2003. As a result, despite the revenue crunch during the intifada, the PA's wage bill continued to increase. By the end of 2005, additional salary increases and hiring prior to the 2006 elections resulted in the PA being unable to remain within the targets set by the Wage Bill Containment Plan that had been agreed with donors providing budget support. At this point 150,000 people were on the PA payroll, an increase of almost 50,000 in five years – 17,000 of them in 2005 alone. Over the five-year period the average annual growth was 4.7 percent (see Figure 21). By the end of 2005, the wage bill exceeded US\$1 billion.

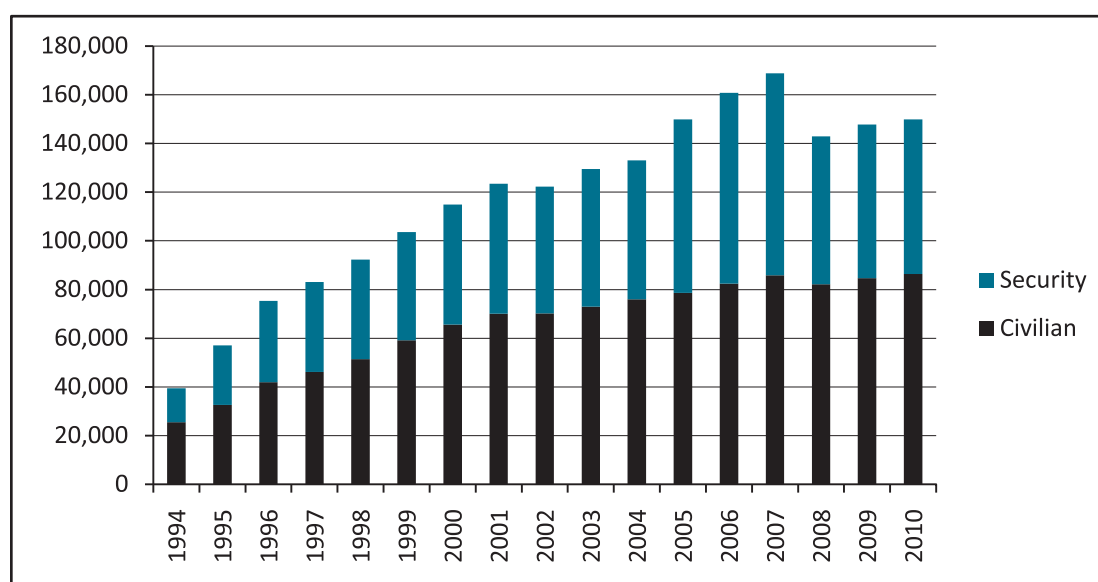
62 For an elaboration of this view, see *State Formation in Palestine*, edited by Mushtaq Husain Khan, George Giacaman and Inge Amundsen (London: Routledge Press, 2004).

63 World Bank, Public Expenditure Review, 2007, Volume 2, P68.

Public sector hiring continued to rise after the 2006 elections, with a further wave of recruitment in the public sector – the security sector in particular expanded to include recruits and new trainees. As a result, total employment grew to almost 170,000 by mid-2007.

The main governance concern with the growth in employment has been that hiring and promotion were used to provide benefits to individuals with personal connections to public officials or those linked to political parties. This was apparent in the early period of the PA where employment was used to reward those with links to the PLO, but is also viewed as a key factor in the large growth of employment in 2005 prior to the elections, and in the growth under the subsequent government in 2006 and 2007.

Figure 21: Growth in Public Sector Employment



Alongside practices of nepotism, a particular governance problem has been the inclusion of individuals in the public sector payroll who are not carrying out duties or reporting to work. This issue has been identified in past World Bank reports, specifically the 2003 report on the civil service and the 2007 PER. The latter study refers to “a number of employees who receive a salary while working outside the country.”⁶⁴ At the time of the PER, the MoF identified 8,000 non-performing security service employees and about 2,000 non-performing civil service staff. Despite repeated promises to take action, none of the identified non-performing personnel were removed from the payroll. This practice has continued, and since 2007, a large number of PA employees in the Gaza Strip are unable to work because of the separate administration in the territory. The PA has determined that they should continue to be paid pending a resolution of the split. The number of non-reporting staff being paid in Gaza is not known.

64 World Bank, Public Expenditure Review, 2007, Volume 2, P76.

In addition to concerns about the recruitment process, there have been governance weaknesses in management of the payroll. One weakness in particular was the practice of paying security staff in cash. The practice left open the possibility that wages could be diverted during the payment process – possibly as a kick back for the original employment decision. A second problem was caused by the use of separate databases to manage staff. Databases were divided between WB&G, and within each territory between civilian and security personnel. While assessments of the payroll have concluded that “ghost” workers are unlikely,⁶⁵ the separate databases left the system open to situations where employees could appear on more than one database. As is discussed below these problems are now resolved.

Reform of Public Employment Procedures

The use of public sector employment as a political and social tool was a major governance weakness. Although it provided support for parts of the Palestinian population facing difficulty, weaknesses in the hiring process meant that support was skewed towards those with political and social connections.

Since 2003, a number of reforms have been initiated to improve the legislative framework and administrative procedures through which the civil service is managed, and these have slowly taken effect. From a governance perspective these reforms essentially address two issues:

- The way in which staff are recruited and promoted; and
- The controls that provide assurance on the veracity of the payroll

Improving the Recruitment and Promotions Process

The most significant development in the way in which staff are recruited and managed was the adoption of Civil Service Law No. 4 in July 2005.⁶⁶ The law was first developed in 1998, but it was not passed until 2005 due to internal disagreements within the Cabinet. It replaced a collection of old Egyptian, British mandate, and Jordanian laws, along with Israeli military laws. The law is detailed, which was seen as an advantage as it reduced the scope for discretion in its interpretation. However, the high level of specificity in the law also makes it very rigid as it is necessary to change the law if new circumstances emerge.

With respect to recruitment, the new law makes the process more routine and transparent (see Box 1).

65 World Bank, *Civil Service Pay and Employment in West Bank Gaza: A Perspective*, 2003, P7.

66 The General Personnel Council is at present reviewing the 2005 Law with the support of the UNDP but there is no indication at this point what changes that will emerge from the review.

Multiple approvals have been introduced into the recruitment process in order to stem unauthorized appointments. One of the unfortunate consequences of this development has been lengthy delays in the approval of new recruits. It is not uncommon for the final approval to take six months to complete and this has led to a number of staff working on a temporary basis pending formal approval.⁶⁷

As with any system facing backlogs, this raises risks that influence can be used to expedite certain applications. While some of the steps – particularly the security clearance – take time in themselves, there have also been delays in recruitment caused by the use of discrete systems by the different agencies, and the need for paper-based communication between agencies. In 2010, the MoF initiated a reform to improve the flow of information associated with the recruitment process. A new payroll system is being developed that will allow data to be entered once by the hiring ministry, and all other approvals will be made on line through the system. The development of the system is expected to be complete in late 2010. Alongside this reform the General Personal Council (GPC) has developed a new “portal” to provide electronic access to employee records, and a streamlined process to make job applications.

Box 1: Civil Service Recruitment Process

The annual budget law includes limits on recruitment in the budget year for all budget agencies.

Requests for new appointments are initiated by the relevant ministry, and the Minister of Finance and Chairman of the GPC are involved in the recruitment process from beginning to end. After putting forward the initial request, the agency receives a signed authorization from the MoF confirming sufficient budget for the position – and that it conforms to the agencies limit on recruitment established in the Budget. The request is forwarded to the GPC to initiate recruitment through open search and examination. The positions are advertised in the official gazette, and an exam committee composed jointly of the GPC and the relevant ministry administers the test (All candidates below the rank of deputy minister are subject to examination.) The candidate is evaluated on a point system according to his or her years of experience, level of education and performance on the exam. The name of the preferred candidate is then submitted for clearance by the security agencies.

Once the person is selected, the budget directorate at the MoF again certifies that there are sufficient funds for the position. After the approval from the Minister of Finance, the payroll department receives an order to include the new employee in the payroll. Following the completion of the recruitment process, the procedures are reviewed by the IAD of the MoF. Finally, all new appointments are subject to the signature of the Minister of Finance.

Source: World Bank PER 2007, updated for recent developments

⁶⁷ The delay in staff recruitment is discussed in World Bank, “West Bank and Gaza - Human Resource Information Systems and Payroll Review” September 2010.

While Box 1 describes the general process, there are variations in the selection process that are adopted by the different ministries. One of the most important recruiting ministries is the Ministry of Education. Since 2007 as part of its commitment to the PRDP, the PA has imposed a budget limit of 3000 net recruitment. Of the net recruitment, approximately two-thirds have been allocated to the Ministry of Education (MoE). The process through which teachers are recruited is therefore a large element of total civil service recruitment. The Ministry has adopted a very structured process marked by rankings based on exams to select candidates for recruitment.

After the formation of the caretaker government of Prime Minister Salam Fayyad in June 2007, a number of immediate steps were taken to reduce the payroll. All recruitment since October 2005 was reviewed to determine whether the procedures set out in the Civil Service Law had been followed, and where this was not the case the appointment was cancelled. This covered both the increase in employment that took place prior to the election in 2006 and the subsequent recruitment by the Hamas government. In addition, security checks were introduced to assess the “good character” of both new and existing staff. As a result of these procedures the payroll was reduced to about 143,000 by the end of 2008, and has since grown at a rate of just over 3,000 per year.

Although the 2007 World Bank PER commented that the recruitment process set out in the Civil Service Law is fairly transparent, this does not apply to the procedures surrounding the security clearance for “good character”, which has subsequently been introduced. One of the main reasons for introducing this procedure is a requirement from important donors that the PA provide assurance that budget funds are not supporting entities on the list of terrorist organizations. However, the new procedure also creates scope for political affiliation to play a role in the employment process. There are no formal criteria for the assessment; no information is provided on the basis for the decision which is made; and no mechanism exists for a complaint on the decision. The process has also been criticized on civil rights grounds – most recently by the International Crisis Group.⁶⁸

With respect to promotions, the 2005 civil service law makes the general process almost solely based on the number of years in service. However outside the general process, there are opportunities for exceptional promotion. Because there are no clear organization charts, position slots, or job descriptions the law is not well equipped to deal with proposals for either exceptional appointments or promotions – and therefore leaves space for discretionary decision making.

The GPC is in the process of revising the civil service law to address a number of these problems. The Council indicated⁶⁹ that the new law would increase the transparency of the recruitment process especially for senior civil servants. This would include clarifying that the Minister not have a direct role in the appointment of senior civil servants. It would also introduce measures

68 International Crisis Group: “Squaring the Circle” September 2010.

69 GPC presentation to a donor forum – 4 November 2010.

to support a future move to performance related remuneration by strengthening the powers to discipline poor performance. The new law is expected to be introduced in early 2011.

Control over recruitment at the security forces is not subject to such strict procedures as the rest of the civil service. Recruitment and promotions for the security forces are the responsibility of the payroll department at the Ministry of Interior (MOI), which is autonomous from the MoF and provides the input into the single payroll system operated by MoF for both the civil service and the security service. It does not necessarily observe the rules on recruitment and promotion which apply to all PA employment decisions. However, the Minister of Finance has taken steps to contain growth in the security payroll, which has resulted in more limited recruitment in recent years.

Finally, for a number of years the GPC has been working on a Code of Conduct to establish ethical standards and values and promote these within the civil service. While initial progress stalled, this work is now moving forward with the support of the United Nations Development Program (UNDP) and Organization for Economic Cooperation and Development (OECD). A national committee representing a range of ministries has been established to progress the work. The GPC is firmly behind the work and is particularly interested in learning from the Jordanian experience in addition to benchmarking the PA draft code with codes in Lebanon and Morocco.

Management of the Payroll

The PA has taken steps to address the payroll weaknesses described earlier. First, the practice of paying security staff in cash was partially addressed in 2003 and by 2005 all security staff were paid through direct credit into the employee bank accounts. This reform removed the possibility that wages could be diverted during the payment process. However, the security payroll remained with the security forces at this time and was maintained separately from the databases in the MoF. The concern about the use of separate databases for the payroll was therefore not addressed until 2008. At that point, in the context of linking the payroll to the accounting system, the different databases were finally consolidated. In the process a number of duplicated records were discovered.

Survey Results on Governance in Public Employment

The results of the public officials survey generally support the view that the PA reforms have improved governance in the area of public employment – but more remains to be done. The households survey reveals that public employment is still perceived to be the most problematic area of all public services – particularly with respect to *wasta* – however the actual experience reflected a much lower incidence of problems. The public officials had positive findings on public employment issues but these were not as strong as those in either the budget or procurement areas.

Public officials supported the view that the 2005 Civil Service Law had improved the recruitment process: 69 percent agreed or strongly agreed that the recruitment process had improved. More specifically, they believed the recruitment process followed an open call for applications. When asked whether position vacancies are announced within the institution, 70 percent agreed or strongly agreed, while roughly 77 percent agreed or strongly agreed that vacancies were announced publicly outside the institution.

On personnel decision policy, most officials agreed that policies regarding personnel decision were formally outlined and easy to understand: 89 percent said they “strongly agree” or “agree” that policies regarding personnel decisions are formally written, and 85 percent also strongly agreed or agreed that the policies were easy to understand. To a lesser extent, they felt that policies were well supervised: 74 percent strongly agreed or agreed. This suggests that there may be a gap between formal procedures and practice.

In relation to human resource decisions, most officials (58 percent) agreed or strongly agreed that decisions were made in a transparent manner. Some 75 percent agreed that human resource decisions in their institution were based on specific criteria defined in writing rather than tacit, informal rules. When asked whether such decisions were based on *wasta*/favoritism, some 52 percent agreed or strongly agreed.

It should be noted that while the public officials were generally positive about procedures in public employment, the results were consistently less positive than those for budget management and procurement procedures. This provides an interesting view of the relative strengths of the different areas of government operation. Aligned with this perspective was the relative view of the integrity of the GPC and the MoF in the survey. While 33.7 percent of respondents considered that the GPC had a low (or no) level of integrity – the highest of the various institutions – the comparable figure for the MoF was only 21.5 percent.

Households had a much more negative view of the reforms in public employment. Less than one-third believed that recruitment practices in the public sector had improved in the preceding three years.

As with the situation in the provision of services, there appeared to be a gap between household perception and actual experience of governance in the area of public employment: 83 percent believed that people receive preferential treatment in public employment, “some” or “most of the time”, depending on their status or connections. However, when asked whether they had actually used *wasta* to access official employment, only 12.2 percent said they had. This finding is closer to that of the public officials survey, where 64 percent believed that employment was based on merit, not connections. While the incidence of *wasta* was much lower than perceived, it was still the second-highest ranked indication of *wasta* use in the survey.

Although bribery is considered a much smaller problem, a similar pattern emerged. One-third of household respondents believed that bribery was commonplace in accessing public employment, but no one reported actually using a bribe to access public employment.

The reason for the divergence between household perceptions of corruption in public employment and reported practice cannot be confidently explained. The higher perception of corruption is consistent with the pattern observed in the survey questions on service delivery, suggesting it may be a legacy of past problems in this area. Alternatively the more limited reform in the security sector or the recent introduction of security checks could be having a strong influence on household perceptions.

Further Improvements to Governance in Public Employment

Since 2003, the PA has implemented a number of important reforms to improve the legal basis and procedures through which public employment is managed. This appears to have reduced the scope for favoritism in civil service recruitment and promotion. However, the conclusion is stronger for the general civil service than the security sector where governance improvements have been more limited. The introduction of security checks for all recruitment has also created new opportunities to influence hiring.

While acknowledging the progress made, the World Bank's 2007 PER identified a range of reforms that would further modernize and improve the civil service arrangements. Many of these recommendations are aimed at addressing governance weaknesses. As the PA has been reluctant to embark on major civil service reform in an environment where the private sector is not in a position to absorb additional workers, most of the recommendations of the PER remain valid. From a governance perspective, particular attention should be given to the following:

- a. Taking steps to address the problem of employees being on the payroll but not turning up for work. This could distinguish those employees at present facing a specific problem in the Gaza Strip.
- b. Completing the development of a new Civil Service law to create staff positions and job descriptions for employees in each PA agency. This would further improve the control and management of recruitment and promotions. Ideally, the position charts should flow from a comprehensive review of the public administrative functions and structures. In addition, a clearer distinction should be made between senior civil servants appointed through merit based procedures, and politically appointed staff working for the Minister.
- c. Ensure that the improved recruitment and promotion procedures adopted in the general civil service are more effectively embedded in the security sector.
- d. Review the practice of security checks for civil servants and, if the practice is to continue, develop procedures to improve the transparency of the process.

Public Procurement

The OECD views public procurement as the government activity most vulnerable to corruption.⁷⁰ Because procurement can involve large, discrete transactions, there can be rents to be shared when the process is skewed to a particular supplier. To minimize abuse, the procurement process should aim to encourage transparency and fair competition to counter the potential for bribes and kickbacks, bid rigging, etc.

In WB&G, public procurement is a combination of centralized and decentralized activities. The two principal laws (works law and supply law) specify that the procurement of works above the value of US\$150,000 should be centralized within the Ministry of Public Works and Housing (MOPWH), and the procurement of supplies above the value of US\$15,000 must be centralized within the MoF. Below these limits, procurement may be delegated according to the authority thresholds as specified in the procurement laws. These provisions are normally enforced and the thresholds respected, but exceptions do occur, particularly in donor-financed projects.

The role of donor-financed projects is an important feature of the procurement process in WB&G. Up to 2008 almost all development expenditure of the PA was financed by donors. When the PA is responsible for executing the expenditure, the “donors insist on sound procurement procedures in line with their own guidelines”.⁷¹ This introduced some order to the procurement process but at the expense of creating a high compliance burden on the PA. Since 2008 the PA has financed a larger share of development expenditures from general resources – especially for “community-based projects”.

Assessment of the Procurement System

The World Bank has conducted two reviews of the PA procurement system. A Country Procurement Assessment Report (CPAR) for WB&G was conducted with the PA in 2004, with the aim of analyzing the public procurement system, including its policies, organization, procedures, and practices. A follow-up assessment – the Country Procurement Issues Paper (CPIP) – was made in June 2008 and focused on reviewing the CPAR findings. The CPIP assessment of the procurement system relied mainly on the most pertinent 54 sub-indicators and a benchmarking tool developed by the Organization for Economic Cooperation and Development – Development Cooperation Directorate’s Development Assistance Committee (OECD-DAC) and the World Bank Round Table on Strengthening Procurement Capacities in Developing Countries. These sub-indicators formed the basis for identifying, in broad terms, the strengths and weaknesses of the procurement system in the WB&G.

⁷⁰ OECD, *Integrity in Public Procurement, Good Practice from A to Z*, 2007.

⁷¹ World Bank Country Procurement Assessment Report, 2004, P vii.

