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The State, Investment Projects, and Development Challenges in **Palestine**

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The Arab NGO Network for Development works in 12 Arab countries, with 9 national networks (with an extended membership of 250 CSOs from different backgrounds and 23 NGO members.

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1. Introduction

The link between politics and the economy are evident all around the world. They are interdependent in many aspects. The dialectical relationship between politics and economics is even more complex in Palestine. However, most literature tends to conclude the dominance of the political factor and its effect, which dominates on most aspects of daily life. The National Authority (PA) was established in 1994 based on the political Oslo Accords, signed by the PLO and Israel. The political agreement gave birth to the Protocol on Economic Relations (Paris Protocol), which organizes mutual economic relations. The agreements granted the PA limited powers, responsibilities, and the ability to manage economic resources in the areas under its control (Areas A and B). However, they restricted its authority, responsibility, and capacity in the remaining areas, or more than 60% of the area of Palestinian land (Area C). The Palestinian Authority was consequently denied control over natural and economic resources and border crossings. Based on World Bank estimates (World Bank, 2013, pp.12,13), direct losses by the PA amounted to $2.2 billion (23% of GDP in 2011) as a result of the continued Israeli occupation, preventing the rise of various economic sectors. Indirect losses are estimated at about $3.4 billion as a result of the continued [Israeli] control of Area C and restrictions on the exploitation of natural resources and the movement of people and goods. A recent study by the United Nations Conference on Trade and Development (UNCTAD, 2019) indicated that the total Palestinian direct and indirect losses resulting from the continued Israeli occupation during the period 1967-2018 are estimated at about $47.7 billion, more than three times the GDP of 2017.

The agreements linked the Palestinian economy with the Israeli economy with one customs envelope, thus depriving the PA the ability to control VAT rates and customs duties (important components of fiscal policy) for most goods and services. It made prices closer between the two markets despite the great discrepancy in wages and income levels. The protocol also kept the function of collecting customs and value added on Palestinian imports in the hands of Israel, subjecting transfers to the PA's treasury to arbitrary security and political considerations. Moreover, the issuance of a national currency is conditional on Israel's approval, which means depriving the Palestinian Monetary Authority of using most of the monetary policy tvools necessary to direct the economy. According to the protocol, Israel controls the level of Palestinian labor flow to serve its economic interests and security considerations. In short, the protocol left most of the keys to the Palestinian economy in Israel's hands. For the past 25 years, the agreement remained the framework governing economic relations between the two sides, despite Israel's lack of commitment to its provisions and their practical annulment by the occupation. It remains so also despite the many critiques and the damage it did to the Palestinian economy.

From a purely objective perspective, the PA's functional role - at least according to the Israelis who have the greatest influence on the rules of the game - seems no more than a (deliberate) trap and a dilemma that makes the task of economic experts and analysts even more difficult. On the one hand, the PA is responsible for providing essential needs (such as health, education, internal security, and employment) to Palestinian citizens and for exerting effort greater than its capabilities to provide the necessary funding to cover those needs. On the other hand, the PA's ability to formulate policies and use the already limited and restricted economic tools is also diminishing.
Nevertheless, the PA fulfilled a large part of its financial, moral, and functional obligations towards the various sectors and groups of society, regardless of their different needs and aspirations. For the past decades, with international community support, the Palestinian government has made considerable efforts to improve the investment climate and business environment. It based its efforts on existing and newly developed legal and institutional

frameworks. However, these efforts and initiatives have always collided with challenges and difficulties that hindered previous attempts and limited the level of desired achievements. It seems the economy still suffers from the same distortions and structural imbalances inherited from the occupation, but with somewhat different tools and elements. The Palestinian economy is still linked to its Israeli counterpart through traditional channels (trade, labor, cash, public finance). Economic performance indicators and growth and development opportunities are still dependent on Israeli economic policies, the mood of the occupation, and its leaders political goals and objectives.

Thus, the Palestinian economy's woes do not stem from the Paris Protocol's provisions or applications. Rather, they are a result of its political and security prerequisites in the Oslo Accords. Considering the existing political and security arrangements and even without its deficiencies and gaps, the Protocol cannot serve as a foundation for rebuilding and developing the Palestinian national economy towards sustainable development. The course of economic relations with Israel cannot be Isolated from the political settlement path. The assumption that there is a possibility to develop equal and friendly economic relations between two entities, one of which occupies the other, has been proven wrong and logically inept at every turn except according to the Israeli understanding. It would be naive to assume that Israel will allow the Palestinian economy to grow and develop normally, enabling the Palestinian people to break free from dependence on Israel, thus blackmail and political pressure. Israel sees the economy as an arena of confrontation with Palestinians and treats it as such. It adds to the incorrect assumption in the first place of goodwill on the part of the Israelis towards just settlement. The COVID crisis shed light on the fragile state of the economy and development in the Palestinian territories. It revealed the extent of exposure to external influences and the surrounding environment, whether Israeli repression or international vacillation. There seemed to be a consensus, at least locally, on the need to focus on development efforts based on local foundations and incentives. Undoubtedly, strengthening the national economy's self-capacity and creating a supportive work environment for the productive national private sector are key entry points for the success of development efforts and the achievement of their objectives.
Hence, the report will try to shed light on the PA's performance and the challenges it faces in developing an appropriate business environment to enhance the private sector's role and its inherent position as a lever for development and its desired goals.

1.1 Report Objectives

This report seeks to explore and evaluate the role of successive Palestinian governments in achieving sustainable development, providing the appropriate environment for the business sector through available tools, and highlighting the challenges and requirements associated with achieving the desired development vision. The report also aims to assess the existing business sector accountability framework. Finally, it proposes the required interventions to correct performance and design an appropriate accountability framework. The report was prepared in the framework of the Arab Watch on Private Sector Accountability.

1.2 Relevance

The report covers a controversial subject that is yet to reach consensus, even in economic circles, especially in defining the roles played by the state and other partners in development. Agreeing on a development model with clear management mechanisms and available tools would be a great achievement if it happens. However, the report seeks to achieve several objectives related to evaluating the performance of various development partners to suggest requirements to reorient efforts and interventions.
The report also comes at a time where the PA faces a flood of multidimensional crises limiting its

ability to focus on setting development priorities and providing its requirements. In addition to the exceptional circumstances of the COVID pandemic, experienced by all countries, the Palestinians face restrictions and obstacles brought about by the Deal of the Century, the threat to annex large parts of the West Bank, and an artificial financial crisis due to Israel's continued custody of clearance funds (the main source of public spending). These general and exceptional circumstances call for greater efforts by researchers and development experts to present proposals and perceptions that can support the Palestinians against the onslaught of infection and aggression.

1.3 Methodology

This report mainly adopts a descriptive[1] approach. The report monitors the reality of development in the Palestinian territories, challenges facing economic advancement, and the roles of development partners. The report will answer the main questions by reviewing documents and secondary data published by the Palestinian Central Bureau of Statistics, the Palestinian Monetary Authority, the Ministry of Finance, and other information from relevant ministries to provide a more accurate understanding of the Palestinian situation. Wherever necessary, the researcher conducted specialized interviews with officials, observers, and private sector representatives. Furthermore, the Palestinian Network for NGOs, ANND's partner in Palestine, held a workshop to discuss the report and validate its findings and recommendations, attended by many representatives from civil society, the private sector, academics, and social activists.

2. Development, the State, and the Business Sector

Various countries with different degrees of development and regardless of political and economic orientation seek to achieve a set of goals and aspirations that policy makers believe are the right approach to achieving their peoples' well-being, using all available economic and social tools. Like other countries and since its establishment in 1994, the PA has faced an exceptional economic and social reality (in the negative sense), causing great difficulties in the development process that require exceptional interventions and capabilities. This section of the report attempts to provide an overview of the reality and indicators of development in Palestine during the last two decades. It reviews the main features of the Palestinian economy and related challenges. It also deals with the PA's performance and its role in creating a suitable business environment as a lever for development and enhancing the self-capacity of the local economy. Specifically, it will investigate the legal environment as an essential element in designing an effective accountability framework in the contractual relationship with the business sector.

2.1 Overview of Development in Palestine

The 1993 political settlement process between the Palestinians and Israelis led to optimistic expectations of an improved economic and social situation in the Palestinian territories. The international sponsorship of the settlement and state and donor pledges to finance development and reconstruction in the territories was a source of optimism. In addition, the emerging PA was granted power over some territories. They included a limited ability to control financial and trade policy in the context of the official Palestinian endeavor to advance the economy, achieve development requirements, and provide an appropriate environment for local and foreign investment.

