

The Public Services under Hamas in Gaza: Islamic Revolution or Crisis Management?

Peace Research Institute Oslo



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Islamic Revolution or Crisis Management?

Are Hovdenak (ed.)



Peace Research Institute Oslo (PRIO)
Hausmanns gate 7
PO Box 9229 Oslo
NO-0134 Oslo, Norway
Tel. +47 22 54 77 00
www.prio.no

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Executive Summary

This study explores the means and strategies by which Hamas and the Gaza government have consolidated their control in the Gaza Strip following the movement's military takeover of that territory in June 2007. It focuses on how Hamas has coped with the challenge of economic and political isolation by reviewing the institutional set-up of the governmental apparatus under Hamas, assessing Hamas's channels of communication with the Palestinian Authority in Ramallah, and discussing Hamas's economic responses to the embargo. Furthermore, the study investigates the provision of public services under Hamas in Gaza through three case studies based on fieldwork interviews within the judicial sector, the education sector, and the health sector. Within each sector decision makers, employees and users were interviewed.

The key findings of the research suggest, first, that Hamas has maintained the overall structure of the governmental institutions it took over. A strategy of maintaining and ruling through the Palestinian Authority institutions ensured a certain degree of constitutional continuity, even though large segments of the public-sector employees were replaced with new people recruited by Hamas. The judiciary represented an exception, as the Gaza government could not legally control it and therefore chose to establish a parallel judicial apparatus for Gaza.

Second, the Gaza government responded to the economic challenge of the Israeli embargo by establishing an alternative economic space based entirely on goods smuggled through tunnels under the Egyptian border. As the smuggled goods over time replaced most of the goods previously imported via Israel, a relative sense of normalcy was re-established in the market. In addition, the Gaza government created its own mechanisms for taxing imports, smuggled goods, and business and property.

Third, basic public services in the sectors of education and health were maintained under Hamas through a delicate "division of labour" between the Gaza government and the Ramallah government. Whereas the expenses within these two public sectors, including salaries for the bulk of the staff, were covered by the Ramallah government, the Gaza government paid salaries for additional staff employed without coordination with Ramallah. However, in the judicial sector the whole staff was replaced and fully covered financially by the Gaza government. The provision of health and educational services was facilitated through coordination between Gaza and Ramallah by the technical staff in the respective ministries, in spite of the declared policy of no political contact. The quality of services in all fields suffered from the large-scale evacuation of qualified staff from their offices.

Finally, no grand redesign of governmental institutions in accordance with Islamic principles has been detected, although the introduction of more conservative cultural and moral codes, such as Islamic dresses and segregation of sexes, was indeed observed in some schools and public institutions. To the extent it is possible to interpret the long-term ambitions of Hamas on the basis of its political practice in Gaza since 2007, it seems appropriate to suggest that the level of control the Islamic movement has obtained will enable Hamas to remain in power for a long time, if they wish.

1. Introduction

On 14 June 2007, after five days of heavy fighting, armed forces of the Islamic Resistance Movement *Hamas* (acronym for *Harakat al-Muqawamah al-Islamiyyah*) overran the barracks and headquarters of the security forces of the Palestinian Authority (PA) in the Gaza Strip and established its own de facto government under the premiership of Ismail Haniyeh.¹ Hamas's military takeover in Gaza marked the lapse of constitutional rule in both Gaza and the West Bank and constituted a significant watershed in the complex process of Palestinian institution-building preparing for an envisioned Palestinian state. The very relevance of the institutions of the Palestinian Authority that were created in 1994 as an outcome of the Israeli–Palestinian 1993 Declaration of Principles (DoP) was challenged as the Occupied Palestinian Territory became politically divided by the emergence of two competing governments – one Fatah-backed government appointed by PA President Mahmoud Abbas controlling parts of the West Bank, and one Hamas government controlling the Gaza Strip. Within weeks of the takeover, Hamas had consolidated its complete control on the ground and started a process of restructuring the ruling institutions it inherited from the PA. More than three years later, Hamas remains in power, apparently self-confident after having survived in spite of an imposed Israeli–Egyptian blockade, international sanctions, and a major Israeli military assault in 2008-9.

This report explores Hamas's performance as a ruling party in the Gaza Strip by looking into how the Hamas de facto government has handled the task of providing public services to the residents. The starting point of the analysis is an acknowledgment of Hamas as a key player on the Palestinian political scene; this role has been proved through its landslide victory in the 2006 general elections for the Palestinian Legislative Council; through its demonstrated military strength and control on the ground; and through its political ambitions manifest by its rule of Gaza. Based on the assumption that Hamas has the power to play a decisive role both for the return to democratic rule in the Occupied Palestinian Territories and for the outcome of any renewed peace process with Israel, it is assumed that there is a pressing need to understand Hamas as a political movement. The aim of this report is to shed light on the priorities and ambitions of Hamas through an analysis of its practice as power-holder rather than of its political documents and dogmas, as many studies have done previously.