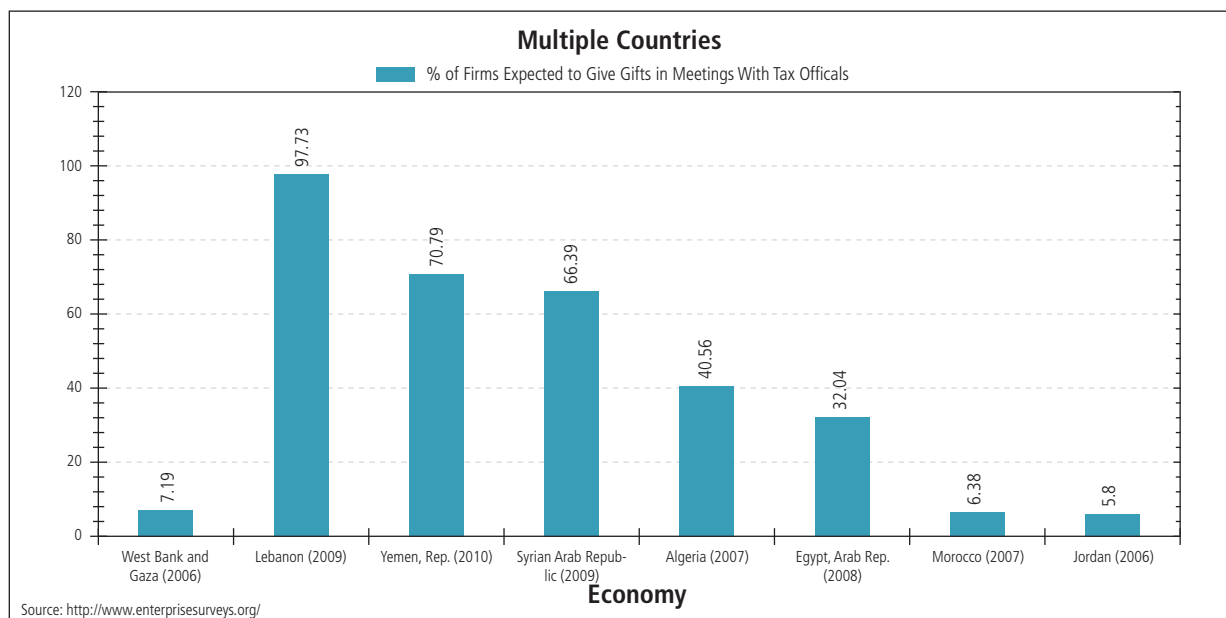
The assessments identified a number of problems faced by the procurement system, but the CPAR indicated that the system managed to function in a reasonably organized and acceptable manner – mainly as a consequence of the role of the donors. The principal shortcomings included:

- a. The existing procurement law and regulations were fragmented and incomplete and their implementation by various PA units inconsistent;
- b. There was a general lack of common guidelines, rules and technical standards;
- c. No national standard bidding documents were available, resulting in a mixture of donor-based Standard Bidding Documents (SBDs) being commonly used, even for national procurement;
- d. There was an absence of routine reporting of procurement activities to a central authority;
- e. There was no independent body with specific responsibility to investigate complaints by bidders about procurement processes; and
- f. The capacity of civil service staff working in public procurement was limited and needed substantial strengthening.

The CPAR reported petty corruption (payments made to secure government services or bribery of lower level officials) to be virtually non-existent in WB&G, and indicated that no evidence of such petty corruption in the public procurement process was reported during the CPAR missions. This assessment aligns with a finding of the ICA carried out in 2006 (see Figure 22 for comparisons across the MENA region). However, the CPAR pointed to a number of weaknesses in the public procurement system that could encourage corruption or provide a suitable environment for corrupt practices. These are discussed in the following sections.

Lack of a Procurement Oversight and Appeals Mechanism

There is no routine reporting of procurement activities to a central authority and no external body with specific responsibility to investigate complaints by bidders on the procurement process. The need for procurement policy formation at a national level, coupled with regulatory and oversight responsibilities, cannot be overstated. A central procurement policy entity established by law with a clearly set mandate and staffed by a competent nucleus of professional staff is the key to a sustainable and comprehensive public procurement system. The entity should include the legal, policy and human resource capacity necessary to develop the public procurement regime in the WB&G. Such an entity would provide a focus for the formulation of procurement policy, maintenance of procurement laws and regulations consistent with internationally accepted public procurement principles, and provide oversight to ensure compliance with the law, transparency in procurement activities, and a reduction in opportunities for fraud, corruption and collusion.

Figure 22: Percentage of firms expected to give gifts to secure a government contract

Limited Access to Information

There is no consolidated procurement public information system. The CPAR emphasized the need to maintain a comprehensive record of each procurement process including copies of all related documents by all procuring entities and implementing agencies, and to develop a Management Information System on procurement activities which would be coordinated with the budget cycle.

Beyond an advertisement for tendering, there is no disclosure of the results of the bidding processes. To ensure transparency and efficiency, the CPAR recommended that a procurement bulletin be routinely published to disseminate information on public procurement, provide advance information on upcoming procurement, advertise all specific procurement opportunities above an appropriate threshold, and the results of the bidding processes. Sanctions against bidders and officials who have been determined to have engaged in fraud and corrupt practices should also be included.

Negotiating with the Bidder

Article 25 of the Works Law includes provisions that allow the tender committee to negotiate with the lowest bidder to make them drop any reservations they might have included in his bid, or to make them reduce the bid price “to the level of the market price”. This is totally against the principles of transparent, competitive bidding, and it will create opportunities for corrupt practices.

Weaknesses in General Ethics and Anticorruption Policy

The CPIP highlighted the absence of a comprehensive anticorruption law and framework for reporting and addressing fraudulent, corrupt or unethical behavior. The legal/regulatory framework does not establish a clear requirement to include language on corruption in bidding documents. It indicated that the only direct reference contained in the legal framework for procurement occurs in the Ministry of Local Government (MOLG) regulations on works procurement barring local government employees and their relatives from taking several kinds of actions leading to personal gain. It also identified the lack of a code of conduct or code of ethics.

Effectiveness of Control and Audit Systems

The CPIP identified a number of general weaknesses in the control environment relating to the work of the external and internal audit bodies – in particular, the law establishing the state audit bureau, the SAACB, which provides for the audit of the procurement process. However, the current general focus of the external audit is on the verification of the administrative and financial aspects. There is also no apparent mechanism for enforcement and follow-up on findings and recommendations of the SAACB's report. In addition, the internal audit procedure which is led by the MoF is largely limited to financial auditing.

Survey Results on Governance in Public Procurement

The results from the public officials survey with respect to procurement procedures largely support the World Bank assessment of a reasonably organized system. However, a number of findings confirm the need for improvements.

The vast majority of public officials surveyed believed decisions related to contracting procedures were made transparently in their institution (87 percent) and were based on specific written criteria (94 percent). Likewise, more than 95 percent disagreed that bribes influenced contracting procedures, and slightly fewer disagreed (79 percent) that connections played a role.

On balance, officials considered that decisions about public contracts are well organized, formal, and controlled: 94 percent stated that they agreed or strongly agree that decisions were based on written criteria, and 87 percent agreed or strongly agreed that it was done transparently. When asked about the audit process, 88 percent agreed or strongly agreed that it was subject to external audits, and 85 percent agreed or strongly agreed that contracting decision were subject to an internal audit process. When asked about any corruption, 96 percent disagreed or strongly disagreed that decisions were based on bribes.

The one area of concern is when officials' were asked about the influence of connections/wasta was in contracting decision. While most officials (79 percent) disagreed or strongly disagreed that

connections/wasta influenced the decision making process, some 21 percent agreed or strongly agreed that they indeed influenced the process.

Some exceptions to competitive bidding seem to exist, as almost 20 percent of officials said they believed exceptions to competitive bidding happened most or some of the time. However, when examining specific manifestations of potential corruption in public procurement, they claimed to rarely or never observe: contracting with fictitious companies (97 percent); awarding of public contracts was influenced by illegal payments (95 percent); re-bidding after choosing one of the competitors (89 percent); or modifying the terms of the contract to favor the interest of a particular company (90 percent).

Addressing Weaknesses in Procurement

The CPAR provided recommendations to assist the PA in developing its capacity to plan, manage and monitor the procurement process effectively; improve the accountability, integrity, and transparency of the procedures and processes; reduce the scope for corruption; and harmonize the procurement rules and regulations in accordance with internationally accepted principles and practices.

The PA has made some progress in addressing a number of the generic issues raised in the assessments. These include the recent improvements to the anticorruption legislation, steps to enhance the internal audit role of MoF, and the establishment of a commitment module in the accounting system that links to the procurement process.

Until recently, however, progress has been more limited on addressing weaknesses in the procurement laws and procedures. In response to the CPAR recommendations, the PA, with Bank support, in early 2006 launched the reform of the public procurement system by drafting the new national procurement law with detailed implementing regulations. However, changes in the government since then, and the unstable political situation, have delayed ratification and enactment of the law and regulations and prevented successful completion of other reform activities. The procurement law underwent several revisions and was submitted several times to the Council of Ministers but failed to pass due to opposition by line ministries.

In early 2010 the PA made another effort to revise the procurement law, and an inter-ministerial group of procurement experts representing major ministries of the PA was mobilized to revise the draft law in accordance with the set of comments provided by the World Bank. The draft law is seen to largely reflect internationally recognized good practice, in particular in the UNCITRAL Model Law on Procurement,⁷² and provides a good basis for further work and improvement. An agreement was made for the World Bank to continue its cooperation with the working group to ensure that the best possible procurement law emerges from this process. The finalization of the

72 United Nations Commission On International Trade Law, Model Law on Procurement (1994)

draft law was expected in mid 2011. The new law and implementing regulations would form the basis for a more effective and transparent public procurement function.

Progress has been slow in writing the legislation despite the support of respected private-sector stakeholders. These include professional associations such as the Palestinian Contractors Union, Engineers Association and the Lawyers Association that have been closely involved in dialogue with government over the reform of the country's procurement system. Palestinian civil society, represented by the Palestinian Coalition for Accountability and Integrity-AMAN has also become involved in the promotion of values and systems of accountability, transparency and integrity in WB&G. AMAN, the Palestinian National Chapter for Transparency International (TI), places special emphasis on combating fraud and corruption in public procurement. It has taken the lead in arranging discussions and workshops on Palestinian laws relating to public procurement institutions and methodology as well as violations and related problems.

Further Improvements to Governance in Procurement

Despite a protracted period of development, the short-term priority remains the completion and enactment of good procurement law. But enactment would only be the first step in a major reform effort that has been initiated by the PA with World Bank support. All parties agree that a number of other critical components of the procurement system need also to be addressed. These include:

- Enacting the supporting regulations for the new law;
- Establishing an independent public procurement authority;
- Initiating national standard bidding documents; and
- Instituting a training program across the government, with additional measures to make the law effective.

The reforms represent a major institutional change and the formal measures will take years to complete, with the building of capacity to support the system being especially arduous. Pending these changes, the PA should consider taking immediate steps to improve its governance arrangements. For example, it should grasp the opportunities created by recent advances in international accounting practice to address the weak procurement information system in the region.

Management of Public Assets

The PA has undertaken initiatives to improve governance of its public assets. In some areas, the reforms have succeeded in dramatically improving accountability and transparency, while in others the reforms still have some way to go to bring about necessary changes. The most

notable reforms took place in the management of the PA's equity holdings and liquid assets. In the late 1990s and early 2000s, non-transparency in the management of these assets and their financial practices was a major governance weakness. In 2003, the PA embarked on significant reforms to improve governance and accountability, but the governance arrangements for physical assets, particularly state land remain weak. The PA has undertaken initiatives to address some governance weaknesses, but more needs to be done.

The sections below examine the management of the PA's two key assets – equity holdings and state land – in further detail. The PA's commercial engagement in the petroleum sector through the Petroleum Corporation is also discussed. Evolution of governance practices in these areas and outstanding challenges are highlighted. One issue not discussed in detail is the management of physical assets other than land – for example cars and computers. In its audit of the 2008 financial statements, the SAACB highlighted the lack of records for such assets as a weakness. Since early 2010, the MoF has begun to register these assets, in a step towards accrual accounting.

Case Study Three: Management of Equity Holdings

Soon after its establishment, the PA acquired shareholdings in a number of companies across various sectors of the economy. These commercial undertakings were placed under the umbrella of a holding company, the Palestine Commercial Services Company (PCSC), managed by the economic advisor to President Arafat. The PA engaged in these commercial activities in part to create an independent revenue stream, and also to develop partnerships with private sector actors as a way to promote investment in a highly uncertain political context. The PCSC had full equity ownership of the Cement Company, which held an exclusive contract for the import of cement from Israel. In addition, it had partnerships with private investors in numerous businesses, including hotels, casinos, cigarettes, telecoms, real estate, flour milling among other sectors. A valuation conducted in 1999 estimated that PCSC had partial or full equity stake in 79 undertakings, at a value of US\$345 million.⁷³

The governance arrangements to manage these assets were weak. Foremost, there was a high degree of non-transparency and lack of accountability in both management and financial practices. Following a public inquiry in 1997, the PLC found that the PCSC was not monitored by the external audit body of the PA, the General Audit Institute. Moreover, the Ministry of Finance itself was unclear about the legal standing of the PCSC, as to whether it was a private or public entity, given that its legal status was not specified. Moreover, the PCSC generated significant profits, which were diverted outside of the PA budget. The finances of these commercial activities were not made public, even to PLC members. The absence of balance sheets or published annual reports meant that no concrete information was available on the profits generated from 1995 to 2000. A 2003 IMF study estimated that profits diverted from the budget between 1995 and 2000 amounted to US\$307 million.⁷⁴

73 IMF, *Economic Performance and Reform Among Conflict Conditions*, 2003.

74 IMF, *Economic Performance and Reform Among Conflict Conditions*, 2003.

By the late 1990s, the PLC and the donor community were calling for greater transparency in these activities. In the context of the EPF 2000, some reforms were initiated. In particular, an audit was conducted by a private firm to identify and value the assets held by the PCSC. In addition, a Presidential decree was issued on January 10, 2000, committing to the establishment of the Palestine Investment Fund (PIF), which would manage all of the PA's assets and commercial activities in WB&G and abroad. In practice, this commitment was not implemented, and PCSC profits continued to be channeled outside the budget.⁷⁵

The major reform push commenced with the establishment of the PIF in 2002. This measure was part of a broader suite of reforms the PA was undertaking under the "100 Day Plan". The PIF was formally established by Presidential decree in 2002, under which all PA commercial activity and asset ownership had to be held within the framework of the PIF. Articles of Association were drafted in August 2002 and the PIF formally established in October. Two external institutions, Standard and Poor's and the Democracy Council, were engaged to conduct a valuation of all assets, a "transparency assessment" of all companies in which the PIF held shares, and provide guidance on governance issues. The 2003 valuation estimated that the PIF assets, as of January 1, 2003, amounted to US\$633 million, encompassing 67 commercial entities and liquid assets. The significantly higher estimate in 2003 over that of 1999 suggests that the earlier assessment had been incomplete. The transparency review also identified bank accounts controlled by the PCSC, reviewed financial data of the various operations in which the PIF had shares, and assessed the ownership, organization, and operation of these entities.⁷⁶

Following this comprehensive review of the financial portfolio, the governance and management of the PIF was substantially reformed. Among the most significant changes were provisions to allow the MoF to have direct oversight over the PIF and to direct its dividends into the PA budget. However, the PIF was "owned" by the "Palestinian People", with formal exercise of this role resting with the Palestinian Liberation Organization, not the PA. While it might have been expected that the PLC would have a role in overseeing the activity of the PIF on behalf of the Palestinian people this was not the case. The articles of association specified the establishment of a board of directors, with the MoF as its chair. It clearly delineated the mandate and responsibility of the board of directors and management, as well as guidelines for regular disclosure of PIF activities and audited financial statements. In addition, a manual was developed to provide clear guidance in the operations of the PIF.

In 2006 and in 2007, a number of major changes took place in these governance arrangements. By Presidential decree, the MoF was no longer the chairman of the Board, having been replaced by an external appointee. The PIF was subsequently transferred to the President's Office. This arrangement continued until the writing of this report.

75 IMF, *Economic Performance and Reform Among Conflict Conditions*, 2003.

76 IMF, *Economic Performance and Reform Among Conflict Conditions*, 2003.

Currently, governance of the PIF is characterized by financial and administrative independence. It is a publicly limited company, governed by a board of directors and general assembly. The current board is a seven-member team from the private sector, appointed by the President for a three-year term. It includes the chairman and CEO of the PIF, who is also the economic advisor to the President. The general assembly, appointed by the President for a three-year term, consists of 30 members from the private sector and civil society. According to the PIF's 2009 annual report, this body "provides strategic guidance to the Board of Directors, gives oversight of annual reports, and approves the distribution of dividends in accordance with the Companies Law. The General Assembly also assigns an external auditor on the basis of the Board of Directors recommendations."⁷⁷

The PIF management team has put in place several features to promote accountability and transparency, which are significant improvements on earlier practices. These include: independent internal auditing, currently performed by PricewaterhouseCoopers; external auditing, currently by Ernst & Young, with the requirement to report to both the general assembly and board of directors; auditing by the Palestinian external audit institution (SAACB) on the PIF's internal processes and performance of internal audit systems; financial disclosure by publishing audited financial reports and investment details on the PIF's website; and conflict of interest rules to prohibit Board members "from intervening in projects, contracts, and commercial matters".⁷⁸ The latter measure is particularly important, as the focus of the PIF has turned from being an investment fund to a development agency. With investment activity now focused on developments within WB&G there is a greater potential for conflicts of interest to arise, or inside knowledge to be abused.

Outstanding Issues

The reforms associated with the establishment of the PIF are among the most important the PA has undertaken to improve the governance of its assets. These governance arrangements significantly advance transparency and management accountability. Nevertheless, as these are ultimately the assets of the Palestinian people the lack of direct accountability to the PA and the PLC for the performance of the fund, and for decisions on the use of its resources, remains a governance weakness. The arrangements should be revised and formalized in legislation. Consideration should also be given to the role of the PIF as a development agency, as in a small economy the operations of a public fund can quickly dominate and crowd out the development of the private sector.

⁷⁷ Palestine Investment Fund, Annual Report, 2009.

⁷⁸ Palestine Investment Fund, Annual Report, 2009.

Case Study Four: Governance of the Petroleum Commission

The Palestinian Petroleum Commission (PC) was established in 1994 as the monopoly supplier of petroleum products in WB&G.⁷⁹ It was granted the exclusive rights to channel and sell petroleum products in the WB&G, and was mandated also to regulate the sector. The petroleum commission received fuel from the Israeli supplier Dor Alon, with an exclusive contractual agreement that ended in 2006. In January 2007, the PA made an agreement with the Israeli supplier, Paz, for the supply of petroleum to the West Bank, and with Dor Alon for Gaza.

In the period following the establishment of the PA, the petroleum sector had a poor governance framework, giving rise to financial mismanagement and non-transparent practices. The PA has embarked on a series of reforms since 2000 to redress these weaknesses. The first wave focused on the administrative and pricing arrangements; more recently there have been reforms in financial management.