The Palestinian economy went through different stages following the Oslo accords. The basic features of the economy at each stage were illustrated through the discrepancy in the data available. In general, the Palestinian economy witnessed a decline in its performance by all measures and indicators in most of the years since 1994. The state of dependence on the Israeli economy has deepened during the last two decades. Israeli security (such as storming Palestinian cities), political (non-compliance with the signed agreements), and economic (violations of the terms of the economic agreement) practices constituted a frustrating environment for development efforts and attempts to advance the economy.

In addition to being in flagrant violation of international law, Israeli settlement in the Palestinian territories has become a means of investment by the occupation authorities. Israeli establishments and businesses in those settlements receive various packages and exemptions from the Israeli authorities. In addition to plundering Palestinian land and planting settlements, they inflict plenty of economic and social damage on Palestinian society. The products of these settlements are smuggled to the Palestinian markets without supervision or control by the PA, creating and enhancing the black and unregulated market for these goods. Several international reports (Human Rights Council, various reports)[2] condemned such practices by the business sector and companies in the settlements. They criminalized their trade in international markets as products of projects built on occupied lands. The same reports illustrated the dangers and violations resulting from those settlements. They can be summarized in the confiscation and destruction of agricultural lands, demolishing Palestinian homes to expand settlements and constructing bypass roads to reach them, exploiting Palestinian workers and employing them in inappropriate working conditions, and excessive use of natural resources such as water, natural stone, and the Dead Sea. In addition, many Israeli cellular operators have taken advantage of settlement sites at high altitudes to erect booster towers and equipment to attract Palestinian subscribers without incurring any taxes or fees to the PA treasury. This practice is considered «unfair» competition with the Palestinian business sector, specifically cellular operators operating in the Palestinian territories. The settlements and existing projects are of course outside the jurisdiction of the PA and thus cannot be subjected to any domestic accountability framework or procedures considering the current balance of power. Local and international efforts, campaigns, and boycotts against settlements and their business sector remain a demand and an objective that must be continued and built upon to curb Israeli violations of international law and bilateral agreements with the Palestinian side.
The political and security atmosphere and resulting economic arrangements were reflected

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in most of the economic indicators. Political and security developments, the Deal of the Century, and the increasing Israeli threats to annex large parts of the West Bank, led to the erosion of development efforts and hindered attempts to create an appropriate investment environment. The task of policy makers in the PA has become more difficult, considering development challenges and distortions that dominate the Palestinian economy. These challenges require additional and exceptional efforts by all development partners in Palestine. The following will discuss the current situation of the business sector and its most prominent characteristics and challenges. It will then delve into the state's role in development planning and the use of available tools and resources to create an appropriate investment environment, advance the local economy, and enhance its capacity.

2.2 Palestinian Business Sector's Main Features

This part of the report sheds light on the reality of the business sector in Palestine in terms of its components and basic features. It also investigates the challenges to enhancing its contribution to sustainable development. In the same context, it reviews the reality of investment in Palestine in terms of its development, the targeted sectors, and the share of foreign investment.

The private sector is an essential link in the structure of the Palestinian economy, which explains the interest in this sector before the advent of the PA, under the title of supporting resilience and survival. After building the PA's institutions, it began reconstructing the national economy, developing its infrastructure, legal and organizational structures, and strengthening the administrative and technical capacity of its public and private institutions.

The private sector plays a noteworthy role in the Palestinian economy, providing jobs for more than 600,000 workers in the Palestinian territories, out of nearly one million workers (Palestinian Statistics, Labor Force Survey, Second Quarter 2020). Its contribution to GDP amounts to 70%. Despite all the difficulties, the sector can develop its capabilities if it is handled well, whether at the level of the private sector's relationship with the public sector or in relation to economic and trade policies.

Around 147 thousand establishments in Palestine are run by the private sector, out of a total of 158 thousand. SMEs dominate the business sector, employing less than 10 workers each and constituting more than 97% of all establishments operating in Palestine (Palestinian Statistics, General Census of Enterprises 2017). It is worth noting the high percentage of establishments in the informal sector make up 56% of the total establishments operating in the private sector and employ 58% of the workforce (Palestinian Statistics, Labor Force Survey 2019). The data shows the concentration of the business sector in services and internal trade activities, which collectively generate about 64% of the total value added (domestic product), while the share of the productive sectors does not exceed 30% (see Table 1).

In addition to the exceptional circumstances of the COVID pandemic, experienced by all countries, the Palestinians face restrictions and obstacles brought about by the Deal of the Century, the threat to annex large parts of the West Bank, and an artificial financial crisis due to Israel's continued custody of clearance funds.

Table 1: Number of Establishments, Workers, and Main Economic Indicators in Palestine According to Economic Activity 2018* (in thousands of US Dollars)

Economic Activity	Sector Contribution to GDP	Sector Contribution to Workforce	Worker Compensation	Production	Intermediate consumption	Total value added	Fixed capital depreciation	Ratio of value added to final production	Profitability Index (Surplus (Value **
Industry	24.4%	14.4%	594,737.5	4,956,010.4	2,851,640.1	2,104,370.3	202,643.4	42.5%	26.4%
Construction	4.1%	0.5%	87,843.6	735,286.8	377,332.5	357,954.3	16,166.4	48.7%	34.5%
Internal Trade	42.5%	54.9%	567,166.7	4,473,969.5	807,498.9	3,666,470.6	128,374.8	82.0%	66.4%
Transportation and storage	1.7%	0.8%	43,643.2	234,163.0	88,317.9	145,845.1	17,162.3	62.3%	36.3%
Information and	6.2%	0.5%	144,761.2	672,734.2	134,180.8	538,553.4	49,058.6	80.1%	51.2%
Services	21.1%	29.0%	696,887.0	2,474,231.7	654,689.6	1,819,542.1	218,996.8	73.5%	36.5%
Total	100%	100%			4,913,659.8	8,632,735.8	632,402.3	63.7%	43.3%

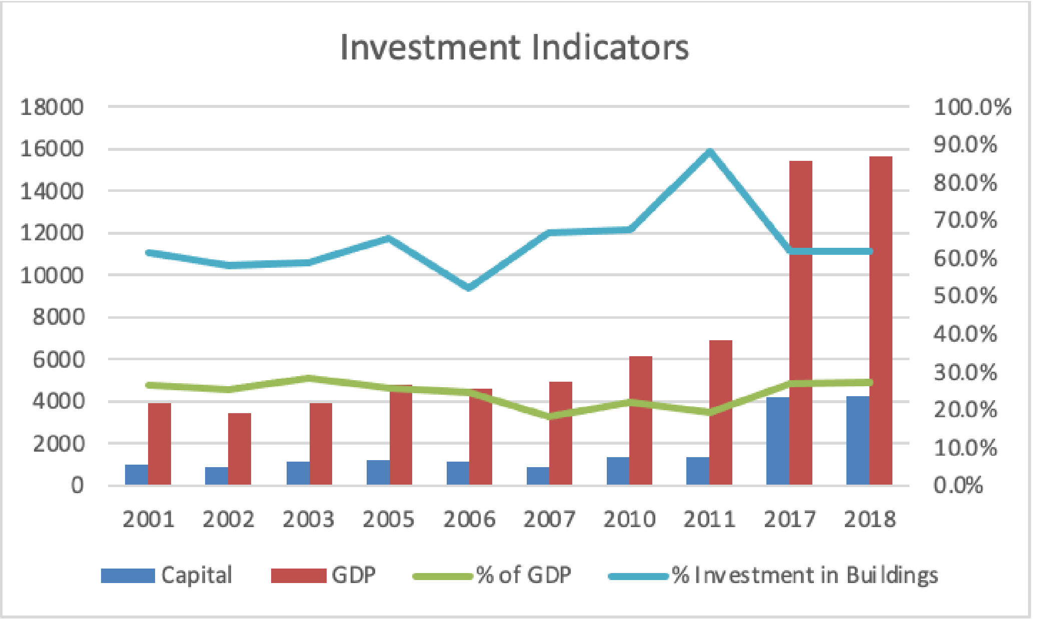
* Palestinian Central Bureau of Statistics, Economic Surveys Series, 2019.

** Calculated by researcher.**

Investment is of particular importance in the economies of countries regardless of political and economic systems. Investment is divided into two main parts: either direct investment through the establishment of investment projects or indirect investment through capital markets. Investment is the second component of the national product after consumption in various countries of the world.