1.1. Key questions

This report concentrates on the outcome of rather than on the reasons for Hamas's takeover of the Gaza Strip: The overall goal is to investigate the performance of Hamas's de facto government in Gaza, including its institutional setup, its economic coping strategies, its provision of public services and, if possible, to extract some markers of Hamas's long-term ambitions behind the decision to take over – and keep – power in the Gaza Strip. To put it as a simple question: have we witnessed an Islamic revolution in Gaza, with permanent Islamist rule and Islamisation of all aspects of civil life as the ultimate goal or has Hamas rather conducted a desperate exercise of temporary crisis management while awaiting for reconciliation with its rivals in the more secular Fatah party?

The following aspects of Hamas's de facto government in Gaza since June 2007 are central topics in the study:

Institutional continuity or disruption?

What are the key institutions of the Hamas government in Gaza? Has Hamas ruled through the existing government bodies of the PA, replaced them or set up parallel structures outside the PA institutions? Has Hamas sought to respect the existing legal framework through its exercise of power or ignored it? Have institutional changes and new legislation appeared as basically reactive measures of crisis management or do they appear as an offensive campaign of imposing Hamas's political agenda and consolidating control of all sectors of society?

¹ International Crisis Group, "After Gaza," Middle East Report No 68, 2 August, 2007.

Coping with economic and political isolation

How has the Hamas government coped with the embargo imposed by Israel and the international isolation? What were the economic sources of the government's budget? What channels were there for communication and coordination between the Hamas government in Gaza and the Fatah-dominated government in Ramallah?

Providing public services

What role has the Gaza government had in providing public services? What are the impacts of the Hamas takeover on the judiciary, the education sector and the health sector? What political priorities have been apparent through the provision of services?

What are the long-term ambitions of Hamas?

Have political priorities through action indicated any long-term goals? To what degree has there been a process of islamisation within the public sector? Is Hamas digging in for permanent control of Gaza or is the movement merely struggling to survive during a temporary state of emergency through measures of crisis management?

Our aim is not necessarily to obtain clear-cut answers to all these questions. Rather it is to shed light on Hamas's conduct as power-holder and to contribute to increased knowledge of this Palestinian branch of the Muslim Brotherhood by exploring its political praxis.

1.2. Background

The PA institutions that Hamas first entered into as a democratically elected party in January 2006 and then – for the branches in Gaza – gained total control over in June 2007 were originally set up for an interim period of five years only, but the term was extended as peace negotiations failed to produce a final status agreement by its original deadline in 1999. The structure of the self-governance body of the PA resembled state institutions, which in 2006 consisted of a 132-member Palestinian Legislative Council (PLC); a president's office; 24 ministries; a cabinet of ministers headed by a prime minister; a judiciary; a police force divided into several branches; public agencies for monetary affairs, energy, industry, and so forth; and a local government administration organised under governorates and local councils.² Most of these institutions had separate branches in the West Bank and Gaza Strip. Consequently, the institutions that Hamas took over in Gaza following the crisis of 2007 represented a relatively complete governing apparatus.

Hamas's takeover was preceded by a year of steadily growing tension and strife between Hamas on the one hand and the security forces of the PA, backed by Fatah, the previous power-holder of the PA and also the backbone of the Palestine Liberation Organisation (PLO), on the other. The ability of Hamas's first government in 2006 and the preceding national unity government in 2007 – which were both led by Hamas leader Ismail Haniyeh – to govern was seriously hampered by Israeli and international sanctions and both failed to secure control on the ground in the Gaza Strip as violent clashes repeatedly broke out between Hamas militia and the Fatah-backed security forces of the PA.³ A central issue of contest was control of the Fatah-loyal security forces, which ignored the authority of the Minister of Interior from Hamas. Hamas suspected, furthermore, that the head of the Preventive Security Forces, Muhammad Dahlan, collaborated with the U.S. government in planning a military offensive against Hamas in Gaza.⁴ Accordingly, Hamas portrayed its offensive as a pre-emptive strike. Finally, in retrospect, Hamas leaders have claimed that the military takeover of the Gaza Strip was not pre-planned by the movement's political leadership, insisting that the goal of the offensive was limited to giving

² PASSIA. "Directory 2007," Jerusalem: PASSIA, 2006, p. 336.

³ For a review of the background of the showdown between Hamas and Fatah, see International Crisis Group, "After Gaza," Middle East Report No 68, 2 August, 2007.