Legacy of Weak Governance

From its inception, the governance framework of the petroleum sector was weak. In broad terms, the PP established the framework for the supply of petroleum to WB&G and set consumer pricing within the region. While this framework delineates certain key features of the petroleum sector in WB&G, it does not provide any reference for governance of the sector. In 1997, three years after the establishment of the petroleum commission, the PLC attempted to pass a bill to regulate the operations in the sector, proposing a board of directors with nine representatives from the petroleum commission, government ministries, and external stakeholders.⁸⁰ But the bill was not signed into law. As a result, the petroleum commission operated without a legal or regulatory framework to govern its operational and financial practices; it remained a stand-alone entity attached to the President's office, outside the jurisdiction of any PA ministry, and not subject to oversight by external audit or the PLC. In the absence of any adequate governance framework a number of questionable practices arose. These included:

Diversion of Revenues

Petroleum excises were directed outside the budget. Separate off-budgetary accounts were established in Israeli banks under the control of President Arafat and his financial advisor. As discussed earlier, excise tax proceeds – of petroleum, tobacco, and alcohol – in addition to revenues from PA monopolies and other commercial activities were directed to these accounts. These proceeds were neither disclosed nor monitored by any PA institution, including the PLC. Because of the lack of transparency, the exact value of petroleum excises diverted to these accounts is not known.

⁷⁹ Petroleum Commission, in its capacity as the supervisory body over the oil sector and the PA's representative of all sector affairs was established pursuant to a decision by the Council of Ministers on 6 October 1994. Source: AMAN, *The Petroleum Commission: Between Evaluation and Reform*, 2010. (original in Arabic)

⁸⁰ AMAN, *The Petroleum Commission: Between Evaluation and Reform*, 2010. (original in Arabic)

The diversion of revenues and non-transparency shrouding this process led donors to strongly advocate consolidation of all income and expenditure under the direct control of the MoF.⁸¹ Under the first quarterly report to the Ad Hoc Liaison Committee (AHLC), that administers aid to the PA, the Minister of Finance committed himself to consolidate all accounts at the Single Treasury Account (STA) by August 31, 1996. But these commitments were not implemented, and the diversion of excise revenues continued until April 2000. At this time, consolidation of revenues took place as part of the implementation of the EPF.⁸²

Non-Transparent Purchase Arrangements

The petroleum commission's contracts to procure fuel were characterized by a number of poor governance practices. The sole-source contract which the commission had signed with the Israeli company Dor Alon was concluded non-transparently, without a tender process. The terms of the license agreement were not disclosed to the PLC.

Exploitive Practices

The petroleum commission also engaged in a number of damaging actions which exploited its monopoly position. It adopted a monopolistic pricing policy, which attempted to maximize profits, but created incentives for cross border smuggling and unofficial sales of petroleum products in WB&G. This resulted in revenues lost to the PA. Moreover, gas station owners raised complaints about inferior level of services provided by the petroleum commission, with regard to quality of petroleum products, delays in delivery of shipments, mismatch between quantities actually received and those reported in the bills, and poor maintenance services provided to gas stations.⁸³ In this context, there were also concerns that the commission was not imposing uniform conditions on gas stations, with respect to financial transactions and obligations or provision of maintenance services.⁸⁴ The commission also engaged in dubious commercial arrangements, for example by forcing retailers to carry particular lubricants, which it supplied from one manufacturer.⁸⁵

Reforms

A series of reforms commencing in 2000 sought to redress these practices. The first wave of reforms in 2000 under the Economic Policy Framework (EPF) aimed to consolidated all excise revenues under accounts controlled by the MoF – although this was only fully implemented in mid 2002. In June 2003, within the framework of broader PFM reforms, the petroleum commission was made a department of the MoF. Management was changed and a full audit conducted of its financial transactions.

81 This was done in the context of the Tripartite Action Plan, April 27, 1995

82 IMF, West Bank and Gaza: *Economic Performance in Conflict Situation*, 2003

83 Center for Private Sector Development, *Palestinian Petroleum Commission: Achievements, Problems, Policy Options*, April 2005.

84 AMAN, *The Petroleum Commission: Between Evaluation and Reform*, 2010. (original in Arabic)

85 IMF, *West Bank and Gaza: Economic Performance in Conflict Situation*, 2003.

Following the petroleum commission's inclusion in the MoF, the Minister of Finance changed the commission's pricing regime, eliminating the monopolistic pricing structure that had been in place. Product prices were reduced by reducing the profit margin and renegotiating prices with the Israeli supplier. The objective was to regain the market share lost from smuggling and unofficial sales. The strategy met with success; within a month, official sales increased dramatically and were accompanied by proportional increases in VAT and excise taxes, thereby increasing Treasury revenues.⁸⁶

The MoF also reduced the petroleum commission's involvement in downstream sector operations, in which it was believed to have a conflict of interest. The petroleum commission transferred full ownership of gas stations to private owners, unwinding arrangements in which gas stations owners were in partnership with the commission.⁸⁷ In addition, the commission ceased its fuel transporting activities, in which it had previously held a monopoly. This decision followed concerns held by gas station owners regarding various malpractices on the part of the transportation companies utilized by the commission. By August 2008, the commission had put in place arrangements that allowed gas station owners to contract their own transportation. These reforms were significant in removing a conflict of interest where the commission had performed a supervisory and oversight role in the sector while it held major commercial operations.

Incorporating the petroleum commission within the framework of the MoF allowed the latter to exercise financial oversight, but also brought financial management challenges. While the reforms consolidated revenues within the CTA, and controlled expenditures under the MoF's internal systems, the cash based systems used for government accounting were inadequate to manage the petroleum commission's commercial activities. These did not produce accounting information to support effective management control by the MoF or financial reports to support external oversight. Moreover the routine systems such as bank reconciliations were neglected.

In short, the initial reforms were not far-reaching enough to bring the financial systems of the petroleum commission into order. An audit conducted by MoF's internal audit team in late 2008 revealed a number of significant weaknesses. These included: the absence of an effective accounting system; lack of financial reports on accounts receivable; no bank reconciliations; and cash payment to employees outside the payroll.⁸⁸ In addition, it was observed that there had been an accumulation of accounts receivable from fuel stations, estimated at NIS367 million. The external audit bureau, SAACB, also identified concerns about deficiencies in the application of internal and external oversight mechanisms on the activities of the PC.⁸⁹ In its report on the audit of the 2008 financial statements, the SAACB commented:

86 IMF, *West Bank and Gaza: Economic Performance in Conflict Situation*, op. cit., p. 103

87 The final PC owned gas station was closed in Jericho in 2008.

88 Interview with MoF Internal Audit Department

89 AMAN, *The Petroleum Commission: Between Evaluation and Reform*, 2010. (original in Arabic)

“We could not ensure the accuracy of the payments of the General Petroleum Corporation (PC) of US\$142,976,000 since PC did not close its accounts of previous years and there was a lack of accurate bank reconciliations to compare books balance with cash balances. There are many differences in the book balance of the PC bank account and bank endorsements. There are no internal audit procedures for sales and purchases; hence, its impact on the financial statements cannot be specified.”⁹⁰

No audit had been conducted of the petroleum commission between 2004 and 2008.⁹¹

Since 2009, the commission has implemented a number of significant measures to improve its internal financial management. These include implementation of a new commercial accounting section in the MoF accounting system (Bisan) for the commission, development of an improved chart of accounts, and the implementation of regular bank reconciliations. Control of the commission’s bank accounts was also transferred to the treasury.

Another priority area has been to confirm and reduce the balance of account receivables. New procedures have been implemented to collect past debts from fuel stations and for regular monthly collection of current receivables. These procedures include requesting an annual cash guarantee from fuel stations; specifying procedures for timely payment; issuing unique identification numbers for fuel stations to monitor all accounts receivables; and coordinating with the MoNE to keep the PC updated on any changes in ownership of titles of gas stations (which had been used as a tactic previously by gas station owners to avoid past payments). In the absence of timely payment by fuel stations, the petroleum commission has set in place procedures to stop fuel shipment to gas stations and to transfer files to the MoF’s legal department. These measures to recuperate outstanding debt and promote compliance had reduced the commission’s accounts receivable from NIS367 million to NIS132 million by October 2010. In a follow-up internal audit report in early 2010 it was reported that most of the problems identified in the 2008 internal audit report had been addressed.

Outstanding Issues

The petroleum corporation has undergone a range of reforms, both in its operations and financial management, and significant progress has been made. A number of other reforms to improve its financial management are still in progress. There remain several areas in which further improvements are required to improve governance:

- 1. Separate reporting of the commission’s financial performance and balance sheet.**
Within the MoF, financial records of the commission are now available, but the MoF’s external financial reports and budget disclose limited financial information pertaining to the commission. The 2008 Financial Statements only included the aggregate receipts

⁹⁰ SAACB, “Report on Audit of the Final Statements of 2008”, September 2010

⁹¹ Interview with MoF Internal Audit Department

and purchases in the period. Separate reporting of the commission's finances would improve the information on its performance, and thereby, facilitate external oversight.

2. **Promote transparency in procurement.** The petroleum commission's initial contractual agreement with Dor Alon, and more recently Paz, were not managed in a transparent manner; there was no competitive bidding and evaluation, no information on the criteria by which companies were selected, or disclosure of the terms and conditions of the agreement. The PA is planning to renew the contract, and is having direct negotiations with major Israeli suppliers. It should work towards establishing a transparent procurement process, with defined procedures and criteria for selection of suppliers, and ensure that the terms are disclosed to the PLC.
3. **Establish a clear governance framework for the sector.** A priority is to enact the draft Petroleum Law, which we understand would establish clear terms of reference for management of the petroleum commission, as well as reporting, accountability, and oversight mechanisms.⁹² Moreover, the private sector in WB&G has been calling for more engagement of private sector representatives in the governance of the sector. One of their main calls has been to separate the functions of regulation of the commission from its commercial activities, so as to reduce the scope for any conflict of interest. In such a scenario, the commission, or other specialized governmental agency, would be responsible for overall management, regulation, and supervision of the sector, while the commercial activities would be separately managed. Such issues should be considered in deciding the future governance arrangements for the sector.

Case Study Five: State Land Administration

In most countries, land has significance not only as an economic asset, but also as a foundation for economic activity across many sectors. In WB&G, land also carries a particular significance in its historic conflict with Israel. Land has elevated value in WB&G due to scarcity arising from land confiscations, movement restrictions, and limits on the use of land in Area C. This context gives particular importance to how state land is managed and utilized.⁹³

Despite its importance, state land management historically has a poor record in WB&G, and has been characterized by a range of governance weaknesses. The fundamental problems relate to the non-transparent manner in which state land was disposed, with little reference to strategic considerations, clear criteria for decision-making, and monitoring of its use. Historically, there were a number of problematic practices, including discretionary allocation of state land to influential PLO/PA figures; non-payment of fees to the Treasury and lack of financial disclosure on state land transactions; non-transparency in allocation of state lands; unauthorized swaps between state and private land; state land not utilized as per agreement with authorities; illegal encroachment and utilization of state land for construction or agriculture.⁹⁴ These transgressions occurred in both Gaza and the West Bank.

⁹² The World Bank was not provided a copy of the draft law.

⁹³ State land is a subset of public land, which also includes municipal land.

⁹⁴ AMAN, Integrity, Transparency, and Accountability in the Management of State Land in the Palestinian Territory, April 2010.

The PA, supported by donors,⁹⁵ has been working on a land administration reform agenda for a number of years, which aims to strengthen the underlying legal, regulatory, and institutional frameworks governing the land sector. The reform process included preparing papers on land policy and public land management, and drafting legislation to put into effect the desired improvements. However only one element of the legislative agenda has been passed and most of the recommendations from this work have not been implemented. As a result, minimal progress has been made on the earlier problems facing state land management, including:

- The absence of a clear policy framework for management and allocation;
- The absence of a comprehensive registry;
- Institutional capacity limitations in managing state land;
- Limited accountability in the mechanisms for allocating state land;
- Limited access to information on state land management and allocation; and
- The lack of a systematic approach to restitution of state land.

The following section discusses these weaknesses, the reform initiatives to date, and the remaining challenges. While the focus is on state land, much of the discussion is applicable to broader land administration issues.

Areas of Weakness in State Land Management

Inadequate Policy Framework

A finding of the PA's work on land administration is that public policy on state land management has not been clear.⁹⁶ This has been reflected in a legal framework that does not specify clear criteria and procedural guidelines for state land use and disposal. As a result, allocations of land were made without reference to broader policy and development goals, and the absence of clear criteria allowed for discretionary decision-making.

These concerns were taken up by the PLC as long ago as 1997. The PLC Corruption Report recommended the “necessity of creating and depending on a fixed policy relating to granting and allotting state land either for individuals, institutions, projects or governmental systems according to a general plan for usage and services of government lands”. Moreover, the committee recommended that the executive authority should investigate past allocation methods and identify violations.⁹⁷

95 The work received technical and financial support from the World Bank, USAID and the government of Finland.

96 Palestinian National Authority, “National Land Policy Framework”, Ministry of Planning, March 2008, page 30, “Currently there are no guiding principles, regulated or transparent procedures, to ensure reasonable objectives of public and private land use are met...”

97 PLC, Corruption Report, 1997.

The preparation of the National Land Policy Framework in 2008 aimed to establish a clear policy framework for land management. This report emerged from extensive consultations with Palestinian stakeholders and makes a range of recommendations for improving land management, including state land management. A particular focus was on classifying state land that would not be disposed of in any circumstances and setting out a strategy for allocations to various sectors in the coming period.

Registration of Land

The PA is restricted in its ability to monitor state land use by the absence of a comprehensive registry. This is a pre-requisite for effective management of the asset. Historically, land registration in the West Bank has been low: only 33 percent of the West Bank and 31 percent of Area C are formally registered (i.e., titled).⁹⁸ Existing records provide inconsistent estimates regarding the area of state land in WB&G.⁹⁹ While, no comprehensive inventory of state land in Areas A and B, which are under the authority of the PA, is yet available, the Palestinian Land Authority (PLA) says that 95 percent of state land is now inventoried.¹⁰⁰ Of the land on the inventory, 79 percent is registered. For the unregistered land and land not on the inventory, legal and illegal land transactions and swaps, as well as unauthorized use of state land, are difficult to track. This deficiency was one of the issues that the land administration reform project hoped to address. The process of systematic registration has only just begun and is expected to take decades to complete unless significantly more resources are provided.¹⁰¹ However, the PLA is also undertaking “first” registration on a targeted basis to address unregistered state land.¹⁰² With respect to state land, the reform plan developed by the PA recommended that the MoF would keep the title documents for public land and would develop and maintain an inventory of public land, including a unified classification system for Public Reserves. The MoF started to implement this role from 2008.

Institutional Arrangements for State Land Management

Different bodies at various periods were mandated to manage state land. Soon after the inception of the PA, in 1996, the Land Department was formed by a Presidential Decree to manage land issues, including state land. The Land Department was divided between the Ministry of Justice and the Ministry of Housing.¹⁰³ Subsequently, in 2002, the Palestinian Land Authority (PLA) was established by Presidential Decree 10 to be the sole institution responsible for land management.

98 World Bank, “Economic Effects of Restricted Access to Land in West Bank”, 2008.

99 According to Land Registry Departments in the West Bank, state land is estimated to be 574,270 dunums or 9 percent of the total area of the West Bank. Most of this public land, 74 percent, is in Area C and therefore not under administrative control of the PA. Records of the Property Tax Department show total area of public land in the West Bank is significantly smaller, an estimated 149,942 dunums, or 2.5 percent of the West Bank. By these figures, 86 percent of public land falls within Area C. These discrepancies can be attributed largely to double recording of some areas in the Land Registry departments, but also reflect the absence of a proper, comprehensive registry of lands in WB&G. In Gaza, public lands are estimated to be 110,000 dunums, or 30 percent of the total area of the Gaza Strip.

100 World Bank interview with Mr. Nadim Baramah, Chairman of the Palestinian Land Authority.

101 World Bank, “Economic Effects of Restricted Access to Land in West Bank”, 2008. Source: AMAN, “Integrity, Transparency, and Accountability in the Management of State Land in the Palestinian Territory”, April 2010.

102 World Bank interview with Mr. Nadim Baramah, Chairman of the Palestinian Land Authority.

103 AMAN, “Integrity, Transparency, and Accountability in the Management of State Land in the Palestinian Territory”, April 2010.

That decree gave the PLA responsibility for land survey and registration operations, dispute resolution, and protection and management of state land.

While the establishment of the PLA was an important positive development, the institution faced a number of challenges that affected its performance and accountability on state land management issues. On the one hand, there was no clear framework detailing the mandate and competences of the PLA. According to Article 5 of the decree, the functions and powers of the PLA were to be issued in separate legislation. As a result, there was no clear oversight and accountability structure for the PLA. The PLA was a floating institution, sometimes reporting to the President's Office and at other times to the Council of Ministers. Moreover, while PLA had a general responsibility to protect state land there was a significant overlap between the mandates of different government agencies; for example, with respect to cultural heritage and archeological sites, also involving the ministries of Local Government, Tourism and Antiquities, and *Waqf* and Islamic Affairs.¹⁰⁴

In order to strengthen the institutional arrangements, the land reform project developed legislation that clarified the role of functions of the PLA. The recommended approach would allow the PLA to focus on its core role of land survey and registration with a separate agency to be established to manage public land. The agency would have responsibility for developing protocols for public land management and disposal, assigning state land to line agencies, resuming land that is surplus to the needs of line agencies. The principal reason for creating a separate entity to manage public land is to reduce the possibility of conflicts of interest for the purpose of achieving greater transparency and accountability in the system.¹⁰⁵

The law developed as part of the land reform project was not introduced, but in May 2010 the Land Authority Law¹⁰⁶ was passed. This law determines the rights and obligations of the chairman, the PLA mandate, functions, and departments. The law differs from that proposed as part of the land reform project in a number of respects – notably placing the PLA in charge of the administration of state land. The PLA has said that the decision not to establish a separate agency was intended to avoid duplication of work. In addition the Chairman of the PLA has said that he is administratively responsible to the President.¹⁰⁷ The PA's earlier work on land administration reform had recommended that the PLA report to the Minister of Finance. The Chairman of the PLA indicated that the decision to have an administrative link to the President was intended to provide stability and to separate the PLA from political influence in the services provided by the Authority.¹⁰⁸ It is not clear why this objective would apply to land administration but not other services provided by the PA.

104 World Bank, Aide memoire: Land Administration Project, Annex 7, 2009.

105 Palestinian National Authority, "Public and Municipal Land Management Study", Ministry of Planning, July 2007.

106 Law No. 6 of 2010 - the «Land Authority Law».

107 It should also be noted that the PLA continues to report to the Council of Ministers on a regular basis, particularly with respect to budget issues.

108 World Bank interview with Mr. Nadim Baramah, Chairman of the Palestinian Land Authority.

Mechanisms for Allocating State Land

The institutional mechanism for decision-making on state land allocation has also evolved since the inception of the PA, and recently the PA has undertaken steps to improve this mechanism.

Prior to 2007, state land allocation decisions rested in practice with the President of the PA. Before the amendment of the Basic Law in 2003, formally the President had the authority to decide on allocations based on the recommendation of a committee whose members were nominated by Presidential Decree. After the 2003 amendment and the creation of the post of Prime Minister, some changes were introduced. Formally, a committee comprised of the head of the PLA, Minister of Public Works and Housing, and Minister of Local Government was to submit recommendations to the Cabinet, which in turn would issue decisions after ratification by the President. In practice, allocation decisions made prior to 2007 rested largely with the President, with little oversight from the Council of Ministers.¹⁰⁹ The absence of independent oversight or reference to clear, known criteria created significant opportunities for discretionary and preferential decision-making.