Investment is an important element in the formation of Palestinian GDP. According to a study prepared by MAS institute (MAS, 2005, p. 15), the volume of Palestinian public and private investment during the transitional period (1994-1999) amounted to about $9.5 billion, or 37.4% of GDP. The subsequent period witnessed a noticeable decline in investment levels, reaching the lowest level in 2002 at $877 million. It came as a result of occupation measures against the Palestinian territories, namely storming West Bank cities. In the subsequent periods of calm, good levels were achieved, until the volume of investment reached more than $4.26 billion in 2018, or 27% of GDP. A large part (62%) of these investments was concentrated in the construction and buildings sector, compared to 38% for machinery and equipment during the transitional period. The share of buildings subsequently declined to reach its lowest level (52%) in 2006. Later, it rose steadily, as investments in buildings constituted more than 88% of the total in 2011. It later declined to settle at 62% (see figure below). In general, domestic and foreign investment activity witnessed a significant decline a few years after its launch. The state of "investment rush" witnessed in the few years after Oslo was reversed to the extent that the cumulative decline rate in private investments reached more than 38% its level in 1994. On the other hand, the ratio of private investments to Palestinian GDP in 1999 amounted to about 22%, this percentage decreased and fluctuated between 13 and 15% between 2000 and 2013 (Abdul Karim, 2014).

Palestine is an investment-exporting country;



Source: Palestinian Central Bureau of Statistics, National Accounts, Various Years.

Palestinian investments abroad surpass those by other nationalities in the country, amounting to $6,392 million (60% of which are deposits abroad) in 2018, compared to $2,939 million of foreign investments in Palestine. It is worth noting that 60% of foreign investments are direct compared to 25% indirect through portfolio investments (Foreign Investment Survey, Palestinian Central Bureau of Statistics, 2018).

As an indicator of the contribution of investment to development, sectoral foreign investment data[3] indicates that the financial intermediation and banking sector has historically registered the highest percentage of foreign investments at 64%, followed by services, internal trade and communications activities by 30%. On the other hand, the share of the productive sectors combined (industry and agriculture) did not exceed 6%.

The above shows that the Palestinian business sector is a real lever for local development, whether through its contribution to GDP or employment. However, private sector activity is concentrated in the commercial and service sectors. It avoids the productive sectors, the cornerstones of any sustainable development. Challenges abound due to its operating in an environment restricted by Israeli occupation. On the other hand, the great fluctuation in the volume of investment, its weak role in sustainable development and the productive sectors, and the correlation of its indicators with the turbulent political and security environment makes Palestine unattractive to investments. However, the business sector is expected to become more vital in the following years due to the financial crisis of the PA and its inability to spend on consumption and development at the same time or attract new labor. Private investments by the business sector are expected to play a bigger role. Thus, the business environment needs to be improved to encourage domestic and foreign private capital flow and increase investment opportunities. Any business environment must have a low degree of risk to start any business. It must respond to the requirements and needs of private investors and overcome their fears by adopting highly stimulating, stable, and certain economic policies. It could start by identifying issues and obstacles of concern for the local and foreign private sector, especially regarding the investment environment that needs special attention by the government as part of the national economic dialogue.

However, pushing to protect investors and reduce their concerns is a problematic approach, albeit a critical goal. It should not divert the focus from the rights of other partners and parties affected by the business sector. Tax incentives and exemptions granted to the business sector are usually at the expense of providing the public treasury with financial resources necessary for government spending on public services. Also, granting concessions and monopolistic contracts to protect investments and increase their economic feasibility misses the opportunity for entrepreneurs and SMEs to benefit from investment in vital economic sectors.

The dialectic of the previous approach would give greater importance and need for the PA's intervention in terms of compensating the expulsion factors in the investment environment through protective constitutional orientations for investors and legal frameworks that are generous to a large extent and reassuring to the maximum level in the field of capital movement and settling commercial disputes. At the same time, these legal frameworks and official directions should preserve the rights of other parties and community partners. Although the general investment environment in the Palestinian areas may currently appear not conducive to attracting local and foreign capital, efforts should continue to stimulate private investment and create the best possible climates. However, such efforts must be accompanied by frameworks to protect workers' rights and the environment from the risk of pollution and emissions from industrial activities. Although this task seems difficult under the current transitional political conditions, it is not impossible, especially if a scientific method is adopted in planning and policymaking, to create the required balance between the rising importance and role of private investments in development on the one hand, and the growing need to control private sector performance and trends designing the desired accountability framework, on the other.

2.3 The State, Sustainable Development, and the Investment Environment

Objective (external) factors, Israel and international influence, are important to determining the level of success in the field of development and providing an appropriate environment for investment. However, this part of the proposition does not negate the necessity of focusing on reviewing and evaluating the performance of the PA and its various institutions at the same level. This part of the report seeks to explore and evaluate the PA's role and performance based on its ability to create a stimulating development environment for the business sector and private investments. In the same context, it will answer questions related to the investment environment and the role of the state, through its various tools, in designing an appropriate and coherent accountability framework that regulates and governs the desired environment for the business sector and its contribution to sustainable development.

Most studies and reports[4] on development challenges and achieving the development goals concluded that success does not merely depend on natural and human resources. Rather, it is based primarily on sound economic approaches, resulting choices, and good governance. Countries that failed to provide these factors failed in achieving their development goals. On the other hand, countries that provided the requirements for good governance, picked the appropriate economic model, and made their economic and development decisions based on knowledge and scientific analysis and with the wide participation of development partners succeeded in facing various economic and social challenges, and were able to put their economies on the path of sustainable development.

Restoring confidence in the Palestinian investment environment and economy is a pivotal task in the context of rebuilding and overcoming the effects of the current economic crisis. It represents the fulcrum for the foundation of the next stage in the development process. Like other governments, the PA possesses important and influential economic policy tools to improve the business environment. However, many restrictions were imposed on the use of government policies, limiting their effectiveness and ability to achieve the desired goals.

Fiscal policy is considered the most influential. Over the past two decades, the Palestinian government has sought to adopt financial measures whose mission and impact were either limited or minimal due to insufficient financial resources and the weak margin available to the government to use the policy. Thus, Palestinian financial measures and procedures are not a fiscal policy per se. They are often considered corrective or remedial measures for emergency and non-structural issues and crises. They are unlikely to impact the macroeconomic or long-term levels unless they become structural measures.

On the monetary policy side, the absence of a national currency is a main constraint to the use of this important economic tool in dealing with current economic crises. It seems that the only margin available to the Palestinian decision-maker is limited to a set of procedures and measures related to stimulating the Palestinian economy through the expansion of credit policies for banks operating in Palestine.

The situation is not much different regarding official trade policies, as they remain governed by Paris Protocol and Israeli procedures. Occupation authorities continue to control crossings and borders, frustrating Palestinian efforts for liberation from Israeli domination and dependence on its economy. As a result, the government's ability to use this policy is extremely limited and concentrated in supporting national products and encouraging exports.

A recent survey showed that a third of establishments believe that government policies constitute an obstacle to investment. The evaluation of policies varied according to the type of policy. Tax policies were considered the most negative factor, followed by trade policies, and employment policies. Meanwhile, more than 42% of establishments believe that monetary policy has no effect (Abdul Karim and Muhammad, 2018).

The public budget (fiscal policy) must be reformulated to suit the requirements of promoting an investment environment (such as reform, transparency, rationalization of current spending). Economic management policies should also be reviewed and amended, including tax policies (reducing VAT to suit the Palestinian economy), offering monopolies that are necessary for public tender and developing laws for their management and oversight. The above could be through reconstructing and rehabilitating various public facilities and networks and their development and maintenance to serve public and investment needs in a way that contributes to achieving a balance with interests. It is also important in this context to pay attention to the needs and requirements of the investment environment in the Palestinian labor market to liberate its operational and absorptive capacities from the distortion effects inherited from the occupation. The interest in developing human capital and increasing its accumulation, as an indispensable element in the process of economic development, is a task of great priority, given its role in increasing productivity, and thus its contribution to the high rates of growth of the national economy, especially since this improvement contributes to developing the ability of the Palestinian economy to enter a stage of openness, trade liberalization, and better integration into its economic environment, enabling it to formulate economic and commercial relations and agreements on better foundations than in previous stages. In addition, the increase in investment and the growing accumulation of human capital will contribute to improving productivity levels as one of the ingredients for reducing production costs and maintaining high quality. It entails increasing the competitiveness of Palestinian products compared to their counterparts from other countries, which means the integration of the Palestinian economy into other markets through exporting goods and services, not just relying on the export of labor according to the needs of other markets.