⁴ David Rose, "The Gaza Bombshell," *Vanity Fair* (April 2008), <http://www.vanityfair.com/politics/features/2008/04/gaza200804>.

a warning signal to the Preventive Security Forces. However, the sudden collapse of the PA forces in the course of the fighting invited the commanders to go further than planned.⁵

Recurring rounds of reconciliation talks between Hamas and Fatah, with various Arab intermediaries, have failed to bring about an agreement for ending the division.⁶ What may have appeared to be a short-lived crisis at an early stage, has turned into a long-term state of affairs. Hamas has established a functioning administration and – against many observers’ expectations – brought about some sort of economic normalcy for the 1.4 million Gaza residents. However, political opponents, in particular Fatah members, have been subject to persecution, including imprisonment and torture – not unlike the situation for Hamas members in the West Bank. Although opinion polls have revealed shrinking public support for Hamas in Gaza during the past three years,⁷ the Hamas leaders appear to be as confident as ever.

1.3. Field-work interviews

The empirical data and the analysis in this report are largely based on interviews with actors in the Palestinian public sector. Four Gaza-based researchers conducted semi-structured interviews with relevant informants within the three sectors analysed in the three case studies that constitute the main part of this study – that is, the judiciary, the education sector and the health sector. Within each sector three categories of respondents were approached: government officials (political leaders, management); public sector employees (such as school teachers, hospital staff, and ministry administration). Furthermore, the research team in Gaza also conducted interviews for the contextual topics presented in the three following chapters of this report – the structure of the Gaza government, the Gaza-Ramallah relationship and the Gaza economy. Two of the researchers – Dr. Hani Albasoos and Mahmoud El Madhoun – are affiliated with the Gaza-based House of Wisdom Institute for Conflict Resolution and Governance, which, due to its good relations with the Gaza government, was able to facilitate for the researchers’ easy access to governmental sources. The research team consisted also of political scientist professor Dr. Mkhaimar Abusada at Al-Azhar University of Gaza and Dr. Fakhr Abu-Awwad, Director General at the Academy for Security and Strategic Studies in Gaza and professor at the Islamic University of Gaza.

Furthermore, field work was conducted by the PRIO researcher and editor of this report in the West Bank, where officials in the Ramallah government who have been involved in administering the public services provided in Gaza were interviewed. This approach ensured that both the perspective of the Ramallah government and that of the Gaza government were included in the analysis of the three public sectors. In addition, given the presumed sensitivity of some of the topics at hand, we had a small number of questionnaires distributed by the help of an international agency in Gaza, to ensure full anonymity on the part of the respondents as a supplement to the interviews conducted face to face.

1.4. The chapters of the report

The chapters of the report are organised thematically, with the three first chapters presenting contextual issues, and the three last chapters consisting of three separate case studies of the public services. Following this introductory chapter, Chapter 2 presents a brief overview of the main institutions of the Gaza government and of the main impact of the Hamas takeover on their functions. In Chapter 3 the thorny relationship between the Gaza government and the Ramallah government is explored, trying to discover what channels of communication and coordination are still operative between the two competing administrations. Then the main elements of Hamas’s management of the economy are discussed in Chapter 4, focusing on the de facto government’s efforts to generate income; its responses to the challenge of the embargo; and its role in the substantial smuggler business that has emerged. Subsequently, in Chapter 5 follows the first of three case studies on public services in Gaza under Hamas, namely on the

⁵ Author’s interviews with Hamas leaders in Damascus, Beirut and Gaza, August 2007 and March 2008.

⁶ International Crisis Group, “Palestine divided,” Middle East Briefing No 25, 17 December, 2008.

⁷ Fafo, “Key results from an opinion poll in the West Bank (February) and Gaza Strip (May) 2010”. Fafo, 2010, http://www.fafo.no/ais/mideast/opt/opinionpolls/palestinian_opinions_2010/Summary_2010_EN.pdf.

judiciary, written by Hani Albasoos, who has investigated the total lapse of the previous courts and their subsequent re-establishment by Hamas. His findings are based on interviews with government officials and employees and users of the court system. The second case study, presented in Chapter 6, covers the education sector and is written by Mkhaimar Abusada and Fakhr Abu-Awwad. Through interviews with teachers, ministry official and parents of school pupils, the authors document the devastating effects of the upheavals in Gaza, including the teachers' strike and the subsequent response by Hamas of employing thousands of inexperienced teachers. Finally, in Chapter 7, the effects of the crisis on the health sector are explored by Mahmoud El Madhoun, who has investigated the changes within the hospitals and the Ministry of Health. The team in Gaza, consisting of Al-Basoos, Abusada, Abu-Awwad and El Madhoun, also conducted separate rounds of fieldwork interviews for the preceding chapters on the structure of the government, the Gaza–Ramallah relations, and the Gaza economy. Finally, a critical and analytical review of the findings is offered in the concluding chapter.