In line with recommendations in the 2008 National Land Policy Framework, the PA has taken steps to reform the decision-making system. The 2010 Land Authority Law established a National Land Council headed by the President of the PA, with membership of the PLA, the ministries of Finance, Planning and Development Assistance, Justice, other PA ministries and representatives of civil society and the private sector. It is mandated to approve land policies and decide on the plans and activities of the PLA. With respect to state land, a ministerial committee has been established to consider proposals for allocation and sale. The committee comprises members of the PLA, and ministries of Justice, Local Government, Tourism, Waqf, Environment, Agriculture, and Planning. Supporting the committee is a technical committee, chaired by the Minister of Local Government. The technical committee has developed allocation criteria, and examines applications before submitting reports to the ministerial committee, with the President making the final decision.¹¹⁰ The PLA supports the work of both committees. Since 2008, state land has been allocated only to government entities, and the only sale of land has been to the PIF for the purpose of developing a housing project near Jericho (Madenet Al-Qamar). The sale of the land to the PIF was negotiated by the PLA with the objective of receiving market value for the PA.

Public Access to Information on State Land

One general weakness of the current land administration system is the lack of a land information system services for public land administration. This does not lend itself to transparency or easily accessible information within the government system or information that is publicly available. The lack of available information is particularly problematic with respect to the management and

¹⁰⁹ AMAN, “Integrity, Transparency, and Accountability in the Management of State Land in the Palestinian Territory”, April 2010.

¹¹⁰ AMAN, “Integrity, Transparency, and Accountability in the Management of State Land in the Palestinian Territory”, April 2010.

disposal of state land. For example, where state land is provided to a developer for a project that may be in the public interest, there is no information made public on the terms of the disposal. Establishing the principle and procedures to support public access to information on state land management was a key recommendation of the land administration reform project. While other recommendations for the project have been implemented, there has been no progress on this issue. The Chairman of the PLA has said that this was not a priority in a period when land was being allocated only to state entities.

Restitution of State Land

In view of the past problems, the PA has made a number of attempts to redress illegal disposal of state land. This has included the enactment of a Presidential Decree in 2005 (No. 5), which sought to revoke previous allocations that did not comply with contractual agreements. In 2009, the PA also launched an anti-transgression campaign in some areas of the West Bank in an effort to curb illegal encroachment on state land.¹¹¹ These are positive steps but fall short of the systematic approach recommended in the land policy framework. It recommended that the public land records at the PLA be examined and reviewed periodically: “If the review reveals that some public or Waqf land was converted into private land in an inappropriate manner, legal measures will be taken to recover public ownership in land and the rights will be restituted.”¹¹²

Status of Reform of Land Administration

A common problem facing the Palestinian Authority has been legal dualism stemming from the different legal systems inherited by the WB&G. This is also a feature of the legal framework governing state land, which is split between several laws, with different laws pertaining to the WB&G. Among the most important legislation were the Provisional Management of State Property, No. 32 of 1965 and Law on Conservation of State Land and Property, No. 14 of 1961, applicable to the West Bank, and Law No. 5 of 1960, applicable to Gaza. The laws pertaining to WB&G differed in some respects, such as the rights granted to the Minister of Finance for state land disposal and the formation of committees for allocation of the land.

In view of the weaknesses in the legal framework, a major focus of land administration reform has been to improve the legal framework. Since 2004, a number of attempts were made to improve the legal framework. A draft Land Law was formulated and presented to the PLC. However, in the absence of an overall public policy on key land issues, discussions between relevant stakeholders reached a standstill and the law was not passed by the PLC.¹¹³

Further efforts to strengthen the legal and regulatory framework took place in 2008 in the course

111 AMAN, “Integrity, Transparency, and Accountability in the Management of State Land in the Palestinian Territory”, April 2010; World Bank, “Economic Effects of Restricted Access to Land in West Bank”, 2008; World Bank interviews, 2010.

112 PNA, National Land Policy Framework, P8.

113 AMAN, “Integrity, Transparency, and Accountability in the Management of State Land in the Palestinian Territory”, April 2010.

of the land administration reform project. Work was undertaken to develop a sector policy as well as draft laws to address key regulatory needs of the sector. Four laws – one to set out the competencies of the PLA, a new Land Law, a new Land Registration Law, and a new Law on Expropriation – were drafted. In addition, the National Land Policy Framework was developed, and approved by the Palestinian Council of Ministers in April 2008. The policy framework encompassed a number of policy and institutional reforms, among them the improvement of state land management.¹¹⁴

As mentioned earlier, while the 2010 Land Authority Law clarifies the mandate of the PLA and some progress has been made in land registration, the other laws and the bulk of the recommendations of the National Policy Framework have yet to be implemented.¹¹⁵ In the absence of a functioning PLC, the remaining laws have not been considered urgent enough to enact by Presidential decree.

Remaining Challenges in State Land Management

The PA's work on land administration reform, reflected in the 2008 National Land Policy Framework, identified a range of governance weaknesses in state land management. Specific responses to these problems have been developed in the form of a comprehensive land policy framework and associated draft laws.¹¹⁶ While there are a number of areas where the policy work needs further development, the documents provide a sound basis for reform. However the PA has implemented few of the recommendations to date. Since 2008 the allocation of state land has been confined to other state entities, and the illegal disposal of state land is not the problem it was. However this is a reflection of current behavior by key offices, not a practice entrenched through legislative, institutional, or policy reform. To improve the governance arrangements surrounding state land management the PA should take the earliest opportunity to revisit and implement the policies and legislative reforms that emerged from the land administration reform project.

Improvements to the Management of State Assets

Improving the management of state assets has been a major policy focus of the PA, particularly since 2003. As identified in the case studies above, the reforms in the management of state equity holdings have been significant and have succeeded in dramatically improving accountability and transparency. Progress has also been made in the petroleum sector, although a number of reforms have been identified to further improve governance in this sector. While considerable policy work has been completed on the management of state land, reform in this important area has been more limited. Confirming the policy work and implementing the institutional and legislative reforms remains a priority.

114 World Bank, "Economic Effects of Restricted Access to Land in West Bank", 2008

115 The Land Authority Law departs from the policy framework in deciding a role for the PLA in state land management.

116 A detailed action plan is set out as an appendix to the National Land Policy Framework.



Chapter 6: Legal Framework for Addressing Corruption

This chapter examines current Palestinian laws and regulations relating to preventative measures to discourage corrupt activity and punitive measures to criminalize and sanction corruption. The basis of the review is the United Nations Convention against Corruption (UNCAC), although this is not a rigorous assessment applying the convention.

When the PA was established in 1994, it inherited a complex, divergent legal system, stemming from the numerous political powers that had governed the PTWB&G over the preceding century. While the PA has worked to harmonize existing laws, there remain separate penal codes for the WB&G, resulting in inconsistent treatment of offences within the territory.

Since 2003, a number of new laws and amendments to existing laws have been made to strengthen the legal framework for addressing corruption offences. Notable among these have been the 2005 Illicit Gains Law, the 2007 Anti Money Laundering Law and the 2010 amendment to the Illicit Gains Law which was renamed the Anti-Corruption Law. The latter is an important milestone in the PA's broader governance reform effort. It establishes a range of activities as corruption offenses, and addresses a number of gaps in the legislative framework, including the lack of whistle-blower protection measures. It also establishes an Anticorruption Commission (ACC) to lead the PA's efforts on communicating, preventing and investigating corruption concerns.

While the recent amendments have improved the legal framework to address corruption, there are a number of areas where the framework could be further strengthened. These include steps to:

1. Broaden the definitions of some offenses;
2. Bolster the asset disclosure regime, and increase the sanctions imposed where a conviction occurs; and
3. Establish a law on freedom of information, which remains an important gap in the Palestinian legal framework.

As many of the changes to the legal framework are recent it is not yet clear how effective they will be. This will only become clear when the ACC starts to operate; the prosecutors start to use the new provisions; and when cases are considered by the courts.

The chapter briefly outlines the legal framework to combat corruption before describing the way in which the law covers the various identified offences, and the legal provisions that support law enforcement. An assessment is then made of how to strengthen the legal framework.

The Legal Framework to Combat Corruption

The legal framework to combat corruption is a reflection of both the penal codes inherited by the WB&G when the territory was established and the legal amendments introduced by the Palestinian Authority, particularly over the past decade.

There are two penal codes applicable to the WB&G: the Jordanian penal code, No.16 of 1960, in the West Bank, and the amended penal code, No.74 of 1936, in Gaza.¹¹⁷ This fragmentation stems from the many different mandates placed on the territories over the last century as well as its partition. The varying legal systems emerged from the changes in rule from Ottoman to British to Jordanian in the West Bank and Egyptian in Gaza, to Israeli and, now, to Palestinian rule.

In the past decade a number of new laws and amendments to existing laws have been made to strengthen the legal framework to promote the prevention of corruption and address corruption offences. The Civil Service Law No. 4 of 2005, and the Public Budget and Financial Affairs Law, No. 7 of 1998 are the main elements of the strengthening process, together with a range of supporting laws such as those on procurement practices, and a law establishing the State Audit and Administrative Control Bureau. To support enforcement of corruption offences, the 2003 amendment to the Basic Law established an asset disclosure regime for senior PA officials. The 2005 Illicit Gains Law called for the establishment of an independent commission to administer the asset disclosure regime and investigate claims of illicit wealth. It also established a criminal offence for illicit wealth.

In June 2010 the 2005 Illicit Gains Law was amended and renamed the Anti-Corruption Law, No. 1 of 2005. The main features of the new law are to identify certain offenses as corruption offenses, to address a number of prior gaps in the asset disclosure regime, and to establish the ACC. The role of the commission is to lead the PA's efforts on communicating, preventing and investigating corruption concerns. A fuller discussion of the institutional arrangements is provided in Chapter 7 of this report.

¹¹⁷ The Penal Code No. 69 of 1953 amended certain provisions of the Palestinian Penal Code, No. 74 of 1936, applicable to Gaza Strip under the Egyptian Governor Resolution No. 555 of 1953 according to the head of the Anti-Corruption and Economic Crime Unit in a conference call at the AGs office in Ramallah on December 11, 2009.

In order to assess the legal framework in WB&G comparison is made with some of the provisions set out in the UNCAC – although this is not a rigorous assessment against the requirements of the convention. The UNCAC represents the codification of principles, which countries around the world are adopting as part of their anticorruption legal framework.¹¹⁸ State parties are obliged to apply specific procedures, particularly on the level of general administration, to amend their laws and the performance of their agencies and organizations to support the development of the preventive and disciplinary precautions for eliminating corruption and to provide organizational tools for applying and activating such mechanisms. The adoption of some of the provisions of the convention are mandatory, such as the offences of active and passive bribery of a national POs and the active bribery of foreign POs and officials of public international organizations. However, many provisions are optional and only require signatories to consider their implementation. While WB&G is not a “state” and cannot formally sign or ratify the UNCAC, the Prime Minister sent a letter to the Secretary General of the UN on December 9, 2004 expressing its commitment to respect and adhere to the provisions stipulated in the convention.¹¹⁹

The following discussion is structured around the sections of the UNCAC regarding preventative measures, criminalization, and law enforcement.

Preventive Measures

The UNCAC has a range of provisions that focus on establishing effective practices aimed at prevention of corruption. Many of the provisions are addressed in other chapters of this report and require no further discussion in this chapter. In this regard the PA has established:

- An anticorruption body, as discussed further in Chapter 7;
- A civil service law and procedures to promote merit based recruitment and promotion (see Chapter 5), although some weaknesses in the law remain, which the PA intends to address in a revision to the law;
- A committee to prepare a code of conduct for employees (see Chapter 5); and
- Systems for public finance and procurement (see Chapter 5).

118 By September 2009, 140 countries had signed the UNCAC.

119 Abu Diak, Ali and Nasser Al-Rayes: *Palestinian Policies and Legislations Regarding Combating Corruption*, 2008. Aman. Ramallah Pg. 32.

Corruption Offences

Under Palestinian law, corruption is defined through certain offenses deemed to be corruption offenses. The term “corruption” is defined to apply to the following offenses, under Article 1 of the Anti-Corruption Law:

- Crimes violating the duties of public office and public trust, including bribery, misuse of public office, embezzlement, and crimes against public confidence;
- Crimes relating to money laundering;
- Any act that leads to transgression and encroachment on public funds;
- Misuse of power in violation of the law;
- Acceptance of favoritism and nepotism (wasta);
- Illicit gain; and
- All acts mentioned in Arab and international conventions on anticorruption, which have been ratified or signed by the Palestinian Authority.

The following outlines the particular offences and how they are treated.

Bribery

Bribery offenses are considered corruption offenses according to the Anti-Corruption Law. Passive and active bribery offenses of national public officials are prohibited by the penal codes and the general election law. Both penal codes criminalize the promise, offering to a public official, or solicitation or acceptance by any public official of an undue advantage in the course of their duty.¹²⁰ The general election law by decree No.1 of 2007 also criminalizes the promise, offering or giving, to a candidate, or solicitation or acceptance by any candidate, of money or benefit in order to vote or refrain from voting or to affect others from voting.¹²¹

Misuse of Public Office

Both penal codes criminalize the offence of obtaining an undue advantage in exchange for trading in influence.¹²² Also, both penal codes criminalize the offence of abuse of function or position, where the performance of, or failure to perform, an act in violation of the law by a public official is done to obtain an undue advantage.¹²³

Embezzlement

The Penal Code, No. 16 of 1960, includes as an offense where a public servant misappropriates

¹²⁰ Articles 170-173 of the Jordanian Penal Code, and articles 103-110 of the Amended Penal Code No. 74 of 1936.

¹²¹ Article 109.

¹²² Article 176 of the Jordanian penal code, and article 106bis of the Amended Penal Code No. 74 of 1936.

¹²³ Article 175 of the Jordanian penal code and article 112 of the Amended Penal Code No. 74 of 1936.

funds with which s/he is entrusted by virtue of work, including managing, collecting or preserving money or other things for the state.¹²⁴ Such acts are also prohibited by the amended Penal Code, No. 74 of 1936.¹²⁵ Moreover, Penal Code, No.16 of 1960, criminalizes the acts of hiding or embezzling enemy state public funds or enemy state citizens which s/he was entrusted to safeguard.¹²⁶

Crimes against Public Confidence

The Anti-Corruption Law also considers crimes against public confidence as corruption crimes. This includes offenses of counterfeiting of the PA's seals, official marks, banknotes and stamps, forgery and falsification, and impersonation.¹²⁷

Money Laundering

The Money Laundering Law by decree, issued in 2007, incriminates any person with money laundering if s/he commits any of the following:

1. Converting or transferring money known to be from criminal activity in an effort to conceal its illegitimacy;
2. Assisting in the flight of a criminal involved in money laundering;
3. Concealing and disguising the true nature or source of money known to be proceeds of a crime;
4. Possessing, acquiring or using money with the knowledge that these funds are proceeds of a crime; and/or
5. Participating in the concealment of knowledge relating to any of the above acts.¹²⁸

Under the law, banks and other financial institutions designated by this law are required to implement “know-your-customer” rules and report suspicious transactions. Penalties are prescribed and procedures for freezing, seizing, and confiscating assets are provided which are compatible with the UNCAC provisions. Such measures to prevent and detect laundering operations in connection with bribery of public officials can achieve concrete results, especially because the law in Article 3 considers bribery and embezzlement and illicit gain offenses as predicate offenses. Therefore, funds derived from bribery are illegitimate and subject to prosecution as money laundering offenses.

¹²⁴ Article 174.

¹²⁵ Articles 112-119.

¹²⁶ Article 129.

¹²⁷ Articles 236-272 of the Jordanian Penal Code, and articles 332-379 of the Amended Penal Code No.74 of 1936.

¹²⁸ See a full description of offenses in Article 2.

Favoritism and Nepotism

The Anti-Corruption Law includes favoritism and *wasta* in the definition of corruption offences. It further defines “favoritism and *wasta*” as:

“A decision or an intervention made by a government official in favor of an ineligible person or party, or a preference given to such person or party for non-professional considerations, such as partisan, familial, religious or factional affiliation/belonging, to obtain a material or moral benefit.”¹²⁹

The decision to include this new offence is a reflection of the importance of this issue in the WB&G context; however it is unclear how prosecutors will utilize this article and how the court will interpret such an offense.

Illicit Gains

The Anti-Corruption Law establishes a criminal offense of illicit enrichment, where significant increase in assets of a public official cannot reasonably be explained as being the result of his/her lawful income, even if such does not constitute a crime. The law defines illicit wealth as “any funds received by those subject to the provisions of this law, either for themselves or for others, as a result of abusing their authority in their posts or due to a conduct that violates a legal text or general ethical code or through any illegal means even if it does not constitute a crime”.¹³⁰ Therefore, the amended Basic Law, Civil Service Law, and the Penal Codes are considered the legal basis for combating illicit enrichment, despite the fact that the latter laws do not include illicit wealth offenses, or even mention the term in their provisions. But the law does cover offenses that constitute public office violations. The amended Basic Law prohibits members of the Legislative Council from exploiting their membership for any type of private business or in any manner whatsoever.¹³¹ Also, the civil service law prohibits civil servants from using their position for personal interests or benefits, or from accepting gifts, rewards or commissions in order to perform their duties.¹³² In the West Bank, the Jordanian Penal Code prohibits bribery of national public officials and embezzlement of public funds in Chapter 1 of Title 3. Similarly, articles 103-119 of the amended law, No.74 of 1936, in the Gaza Strip prohibit these types of offenses.

Consequently, any activity that does not constitute a crime under other laws, when the funds were received as a result of abuse of position, or due to a violation of ethical conducts, may be prosecuted and punished under the provisions of the Anti-Corruption Law.

¹²⁹ Article 4 of the amended law No.1 of 2005 on anticorruption.

¹³⁰ Article 1 of the amended law No.1 of 2005 on anticorruption.

¹³¹ Article 54 (1).

¹³² Article 67 (3) of Civil Service Law No. 4 of 1998.

The provisions for enforcing a charge of illicit gains have been amended in the Anti-Corruption Law to address concerns that by shifting the burden of proof to the defendant the earlier law violates the presumption of innocence principle enshrined in Article 14 of the Amended Basic Law. The earlier provision required the defendant to prove the legitimacy of his source of funds where the significant increase in assets of a public official cannot reasonably be explained as being the result of his/her lawful income, and thereby prove his/her innocence.¹³³ The new provision requires the official with contested wealth to disclose the source of such gains. If the commission is not convinced of the legitimacy of the source of such fortunes, they shall prove through their investigation the illegitimacy of such gain.¹³⁴ In WB&G, since the law has not been utilized and no precedents set, it remains to be seen how it will be used by prosecutors and interpreted by the courts.

Acts Mentioned in Arab and International Conventions on Anticorruption

While the law includes as offences all acts mentioned in Arab and international conventions on anticorruption, which have been ratified or signed by the Palestinian Authority, it is not clear what practical effect this will have. The Arab convention against corruption is still a draft, and, thus, is not yet open for signing. As mentioned earlier, because it is not yet a state, the PA does not have the power to sign or ratify the UNCAC but it has announced in a commitment letter to the Secretary General of the UN, that it would respect the UNCAC and adhere to its provisions.¹³⁵ However, such a commitment is not equivalent to national law, and the commission cannot prosecute someone for violating the provisions of the UNCAC. The inclusion of this provision is therefore mainly a signal of the intent to harmonize national laws with the conventions.