2.4 The Legal Framework Governing the Private Sector

The legal framework regulating the business sector plays a prominent role in encouraging domestic and foreign private investment (Private Sector Development Center, 2013), as it includes regulation, protection, and incentives for potential investors. In the Palestinian case, several legislations regulate the business environment through a heavy and inefficient legal legacy that accumulated over more than a century. The laws in force in Palestine are numerous and varied according to the multiplicity of political and administrative systems that have ruled Palestine since the beginning of last century. Ottoman, British, Jordanian, and Egyptian laws and Israeli military orders are applied, in addition to local Palestinian laws enacted after the establishment of the PA in 1994. This multiplicity and discrepancy in laws creates a state of uncertainty for large sectors of investors. It also poses a serious dilemma for the Palestinian judicial system, which is empowered to settle disputes arising from the application of laws and the exercise of economic activities.

It is also important to note the specific (emergency) political context that governs the current legal environment. The unprecedented political division between the two parts of the homeland (the West Bank and Gaza) deepened the legal disparity in both regions. Each authority enacted its unique set of new legislation (the Legislative Council in Gaza, and the President of the PA in the West Bank). The President also dissolved the Legislative Council, leaving a large and influential legal vacuum to be replaced by laws and decisions he issued.

In effect, the absence of the Legislative Council weakened the chances of an accountability framework for commercial activities and the business sector. The impact and repercussions of dissolving the Legislative Council increased with the absence of one of the most important tools of accountability and control over the performance of the executive authority (the most important party in contractual relations with the private sector). It also had a great impact on the rights of other parties (public money, workers, consumers, marginalized groups), in addition to the many caveats resulting from inaction (and sometimes collusion) with the business sector. Another dimension relates to the imbalance of power between the public and private sectors, in favor of the latter, of course, considering the limited financial and natural resources and the occupation's restriction of the PA's efforts, in addition its weak performance and its institutions' low efficiency in managing already limited resources.

In any case, several legislations in force in Palestine are related to the regulation of business and investment affairs. This part of the report seeks to explore their pertinence to a balanced environment for both the business sector and society. The desired balance requires providing the necessary legal and regulatory protection to reassure private investments and reduce their risks on the one hand and achieve the interests of other parties and their economic and social rights, on the other. Those laws include:

Basic Law (Interim Constitution)

Article 21 in Chapter 2 of the Basic Law defines Palestine's economic approach. It stipulates that «the economic system in Palestine shall be based on the principles of a free market economy. The executive branch may establish public companies that shall be regulated by a law.» It guarantees freedom of economic activity and defines the rules governing its supervision and their limits. Private property is protected and may not be expropriated except in the public interest and for fair compensation in accordance with the law or pursuant to a judicial ruling. Consequently, the PA enacted laws, formulated economic policies, and prepared development plans based on the guiding principles of the Basic Law.

It is likely the PA settled on liberalizing markets and following free market policies in line with the neo-liberal approach and policies led by the US and IFIs such as the World Bank, the IMF, and the WTO. The most prominent critique of this approach is that the free-market economy is supposed to manage itself automatically through Adam Smith's «invisible hand.» Practically, however, free-market mechanisms and perfect competition cannot be achieved. In addition to the traditionally known obstacles, which prevent free market mechanism from optimally allocating resources or achieving efficiency and economic justice, additional obstacles appear in the Palestinian case. They can be summed up as follows:

- The forces of supply and demand and the price apparatus in the Palestinian territories by virtue of dependency (commercial, financial, monetary and labor) are strongly influenced by the forces of supply and demand, prices, and economic policies prevailing in the Israeli economy. Consequently, market mechanisms - or price apparatus - as a tool for resource allocation are under the control of external forces of supply and demand. The sharp and unequal competition with the Israeli economy will lead to additional dependence and internal disintegration. It will distort the economic structure in the Palestinian territories and drain the financial surplus necessary for investment and development.
- The Palestinian economy faces additional challenges related to the physical fragmentation of the Palestinian markets. It is due to the Israeli occupation policies based on placing obstacles and limiting the freedom of movement of people and goods between Palestinian areas and with the outside world through the control of land, sea, and air crossings and ports. It led to the absence of a unified market and the emergence of several separate and isolated markets in the different Palestinian geographical areas. Thus, forces of supply and demand in each region operate separately, and the factors of production and investment (commodity, labor, and capital) cannot move easily between different geographical areas. The success of the free-market economy model requires wide freedom of movement of production elements to achieve the required market balances and reduce existing distortions in the markets for goods, labor, and raw materials (in the local economy and with the global economy).
- The private sector in the Palestinian territories is concentrated in the services and trade sectors and is avoids the productive sectors, especially agriculture and industry, preferring investing in activities that avoid competition with imported goods, especially Israeli, such as commercial agencies and subcontracting. The policy of free openness contributed to exposing the emerging Palestinian industry to intense competition with imported goods, especially Chinese, which led to a decline in its role - especially clothes, shoes and some food industries - in exploiting production capacity. It lowered its labor capacity and consequently its contribution to the GDP. Moreover, the capitalist private sector in the Palestinian territories, whose general structure is dominated by small and individual enterprises (97% of the establishments operating in Palestine are SMEs), in contrast to the severe weakness of large public shareholding

companies, remains in need of active and effective government intervention to assist it in self-growth, expanding the market, and increasing its competitiveness at least in the local markets.

- The PA's efforts led to some remarkable achievements in terms of the institutional, legal, and infrastructure frameworks of the national economy and in revitalizing the role of the private sector. However, policies followed over the past two decades have apparently failed to create the conditions conducive to strengthening its own capacity. Such an economy should be based on sustainable growth that creates sufficient job opportunities to absorb the accumulated increase in the Palestinian labor force. It did not contribute to alleviating its contraction and its dependence on external factors (specifically Israel and international aid), nor on generating sufficient revenues to meet the growing basic social needs of citizens. In the opinion of many, the cost of the achieved accomplishments is considered relatively large, as there are no appropriate mechanisms to devote the principles of transparency, control and accountability in managing public money and in regulating the relationship with the private sector in accordance with those principles.
- In sum, it is doubtful that the free-market economy or the «invisible hand of the market» could achieve the goals of balanced economic and social development in the Palestinian case today or tomorrow. Moreover, the Basic Law failed to link the principles of a free economy, already abandoned by the countries of origin, and the principles of social justice and equal opportunity. Thus, the principle of free initiative in a competitive economy and social security, or what is known as the social market economy approach, could be the closest to the reality and conditions of the existing Palestinian economy. This approach is very much in line with the directions, visions, and priorities stated in the comprehensive development plan prepared by a team of Palestinian experts led by Dr. Youssef Al-Sayegh in 1993 and adopted at the time by the PLO in Algeria in 1988.

Companies Law

Since its establishment, the PA sought to create a legal system that contributes to the unification of the various laws in force in the West Bank and Gaza Strip. It aimed to adopt current local laws that meet the needs of development and advancement of society. The efforts of the authority succeeded in some places and failed in many others. The most prominent failures were in the field of legislation related to companies. To this day, there is no Palestinian law for companies. The Jordanian Companies Law of 1964 applies in the West Bank. In Gaza, a Palestinian law was approved in 2012 unilaterally by Hamas and without the approval of the PA President. The law applied in the West Bank is incompatible with the current reality and the challenges facing the business sector. How can a law approved more than half a century ago and annulled in Jordan (its country of origin) address the developments witnessed by the business sector or meet current development requirements? Moreover, the law in the Gaza Strip lacks legitimacy and unanimity, given that its geographic jurisdiction is limited to companies operating in Gaza. In this context, it is important to examine the extent to which the applicable laws respond to the requirements of governance, mainly the impact on profitability and sustainability for investors, businesses, and shareholders.

In any case, neither law is up to business sector aspirations or investor trends, in terms of keeping pace with current realities, their legitimacy, or comprehensiveness. In general, the legal framework for companies suffers from many shortcomings in addressing important and urgent issues in the Palestinian reality, most notably:

- The discrepancy between laws in the West Bank and Gaza led to different controls and powers of the Companies Controller. The law in force in the West Bank is old and thus lacks relatively recent governance principles. Companies need to be committed to such principles, given their relevance in defining responsibilities of companies, controlling the performance of the executive departments in joint stock companies in terms of protecting small investors, enabling the regulatory authorities and stakeholders to hold these departments accountable for the results of their performance. Rights and interests of other societal groups should also be preserved, including workers and marginalized groups, through legislating and activating CSR mechanisms as binding development requirements and not a voluntary charitable act.