2. The structure of the Gaza government

The de facto ruler of the Gaza Strip since 14 June 2007 has been the Hamas government led by Ismail Haniyeh,⁸ who defied President Abbas's dismissal of him as prime minister after the takeover in Gaza. The Gaza government inherited the institutions of the Palestinian Authority, which had been built up since 1994. Hamas has preserved the structure of these institutions, rather than setting up new, parallel institutions. The Islamist movement has, however, systematically secured a firm control over the government institutions by replacing the officials at the management level in some ministries – or the entire staff in others – with Hamas affiliates. Hamas officials interviewed for this study have consistently sought to justify any decision affecting the structure of the government by referring to legal arguments and the Basic Law.⁹

After some months of paralysis within the public administration following the takeover, Hamas secured firm control over all branches of government authority in Gaza.¹⁰ The cabinet of Haniyeh – or the Council of Ministers, as it is labelled in the official website of the Gaza government¹¹ – oversaw the work of the ministries; its decisions were sanctioned by a minimised version of the PLC as an exclusive Hamas body; and the judiciary was revived, handling both civil lawsuits and criminal charges. At the local level, the Gaza government complemented its power by dissolving Fatah-controlled municipality councils and appointing councils consisting of Hamas members.¹² Yet another pillar of support was the Hamas movement and a network of Hamas-affiliated associations of different kinds. Below is an overview of the status and changes in these key components of the Hamas rule in Gaza.

2.1. The Hamas cabinet

The cabinet of Prime Minister Ismail Haniyeh consisted initially of the five Hamas ministers from Gaza in the preceding National Unity Government (NUG). Six other Hamas ministers of the NUG, who could not retain any role in the Gaza government as they were living in the West Bank, were subsequently replaced by Hamas figures in Gaza. The remaining ministries of the NUG, which had been led by non-Hamas leaders, were distributed among the eleven ministers of the new cabinet, making most of the ministers in charge of two or three portfolios each. Ismail Haniyeh, for instance, was responsible for the two key portfolios of Finance and Foreign Affairs, in addition to being the prime minister (see complete list of ministers in the Gaza Government in Appendix A). The Gaza government holds its meetings on a weekly basis, every Tuesday.¹³

2.2. The ministries

Most ministries have undergone a complete transformation, as the previous staff has been replaced with new, Hamas-appointed employees. Also in those ministries in which the previous employees to a certain extent have remained – basically in the health and education sector – the key positions at the management level have been consistently filled with Hamas loyalists.

The major wave of replacements followed prolonged strikes in the public sector organised by Fatah and backed by the Ramallah government protesting the Hamas's military takeover in Gaza. Hiring new staff appeared to a large extent to be a reactive measure to save the public

⁸ Ismail Haniyeh was also prime minister in the first Hamas government (March 2006–March 2007) and the succeeding National Unity Government (March–June 2007).

⁹ This is consistent with the author's previous interviews with Hamas leaders in Gaza, August 2007 and March 2008.

¹⁰ International Crisis Group, "Ruling Palestine I: Gaza under Hamas," Middle East Report No.73, 19 March, 2008.

¹¹ The Gaza Government runs its own website at: <http://www.pmo.gov.ps/> (Arabic only).

¹² In a number of municipalities the local elections were disrupted by irregularities and never completed.

¹³ Information about the cabinet ministers provided by the House of Wisdom in Gaza.

services from collapsing rather than an offensive campaign to oust the original employees. Ramallah's order to its employees to stay home offered Hamas an opportunity to replace the staff with Hamas people.¹⁴ In many cases, many employees confirmed that they were indeed allowed back to work after the strike ended. However, for managers and key administrative personnel, it was a different story, as they were systematically removed from their positions and offered other posts.¹⁵

The impact of the takeover in each ministry has depended on what sort of activity the RG has maintained. Ramallah still provides the salaries for most of the operating staff within three ministries: social affairs, health, and education.¹⁶ In these sectors, most of the staff has resumed their work after a prolonged period of strikes, with the acceptance of the RG, which continued to pay their salaries. In the other ministries, almost all the staff paid by the RG remains absent from their workplaces on direct instructions from Ramallah. In these ministries, the absent staff has largely been replaced by Hamas-appointed personnel. While the absent staff has continued to receive salaries from the RG, the new staff is paid by the Gaza government.¹⁷ The public employees thus consist of three main categories: one is those who work and still receive their salaries from the RG; the other category consists of those who stay at home, also with full salaries from the RG; and the third category is those employed and paid by the Gaza government.