Laws to Support Law Enforcement

Alongside the laws to address offences, the legal framework includes a number of provisions to support law enforcement. The most important of these are the asset disclosure requirements, and recent steps to provide protection for whistleblowers.

Asset Disclosure

Income and asset disclosure contributes positively to building a culture of integrity in the public sector, protecting public funds and curbing corruption. The amended Basic Law and other laws constitute the legal framework of asset disclosure for specific public officials as recommended

133 The landmark decision issued by the Egyptian Cassation Court in April 2004 raises the question whether the illicit wealth offense is compatible with legal principles. The court acquitted a former minister charged with illicit wealth where the inflation and increase of his funds did not match his monthly remuneration and allowances earned. The court asserted in its decision that the illicit wealth law violates the constitution regarding the genesis of innocence. See Abdul Menaim, Suliman. *Thaherat Alfassad*. [Corruption Phenomenon]; pg. 50.

134 Article 20 of the amended law No.1 of 2005, on anticorruption.

135 The Prime Minister, Ahmad Qurei, sent a commitment letter to the Secretary General of the UN on December 9, 2004. Abu Diak, Ali and Nasser Al-Rayes. 2008. *Palestinian Policies and Legislations Regarding Combating Corruption*. Aman. Ramallah pg. 32.

by UNCAC.¹³⁶ The anticorruption law calls for establishing an independent centralized anti-corruption commission (ACC)¹³⁷ entrusted to receive, maintain and verify all asset declarations for those who are subject to the law, as well as investigate corruption complaints.¹³⁸ The chief determinant of the laws is to detect and prevent asset theft and combat corruption. Thus, the Anti-Corruption Law establishes the offense of illicit enrichment where a significant increase in assets of a public official, or his/her spouse and minor children, cannot reasonably be explained as being the result of his/her lawful income.¹³⁹ This measure also corresponds to the suggestion to criminalize illicit enrichment set out in UNCAC article 20.¹⁴⁰

The amended Basic Law of 2003 requires members of the Legislative Council,¹⁴¹ the Prime Minister and ministers¹⁴² to submit an asset declaration for themselves, his/her spouse and each minor child, that details their assets and liabilities at home and abroad. The judicial authority law also requires judges and prosecutors to submit asset declarations, his/her spouse and each minor child that detail their assets and liabilities at home and abroad.¹⁴³

According to the Anti-Corruption Law, the President of the PA, his spouse and children have a duty to submit asset disclosure, detailing all liabilities and possessions in terms of real estate, transferable assets, shares and cash funds inside WB&G and abroad.¹⁴⁴ Specified public officials subject to the same Anti-Corruption Law are required to submit asset disclosures for themselves, spouses and minor children, which also means that foreign public officials and officials of international organizations are required to submit their asset disclosure since they are subject to the law.¹⁴⁵

It is also worth noting that not all asset declarations of public officials are submitted to the ACC. The speaker and MPs' asset disclosures shall be submitted to the High Court of Justice.¹⁴⁶ The prime minister and ministers shall submit theirs to the president.¹⁴⁷ Judges and prosecutors

136 Articles 8 (5) and 52 (5) of UNCAC.

137 According to article 3 (1) of the amended law, No.1 of 2005, on anticorruption, the commission stipulates that according to the provisions of this law, a commission called "the anti-corruption commission" shall be established; this commission shall enjoy legal character and administrative and financial independence and shall have a special budget from the general budget of the state. In this capacity, the commission shall have the right to do all legal proceedings needed to attain its goals and the right to draft contracts and litigation. The commission shall be represented before courts by the seconded public prosecution staff operating at the commission. Article 3(2) stipulates that the President of the State appoints the chief of the commission upon nomination from the Cabinet.

138 Article 8 of the amended law No.1 of 2005, regarding anticorruption commission.

139 Article 1 of the anticorruption law, No. 1 of 2005.

140 UNCAC, in article 20, invited state parties to consider criminalizing illicit enrichment. The article stipulates that "Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income".

141 Article 54 (2).

142 Article 80 (1).

143 Article 28 (2) and article 71 of the judicial authority law No. 1 of 2002.

144 Article 11 of the amended law No.1 of 2005 on anticorruption.

145 Article 2 of the amended law No.1 of 2005 on anticorruption.

146 Article 54 (2).

147 Article 80 (1).

shall submit theirs to the head of the Supreme Court.¹⁴⁸ The president's asset disclosure must be submitted to the High Court of Justice.¹⁴⁹ The remainder of the specified public officials subject to the law shall submit their asset disclosures to the ACC.

Whistleblower Protection

The Anti-Corruption Law marks the first attempts at introducing measures to protect those who report corruption offenses. UNCAC requires the protection of witnesses, experts, victims under Article 32, and recommends the protection of reporting persons under Article 33, which states that parties are required by UNCAC to take appropriate measures against potential retaliation or intimidation of witnesses, victims and experts. They are also obliged to consider providing procedural and evidentiary rules for strengthening such protective measures, and to extend protections to reporting persons.

The lack of protection for whistleblowers was identified as a key reason why corruption is not reported by respondents to the households and public officials surveys conducted as part of this study. In the public officials survey 70 percent of respondents claimed that they did not believe that the reporting employee would be protected. In the households survey, nearly the same number (66 percent) claimed that they did *not* believe that an individual reporter of corruption cases would be protected. Of the household respondents who did not report corruption, 67 percent did not report corruption citing a concern with potential harassment and reprisal. Likewise, among public officials who observed corruption, but did not report it, 60 percent of respondents identified fear of retribution as one of the main reasons for non-reporting.

Within the Palestinian legal framework, various laws contain provisions on reporting crimes. For instance, there are articles on reporting crimes in the Monetary Authority Law,¹⁵⁰ the Public Procurement Law,¹⁵¹ Labor Law,¹⁵² Evidence Law,¹⁵³ Auditors Profession Law,¹⁵⁴ State Audit and Administrative Control Bureau,¹⁵⁵ the Financial Bylaw for Ministries and Public Institutions.¹⁵⁶

The Anti-Corruption Law not only requires whoever possesses serious information or documents relating to corruption to provide them to the commission, but also shall ensure witnesses, experts and informers legal and personal protection.¹⁵⁷ The law also provides job protection from retaliation as well as legal protection to prevent taking any criminal, civil, or disciplinary

148 Article 28 (2) and article 71 of the judicial authority law No. 1 of 2002.

149 Article 11 of the amended law, No.1 of 2005 on Anti-Corruption Commission.

150 Article 33 of law No. 2 of 1997.

151 Article 47 of law No. 9 of 1998.

152 Article 110 (3) of law No. 7 of 2000.

153 Article 176 (1) of law No. 4 of 2001.

154 Article 22 of law No. 9 of 2004.

155 Articles 35, 36 and 42 of law No. 15 of 2004.

156 Articles 141 and 142 of bylaw No. 43 of 2005.

157 Article 18 of the amended law No.1 of 2005 on anticorruption.

actions against him or her (reversible penalties).¹⁵⁸ However the procedures to implement these measures need to be set out in regulations to be prepared by the commission and issued by the council of ministers. This has yet to occur.

Other Provisions to Support Law Enforcement

While Palestinian laws have provisions on reporting crimes, it makes it certain that criminal actions must be taken only on a complaint, requisition or a warrant.¹⁵⁹ Under the Criminal Procedures Law, a prosecutor is not permitted to conduct an investigation or press criminal charges where the law hinges its prosecution on a civil charge, or permission, or request upon a written or verbal complaint from the victim or their designated representative.¹⁶⁰ Also, article 54 of the same law stipulates that a criminal action may not be filed against an official or public employee or a member of the judicial police due to a felony or misdemeanor committed by him during or due to the performance of his function, except based upon the permission of the Attorney General or any of his assistants.

To overcome this issue, the Anti-Corruption Law grants the ACC the mandate to receive, examine, follow up on, and conduct investigations regarding corruption offense as well as prosecute defendants who violate the provisions of this law “the Anti-Corruption Law”¹⁶¹. This is despite the provisions of the Criminal Procedures Law. In this regard, the commission has the right to start intelligence gathering and investigations needed to follow up on corruption cases either of its own initiative or based on a claim. The commission, through public prosecution, has the mandate to prosecute crimes set out in the Anticorruption Law. The Anti-Corruption Law grants the commission the right to request an adequate number of public prosecutors and an attorney general assistant to be seconded to work for the commission for two renewable years. The seconded prosecutors to the commission are specialized in investigating and prosecuting cases across the whole country.

In addition, both penal codes cover all cases that may lead to the obstruction of justice, including perjury, refraining from testimony, or from providing necessary help for the judicial system, or refraining from reporting crimes or preventing its occurrence or trying to affect the judicial system.¹⁶¹ Furthermore, it is a criminal offence for any person to conceal things taken, or embezzled, or collected from the commission of crime.¹⁶² They also prohibit all types of attempting, participating, aiding and abetting in any form in the commission of a crime punishable by law.¹⁶³

158 Article 19 of the amended law No.1 of 2005 on anticorruption.

159 Article 24 and 25 of the Criminal Procedures Law No.3 of 2001.

160 Article 4 of the Criminal Procedures Law No.3 of 2001.

161 Articles 206-226 of the Jordanian penal code and chapter 3 of the amended penal code No.74 of 1936.

162 Article 83 of the Jordanian penal code and article 2 of the money laundering law by decree.

163 Articles 68, 75, 76, 80, 81 of the Jordanian penal code and articles 23-26 and 29-34 of the amended penal code No. 74 of 1936 and article 2 of the money laundering law by decree.

The penal code also establishes that the knowledge, intent or purpose required as an element of an offence may be inferred from objective factual circumstances. In Palestinian law, legal entities are held criminally, civilly or administratively liable in the case for crimes committed by their representatives or directors or agents in their name or on their behalf.¹⁶⁴

According to article 33 of the Anti-Corruption Law all corruption offenses mentioned in that law are not subject to the statute of limitation.¹⁶⁵ This provision is in accordance with article 29 of the UNCAC which calls for a long statute of limitation period or suspending the statute where the offender has escaped the administration of justice. This is an important development as in the absence of this provision the sentencing of a defendant determines the position on the statute of limitations and mutual legal assistance and extradition. Where bribery is a misdemeanor, as is the case in the West Bank, there is not long enough to ensure effective investigation and prosecution of the offence.

Further Strengthening the Legal Framework

The legislative changes made since 2003 have improved the legal framework to prevent corruption and address corruption offences in WB&G. On the issues of prevention a number of weaknesses are discussed in other chapters of this report. In particular in Chapter 5 with respect to the management of public finances, the public employment management and procurement practices. However, one important gap in the framework is the lack of a freedom of information law. This is discussed further below.

With respect to the legal framework to address corruption offences many of the changes are recent and it is not yet clear how effective they will be in practice. This will only become apparent when the ACC starts to operate; the prosecutors start to use the new provisions; and when cases are considered by the courts. However, short of this test of practice there are a number of areas where the legal framework could be further strengthened. The most important of these are to:

- Harmonize the separate penal codes for WB&G and address specific weaknesses in the penal codes for corruption offenses;
- Improve the Anticorruption Law – especially with respect to asset disclosure; and
- Strengthen the sanctions in the civil service law.

Access to Information

At present there is no law in the WB&G that mandates public access to official information. This is a serious weakness, as laws that allow citizens access to information can be a powerful anticorruption weapon as they can bring government activity "into the light" and provide confidence to communities that the government is working for them and in their interests. Encouraging the role of the public and community based organizations in particular are key

¹⁶⁴ Article 36, 37 and 74 of the Jordanian penal code.

¹⁶⁵ Article 33 of the amended law No.1 of 2005 on anticorruption.

elements in the prevention section of the UNCAC. While governments are sometimes concerned that disclosure of information would do harm to the national interest, these cases can be addressed through clear harm based exceptions.

In recent years a large number of countries have introduced laws to provide citizens with access to information. In general these embrace the principle that public bodies hold information not for themselves but on behalf of the public. These laws include:

1. Provisions allowing information held by public bodies to be accessible to the public, subject to clear, comprehensive and harm-based exceptions; and
2. Clear procedures for managing requests for information by individuals, including rights to judicial review if there is any refusal of access to information.

The concept that information is available unless release would do harm is foreign to many within the PA, and is not well understood generally within WB&G. Introducing a freedom of information law without spending considerable time building an understanding and acceptance of the approach would be counterproductive. While the law remains the longer term objective the short term priority is to start the process of social mobilization to create an environment that supports its operation.

Legal Pluralism and Weaknesses in the Penal Codes

As mentioned earlier, there are different penal codes for the WB&G, which differ in what is deemed to be a criminal offense and the sanctions applicable to that offense. This is a fundamental problem as it challenges the principle that “all people are equal before the law”. It also affects the jurisdiction of the courts. For instance, bribery offenses in the West Bank are misdemeanors but are considered felonies in Gaza. Therefore, such offences are subject to two different court jurisdictions as well as statutes of limitation. However, corruption offenses that constitute a crime and were committed partially or fully in the PTWB&G are deemed to be subject to the scope of the Palestinian courts’ jurisdiction,¹⁶⁶ and may be tried pursuant to the applicable penal code. Thus, no crime and penalty may be established except by virtue of law as stipulated in article 15 of the amended Basic Law of 2003.

The problem of legal pluralism is recognized by the PA and steps are being taken to address it. The Minister of Justice proposed a penal code bill to the Council of Ministers on April 7, 2010. The drafting process of a new penal code will put an end to the inconsistency of individual’s rights and responsibilities created by applying two penal codes.

With respect to the specific offences there are a number of weaknesses in the penal codes as summarized in Table 9.

¹⁶⁶ Article 166 of the criminal procedures law No.3 of 2001.

Bribery

In harmonizing the penal codes, the West Bank code for criminalizing bribery offenses should be brought into line with that of the Gaza Strip, which is more comprehensive. The Gaza penal code, in articles 103-110, incriminates among other things: the solicitation of a bribe to perform or refrain from performing one of the job duties; the acceptance of any gift or present after performing the duties, even if there was no prior agreement; and the use of real or alleged power to obtain or attempt to obtain personal interest. The penal code in the West Bank does not encompass a situation in which a gift or gratuity is given or accepted by the official after the fact, i.e., without prior agreement.

In addition, there are a number of areas where bribery is not punishable by either penal code. In particular, where an official does not accept the bribe, or where the bribery involves foreign and international public officials or the private sector.

Table 9: Summary of WB&G Coverage of UNCAC Provisions on Criminalization

Article	UNCAC provisions concerning criminalization	Status WB&G
15	Bribery of national public officials	✓
16	Bribery of foreign officials	x
17	Embezzlement	✓
18	Trading in Influence	✓
19	Abuse of Functions	✓
20	Illicit Enrichment	✓
21	Bribery in the private sector	x
22	Embezzlement of property in private sector	x
23	Laundering of proceeds of crime	✓

Misuse of Public Office

The penal code in the West Bank targets the decision-maker/official, and does not target those who are in the neighborhood of power and who try to obtain advantages from their situation by influencing the decision-maker. Trading in influence occurs when a person who has real or apparent influence on the decision making of a public official exchanges this influence for an undue advantage. In this scenario, the recipient of the advantage in trading the influence is not the official decision maker, nor is the recipient necessarily expected to act or refrain from acting in breach of his/her duties. The decision-maker may also be unaware of the crime. The offence therefore addresses so-called “background corruption”.¹⁶⁷

¹⁶⁷ OECD, Corruption: A Glossary Of International Criminal Standards, 2007. pg.26.

Embezzlement

For the sake of better application of the provisions relating to embezzlement, it would be better if the penal code identifies and clearly clarifies what constitutes public funds. Even the Anti-Corruption Law has not defined what constitutes public funds.

Furthermore, it is noticeable that the laws do not clearly cover embezzlement in the private sector, as required by the UNCAC provisions.

Sanctions and Pardons

The articles that criminalize corruption acts in WB&G have very different sanction provisions. For example, in the West Bank bribery is considered a misdemeanor and the maximum penalty as stipulated in the penal code is three years imprisonment, with a maximum fine of JD200.¹⁶⁸

While in Gaza, the amended penal code No.74 of 1936 makes it a felony for bribery offences and punishable up to life imprisonment. There is considerable variability in sanctions in different countries in the region. Some, such as Egypt, impose harsh punishments for active bribery of public officials with prison terms up to 25 years while others, such as Lebanon, Morocco and UAE, have imprisonment sanctions between two months and ten years.¹⁶⁹

While the need to standardize the sanctions in WB&G is clear there is not a simple answer to determining the severity of sanctions that should be imposed. The main guidance is that the sanctions imposed should be set to reflect the seriousness of the crime. For example, a bribe for an official to act within the duties of his/her office should not be as severe as those who are bribed to violate his/her duties.

In addition, there are no articles within the penal code that restrain the executive authority from exercising its rights in providing pardon or amnesty to those who were convicted in corruption cases. There is a strong argument against giving the executive the authority to pardon an individual for crimes committed. However if pardons are to be prohibited this should be addressed comprehensively and not just for corruption crimes.

Anticorruption Law and Asset Disclosure

While the Anti-Corruption Law makes a positive contribution to the overall legal framework there are a number of gaps in the law that should be addressed.

¹⁶⁸ Articles 15 and 21 of the Jordanian penal code.

¹⁶⁹ MENA-OECD Investment Program. "Business Ethics and Anti-Bribery Policies in Selected Middle East and North African Countries." Available [on-line] at <http://www.oecd.org/dataoecd/56/63/36086689.pdf>.

Appointment of the Head of the Anticorruption Commission

Given the important and powerful role envisaged for the ACC, there should be a role for the PLC in the selection of the head of the commission. At present, the law provides that the appointment be made by the President based on the recommendation of the Council of Ministers – perhaps because the PLC is not at present functioning. The law should align the selection process of the head of the commission with that of the head of the State Audit and Administrative Control Bureau (SAACB) which provides that the PLC must endorse the nomination of the SAACB head.

Frequency of Disclosure

The Anticorruption Law requires all those subject to the law to submit an asset declaration within two months after s/he becomes subject to the provisions of this law, and every three years or upon request, and within one month after they are no longer subject to the provisions of this law.¹⁷⁰

This is not a strong provision as most countries with effective asset declaration laws require they be completed annually or biennially. However the law is further weakened by exempting from this provision the President of the PA, the Prime Minister and members of the Council of Ministers, the Speaker and members of the PLC, members of the Judicial Authority and public prosecutors.

Verification of Disclosure

The Anticorruption Law establishes an independent, centralized ACC¹⁷¹ entrusted to receive, maintain and verify all asset declarations for those who are subject to the law, as well as investigate corruption complaints.¹⁷² The exception is that the law grants the commission, after the permission of the Supreme Court, to access the asset declarations of the president, prime minister and ministers, MPs, judges and prosecutors¹⁷³. However, it is unclear what criteria what procedures will be followed to verify asset disclosures. This is particularly relevant as the disclosures will not be accessible by the public.