- No executive regulations were issued to implement the law in the West Bank, which led to divergent interpretations of many of its articles. On the other hand, the law applied in Gaza, although relatively recent, did not consider the obligation of companies to apply the principles of governance, especially regarding protecting small investors, preventing conflicts of interest, and not crowding out the private sector, specifically in Article 13, which allowed the transformation of any public institution into a joint stock company operating according to commercial principles.
- In the same context, neither law considers the requirements of protection due to small investors in public joint stock companies. They both failed to specify the minimum number of shareholders despite the limit on the number of founders, allowing public joint stock companies to have a limited number of partners. Also, corporate laws do not place restrictions on public shareholding companies buying their shares (Treasury bonds), which opens a wide scope for exploitation through speculative operations, especially considering the weak control mechanisms and the absence of transparency in many companies. Furthermore, laws impede the participation of small investors in the membership of the boards of directors of public shareholding companies through the text of the law. The law determines the minimum number of shares whose owner is entitled to run for membership in the Board of Directors. According to a study (the Palestinian Capital Market Authority, 2012, page 42), 68% of the total shareholders in public shareholding companies do not have the minimum required for candidacy, and therefore are small investors. It is evident in their absence from General Assembly meetings, knowing in advance that they are unable to affect change. Voting takes place according to shares and not the number of shareholders. They also do not have a representative to express their opinions and orientations in the Board of Directors.
- The principles of governance include the need to disclose social responsibility statements, details, and policies and their consistency with the development vision. This disclosure reflects the company's desire and culture to interact with the community in which it operates, its alignment with community issues, and its contribution to addressing them to improve society's view of companies and increase their attractiveness to investors. According to a study by the Palestinian Capital Market Authority (2012, page 39), most companies listed on the Palestine Exchange disclose their social responsibility work in their annual reports, but the percentage drops significantly in relation to

In sum, it is doubtful that the free-market economy or the «invisible hand of the market» could achieve the goals of balanced economic and social development in the Palestinian case today or tomorrow. Moreover, the Basic Law failed to link the principles of a free economy, already abandoned by the countries of origin, and the principles of social justice and equal opportunity. Thus, the principle of free initiative in a competitive economy and social security, or what is known as the social market economy approach, could be the closest to the reality and conditions of the existing Palestinian economy.

company policies in the field. It is worth noting that applicable laws do not require companies to disclose data related to social responsibility and related policies.

In general, laws regulating the work of companies in Palestine are inappropriate to stimulate the business sector. This includes all stages of the life of the project (the company), starting from registration through the provisions regulating the issue of bankruptcy, up to binding governance principles. Commitment to governance requirements by the business sector, particularly public joint stock companies, is weak, given that the principles contained in the companies' laws remain indicative and not binding. It also applies to the principles contained in the Code of Governance approved in 2009. The features of this weakness are prominent in Board of Director membership, combining ownership and general management, failure to represent small investors and protect their interests, concentration of ownership in the hands of a few large shareholders, poor level of disclosure regarding board members and executive management privileges, and public CSR policies. The level of adherence to governance principles is not expected to improve if the Code of Governance remains non-binding to the business sector and if it lacks incentives and deterrents. It is useful to constantly remember that promoting good governance practices in the private sector contributes to enabling companies to play the balanced development role expected of them, in addition to enabling them to enhance a culture of mutual oversight with public sector institutions to ensure justice, integrity, and transparency for all stakeholders in society (Nasr Abdul Karim and Mansour Hussein, 2011, p. 1).

Government Bids

The contractual relationship between the government and the private sector is basically governed by two laws, which have not undergone any amendment since their approval more than twenty years ago. The first is the General Supplies Law of 1998, which is concerned with immovable funds such as cars and office furniture needed by government departments. The second law is the Government Works Tenders Law of 1999. It relates to strategic projects of public interest, such as electricity and communications. There are several drawbacks to the two laws, which can be summarized by the following points (Ahmed Abu Dayyah and others, 2008):

- Sometimes a conflict appears between the two laws, especially regarding procurement of public works (development projects), which request implementation bids and purchase supplies at the same time.
- The General Supplies Law contains a legal flaw by allowing purchases to be made within certain amounts outside the supervision and control of the Central Bidding Department.
- The accompanying regulations stipulated by the law were not issued. They include the system of financial rewards for experts, technicians, and members of technical committees, and the consequent erosion of their rights in exchange for the effort expended, and thus the possibility of its impact on the performance of their duties to the fullest and highest degree of integrity and transparency.
- Neither law contains a clear legal text requiring employees or committee members to report potential corruption cases during the bidding and awarding process. They do not expressly guarantee protection for whistleblowers.
- There is no legal authority to decide on disputes that may arise between the executor of the bid and the committees. Rather, the objections that the private sector may raise to the specifications of the bid being proposed are studied by the same committee that set the specifications and conditions.
- Tenders suffer from the absence of a comprehensive development plan. Their announcement is affected by the economic and financial situation of the Palestinian treasury, including its dependence on external grants, delays in revenue collection (specifically clearing), or delays in approving

the general budget. In this regard, it is important to note that the law does not allow a bid or a purchase order unless the amount is allocated in the general budget and financial allocations are available. However, the supplying private sector suffers from the government's delay in fulfilling its financial obligations, as evidenced by the increase in the arrears item in the government's budget.

- Although the law stipulates bids, whether for supplies or public works, that exceed a certain amount, should go through the Central Bidding Committee, many projects that are implemented by some authority institutions and funded by external donors do not comply with this clause. They implement bids from outside the Central Bidding Department's authority.
- Mismanagement also results from purchases from one company even though the referral decision includes two. This extends to the formulation of bids or purchase orders so that the specified specifications apply to a particular company, depriving the rest of the sector from competition, as well as affecting the principle of obtaining the best quality at the right price.
- The technical committees of bidding departments often lack the expertise to set the terms of bids with the best conditions (number and type), in addition to reviewing the specifications of the bids submitted, which also applies to the receiving committees. These two points carry a clear loophole that may lead to the misuse of public money. In addition, the system for hiring experts from outside the government institution is still not operational and exacerbated by the absence of an allocations and rewards system.
- Oversight over the bidding and public procurement process is absent, and so is effective oversight to audit and verify compliance with specifications upon delivery.

Enhancing the principles of transparency is not limited to the framework of the relationship between the public and private sectors. It extends to include private sector institutions and the services provided by these companies, especially regarding managing a public utility or providing a public benefit. To correct the imbalance in contractual relationship between the government and the private sector requires a set of measures. They may be summarized in amending the two previous laws to enhance the governance environment, improve control over government bids and contracts, and reduce opportunities to waste public money. Furthermore, they must activate regulatory authorities such as the Legislative Council and the Financial and Administrative Control Bureau in contracting procedures and agreements concluded by the government with investors in vital and strategic projects and sectors.

Investment Promotion Law

The Palestinian Legislative Council issued its first law to encourage investment in 1998. Its second article specified the desired objectives of achieving development goals and priorities in Palestine by increasing investments through the establishment of the Palestine Investment Promotion Authority (PIPA), providing guarantees and incentives to investors, and an appropriate environment conducive to investment. The law was later amended several times, including decisions by the President or Prime Minister, considering the Legislative Council's disruption and continuing state of emergency. These amendments affected articles related to capital ceilings, conditions for benefiting from incentive packages, economic sectors benefiting from them, and other areas. Following are the major changes made by each amendment in terms of economic activities, operating public facilities or providing public services, and the powers granted to authorities related to exemptions:

1988 Law: It opened the door to projects from all sectors, with some exceptions that required prior approval from the Council of Ministers, including electricity production and distribution,

telecommunications, and similar projects. However, the law did not explicitly mention concession contracts granted by the government, whether monopolistic or non-monopolistic.
2011 Amendments: The law explicitly defined the sectors it serves, including concession contracts subject to Council of Ministers' approval. The law did not differentiate here between monopolistic and non-monopolistic concession contracts. Moreover, it gave powers to the Council of Ministers, upon the recommendation of PIPA's Board of Directors, to grant exemptions to any other sector or branches.

2014 Amendments: The law mentioned some sectors and conditions (such as operating, exporting, and using the local component) to benefit from its incentives, in addition to «qualitative projects that provide a service or value that conforms to special standards or meets international environmental conditions, alternative energy services, or projects located in development priority areas.» However, it excluded some sectors, including all kinds of electricity projects, telecommunications and communications services, and companies that obtained monopoly concession contracts. Once again, the law stipulated which authority should approve exceptions, granting it this time to PIPA's Board of Directors. It gave it the power to grant additional incentives to any investment project that was not explicitly mentioned in the law.