Although Hamas has managed to raise funds for paying salaries to its staff from external and domestic sources, the limited funding has forced the Gaza government to reduce the number of public employees dramatically. For instance, of the 817 original staff in the Ministry of Social Affairs, 89 remained in their positions after the crisis of June 2007; the rest obeyed the orders from Ramallah to stay home. The Gaza government employed 238 new staff in order to run the most basic functions of that ministry. In the Ministry of Transportation, only 26 of 800 employees continued their work, while the Gaza government added 110 new personnel. Similarly, in the Ministry of Foreign Affairs, 15 of 172 employees chose to defer to the orders by Ramallah to stay home, and they were joined by six new staff appointed by Hamas. These figures, obtained from the various ministries in Gaza, give an impression of the dramatic impact of the personnel reshuffle that took place within the governmental sector after Hamas's takeover.¹⁸

Some of the services have become less important or irrelevant due to the new situation: the Ministry of Tourism was cancelled for the obvious reason that no tourists were going to Gaza. The Ministry of Information, furthermore, was downgraded from a ministry to the status of an information office. The Ministry of Foreign Affairs was badly affected, as most countries cut off international relations with the isolated government in Gaza, and most embassies closed their offices or left only a few local staff to take care of their interests in Gaza. Also within each of the other ministries there used to be a department for international cooperation, which also lost their function as international relations dried out.¹⁹

2.3. The Palestinian Legislative Council

The parliamentary body of the PA, the Palestinian Legislative Council (PLC), consists of 132 representatives who were elected in January 2006 when Hamas won by a landslide, ensuring a solid majority of 74 seats. Immediately after Hamas's electoral victory, the functions of the PLC were severely hampered by Israeli interference in the freedom of movement of the legislators. Owing to Israeli closures, the PLC was unable to meet in one location, and sessions were held in Ramallah and Gaza simultaneously, communicating by video transmittance between the two

¹⁴ Interview with Eyad El-Sarraj, president of Gaza Community Mental Health Programme and previous leader of the Palestinian Independent Commission for Citizens Rights, Gaza, March 2008.

¹⁵ Interview with Qasem A. Maani, Director General of international Cooperation, Ministry of Health, Ramallah, November 2009.

¹⁶ Interview with Yousef Al Zamer, Accountant General of the PA, Ramallah, November 2009.

¹⁷ Interview with Yousef Al Zamer, Accountant General of the PA, Ramallah, November 2009.

¹⁸ Figures collected from the ministries in Gaza by House of Wisdom researcher Mahmoud ElMadhoun.

¹⁹ *Ibid.*

locations.²⁰ A more fundamental problem was Israel's detention of 45 Hamas legislators, who were thus barred from attending the PLC sessions – consequently depriving Hamas of the ability to translate its parliamentary mandate into political action.²¹

After Hamas's military takeover in Gaza in June 2007, the PLC became paralysed and has remained inactive as a unified body. In the absence of a functioning legislative power, President Abbas has been able to rule by the power of presidential decree, which will have to be reviewed by the PLC as soon as it is able to get together. Furthermore, the cabinet of Salam Fayyad administers the governmental institutions based in Ramallah in spite of lacking the constitutionally required vote of confidence by the PLC.²² Obviously, both the president's rule by decree and the legitimacy of the Fayyad cabinet would be challenged if the PLC were able to get together and ensure the power of the legislators. The constitutional crisis is further exacerbated by the fact that the legal term, according to the Basic Law, has expired for both the president (January 2009) and the PLC (January 2010).²³

Hamas has coped with the paralysis in the legislation by reviving the Gaza part of the PLC as an exclusive Hamas body. This incomplete PLC has been joined by 26 Hamas members and one independent lawmaker.²⁴ In a special measure to overcome the problem of detained members and the isolation from the West Bank, the "Gaza PLC" has established the practice that every PLC member in Gaza has the authority to represent one or two of those PLC delegates being detained in Israeli prisons, whereas other lawmakers prevented from being physically present may participate and vote by phone. Since its first session in September 2007, the Gaza PLC has voted to cancel the decrees issued by President Abbas and has passed several legislation bills as well as the yearly budgets of the Gaza government. The Gaza PLC holds sessions every 2 weeks, whereas the committees of the PLC have regular meetings every week.²⁵

2.4. The judiciary

The judiciary in Gaza is apparently the institution that has undergone the most comprehensive transformation after the Hamas takeover. Like what happened in the police sector, the courts were subjected to complete evacuation of their previous staff, causing the judiciary to be paralysed for several months in 2007/2008. Hamas responded by dismissing the judges, the prosecutors and the attorney general and appointing replacements in all positions. The courts were subsequently reopened and started passing sentences in accordance with Palestinian laws, though accepting the legislative amendments passed by the sessions of an incomplete PLC held in Gaza.