¹⁷⁰ Article 16 of the amended law No.1 of 2005 on anticorruption commission

¹⁷¹ According to article 3 (1) of the amended Law No.1 of 2005 on anticorruption stipulates that according to the provisions of this law, a commission called “the anticorruption commission” shall be established; this commission shall enjoy legal character and administrative and financial independence and shall have a special budget from the general budget of the state. In this capacity, the commission shall have the right to do all legal proceedings needed to attain its goals and the right to draft contracts and litigation. The commission shall be represented before courts by the seconded public prosecution staff operating at the commission. 3(2) The President of the State appoints the chief of the commission upon nomination from the cabinet.

¹⁷² “Hearing Session About the Status of the Judiciary.” Al-Quds newspaper, 29 June 2009.

¹⁷³ Article 16 (2) of the amended law No.1 of 2005 on anticorruption

Challenging Confidentiality of Documents

Asset declaration forms, documents or any procedures taken to investigate and verify complaints are deemed confidential and cannot be disclosed unless by a competent court decision, as stipulated in article 22 of the Anticorruption Law. However, it is not clear whom and based on what an individual can challenge the confidentiality of the form before the competent court¹⁷⁴. This is a serious fault in the law as the efficacy of the asset disclosure regime could be undermined if there is not a genuine ability for the information to be reviewed.

Sanctions for Noncompliance

The law provides financial sanctions for non-compliance or violations of asset disclosure obligations. However, the law does not specify a time limit of violating the asset disclosure law by not submitting the asset declaration or indicate what subsequent steps are to be taken against the official who refuses to submit his/her asset disclosure. The law should require that these actions are investigated by the commission. The law also does not specify the period of maintaining those assets.

Coverage of Children of Officials

The general principle in the law is that only minor children of the public official are covered – although article 11 makes an exception by not setting an age limit for the president's children. In addition, the law gives the Council of Ministers the power to subject other persons to the provision of the law. The law should explicitly give the commission the power to subject other persons to the provisions of the law, and a clear reference should be made to other relatives as persons potentially subjected to this law.

Powers of the Commission

The law does not explicitly regulate some important aspects of the commission's powers, absolutely necessary for the application of the law:

- How the commission assures compliance to its demands (for example, by suspension of functions, freezing of money and properties, etc., Article 9-2);
- How the commission can enforce the orders given to public servants (for example, the summoning for witnesses, etc., under Article 9-3).
- How to enforce the obligation to provide files, information and other demands made by the commission (for example, procedures and penalties in case of disobedience, under Article 9-4).

¹⁷⁴ Article 9 bis (1) of the amended law No.1 of 2005 on anticorruption

Civil Service Sanctions

The UNCAC requires that clear policies be put in place to take action against the perpetrators of corruption. In WB&G there is a weakness in the law regarding the sanctioning of administrative employees for corrupt activities – for example for judiciary employees trying to distort or steal official court documents.¹⁷⁵ The civil service law does not provide for automatic suspension or dismissal of employees who are charged with offences relating to their jobs; and it further complicates the matter by requiring the presence of a GPC representative in every investigative committee for the latter’s decisions to be honored by the GPC. This makes the administrative procedures for investigation extremely lengthy. For example, the World Bank was informed that eleven judicial employees were under trial for felonies such as accessory to forgery in official documents, false verification of documents, forgery, bribery, and illegal use of state stamps, and were still working in the courts dealing with sensitive documents. They had also committed serious administrative violations (the criminal indictment was for the court to decide).¹⁷⁶

In order to help overcome this problem, the High Judicial Council proposed a draft by-law which outlined procedures for swift disciplinary action against court employees.¹⁷⁷ Although the by-law was adopted in 2008, it has yet to be published in the Official Gazette and is, therefore, not in effect. A new Civil Service Law is being prepared by the GPC and an amendment in this law should be the longer term solution to the problem. In the interim, the Anti-Corruption Law grants the ACC the mandate to request from the concerned authorities the suspension of a public official, his/her salary, and allowances or any financial entitlements.¹⁷⁸

Improvements to the Legal Framework

As discussed earlier, the legislative changes made since 2003 have improved the legal framework to address corruption in WB&G. The separate penal codes for WB&G continue to present a major challenge and harmonizing these codes remains a judicial priority. However, with reference to anticorruption efforts there are a number of areas where the legal framework should be further strengthened. In particular:

- An access to Information Law and supporting system for disclosing public information should be a long term aim. The short term priority is to start the process of social mobilization to create an environment that supports its operation in the future;
- The penal codes should be made more comprehensive, especially in the way they address bribery of foreign officials and bribery and embezzlement in the private sector;


¹⁷⁵ “Hearing Session About the Status of the Judiciary.” Al-Quds newspaper, 29 June

¹⁷⁶ A conference call with the Chief Justice, Issa Abu Sharrar, on July 30 2009.

¹⁷⁷ Chapter 5 of the draft bylaw regarding court employees. This bylaw was adopted by the HJC on Oct. 23, 2008.

¹⁷⁸ Article 9 (2) of the amended law No.1 of 2005 on anticorruption.

- There should be a role for the PLC in the appointment of the head of the ACC;
- There should be additional provisions in the Anti-Corruption Law to strengthen the asset-disclosure regime, especially in regard to the scope and frequency of disclosures and to ensure opportunities to challenge the confidentiality of documents; and
- The sanctions in the civil service law should be strengthened, and the work on a code of conduct for public employees completed.



Chapter 7: Combating Corruption in West Bank and Gaza: Institutional Framework

In recent years, the PA has made substantial efforts to build institutions whose mandate is to promote accountability of public sector institutions and tackle corruption. Key efforts in this area include the establishment of a new external audit bureau, the SAACB, in 2006¹⁷⁹ with a legal unit which is mandated to work on anticorruption related activities. In the same year, the AG's office created the Economic Crimes and Support Unit, a centralized anticorruption and economic crimes unit. In 2008, the PLC established a Complaints Bureau to specifically manage complaints received from the public on a range of matters, including corruption. Most recently, in 2010, the PA established the ACC – formerly called the Illicit Gains Commission – which is slowly beginning to commence operations. In October 2010, the PA also established the Corruption Crimes Court.

These initiatives represent important steps towards improving the institutional framework to tackle corruption. Most significantly, the revised Anti-Corruption Law (originally called the Illicit Gains Law) aims to consolidate and coordinate anticorruption efforts in WB&G by delineating a wide mandate for the ACC. While the establishment of the commission, and more recently the Corruption Crimes Court, are positive signals of the PA's interest to strengthen anticorruption efforts, policymakers need to make concerted efforts to ensure that they function effectively. International experience highlights the need for caution in assuming that the mere establishment of a commission will address corruption related problems and underlying institutional weaknesses. The PA will need to seriously consider these issues to ensure that the ACC does not simply become yet another agency among many, but one that is genuinely effective in tackling corruption at all levels.

In order to do so, the PA and the leadership of the new ACC will have to address a number of challenges in the institutional framework to combat corruption. The weakness is not in the absence of appropriate institutions per se, but rather how effectively the institutions perform and the extent to which they are held accountable. The national households and public officials surveys point to lack of confidence in follow up of corruption cases and enforcement of anticorruption rulings. The major institutional weaknesses in WB&G comprise three broad issues:

¹⁷⁹ The law establishing the SAACB was passed in 2004, but the institution was not immediately established.

- Weak inter-agency coordinating and working relationships.
- Institution-specific financial and technical capacity limitations.
- Weak context for accountability, which undermines enforcement of anticorruption provisions and rulings.

Institutions Involved in Anticorruption

Prior to the establishment of the ACC, no central agency existed for anticorruption efforts in WB&G. Rather, a host of agencies were engaged in various aspects of anticorruption. These include the AG's office, a unit within the police department, the SAACB, a unit within Preventative Security Services, and the GPC. When the PLC was active, it also undertook investigations, particularly in high profile cases.

The major public sector agencies and their mandate in relation to anticorruption are briefly described below.¹⁸⁰

Palestinian Legislative Council

The PLC in WB&G has been inactive since 2006. Prior to this period, the PLC was engaged in anticorruption and accountability efforts through its general and financial oversight activities, as well as specific investigative tasks. Specifically, all permanent committees of the PLC conducted general oversight, while the Financial Committee was mandated to have oversight over the PA budget, review budget implementation, and hold the executive accountable for government spending. In cases where concerns were raised about the activities of public institutions or high-profile public figures, the PLC also formed special committees or entrusted one of its committees to carry out investigations. More generally, the PLC also received complaints from the public on corruption-related matters. In 2008, it established a Complaints Bureau to manage these.

State Audit and Administrative Control Bureau

The SAACB, established in 2006, is mandated to undertake financial and administrative oversight of all PA institutions through its audit work. It was also assigned a role to receive and investigate public complaints, as well as undertake some anticorruption activities. The anticorruption work of SAACB fell under the responsibility of the Legal Affairs and Public Complaints Directorate, one of the twelve directorates comprising the SAACB. This directorate received and investigated complaints submitted to the Bureau from the public and forwarded cases to the AG as relevant. Although the bylaws of the SAACB restricted its anticorruption related mandate, the institution had nevertheless hoped to establish a new department, the Integrity Reinforcement and Anticorruption Department, with primary responsibility for anticorruption policy development

¹⁸⁰ In addition to these institutions, corruption-related complaints are also directed to the Commission for Human Rights, complaints department at the Council of Ministers, and NGOs such as AMAN.

and monitoring in WB&G as well as public outreach on anticorruption. This proposal has been abandoned in light of the establishment of the ACC.

Attorney General's Office

The AG's office created the Economic Crimes and Support Unit, a centralized anticorruption and economic crimes unit, in 2006. Based in Ramallah, the unit had jurisdiction to investigate and follow-up corruption and economic related crimes. The unit received cases from ministries, the SAACB, responsible units within the Palestinian civil police, different law enforcement agencies, the presidential office, legislative council, the Cabinet, and various security forces. Prior to the establishment of the unit, corruption and economic crimes were dealt with on a case-by-case basis within the AG's office. With the establishment of the ACC, the unit in the AG's office is now focusing its efforts only on economic crimes, such as money laundering and infringement of trademarks.

General Personnel Council

The GPC oversees all civil service issues in the PA, including implementation of civil service laws. In this capacity, the GPC undertakes investigations on potential administrative violations committed by civil servants and implements disciplinary measures in conjunction with the relevant ministry or agency. In cases where an employee has potentially committed criminal acts (including corruption), cases are referred to the AG's office. Even in cases where the employee is acquitted of criminal charges, GPC can carry out investigations of administrative violations.

Challenges with the Anticorruption Framework

In WB&G, the institutional framework to combat corruption has had shortcomings, which have limited its effectiveness. The PA, supported by donors, is indeed taking steps to address the main challenges. However, until these efforts are realized to fruition, these challenges weaken the governance environment in WB&G.

Poor Interagency Coordination

Currently in WB&G, institutional mandates and inter-agency relations lack a coherent and clear framework, leading to overlap in efforts. On the one hand, there is insufficient institutionalized coordination between ministries or agencies forwarding cases to the AG's office, which results in duplication of efforts and sometimes contradictions in case follow-up. Moreover, when the AG's office had jurisdiction over corruption crimes, it was frequently not notified when law enforcement agencies were investigating corruption cases. As a result, because the AG's office was not aware of the potential upcoming workload, it was not able to prepare for the second phase (interrogation and trials).

Institutional coordination was also hampered due to lack of trust between some agencies. Interviews with various institutions reveal two primary factors underlying the lack of confidence: a perception that the quality of work of an agency was poor or a belief that some institutions were politically compromised. One example of this is the relationship between the AG's office and civilian police. According to the Criminal Procedures Law, the prosecutor's office is responsible to oversee investigations and delegate duties to the civilian police. In reality, this delegation often did not happen, and the AG's office repeated or duplicated work carried out by the police¹⁸¹. This stemmed from a lack of trust on the part of prosecutors in the competence and capacity of the civilian police.

Limited cooperation also undermined the capacity of some institutions to effectively carry out their own responsibilities. One notable example is the PLC, which requires support from other PA institutions to fulfill its oversight functions. Historically, the PLC did not receive on a systematic basis required reports from institutions such as external audit and MoF. In the absence of these reports, the PLC did not have comprehensive or systematic information on the functioning of the public sector and in particular on potential corruption related violations. While improvements have been achieved in this area, the working relationship between the new SAACB and the PLC remains untested, in so far as the new institution was created at the same time that PLC plenary stopped functioning. Similarly, the SAACB itself did not always have sufficient cooperation and information from the agencies over which it has oversight jurisdiction. For example, agencies often failed to submit reports and documents requested by the bureau, and did not always inform the bureau of cases involving irregular expenditures, financial embezzlement, theft, misappropriation and waste of public funds. This limited the efficacy of the bureau and the legal directorate specifically in identifying corruption-related violations.

In addition, the institutional arrangements for receiving and managing public complaints were not clear. According to the national households survey, a significant percentage of respondents, 72.3 percent, believe that it is "very difficult" or "difficult" to report corruption cases. One of the reasons is because of a lack of information on where to report corruption. According to the survey, of those who witnessed corrupt acts, 30 percent of respondents did not report corruption because they did not know where to report the case of corruption. The most common institutions to which corrupt acts are reported by households in WB&G are the police (52.3 percent of those who reported corruption acts), followed by security forces (39.7 percent), and the agency in which the corrupt act took place (30.7 percent). Less than 10 percent of respondents reported the act to non-government organizations, the independence commission for human rights, and, the state audit and administrative control bureau. Of the public officials who reported corruption, 78 percent reported it to the same agency in which the corruption occurred, followed by SAACB S (20 percent) and the courts (16.3 percent)¹⁸².

181 EUPOLCOPPS, Project Document: Anti-Corruption and Economical Crimes, 2009

182 The responses add to more than 100 percent because the survey was designed to allow for situations where the respondents reported to more than one institution.

The PA, supported by donors, has taken steps to address some of these coordination issues. For example, EUPOL COPPS has been working with the AG's office to improve cooperation with the civilian police. In 2008, a working group comprising representatives of the anticorruption and economic crimes unit of the AG's office, civilian police, and EUPOL COPPS, was established. Its primary mandate was to improve cooperation between the two entities and provide training for corruption related investigations.

Institution-Specific Capacity Limitations

Beyond issues of coordination, there were a number of internal technical and financial capacity limitations that limited the effectiveness of some institutions. The capacity limitations were in part a reflection that these were relatively new institutions – with some only having been established in the last five years. They included the absence of clear internal systems to manage anticorruption activities, limited financial resources, and insufficient technical capacity. Some institution-specific issues are noted below:

PLC: The PLC lacked procedures and clear criteria for deciding on the investigations to be taken up by its committees, as well as clarity on the division of responsibilities between the complaints bureau and committees with respect to investigations. In addition, the financial resources and technical skills to carry out investigations were limited.

GPC: The GPC is required to investigate potential violations by civil servants. This is a challenging task, given that the GPC has oversight over all government agencies, and the lengthy bureaucratic procedures associated with these investigations. Informed justice sector officials note that with a shortage of human resources within GPC, the system was not been effective in taking swift action against civil servants.

SAACB (External Audit): The legal directorate unit within the SAACB lacked certain capacity to fulfill its mandate with respect to its anticorruption work and other areas. The staff had insufficient skills to carry out investigations. While procedures to handle corruption related complaints and potential cases existed in principle, it was not evident how organized or clear the system was in practice. Systems for record keeping and case data were limited. With the establishment of the ACC the SAACB will focus on core audit activity with possible cases of corruption being referred to the ACC.

AG's Office: A lack of financial resources and technical capacity to handle corruption cases has compromised the work of the AG's office. This includes training on techniques of investigation; the role of the prosecutor; the nature of cooperation between the law enforcement agencies and the prosecutor; crime analysis techniques; drafting the bill of indictment; preparing witnesses; and trial tactics among other issues. Similar to the SAACB, the anticorruption work of the AG's office has now shifted to the ACC.

Weak Context for Accountability

Combating corruption fundamentally requires a context in which there exists a strong legal framework, genuine mechanisms of checks and balances, and where institutions enjoy a fair degree of independence. This context is necessary to promote accountability by public sector institutions and officials, and build public confidence in the efficacy of the institutional framework. In WB&G, however, this underlying context for accountability has been weak due to a number of factors, including institutional weaknesses in the exercise of power of the (PLC, a non-functional PLC since 2007, a weak judiciary, and the overall political instability. There are also no mechanisms to monitor institutional performance with respect to their anticorruption responsibilities.

The PLC's role in advancing anticorruption efforts has been less effective than its formal mandate would allow. There were periods, such as in 1997 when the PLC was a strong advocate against corruption. Between 2003 and 2005, the PLC also took a number of high-profile investigations involving senior officials, and called for criminal prosecutions in a number of cases. However, for various reasons grounded in the larger political economy of the WB&G, it has often shied away from using its legal power to compel the government to follow its recommendations. Various factors contributing to this reluctance include the executive's historical dominance over other parts of government, as well as the predominance of a single party within the PLC that also controlled the executive. Moreover, currently, a basic pre-requisite for legislative oversight – the existence of a functioning parliamentary institution – is non-existent. The imprisonment of PLC officials has prevented the PLC from convening since 2006. As a result, all PLC functions, including those of oversight, have been fundamentally compromised.

Another key branch of government crucial to promoting accountability – the judiciary – has been historically confronted with a number of challenges, which undermined its effectiveness. Among the most significant concerns directly pertaining to corruption relate to nepotism or favoritism in the appointment and promotion of judges, questionable rulings on corruption related cases – in particular concerns that lighter penalties are awarded for corruption-related crimes than stipulated by the law, and non-implementation of judicial rulings particularly those involving influential individuals and senior public officials.¹⁸³

Decision-making at some institutions is also highly centralized, which creates scope for impartiality and discretion in addressing corruption cases. For example, prosecutors cannot take decisions against civil servants without the permission of the AG, as stipulated in Article 54 of the criminal procedures law. The law is silent on how to challenge the AG's decision.

183 AMAN, National Integrity System Study: Palestine 2009.

With a weak accountability framework, a lack of progress on corruption cases can raise questions about the willingness of the AG's office to prosecute. A large number of corruption cases taken by the office since 2004 remain pending or were closed. About 13 cases involved individuals who held senior executive positions. According to the AG's office, insufficient evidence and the fact that many perpetrators flee WB&G are the primary reasons making prosecutions difficult.¹⁸⁴

Compounding the situation is that there are no mechanisms to monitor the extent to which institutions are fulfilling their anticorruption responsibilities, or reporting on their achievements. Data on complaints received, nature of follow up, investigations pending, and outcomes are not systematically recorded or reported, as was evidenced in the course of this study.¹⁸⁵

Reflecting the above weaknesses, survey results indicate that households and public officials do not have faith in the capacity or willingness of institutions to properly investigate corruption and in the mechanisms to enforce rulings. According to the national households survey, half of respondents do not believe that perpetrators would be brought to justice if citizens reported a corruption case. Of the household respondents who did not report corruption, 69.7 percent said they did not report corruption because they did not believe it would be investigated, 69.3 said they believed that even if a decision was taken in their favor, it would not be enforced. Likewise, among public officials who observed corruption but did not report it, most cited lack of faith in the system as the main reason for not reporting. The specific reasons for non-reporting included the belief that the ruling would not be enforced (62 percent); and lack of faith that an investigation would transpire (61 percent). Three-quarters of public official respondents felt that corrupt officials were never punished. These survey findings reveal the generally low level of confidence the public has in the fight against corruption.