2015 Amendments: The law did not explicitly specify the sectors benefiting from its provisions, but it linked them in detail to employment requirements, the percentage of export, and the share of the local component. The law also made it possible to grant incentives for non-monopolistic concession contracts or licenses issued by official regulatory authorities other than the Council of Ministers, concessions granted to establish industrial and/or agricultural areas and cities, and concessions unrelated to public utilities. On the other hand, monopoly concession contracts were excluded from tax incentives, in addition to some other exceptions for the banking and financial sector in general. The law allows PIPA's board to add other sectors or new economic activities it deems necessary, on the condition of the Council of Ministers' approval.

The previous presentation points to the changing government vision regarding which economic sectors should benefit, sometimes through limitations and at other times through generalization. The latest amendment in 2015 decided not to specify targeted sectors. It might be right in allowing additions based on certain criteria. However, the legislator should have identified targeted sectors in a way that constitutes an opportunity to align with the Palestinian development priorities. It is worth noting that leaving the field open for selecting the sectors targeted by PIPA's management opens the way to weakening the foundations of clarity and transparency and this may require more specific controls and standards.

On the other hand, the wavering of authority to grant exceptions between the Council of Ministers and PIPA's Board of Directors or both combined, creating confusion and instability in regulatory and judicial institutions and the business sector alike. The fluctuation also seems evident regarding legal incentives given to infrastructure projects and concession contracts, reflecting the government's immediate vision or desire rather than a comprehensive and strategic development framework. This brings

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us to the most important point here, which is the inadequacy of the Investment Promotion Law in managing concession contracts, one of the most important forms of contractual relationships between the public and private sectors.

Monopoly and Antitrust Law

Monopolies are granted by the state to a private individual or company during a period known as the “monopoly period” based on certain agreement and conditions, whereby the right of exploitation, creation, or management is granted to another party in return for an agreed upon price. Concessions in Palestine date back to before the PA's establishment. However, contracts were carried out according to special laws. Each law was related to a specific concession, which was prevalent during the British Mandate (issued by the High Commissioner), and later the Jordanian rule (with the approval of the House of Representatives), then the Israeli occupation (military decisions). The most prominent could be the electricity concession law approved by the British Mandate in 1927, according to which the Jerusalem Electricity Company preserved part of the concession granted to it during the Ottoman era.

With the advent of the PA in 1994, the President did not wait for the first Legislative Council to form and proceeded on the eve of the legislative elections to pass a set of laws regulating several sectors such as energy, water, and communications, from which monopoly laws emerged using the same mechanism in place before the PA's establishment, a law for each sector. According to analysts, since its inception, the authority has paid attention to the issue to provide immediate returns, either by raising funds directly or by allocating shares in the names of multiple entities (legal or personal) to which it has close ties.

The laws were issued in several forms, by the President before the first legislative elections 1996, by the first Legislative Council, and through Presidential decisions after the Legislative Council was disrupted in 2007. Granting and concluding concession contracts remained without a unified institutional or legal umbrella. However, the 2003 amended Basic Law approved the constitutional framework regulating concessions in the West Bank and Gaza Strip: «The law shall specify rules and procedures for granting privileges or imposing obligations related to the utilization of natural resources and public facilities. The law shall also detail the ways and means of dealing with real estate owned by the state and other public legal personalities, and the rules and procedures regulating them.»

It means that the rules and procedures for granting concessions must be defined through a general law. However, this article, if a general concession law has not been approved, does not obligate the beneficiaries to be ratified by the Legislative Council. The Palestinian legislator has drawn up a draft law in this regard in line with the declared economic policy of the PA in terms of giving the private sector the opportunity to contribute to its development, and in terms of the principles of freedom of economic activity, the preservation of private property, and the encouragement of local and foreign investment. The Legislative Council approved the draft law by public debate in 2005, but it has not reached final approval so far.

Many observations have emerged on the formulation of concession laws, the mechanism for granting them, and their compliance with the conditions of integrity, transparency, and accountability.

According to the law's provisions, each ministry or public institution administers and grants concessions in the field of competence. However, many observations have emerged on the formulation of concession laws, the mechanism for granting them, and their compliance with the conditions of integrity, transparency, and accountability.

Labor Law

The Labor law applied in Palestine was adopted in 2000. It regulates the relationship between the three parties to production. The main function of the law is to provide a balanced partnership environment between the parties to production that contributes to achieving rational distribution of resources and defining the rights and duties of each party. A study by Abu Hantash and Salah (2010) evaluated the level of business establishments' commitment and compliance with its provisions and economic and social repercussions. The study concluded that the level of commitment is generally low. The non-compliance was concentrated in the areas of overtime, vacations of all kinds, end-of-service benefits, termination indemnities, work injuries, and delays in wage payment. The study attributed the reasons for the low commitment to the lack of awareness among workers of their rights, and the limited capacities and human and material resources of the official control and inspection bodies. The law's efficiency and the extent to which it achieves the required balance between the different parties is an influencing factor on the level of compliance. Added to all this is the weak performance of the judiciary in adjudicating labor disputes.

The study showed that enterprises that are not committed to the labor law are involved in the informal sector to avoid legal procedures and obstacles. Sometimes, workers themselves accept unfair working conditions that violate the law and deny them part of their basic rights considering high levels of unemployment, low bargaining power, and weak representation. Data[5] indicate that the percentage of establishments operating in the informal private sector is 56% of the total. The rise in this percentage is a dangerous indication of the increasing possibility of non-compliance by establishments operating in the informal sector with labor rights in the absence of oversight and incentives.

The labor law remains a basic determinant for workers to obtain their economic and social rights and the relationship between the parties to production to achieve the required balance. The law also contributes to curbing the «unruly» trends of the business sector and their desire to reduce costs and maximize profits at the expense of labor rights. In this regard, the report recommends reopening the Labor Law for discussion and amendment more than twenty years after its adoption. It is expected that the discussion will lead to the amendment of articles to remove confusion about the controversial articles and tighten penalties for violators. Achieving this goal requires providing a better and more just environment in terms of empowering the supervisory bodies, enhancing their material and human capacities, rehabilitating the judiciary and providing it with specialized judges, increasing labor awareness, and strengthening the governance of union work.

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Income Tax Law

It is not common for income tax law to be associated with labor law. The target groups and desired goals in each law appear to be different. However, the situation in Palestine seems unique in this regard. In 2012, the government (in the absence of the Legislative Council) proposed to amend tax brackets and rates, setting high income tax rates (30%) for the highest bracket. It seemed that the proposed modifications would have increased returns for the public treasury and could contribute to achieving a higher level of tax justice. However, the proposal was met with strong opposition from the business sector, prompting the government to retreat and submit to the private sector's opposition. However, the government's retreat was accompanied by the entry of workers' representatives to the line of discussion and negotiation. Meetings and dialogues were held that included the three production parties and experts. The sessions led to a compromise formula between the two parties, which resulted in the adoption of the minimum wage (after more than 12 years of procrastination and opposition) in favor of workers in the private and civil sectors, provided that the government amends its proposal and lowers the tax rates on corporate profits to 15% compared to 20% for monopolies.

The continuing imbalance in the relationship between the public and private sectors (in favor of the latter), and the government's continued weak efficiency in managing the tax system (in the legal and practical aspect), weakens the system of accountability and control over the business sector's, reduce the government's role, and the chances to achieve economic and social justice and protects of the rights of marginalized and disadvantaged groups. The solution requires reviving the legislative authority representing all segments of society, which derives its authority and legitimacy through the electoral process and community participation. The return of the legislative authority would restore balance in the relationship between the government and the business sector. It should be followed by reforming the tax system, including the income tax law, towards the adoption of a balanced tax law that achieves the desired economic and social justice and contributes to achieving financial sustainability for the Palestinian government.

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3. Case Study: Building an Accountability System - Government Procurement

This part of the report reviews the contractual relationship between the government and private sector institutions from a critical and evaluative point of view of actual practices on the ground and compliance with laws and regulations by both parties. The issue was chosen for several considerations, including the complex role played by the Palestinian government in its current form as a temporary legislator in the absence of a Legislative Council since 2007, in addition to being the body supervising and controlling the work of the private sector. Contracts concluded by the government with the private sector, or the so-called public tenders, constitute a significant part of its budget. Furthermore, a major chunk of the tenders, although fluctuating, is directly concerned with development investment and contributes to the provision of goods and basic public services for citizens, such as electricity, water, communications, and transportation.