There is one legal point worth noting in the transformation process of the courts which has been different from the measures taken in the other fields of government. With regard to the ministries, Hamas argued that it took over existing institutions of the PA in accordance with the prerogatives of an elected government rather than establishing new, parallel institutions. However, in the case of the judiciary, Hamas deviated from this path, as it took the step of establishing a new institution parallel to the High Judiciary Council, which oversees the functions of the courts. Owing to the constitutionally guaranteed independence of the judiciary, the Gaza government had no legal way to demand its compliance. On realising its limitations in enforcing its will on the High Judiciary Council, the Gaza government set up its own

²⁰ Ma'an News, "PLC session opens via video conference between Ramallah and Gaza due to Israeli travel restrictions," 18 February 2006, <http://www.maannews.net/eng/ViewDetails.aspx?ID=183261>.

²¹ Interview with Jamal Iskaik, PLC member from Hamas, Gaza, 23 August 2007. See also Maan News, "Israel continues illegal sentences of Hamas PLC members; extends three terms," 5 May, 2009. <http://www.maannews.net/eng/ViewDetails.aspx?ID=210319>.

²² Paragraph 79 of the Basic Law requires that the prime minister and any other minister receive the approval by the PLC prior to taking office. A dismissed government remains in power as a caretaker cabinet until another government has received the vote of confidence of the legislators. The Basic Law is <http://www.palestinianbasiclaw.org/2003-amended-basic-law>.

²³ Nathan Brown, "Palestinian Presidential Elections," Carnegie Endowment for International Peace. Washington DC, July, 2008, http://www.carnegieendowment.org/files/brown_palestine_elections.pdf.

²⁴ Mahmoud ElMadoun's interview with Abdelkader Abu El-Nour, Director General of the PLC Vice Speaker's Office, Gaza, December 2009.

²⁵ Mahmoud ElMadoun's interview with Abdelkader Abu El-Nour, Director General of the PLC Vice Speaker's Office, Gaza, December 2009.

institution, the High Justice Council, to oversee the re-establishment of the courts in Gaza. The functions and performance of the new judiciary is explored in depth in Chapter 5.

2.5. Law enforcement: the new Gaza Police

The core of the new Hamas police in Gaza was the Executive Force (*Tanfithiya*), which was a police unit set up by the first Hamas government already in April 2006 in a response to the fact that the PA security forces refused to cooperate with the Interior Ministry under Hamas.²⁶ Although President Mahmoud Abbas refused to sanction the new Hamas-loyal police force, it conducted policing duties as a body parallel to the Fatah-loyal civilian police for more than a year before recurring violent clashes between the two forces, backed by their respective partisan militias, finally led to the demise of Abbas's control of Gaza.

The previous security personnel were ordered by President Abbas to stay home from the first day of Hamas's military takeover. This move facilitated a quick completion of the enforced "transfer" of power as Hamas forces gained complete access – without further bloodshed – to the infrastructure of the previous police, including stations, vehicles, communication equipment and weaponry.²⁷

The Executive Force, which counted some 5,800 armed men, was organised into six divisional districts in the Gaza Strip, with an administrative structure similar to that of the Palestinian Civil Police. In an apparent move to widen its recruitment basis and create an image of an inter-factional unit, some members from other major political factions were allowed to join it, although the majority came from Hamas and its armed wing, Izzedin al-Qassam Brigades.²⁸

In October 2007, the Executive Force was officially dissolved and subsequently completely integrated into the pre-existing PA Civil Police structures. By this step, Hamas signalled that it did not run a police force outside the framework of the PA, but within it, claiming to execute law enforcement in accordance with its responsibilities as a legitimate government.²⁹

Hamas succeeded in ensuring an almost immediate improvement of internal security after the takeover, ending months of chaos and widespread lawlessness throughout the Gaza Strip.³⁰

However, both Palestinian and international human rights' organisations have documented grave and widespread violations of the law and excessive human rights abuse against political opponents by the Hamas police. Especially Fatah members appear to have been targeted and subject to arbitrary arrests, extra-judicial killings and torture. The freedom of assembly and the freedom of the press have also been increasingly violated. There is furthermore no public scrutiny of the Hamas police force and no proper mechanisms for complaints and internal investigation, in accordance with these human rights organisations.³¹

The Hamas police have also been attributed a "moral policing" aspect. There have been complaints of traffic units stopping couples in cars to demand proof of marriage. In 2008, the police announced that a police permit was required to hold weddings and festivals, to avoid moral infringements. Such regulations and practices may indeed be interpreted as expression of an Islamist agenda, as Milton-Edwards has argued.³²

²⁶ International Crisis Group, *After Mecca: Engaging Hamas*, Middle East Report No 62, 28 February 2007, p 11.