Future Directions

The most significant change in the institutional arrangements for leadership of future anticorruption efforts in WB&G is the establishment of the Illicit Gains Commission (now called the ACC), in June, 2010.¹⁸⁶

The 2005 Illicit Gains Law had originally envisioned and the establishment of an Illicit Gains Commission, but the 2010 amendment to the law broadened the scope of the commission. As a result, it was established as the anticorruption agency in WB&G, with jurisdiction over all corruption crimes, as defined in the law.¹⁸⁷

184 World Bank interview with AGs Office, 2009.

185 A number of agencies covered in this study made efforts to provide available data for purposes of this study, but others, such as the AG's office, were unwilling or unable to provide requested data.

186 The commission is in the process of building up its capacity and is yet to start functioning.

187 See the Legal section for more on the scope of the law.

In October 2010, in line with the establishment of the commission, the Higher Judicial Council also announced the establishment of the Corruption Crimes Court. It is to be a specialized court composed of three first-instance judges, who have since been identified. The court will have the jurisdiction to review and issue judgments on all corruption offenses referred to it by the ACC within a specified time frame. Judgments issued by this court are appealable according to the criminal procedures law.

Anticorruption agencies have been established in a number of countries, with various models adopted (see Table 10, below).¹⁸⁸ The ACC appears to follow the “universal” model, with a mandate for investigative, prosecutorial, and education and publicity activities. Specifically, the ACC is mandated with the following key activities: detect corruption-related violations and encroachments; conduct investigations; prosecute violators; review legislation pertaining to prevention of corruption; develop general anticorruption policy in cooperation with relevant authorities; design plans and programs for policy implementation; coordinate with all PNA institutions to enhance and develop measures for prevention of corruption crimes; coordinate with media and civil society organizations on anticorruption measures; conduct awareness raising activities targeting the public; work towards building a database and information systems to track corruption and monitor anticorruption efforts; and develop regular publications on the subject, including an annual report on its work.

The ACC of WB&G is still in a nascent phase of operations. A head was appointed in 2010, but it has yet to build up staff capacity – although a limited number of prosecutors have been seconded from the AG’s office, as stipulated in the Anti-Corruption Law. Corruption files from the AG’s office have been transferred to the ACC, and in some cases investigation have commenced. Box 3 sets out progress of the ACC since it was established.

Box 2: Achievements of the Anti-corruption Commission

- The ACC was established in June 2010 according to the amended anti corruption law no 1 of 2005.
- Specialized anti corruption prosecutors were delegated to work for the ACC in July 2010.
- In August 2010 a special court to deal with crimes of corruption was established.
- 85 cases were referred to the commission from the Attorney General’s Office.
- 14 files were submitted to the court of corruption crimes after the investigations were complete.
- The ACC has prepared administrative and financial regulations and an organizational structure to pursue its mandate.
- The ACC managed to return millions of dollars and governmental lands to the PA through its investigations.
- The ACC received around 100 complains from individuals and institutions , some were rejected because of being out of jurisdiction .
- The ACC has prepared an asset disclosure form, which will be distributed to all parties subject to the Law.

Source: Anti corruption Commission.

188 World Bank, John Heilbrunn, “Anticorruption Commissions: Panacea or Real Medicine to Fight Corruption?” World Bank, 2004

As progress is made to render the ACC operational, PA policymakers need to make concerted efforts to ensure that the ACC functions effectively. The establishment of the ACC is a positive signal in terms of the PA's interest to address corruption, but international experience also highlights the need for caution in assuming that the mere establishment of an ACC will address corruption related problems and underlying institutional weaknesses. ACC tend to work well primarily in contexts which have a strong legal framework and where institutions enjoy a fair degree of independence. A number of studies, which have examined the efficacy of ACCs, observe that the ability of such agencies to multi-function as police, regulators, educators, and policy advisors is not effective.¹⁸⁹ Moreover, international experience shows that these agencies face several problems: for one, they are often unable to avoid the problem of coordination with other agencies; second, "turf wars" between agencies can in fact be exacerbated, which can worsen inter-agency coordination; and if the institution is not independent, it can itself can be hijacked for political purposes.

Table 10: International Models of Anticorruption Agencies

Model	Functions	Reporting	Country examples
Universal	Investigative, preventative, and communicative functions	Executive	Hong Kong, Independent Commission Against Corruption
Investigative	Small and centralized investigative commission	Executive	Singapore, Corrupt Practices Investigation Bureau
Parliamentary	Typically preventative approach	Parliament	New South Wales, Independent Commission Against Corruption
Multi-Agency	Individually distinct offices/ departments that collective form a web of agencies fighting corruption; office to undertake outreach/preventative functions coordinates and cooperates with other departments	Executive, Parliament	United States, Office of Government Ethics

¹⁸⁹ Richard Messick, "Issues to Weigh When Considering Creating an Anticorruption Agency", Internal World Bank Memo, January 2009; See also: Patrick Meagher, "Anticorruption Agencies: A Review of Experience", IRIS Center, University of Maryland, August 2002; Council of Europe, "Anticorruption Services: Good Practice in Europe", August 2004; John Heilbrunn, "Anticorruption Commissions: Panacea or Real Medicine to Fight Corruption?" World Bank, 2004; Council of Europe, "Strengthening Anticorruption Services in Southeastern Europe: Current Status and Needs for Reform", July 2005; Alan Doig, David Watt, and Robert Williams, "Measuring 'Success' in Five African Anticorruption Commissions", U4 Group, May 2005; UNDP, "Institutional Arrangements to Combat Corruption - A Comparative Study", December 2005.

The general challenges facing ACCs mirror the specific PA issues discussed above. The PA will need to seriously consider these issues to ensure that the ACC does not become simply another agency among many, but one that is effective in tackling corruption at all levels. The drafting of the law establishing the ACC appears to have recognized some of these challenges. One of the most significant features of the ACC is that it has been given responsibility to coordinate the efforts and working relations of all relevant institutions and develop a policy framework to guide anticorruption efforts in WB&G. If the ACC successfully fulfills this mandate, it will address one of the major challenges confronting the sector, i.e., weak inter-agency working relations and coordination, as previously discussed. For example, the 2010 amendment to the 2005 Illicit Gains Law (since renamed the Anticorruption Law) provides the ACC with authority to undertake investigations, and to second prosecutors from the AG's office to the ACC. The investigative jurisdiction between the new ACC and Anticorruption and Economic Crimes unit in the AG's office has broadly been delineated such that the former is in charge of corruption crimes and the latter of economic crimes. With this demarcation, there is the scope for some blurring of boundaries and therefore confusion over jurisdiction, as some crimes can be defined in both categories. Significantly as well, the nature of technical cooperation between the AG's office and the ACC has not been determined. As specified in the Anticorruption Law, some prosecutors from the AG's office have been seconded to the ACC to take responsibility for the corruption files, which were recently transferred from the AG's office to the latter. But, beyond personnel, investigation of corruption crimes requires specific training, infrastructure, and relationships with other agencies like the police, some of which was being developed in the AG's office with support of agencies such as EUPOL COPPS. The nature of technical cooperation between the ACC and AG's still needs to be developed, such that the ACC has access to the necessary technical capacity and requirements to carry out investigative work. This is necessary to enable the ACC to fulfill its investigative mandate, while avoiding duplication of costly capacity and infrastructure investments. Hence, as it goes forward with its responsibilities, the ACC should consider the drafting of MOUs or protocols of work on corruption cases specifically, encompassing issues as procedures for investigation, coordination and prosecution among the different agencies, especially with the AG's Office and SAACB.

The PA also needs to establish mechanisms to evaluate and monitor performance of various agencies supporting the anticorruption institutional framework. In this context, provisional reporting arrangements for the ACC will itself need to be determined with the continued absence of a functioning PLC. In addition, all institutions should be required to publish regular statistics on their work and outcomes. The ACC is in a nascent phase of operation, and therefore, these mechanisms have yet to be developed.

Improvements to the Institutional Arrangements

There are a number of measures that should be considered to improve the institutional arrangements. In particular:

1. In light of international experience, careful consideration should be given to deciding on the short term priorities for the ACC. The mandate is extremely broad and the ACC risks trying to do too much too soon. It should develop an implementation plan that focuses the effort in the short term and works over time towards a full coverage of the mandate.
2. As the designated anticorruption agency in WB&G, the ACC should give priority to clearly specifying institutional mandates and inter-agency relations. In a context where nearly all involved institutions are lacking financial resources as well as expertise, there is a heightened need for such coordination. Key actions include:
 - a. Reviewing current institutional mandates of various agencies involved in anticorruption efforts in order to address overlaps in work and gaps, which undermine working relationships;
 - b. Developing clear MOUs to guide inter-agency working relationships;
 - c. Developing clear mechanisms for reporting corruption and follow-up. There should be standard follow procedures including interviewing, evidence collection, and documenting findings. A thorough investigation of all alleged occurrences will foster trust among the public and officials and ensure that potential reporters of corruption feel that reporting is worthwhile; and
 - d. Improving the public's knowledge of these institutions, so that people are made aware of the appropriate institutions to which they should report corruption, the procedures involved, and their overall rights when confronted with corrupt officials.
3. Strenuous efforts should be made to improve public confidence in the efficacy and impartiality of current anticorruption institutions. Towards this end:
 - a. All institutions involved in anticorruption efforts should publish regular reports indicating their work, status of cases, and outcomes; and
 - b. Once functional, the ACC will need to prove its legitimacy and effectiveness by demonstrating impartiality in the implementation of the law, so that officials at all levels of the bureaucracy are held accountable.
4. As the institutional mandates of other agencies are reviewed and revised in light of the new role of the ACC, plans should be developed to address the capacity and broader institutional constraints identified in this report.

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Annex 1: Methodology of the Household and Public Officials Surveys

The methodologies for the household and public official's surveys were prepared by the PCBS. The following sections were prepared by the PCBS to describe the main features of the two methodologies.

Household Survey

The Governance household survey was designed to conform to international best methodology practices. The survey's questionnaire includes the following basic components:

Identification data: The identification data constitutes the key that uniquely identifies each questionnaire. The key consists of the questionnaire's serial number, locality code, and governorate code. The localities were classified according to the Standard Administrative Classification that was adopted by a national committee composed of representatives of various national institutions, and applied by PCBS in the Population, Housing and Establishment Census 2007.

Data quality control: A set of quality controls were developed and incorporated into the different phases of the survey including field operations, office editing, office coding, data processing, and survey documentation.

Survey's main indicators: The first section of the questionnaire includes identification data about the geographical location and the population. Other sections include data about: perceptions of corruption; perceptions of corruption in PA institutions; actual experiences with corruption in PA institutions and the judicial, health, and education sectors; and, perceptions of and experiences with reporting corruption.

Sample and Sampling Frame

Target population: All Palestinian individuals aged 18 years and over whose usual place of residence with their households was in the Palestinian Territory in year 2007.

The sampling frame: The sampling frame consists of enumeration areas adopted in the Population, Housing and Establishment census 2007. Each enumeration area has an average size of about 120-150 households.

Sample size: The sample size of the survey was estimated to be about 3,000 households. The survey was distributed to 2,000 households in the West Bank and 1,000 households in the Gaza Strip.

Sample design: The sample is a stratified clustered systematic random sample. The design is comprised of three phases:

1. Random sample of 150 enumeration areas;
2. Selection of 20 household from each enumeration area, selected in phase one, using a systematic random method.
3. Selection of a person (aged 18 years or more) in the field from the selected households; and, Kish tables were used in the selection of persons (alternating one male and the next female) to ensure indiscriminate selection.

Sample strata: The distribution of the sample was stratified by governorate, and type of locality (urban, rural, camps).

Pretest

As part of the work plan for the survey on the perception of households, a pretest was conducted to examine the survey's instruments, training manual, implementation plan, data collection procedures, selection and training of fieldworkers, time estimates for various stages, and the data entry program. The pre-test was conducted in the West Bank for three days during the period of 17 January 2010 to 1 February, 2010. Fifty individuals from the West Bank were sampled in the pretest phase.

Training: Eight trainees were recruited for the pretest. The training occurred for three days beginning on 12 January 2010 and ending on 14 January 2010.

Achievement rates: Each fieldworker was expected to complete two questionnaires per day. Each questionnaire took about 70 minutes for the respondent to complete.

Data Entry and Quality Control

Data entry programs were tested in advance using sample questionnaires. Improvements and corrections were made to the data entry program as part of the preparation for the entry of the pretest data. Minor improvements were added to the data entry program to ensure a user friendly interface and proper validation routines. A general assessment of the experience:

- Strengths:
 1. The possibility of implementing this survey without any negative reactions in the field.
 2. Effectiveness of training during the pretest period.
 3. Ability of fieldworkers to fill in questionnaires with high quality and minimal number of errors.
 4. Cooperation of respondents with fieldworkers was good.
 5. Appropriate survey tools, including the questionnaires.

- Weaknesses:
 1. Some of the questions were ambiguous to respondents.
 2. The length of the questionnaire reduced the completion rates as planned.
 3. Lack of documentation regarding non-response cases (number and reasons).

General recommendations:

- Proper documentation of non-response cases;
- Illustrate the methodology in for the substitution of households and persons in the sample;
- Rephrasing of some of the questions that were unclear or ambiguous;
- Rearrangement of some of the questions on the questionnaire to ensure consistency and smooth interviews; and,
- Reflect changes to the questionnaire on the data entry program.

Fieldwork operations

Attention was given to the details of the fieldwork operations of the Governance survey to ensure that the implementation meets accepted standards. These details included technical and administrative requirements, fieldwork procedures, recruitment procedures, training of fieldworkers, and provision of necessary physical requirements to successfully implement the survey.

Fieldwork procedures: Fieldworkers were instructed to work according to the following instructions:

1. Locate the beginning of the enumeration area using either the relevant guide or the map (if available);
2. Turn right and walk clockwise within the enumeration area;
3. List adjacent households until the completion of twenty households;
4. Do not allocate questionnaires for households or individuals who refuse to complete the survey or who were not available during the fieldworker's visit;
5. Use the Kish tables for the random selection of a person from the list of household members;
6. Select a male member from those households with an odd number in the enumeration area, and female member from households with even numbers.

Training and selection of fieldworkers: Qualified fieldworkers with previous experience in statistical data collection were selected to collect the survey data. Fieldworkers participated in fieldwork training in which the details of the survey's questionnaires were explained thoroughly along with practical exercises to ensure clarity.

Special attention was given to the uniqueness of the Governance survey, including the questions, terminology, and concepts. The training program of fieldworkers included:

1. Introduction to the Governance survey and its objectives;
2. Explanation of used terminology; and
3. Procedures for data collection using the designated questionnaire.

Distribution of the field work team: Fieldwork activities started on 19 February 2010 and ended on 5 March 2010. The fieldwork team consisted of a fieldwork coordinator, supervisors and fieldworkers. Every five fieldworkers were supervised by one individual. Fieldwork offices were used to facilitate the administration of fieldwork activities including the distribution and delivery of questionnaires, fieldwork editing during data collection, and preparation as well as the submission of daily progress reports.

Data processing

Data processing: This phase included the following activities:

1. Office editing: Questionnaires were reviewed according to rules specified in an editing manual specifically designed for the survey. The purpose of this activity was to ensure that the questionnaires had no errors, and uncompleted questionnaires.
2. Programming and data entry stage: This stage included preparation of the data entry programs, setting up the data entry control rules to avoid data entry errors, and validation queries to examine the data after the data was entered into the program.

Public Officials Survey

This section presents the scientific methodology that was adopted in the planning and implementation of the Governance Survey/public employees' perception in the Palestinian Territory in 2010, including the methodology design of basic research instruments and methods of data collection, data processing and analysis of the survey's data.

Survey questionnaire

The survey questionnaire on Governance is the main instrument for data collection, and thus its design took into consideration the standard technical specifications to facilitate the collection, processing and analysis of data. Because this type of specialized surveys is new to PCBS, relevant experiences of other countries and international best practices were thoroughly reviewed to ensure the contents and design of the survey's instruments are within international standards. The survey's questionnaire includes the following basic components:

Identification data: The identification data constitutes the key that uniquely identifies each questionnaire. The key consists of the questionnaire's serial number, ministry name, and code according to the sampling frame of public servants 2007 and governorate code. The classification of localities/governorates is according to the Standard Administrative Classification that was adopted by a national committee composed of representatives of various national institutions, and applied by PCBS in the Population, Housing and Establishment Censuses 2007.

Data quality control: A set of quality controls were developed and incorporated into the different phases of the survey including field operations, office editing, office coding, data processing, and survey documentation.

Survey's main indicators: Main indicators cover areas based on personal experiences as well as other areas based on perceptions on different topics addressed by the survey including: living issues, decision-making in public sector, personnel administration, appointments in the public sector, budget management, services / contracts and tenders in the public sector, and reporting corruption if it occurs.

Sample and sampling frame

Target population: All employees in managerial positions in the ministries of the PNA in the West Bank during the survey's reference period. The target population did not include Jerusalem J1 and data collection was not possible in the Gaza Strip.

The sampling frame: Listing of the number of employees of the PNA distributed by ministries in the West Bank.

Sample size: The sample size of the survey was estimated to be about 864 employees in the West Bank.

Sample design: The sample is stratified clustered systematic random sample. The design is comprised of these phases:

1. Ministries and public agencies (33)
2. Grade: Includes head of division, Department director (B, C, D), Director General (A, A1)
3. Sex (male, female)

The sample: A selection was made of public officials from the total population of PNA employees. This selection was designed to have a higher representation of senior officials, officials from branch offices, and of those working on budget procurement and human resource issues.

To report results against a target population of all employees in managerial positions in the ministries of the PNA in the West Bank the results could be weighted to adjust for the greater weighting of certain types of officials. This was not done for the analysis. In reviewing the data the variance between weighted and unweighted responses was generally small – although in some specific questions it was as high as 6 percent.

However as is reflected in table 11 below, where the results for two of the questions are presented, the difference between weighted and unweighted results is small when those who responded “don't know” are excluded from the analysis (therefore when the analysis focuses only on those who expressed an opinion). This was the approach taken to the analysis of the survey. The

reason for this is that those with greater weight in our sample are more familiar with the systems than the average PNA employee. Therefore reducing their influence has the effect of increasing the number of “don’t know” responses.

Pretest

As part of the work plan for the survey on the perception of Public servants – 2010, a pretest was conducted to examine the survey’s instruments, training manual, implementation plan, data collection procedures, selection and training of fieldworkers, time estimates for various stages, and data entry program.

Pretest schedule: The pretest was conducted in the West Bank over three days during the period 07/03/2010 till 09/03/2010.

Table 11: Assessment of weighted and unweighted survey results

Budget Decisions are made in a transparent manner					
	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
	%	%	%	%	%
Weighted	20.4	42.0	13.2	1.7	22.7
Unweighted	20.5	47.0	13.6	1.7	17.1
Excluding “don’t know”					
Weighted	26.4	54.3	17.1	2.2	
Unweighted	24.8	56.8	16.4	2.1	
Budget decisions are based on the influence of a bribe					
	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know
	%	%	%	%	%
Weighted	1.0	3.3	44.1	23.8	27.8
Unweighted	0.8	3.0	48.9	25.5	21.8
Excluding “don’t know”					
Weighted	1.4	4.6	61.1	33.0	
Unweighted	1.0	3.8	62.5	32.6	

Sample size of pretest: The sample size of the pretest was estimated to 30 public employees in the West Bank.