The Palestinian Basic Law outlines the limits of the relationship between the public and private sectors by following the approach based on the principles of a free economy. The law guarantees freedom of economic activity and provides many guarantees for the business sector. Decision makers believed in the importance of the business sector and its role in achieving the desired sustainable development. In the context of implementing the general directions contained in the Basic Law, the PA seeks to adopt a legal system to regulate the Palestinian private sector and to provide a legal cover for conducting business freely and safely, on the one hand, ensuring control over the performance of the business sector and investors and contributing to the design of an accountability framework, on the other. However, the previous official endeavor collided with several obstacles that reduced its chances of success. The most prominent of these obstacles is the fragmented legal framework inherited from previous political eras, which fails to crystallize an efficient accountability framework for the business sector. Added to this is the decline in the PA's ability to use various economic policy tools for many external, subjective, and objective factors.

In general, the business sector benefited from the general PA's orientation in supporting the private sector and providing a stimulating legal and institutional environment. Hundreds of projects have also benefited from the exemptions and exceptions contained in the Investment Promotion Law. In the same context, successive Palestinian governments have distinguished the local business sector through their policies to support local production and distinguish locally made products in government tenders and purchases.

The Government Bids Law regulates the process of tendering, through several stages and procedures that sometimes overlap and provide space to achieve more standards of transparency and oversight. However, the actual application of these procedures is tainted by the following shortcomings:

- The technical committee entrusted with setting the terms and specifications of the bid is inconsistent, as it is also the body authorized to receive objections raised by the private sector to the specifications of the bid.
- Many projects that were implemented by some institutions of the authority and funded by external donors were implemented outside the central bidding department, such as some projects of the Ministry of Education and the President's Office. They were implemented directly by the financier and without the knowledge of the Central Bidding Committee and this is one of the law's shortcomings.

- Management of procurement processes in which purchases are referred to from more than one supplier or company is lacking. In some cases, purchases, or a large percentage thereof, are made from only one supplier, excluding the rest. Furthermore, bids and purchase orders are tailored to specific companies, depriving the rest of the sector of competition, in addition to affecting the principle of obtaining the best quality at the right price.
- The technical committees of the bidding departments often lack specialized expertise and human resources specialized in setting the terms of bids and reviewing and studying the bids submitted, which also applies to the receiving committees. This entails a lack of oversight over the bidding and public procurement process, and a lack of effective oversight to audit and verify conformity with specifications upon delivery. These two points carry a clear loophole that may lead to the misuse of public money. In addition, the system for hiring experts from outside the government institution is still not operational, and this is exacerbated by the absence of a system of allocations and rewards.
- Tenders suffer from the absence of a comprehensive development plan. Their announcement is affected by the economic and financial situation of the Palestinian treasury, including its dependence on external grants, delays in revenue collection (specifically clearing), or delays in approving the general budget. In this regard, it is important to note that the law does not allow a bid or a purchase order unless the amount is allocated in the general budget and financial allocations are available. However, the supplying private sector suffers from the government's delay in fulfilling its financial obligations, as evidenced by the increase in the arrears item in the government's budget.

3.1 Arrears

They are the amounts owed by the Palestinian government, either to government sector employees (salaries and wages), current or retired, or to the benefit of the private sector. The latter mainly includes vital sectors such as private hospitals, pharmaceutical companies, supplies and logistics for ministries, especially the Ministry of Education, and private sector entitlements for the implementation of government-funded development projects. Private sector arrears constitute the largest proportion and have been growing steadily over the years. The accumulation of private sector arrears stems from the following possibilities, one or a combination of them:

- Executing some bids and purchases from the private sector without approving a budget (this is a violation of the law),
- Inadequate value of revenues achieved from those expected in the draft budget due to miscalculation or other objective reasons,
- That an amount is monitored for bids, but the payment is delayed, either due to the length of government procedures (which affects the work of the private sector and its competitiveness and the banking sector as a major financier of private sector activities) the private sector's lack of commitment to provide the papers and documents necessary for the exchange procedures or changing the exchange priorities for other emerging items (fuzzy developmental priorities).

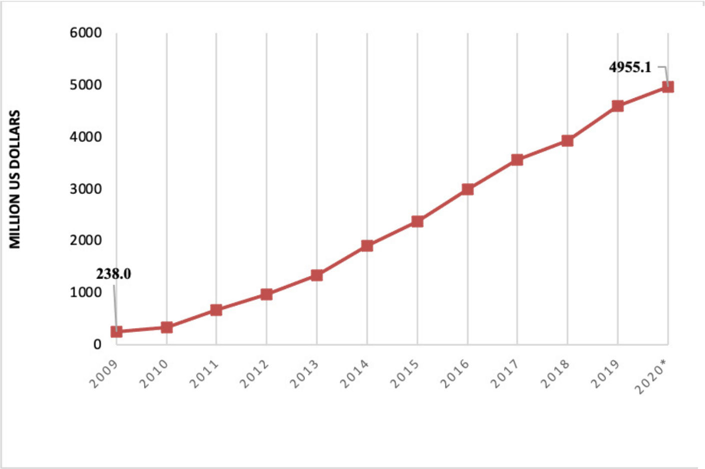
Reports (National Team to Support Public Budget Transparency, 2019) and those who monitor public finances suggest that the delay results from the inability of local revenues to finance current expenditures. Therefore, the government may resort, instead of borrowing locally or externally with a specific interest rate, to postpone the payment of its dues to the private sector, which is like interest-free loans. Regardless of the Palestinian government's reasons for this practice, its repercussions are many, especially as it touches vital sectors in the field of health and education.

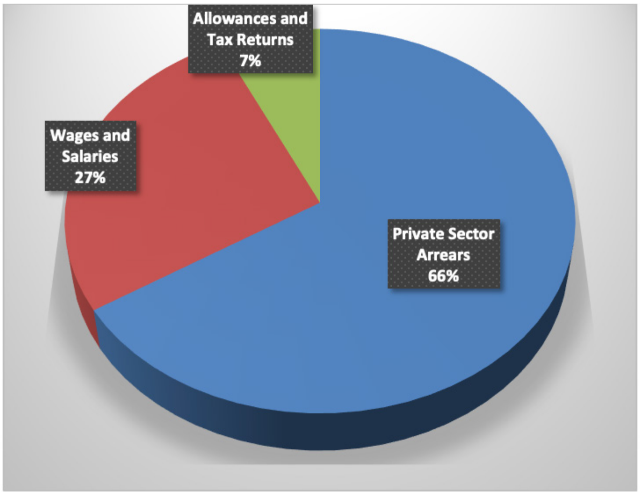
The Palestinian government's approach to private sector arrears creates several distortions:

- It puts the work of the private sector supplying the government to the test and may affect its sustainability and its ability to continue providing services and equipment, which subsequently affects the Palestinian consumer. The biggest example is hospital dues, which often threaten the continuity of providing services.
- As a result of the government's delay in paying dues to the private sector, the business sector resorts to the banking sector to finance the liquidity deficit. The continued delay in the payment of premiums and dues of the business sector in favor of the banks could create a liquidity crisis and affect the soundness of the banking system.
- Government delays in paying dues to the private sector leads to higher prices or lower quality of goods and services, which naturally harms the ultimate consumer.

Private Sector Arrears by Owed Party and Use

(Evolution of the value of arrears (2009-2020)





Source: Palestinian Monetary Authority, Financial Stability Report, 2020.

3.2 Concessions

Concessions are some of the most prominent forms of government contracts with the private sector. Since its inception, the PA has adopted a few concession laws in the energy, water, and communications sectors. In addition, it continued to operate concession contracts that were in force before its emergence, such as the Jerusalem District Electricity Company, which has its roots in the Ottoman era. In general, neither the concession laws nor the conclusion of contracts was carried out in accordance with a comprehensive and clear economic and financial policy. Rather, they were the result of a set of immediate considerations, the most prominent of which was the interest of the authority at the beginning of its inception by providing its treasury with financial resources through the participation of the private sector in order to establish its existence as a viable entity. On the other hand, it failed in promoting balanced mechanisms that achieve the interests of the three parties (the government, the private sector, and the citizens), which often led to an imbalance of power in favor of the private sector. In the absence of a unified legal or institutional umbrella for the granting of concessions, the mechanisms for concluding contracts were numerous and varied according to the institution granting the concession. The following three themes evaluate the question of concessions since the PA's establishment:

Granting Mechanism: In its early days, the PA relied on granting concessions through individual, sometimes secret negotiations. Its desire to grant a concession in a specific field and to invite companies to compete was not announced. The concession granted to the Palestinian Telecommunications Company in 1996 and the Palestine Electricity Company in Gaza are the most prominent examples. Competent ministries do not have any information or documents on the mechanism of concluding the agreement. The principle of non-competition also applies to the concessions granted in the transportation sector to public vehicles on a particular route, as they were granted as soon as an application fulfilling the conditions was submitted to the Ministry of Transportation, which led to a significant increase in the number of public vehicles obtaining the concession.