²⁷ Interview with an officer in General Intelligence of the PA, who had evacuated the police compound before it was taken over by Hamas, Gaza, August 2007.

²⁸ Beverley Milton-Edwards, "Order Without Law? An Anatomy of Hamas Security: The Executive Force (*Tanfithiya*)," *International Peacekeeping*, Vol. 15, No.5, November 2008, p. 666.

²⁹ Beverley Milton-Edwards, "Order Without Law? An Anatomy of Hamas Security: The Executive Force (*Tanfithiya*)," *International Peacekeeping*, Vol. 15, No.5, November 2008, p. 668.

³⁰ Interviews with Gaza citizens, Gaza, September 2007 and March 2008. See also International Crisis Group, "Ruling Palestine I: Gaza under Hamas," Middle East Report No.73, 19 March, 2008. p. 10.

³¹ Human Rights Watch, "Under Cover of War. Hamas Political Violence in Gaza," New York, April 2009; Palestinian Centre for Human Rights, "Annual Report 2008," Gaza, 2009. The latter report also refers to grave cases of abuse by PA police cracking down on Hamas members in the West Bank.

³² Beverley Milton-Edwards, "Order without Law? An Anatomy of Hamas Security: The Executive Force (*Tanfithiya*)," *International Peacekeeping*, Vol. 15, No.5, November 2008, p. 673.

In conclusion, the Gaza government seems to remain in firm control on the ground by the help of an effective police force. While Hamas was initially denied control through the existing police, it succeeded, first, in establishing its own police force alongside the official security forces, and later in replacing the pre-existing structures.

2.6. Local governance

Hamas has entrenched its control at local governance through several channels. A key institution is the municipalities, which are fairly decentralized and almost economically self-sufficient. In Gaza, municipalities collect property taxes directly and keep 90 percent of revenues, while transferring only the remaining 10 percent to the central government.³³ Many of the councils in the Gaza Strip were already controlled by Hamas after its strong showing in the local elections in 2005. However, in several towns and villages, the election process was never completed owing to claims of irregularities. After the takeover, the Gaza government appointed new local councils for major towns where elections had not been held.³⁴ Furthermore, when the electoral term ended in 2009, Hamas-controlled councils had their terms extended by the Gaza Ministry of Local Government, while members of Fatah-controlled councils were replaced with Hamas affiliates.³⁵

At the local level of governance is also the traditional institution of *mukhtar*, family headmen, representing big families and clans before the central authorities. Having been licensed in the 1990s by the late PA President Yasser Arafat, many of the *mukhtars* were seen as Fatah-affiliated and were non-cooperative toward Hamas. They represented thus a potential challenge for the new rulers in Gaza, and Hamas took steps to reduce the strength of the clans by, among other things, trying to co-opt the family elders.³⁶ One step in co-option was to offer patronage by appointing new *mukhtars*: by the end of 2009 the Gaza government had appointed 75 new *mukhtars*, adding to the 638 *mukhtars* already registered in the Ministry of Local Governance.³⁷ A Hamas source emphasised, though, that the authority of the *mukhtars* had decreased due to the strengthened role of the civil police as well as the well-functioning local reconciliation committees.³⁸ Furthermore, Hamas was willing to confront the problem of widespread possession of PA-issued weapons among the clans and conducted on occasion enforced arms collection if the family elders did not co-operate.³⁹

One institution that supplements the power of Hamas power at the local level is the *Rabita't al-Alam al-Islami* – the Muslim Scholars' League, which is a Palestinian branch of an international association. The head of the League in Palestine, Marwan Abu-Ras, is a Hamas legislator in Gaza with the authority to issue *fatwas* – religious verdicts. The *Rabita* oversees a network of local reconciliation committees – *sulha* – which are active in solving civil disputes outside the courtrooms. In the absence of a functioning judiciary in the aftermath of the Hamas takeover, these reconciliation committees filled an important role as a temporary substitute for the courts.⁴⁰

Another Islamic institution deeply rooted locally is the *zakat* committees, of which Hamas also has taken control. The *zakat* committees have an important social function by distributing charity and alms to the poor.⁴¹

³³ UNDP, "Local Government: Occupied Palestinian Territories," UNDP – Programme on Governance in the Arab Region (undated), <http://www.pogar.org/countries/theme.aspx?cid=14&t=6>.

³⁴ Palestinian Centre for Human Rights, "Annual Report 2008," Gaza, 2009, p. 72.

³⁵ House of Wisdom researcher Mahmoud AlMadhoun.