Training: Five trainees were recruited for the pretest. The training for the pretest was for two days started on 03/03/2010 and ended 04/03/2010. The selected fieldworkers have experience in household surveys.

Achievement rates: The daily achievement rate for each fieldworker is 4 completed questionnaires. The time estimate for the completion of one questionnaire was 35 minutes.

Response rate: The total number of questionnaires collected during the pretest amounted to 30, which is equal to the designated sample size. In addition, 28 questionnaires were completed and 2 were partially completed. The completion rate of questionnaires is due to the survey's methodology which was based on area sample.

Evaluation of data entry and editing procedures: Data entry programs were tested in advance using sample questionnaires. Improvements and corrections were added to the data entry program as part of the preparation for the data capturing of the pretest's questionnaires. In the actual data capturing of the pretest data, minor improvements were added to the data entry program to ensure user friendly interface and proper validation routines.

A general assessment of the experience

- Strengths:
 1. Effectiveness of training during the experimental period.
 2. Effectiveness of fieldworkers in the field to fill in questionnaires with high quality and minimal number of errors.
 3. Cooperation of respondents with fieldworkers was good.
 4. Appropriate survey's tools, including the questionnaires.

- Weaknesses:
 1. Some of the questions were ambiguous to respondents
 2. Lack of documentation regarding non-response cases (number and reasons)

General recommendations:

- Proper documentation of non-response cases
- Illustrate the methodology in consistent manner regarding the substitution of employees.
- Rephrasing of some of the questions that were unclear or ambiguous.
- Rearrangement of some of the questions on the questionnaire to ensure consistency and smooth interview.
- Reflect changes to the questionnaire on the data entry program.

Fieldwork operations

The purpose of fieldwork operation is to collect the required data from its primary sources, and it is considered the most important stage in the implementation of any survey. As a result, greater attention was given to the details of the fieldwork operations of the Governance survey to ensure the implementation is within the standards. These details included a range of technical and administrative requirements, fieldwork procedures, recruitment procedures, training of fieldworkers, and provision of necessary physical requirements to successfully implement the survey.

Fieldwork procedures: Fieldworkers were instructed to work according to the following instructions:

1. Locate ministry by its name
2. Obtain listing of employees whose grade/position as head of division or above from the personnel department in the Ministry.
3. Include head of finance, procurement, and personnel units within the sample
4. Allocate 33% of the sample for branch offices of the ministries if available and by supervisory categories using a table of random numbers to select staff from these categories.
5. Use the table of random numbers of employees, regardless of the geographical location of the place of work of these employees.
6. Identify the employees who have been selected.
7. Set an interview date with the employees who have been selected.
8. Select a place to conduct the interview with the employees who have been selected.

Training and selection of fieldworkers: Qualified fieldworkers with previous experience in statistical data collection were selected to work in the data collection for the survey. Fieldworkers participated in specialized fieldwork training in which the details of the survey's questionnaires were explained thoroughly along with practical exercises to ensure clarity. Special attention was given to the uniqueness of a survey of Governance, including the questions, terminology, and concepts. The training program of fieldworkers included:

- Introduction to the Governance survey and its objectives
- Explanation of used terminology
- Procedures for data collection using the designated questionnaire

Distribution of the field work team: The fieldwork team consisted of fieldwork coordinator, supervisors and fieldworkers. Every five fieldworkers were supervised by one supervisor. Fieldwork offices were used to facilitate the administration of fieldwork activities including the distribution and delivery of questionnaires, fieldwork editing during data collection, and preparation as well as submission of daily progress reports.

Data collection: Fieldwork activities had started on 23/03/2010 till 20/04/2010. The sample of the survey reached 864 employees in the West Bank. Fieldworkers were provided with all necessary requirements (i.e. questionnaires, sample list).

Data processing

The data processing phase includes many interdependent activities that aim to electronically capture the collected data ready for analysis. These activities are:

1. **Office editing:** Questionnaires were reviewed according to rules specified in a special editing manual specifically designed for the survey. The purpose of this activity was to ensure that the questionnaires had no consistency errors, and no uncompleted questionnaires.
2. **Programming and data entry stage:** This stage included preparation of the data entry programs, setting up the data entry control rules to avoid data entry errors, and validation queries to examine the data after it has being electronically captured.

Annex 2: Survey findings for the Justice, Health and Education Sectors

As part of the household survey respondents were asked for their perception of corruption in the justice, health and education sectors. Alongside this, those who had recently accessed public services were asked to comment on the actual experience. The following sections present the main findings.

Judicial Services

Perceptions of Corruption

Corruption was not perceived to be the most important obstacle in the judiciary. Respondents perceived bribery to be least important obstacle to using courts, and *wasta* to be the third most important obstacle. The top rated factors were excessive amount of time taken by court proceedings (73.2 percent of respondents) followed by difficulties in and lack of enforcement of court decisions (62 percent of respondents).

Though they are not the top-rated factors, bribery and *wasta* were nevertheless perceived to be important obstacles: 33.9 percent of respondents believed that extra-legal and bribe-related costs were very important obstacles to accessing justice. A higher percentage of respondents, 55.4 percent, regarded *wasta* and favoritism in court decisions as a very important obstacle (see Table 12: **Obstacles to Accessing the Judiciary**).

Table 12: Obstacles to Accessing the Judiciary

Obstacle	Very Important	Important	Less Important	Not Important
Excessive amount of time	73.2	21.1	3.9	1.8
Difficulties in and lack of enforcement of court decisions	62.0	27.5	7.9	2.6
Role of <i>wasta</i> /favoritism in court decisions	55.4	23.3	11.8	9.5
Judges' lacking professional capacity	52.6	28.6	13.4	5.5
Complicated and tricky legislation	51.3	33.1	11.0	4.6
Legal costs involved in accessing justice	43.2	30	16.6	10.1
Access to adequate legal counsel	42.9	37.8	13.8	5.5
Extra-legal/bribe-related costs involved in accessing justice	33.9	29.7	22.5	13.9

A slightly higher percentage of respondents from the West Bank compared to Gazans viewed extra-legal and bribe-related costs as an obstacle to accessing the judicial system.

Experience of Corruption

Very few respondents said bribes were paid during their court cases. Only 11.2 percent of survey respondents or household members had been involved in a Palestinian court dispute in the preceding three years, 68.2 percent of them in the preceding year. Of the few who did use the court system, however, very few indicated paying any official. None reported paying a bribe to a judge or a prosecutor (see Table 13).

Table 13: Bribe Payments in the Judicial System

Type of Court	Lawyer	Another Official
Sharia (N=48)	6.3 (N=3)	2.1 (N=1)
Magistrate (174)	4 (N=7)	2.3 (N=4)
First Instance (N=49)	4.1 (N=2)	3 (N=1)
Appeals (N=25)	20 (N=5)	4 (N=1)
Supreme Court (N=10)	0	0
Military Court (N=10)	1 (N=1)	1 (N=1)

Of the 3 percent (seven respondents) who reported bribing a lawyer, the median cost of such a bribe was 1,300 ILS (US\$333.19). Of the 1.7 percent (four respondents) who reported paying a bribe to an official other than a judge, lawyer or prosecutor, the median cost of that bribe was 100 shekels (US\$25.66).

Actual use of wasta also appears to be relatively low. Respondents were asked whether they or the other party used wasta or an intermediary to influence the judiciary process. Overall, 9.7 percent (22 respondents), 9.3 percent (21 respondents), 7 percent (16 respondents), and 5.8 percent (13 respondents) said that wasta or an intermediary was used to influence, respectively, the lawyer, another official, judge, or prosecutor.

Of the six types of courts, a higher percentage of respondents reported using wasta or another party using wasta in Supreme Court cases. The table below shows the percentage of respondents who reported that wasta was used with a judge, lawyer, prosecutor, or other official for different types of courts. Of the small number of respondents who did have experience with the judicial process in the WB&G, a higher percentage of respondents used wasta for the Supreme Court compared to the other types of court (see Table 14).

Table 14: Use of Wasta in the Judicial System

Type of Court	Judge	Lawyer	Prosecutor	Other Official
Supreme (N=10)	30.3	30.3	30.3	55.6
Appeals (N=25)	20	12	20	16
Military (N=10)	20	10	20	10
First Instance (N=49)	12.5	8.3	12.5	16.7
Sharia (N=48)	10.4	18.8	8.3	6.3
Magistrate (N=174)	6.9	9.9	5.3	9.4

Corruption in the court system does not appear to be the main hindrance to court access. Respondents who were involved in a conflict in the last year but did not turn to the Palestinian judiciary to resolve the conflict were asked why they opted out of the court system. No respondents said they opted out because “official cost of the court system is too high” or because of the “cost of bribes and tips to civil servants” in the courts.

Public Health Services

Perceptions of Corruption

Costs related to paying bribes are viewed as the least important obstacle to using the health system in WB&G. Wasta came sixth in the percentage of respondents who cited it as a very important problem to accessing primary clinics and hospitals. The costs related to paying bribes came last in the percentage of respondents who cited it as a very important problem to accessing primary clinics and hospitals (see Figure 23 and 24).

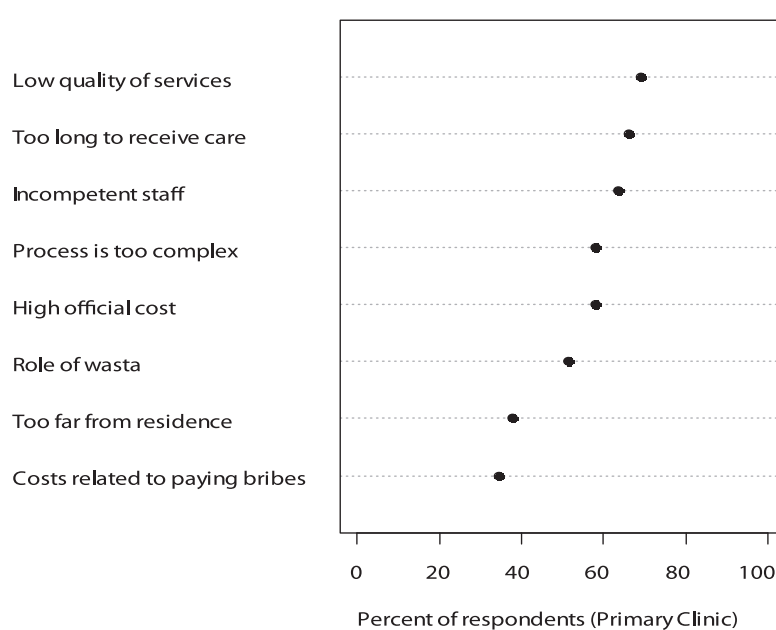
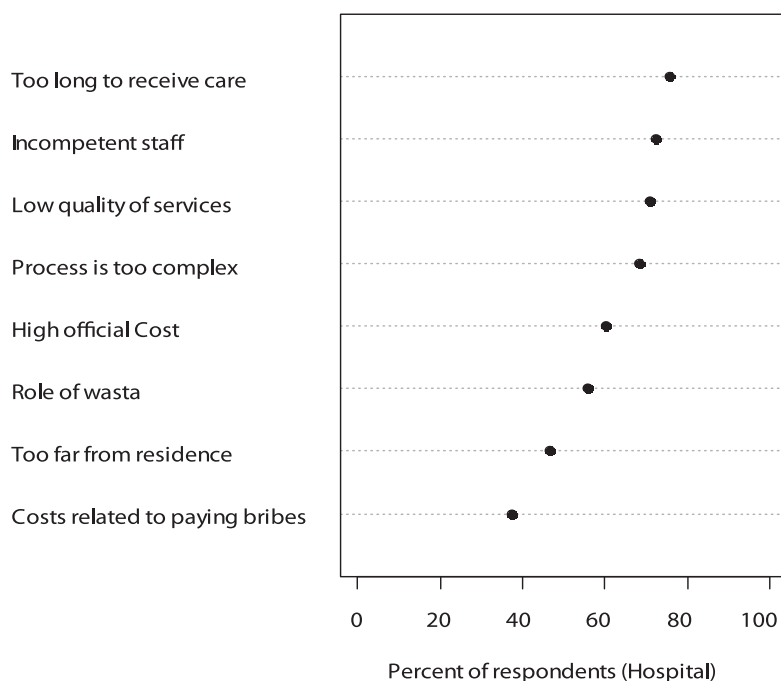
Figure 23: Perceived Problems in Health services – Primary Clinics

Figure 24: Perceived Problems in Health Services – Hospitals

Though their relative importance in accessing health care in WB&G is low, wasta and costs related to bribery and wasta were still perceived by a relatively large number of respondents to be important problems in accessing these services. For primary clinics, nearly 35 percent of respondents viewed costs related to bribery as an important obstacle, while over 50 viewed wasta as a very important obstacle. For hospitals, nearly 40 percent of respondents viewed costs related to bribery as an important obstacle, while nearly 60 percent viewed wasta as a very important obstacle.

A higher percentage of respondents from Gaza than the West Bank saw the following factors as very important or important obstacles to accessing primary clinics and hospitals: the high official cost of care; the low quality of services; incompetent staff; the wait to receive care; and, the complexity of the process. By contrast, a higher percentage of respondents from the West Bank than Gaza viewed the cost of bribes and travelling between one's residence and a health care facility as obstacles to accessing the health care system.

When respondents were asked to identify the single most serious problem in receiving effective services in health sector in the WB&G, 22.5 percent and 26.9 percent of respondents cited "incompetent staff" as the most serious problem to receiving effective services in primary clinics and in hospitals, respectively.

Experience of Corruption

While over one-third of respondents cited bribery-related costs as obstacles to health services, very few reported paying a bribe or gratuity for health-related activities. Respondents or their household members who had experience with seeking health-related services were asked whether they had been asked to pay a bribe or gratuity. Of those who tried to obtain the various health related services, less than one percent reported having been asked to pay a bribe or gratuity for any of the ten services listed. For example, only 0.39 (seven respondents) percent reported having been asked for a bribe or gratuity for medication. Of these, only three respondents said they actually paid the bribes, amounting to 100 ILS (US\$25.65), 150 ILS (US\$38.48), and 200 ILS (US\$51.30).

Although a very small percentage of respondents reported paying a bribe for health-related services, a higher percentage of respondents reported that they or a household member used wasta. Of the respondents who tried to obtain a medical referral abroad, 23 percent reported using wasta, and 11 percent reported using wasta to obtain medical equipment. Less than 5 percent of respondents used wasta for medicine, ambulance services, emergency care, medication from primary clinics and medication from outpatient clinics.

There is a moderately strong correlation, 0.58, between the respondents who have used wasta to obtain a service and those who knew that some people received preferential treatment most of the time for such services.

The majority of respondents who used wasta reported that it helped them to get services faster. Asked about wasta's impact, most respondents said it speeded up service delivery. For example, of those who used wasta for surgical appointments, 80.4 percent said that it helped them to get the appointment faster than if they had not used wasta. Of the respondents who used wasta to obtain a medical/legal certificate, 80 percent said it helped them to receive it faster.

Of the respondents who used wasta, a smaller percentage said that the wasta helped them to receive better quality service – one-quarter they received better quality medications, and 23.3 percent said they received a better quality hospital bed. However, few respondents said they would have been denied a service without wasta, and similarly, few said that wasta had no impact on the services received.

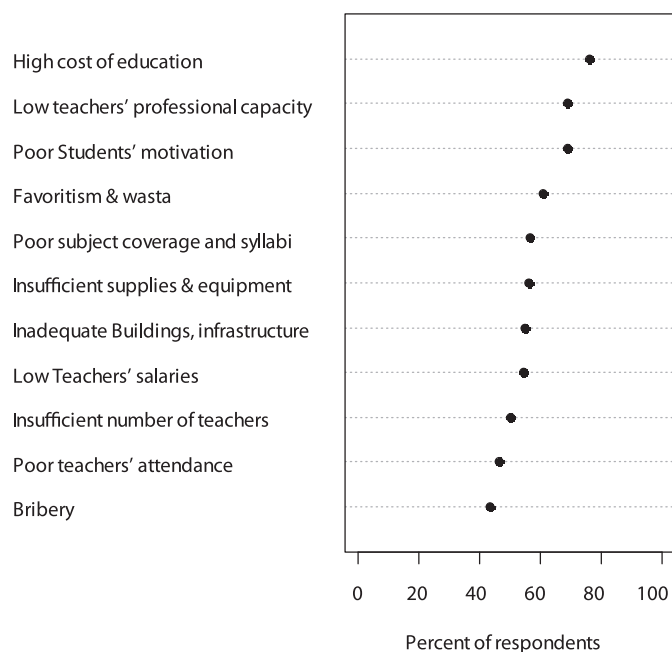
Public Education

Perceptions of Corruption

Bribery was the least important of 11 factors among respondents who believed that it was nonetheless a very important factor in preventing access to or reducing the quality of education. Favoritism and wasta ranked fourth most important. As in health services, although bribery had a relatively low ranking, a relatively high percentage of respondents viewed it as a very important obstacle to accessing education (43.4 percent of respondents), and 58.2 percent of respondents view favoritism or wasta to be a very important obstacle to accessing education services.

Asked to rank the most serious obstacles to receiving good quality education in the WB&G, most cited the high cost of education (30.6 percent said it was the most serious problem), with weak teacher professional capacity second, and poor subject coverage and syllabi third-most problematic (see Figure 25).

Figure 25: Perceived Problems in Education Services



Experience of Corruption

Very few respondents reported actually paying a bribe or gift for education-related activities. If a respondent or household member had contact with the public education system in the WB&G, the respondent was then asked: “Did you or someone in your household pay bribes or make a ‘gift’ while registering one’s children, transferring a student from one school to another more appropriate school, applying to university, and, obtaining a scholarship?” Only two

respondents answered in the affirmative; one said he had been asked to pay the bribe or gift while registering his child, and had given 50 ILS (US\$12.83) to a principal. The other respondent said he had been asked for the bribe or gift during the university application or acceptance process, and had paid 200 ILS (US\$51.30) to an education ministry official.

Wasta was more pervasive than bribery in education-related activities. Of respondents or household members who had contact with the public education system in the WB&G, 9.6 percent (16 individuals) reported using wasta while trying to obtain a scholarship; 1.2 percent (seven individuals), 4.8 percent (11), and 2.9 percent (13) said they had used wasta while, respectively, registering their children, trying to transfer a student from one school to another, and while applying and trying to gain acceptance to university.

Similar to other public services, perceptions of corruption in the education sector are greater than actual experiences in the past year. Perceptions may reflect past practices, as improvements have been made in areas such as awarding of scholarships (see Box 3).

Box 3: Improvements in the Awarding of Scholarships

The awarding of university scholarships has witnessed a significant improvement in recent years. AMAN has monitored the changes made by the scholarship's department at the Ministry of Education and Higher Education, which included publicizing scholarship information, publishing an online guidebook for high school graduates on how to obtain a scholarship and all its requirements. Furthermore, over the past two years the department has publicized the names of selected students and its reasons for selecting them.

In order to ensure integrity and transparency in the conduct of interviews of the selected students during the last two years, the department also formed a joint committee that includes embassy representatives, chairs of departments from Palestinian universities and representatives from the Ministry.

Source: Extract from AMAN, November 2010