In general, the individual negotiation mechanism negatively affected the chances of the emergence of competing Palestinian companies, as those that took long-term concessions were able to control products and prices. The failure to follow declared principles in granting concessions that guarantee competition between private sector companies, in addition to concluding concession agreements in an ill-considered manner considering the lack of expertise has caused financial damage and produced financial, technical, and administrative disputes. For example, disputes took place between the franchised telecommunications company and the PA after the monopoly period ended (5 years - about 260 thousand subscribers), because the company refused to end the monopoly period on the grounds that it did not operate alone in the Palestinian market (considering the illegal competition of Israeli companies). This is in addition to the technical disagreement about the definition of subscription to the wireless communication service, as the company considered that the number of subscribers is based only on subscribers in the communication service through the bill and refused to calculate subscribers through the prepaid system. The dispute was only resolved after the government at the time, as the legislator, in the absence of the Legislative Council, amended the Investment Promotion Law, and stipulated that companies that benefited from the law's exemptions and incentives obtain the approval of the Council of Ministers, which forced the company to negotiate with the Ministry of Finance about financial rights .

Issuing Body: Several bodies issue concessions and it is customary for relevant ministries to grant work licenses in the sector they regulate according to what the law allows. Some laws have referred to the power of granting concessions, such as the law establishing the Palestinian Energy Authority, for example, which granted it the necessary licenses generating and distributing energy. However, in other cases, the law did not explicitly refer to the ministry's responsibility for concluding concession contracts, as in the Transportation Law, but it was later clarified in the Executive Regulations of the Traffic Law. The Telecommunications Law also did not authorize the Ministry of Communications to be responsible for concluding concession contracts. However, the Ministry of Communications and Post entered a concession contract with the Palestinian Telecommunications Company. However, the concession contract was signed by the Minister of Finance.

The question of the issuing body entails ensuring the lack of conflict of interest between the official or public servant granting the concession and the activities of the company. However, most of the laws ignored the issue when first approved. Subsequent laws, however, corrected the matter. For example, the Electricity Law placed restrictions on the members of the Electricity Regulatory Board, the Chairman of the Council, its members, and their relatives up to the second degree regarding any financial benefit from generating companies and electricity distribution. Nevertheless, some sectors remained without regulation, such as the transportation sector.

In order to preserve the public interest, it is necessary to publish the concession contracts after they are signed and to guarantee the right to obtain any information about them. Although the approved laws and regulations do not prevent the publication of these agreements, concession contracts concluded by the PA were not always disclosed. The agreements are also absent from websites of both parties.

Oversight and Supervision: Oversight over companies that obtained licenses to exploit and manage a public facility was granted through the Administrative and Financial Oversight Bureau law, referring to the authority of the Bureau in its oversight, in addition to other relevant laws. However, actual control practices on the ground were weak and, in many cases, too late.
The Jerusalem District Electricity Company, for example, continued its work after the PA's establishment. It covered new concession areas without obtaining a new concession due to political and national considerations since it was a Jerusalem company and because it operates within the scope of both the areas controlled by the PA and by Israel. The company remained practically outside the jurisdiction of the PA's institutions, which could not exercise oversight in many matters, especially electricity prices and charges, which in turn resulted in an unfair pricing that harmed the interest of the third party in the concession contracts (the consumer). The company continued its practices until the issue of its licensing and oversight was regulated by the Electricity Regulatory Council after it was established by law in 2009.

Electricity is provided to citizens in some areas that do not fall within the privilege of the existing electricity companies through local government bodies. This practice resulted in mismanagement by local authorities, especially regarding their ability to collect electricity prices from citizens or collect them but not pay them to the Qatari Israeli electricity provider. It led to demands from the Israeli side to the PA treasury, raising the net lending line in the budget and the treasury incurring heavy losses as a result. All these practices took place in the almost complete absence of oversight by official institutions. However, the Electricity Regulatory Council worked to correct

Neither the concession laws nor the conclusion of contracts was carried out in accordance with a comprehensive and clear economic and financial policy. Rather, they were the result of a set of immediate considerations,

the legal conditions and transfer the powers of electricity distribution to existing companies or newly established companies, but this was met with strong rejection by local authorities. Although the instructions of the Electricity Regulatory Council are enforceable and legally binding, the authority's institutions have not been able, on the ground, to compel all agencies to join the electricity distribution companies, and many of them still distribute electricity from outside the licensed distribution companies to this day.

The situation is similar in the water sector. Except for Ramallah and Al-Bireh, which are managed by the Jerusalem District Water Authority, provision is carried out through municipalities and local bodies, amid weak oversight by PA institutions. It led to a discrepancy in water prices across different regions depending on the difference in cost estimated by the municipalities and their need to cover the deficit of some items in their budgets through the consumer bill.

In later stages, the PA established several regulatory bodies to supervise the private sector in public utility goods, such as the Electricity Regulatory Council referred to earlier and the General Authority for Industrial Estates and Industrial Zones. However, the Telecommunications Regulatory Authority has not yet been established despite adopting a law regulating its establishment in 2009.

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Conclusion

Immediately after its inception, the PA focused on providing the public treasury with financial resources through the private sector's involvement in strategic projects. It utilized mechanisms of monopolistic and non-monopolistic privileges in several vital sectors such as electricity and communications. However, it failed to promote mechanisms that achieve the balanced interests of the three parties (the government, the private sector, and citizens), which often led to exaggerating the private sector's powers. On the other hand, the actual practice of the executive authority through its monopoly on the import of cement and petroleum products contradicts one of the most important foundations of the Basic Law, which is the principle of the free market. Although the PA has adopted a policy of encouraging competition and preventing monopoly since its inception, this is not consistent with a practical reality in which some important concession contracts were granted through individual negotiation mechanisms and without opening the door to competition, in addition to the failure to pass a law to encourage competition and prevent monopoly despite repeated attempts since 2003.

Practical examples of the contractual relationship with the private sector have shown the lack of transparency in the mechanism of concluding and announcing concession contracts. Most were not based on prior studies, and there are no documents explaining the mechanism by which the provisions of the agreement were approved, especially those that the regulating laws did not explicitly refer to. Furthermore, the agreements were not published immediately after signing and only announced in the media. They were all concluded outside the control and supervision of the Legislative Council. Most concession contracts were concluded without including clear provisions to prevent conflicts of interest. There was some improvement in this area in subsequent years through the enactment of laws for regulatory and supervisory bodies, but they still lack binding enforcement mechanisms.

By reviewing the reality of the legal environment regulating the contractual relationship between the government and the business sector, it seems **Palestinian legislation regulating the work of the private sector suffers from multiple problems.** Most notably it relates to the continuation of old laws that do not respond to current requirements and new challenges. An example is the Jordanian Companies Law, which is still in force in the territories despite being more than half a century old and the fact that it was abolished in Jordan and replaced by a modern law that responds to developments and meets the needs of both the legislature and the business sector alike.

The legal environment is also tainted by its **lack of several important laws** in the field of contractual relations, such as a general law on concessions and a law on encouraging competition and preventing monopoly. In most cases, contracts are regulated, and agreements signed with the private sector to invest in strategic sectors through special laws and without presenting these agreements to the regulatory and legislative authorities. In the same context, some articles of the laws conflict with the foundations of transparency and good governance. The evaluation of some laws showed that they did not respond to the international guiding principles related to legislating the protection of economic and social rights for different societal groups, as in the Labor Law, and to enhance the concept and foundations of economic and social justice and the distribution of burdens, as in the Income Tax Law.

Despite the progress in recent years, there is still a lack of oversight by multiple supervisory bodies over the work of the private sector due to the lack of human resources and technical expertise, in addition to the absence of regulatory bodies, as is the case in the telecommunications sector.

Endnotes & References

1 The descriptive approach studies phenomena as they are, describing them in detail and expressing them qualitatively by explaining their characteristics and quantitatively through numbers, tables, and indicators of their volume, size, or degree of connection with other phenomena.

2.
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