³⁶ International Crisis Group. "Inside Gaza: The Challenge Of Clans and Families," Middle East Report Number 71, December 20, 2007, p. 16.

³⁷ Interview with Hosam Mahdi, Director of the Minister's Office, the Ministry of Local Governance, Gaza, December 2009.

³⁸ Interview with Hosam Mahdi, Director of the Minister's Office, the Ministry of Local Governance, Gaza, December 2009.

³⁹ International Crisis Group. "Inside Gaza: The Challenges of Clans and Families," Middle East Report Number 71, December 20, 2007, p. 16.

⁴⁰ Interview with Marwan Abu Ras, Head of Palestinian Scholars' League, Gaza, August 2007.

⁴¹ Beverley Milton-Edwards, 2008. "The ascendance of political Islam: Hamas and consolidation in the Gaza Strip," *Third World Quarterly*, vol.29, no.8, pp. 1585-1599.

2.7. The Hamas movement

Beyond the formal structures of the governmental institutions, a central pillar of the power in the Gaza government remains the strong backing the rulers draw from the mass movement of Hamas. Hamas is a grassroots organisation with a broad popular following, running a network of popular organisations, welfare and charity associations, medical institutions, trade unions, women's organisations and the like. Many of these organisations have provided supportive services at a time of crisis in the public services of the ministries.⁴² In addition to these affiliated organisations stands the Hamas organisation itself with its numerous dedicated members, organised at street level through a local "leader of the neighbourhood" (*amir al-manteqa*) covering almost every street and block in the cities and refugee camps of the Gaza Strip. Many of these areas were in reality controlled physically by the armed wing of Hamas, the Izzedin al-Qassam Brigades, rather than by the PA police, years before the Hamas takeover.⁴³ This means that the fundament of the "Hamas state" was very much in place even before the Hamas "coup" from the top of the PA institutions. When it comes to public services, the activists were furthermore crucial, as many of them volunteered to fill many of those posts that had been left vacant due to strikes among public servants staged by Ramallah. The duality of Hamas's power from the top and from below helped the transition of control to Hamas and secured the continuation of key public services. But the close relationship between the Hamas movement and the Hamas government became a point of criticism from citizens who expressed confusion about whether it was the government or the movement that was actually in charge of policy-making and implementation on the ground: the line between responsible government and the "street justice" of the activists appeared on many occasions as blurred.⁴⁴

According to Yezid Sayigh, the Shura Council of Hamas in Gaza is acting like a shadow government, ensuring that Haniyeh's policies are in harmony with Hamas's broader agendas. The Shura is a well-established institution that is elected through internal elections, most recently held in 2008.⁴⁵ The existence and involvement of such parallel structures in governing Gaza appear to constitute a reasonable explanation for Hamas's relative success in monopolising control of governance functions within a few months of its takeover.⁴⁶

⁴² Interviews with representatives of the Islamic associations *Mujamma* and *Salah*, Gaza, March 2008.

⁴³ Interview with an *amir al-manteqa* (anonymous) in Zeitoun neighborhood, Gaza City, March 2007; Are Hovdenak, "Hamas in transition: the failure of sanctions," *Democratization*, 16:1, 59–80, February 2009, p. 64.

⁴⁴ Interview with Palestinian NGO activist (anonymous), Gaza, March 2008.

⁴⁵ Yezid Sayigh, "Hamas Rule in Gaza: Three Years On". Middle East Brief No 41, Crown Center for Middle East Studies, Brandeis University, March 2010, <http://www.scribd.com/doc/28978427/Hamas-Rule-in-Gaza-Three-Years-On>.

⁴⁶ Beverley Milton-Edwards, "The Ascendance of Political Islam: Hamas and Its Consolidation in the Gaza Strip," *Third World Quarterly* 29, issue 8, November 2008, p. 1591.

3. The strained Gaza–Ramallah relationship

The strained relationship between Ismail Haniyeh’s Hamas government in Gaza, on the one hand, and President Mahmoud Abbas of the Fatah movement and the government of Salam Fayyad in Ramallah, on the other, has been dominated by rivalry over constitutional legitimacy, political control of governmental institutions, and access to economic resources. As recurring rounds of negotiations have failed to produce an agreement on the conditions for reconciliation, the division has only deepened further, indicating that a long-term or even permanent political separation between the West Bank and the Gaza Strip cannot be ruled out as a possible scenario.

At the core of the dispute between Haniyeh and Fayyad is the basic question of who is constitutionally entitled to be the head of a legal government. President Abbas has claimed that under the Basic Law, the president has the right to appoint an “emergency cabinet”.⁴⁷ However, legal experts have emphasised that, although the president may dismiss a prime minister according to the Basic Law, a new cabinet can only take office after a vote of confidence has been obtained from the PLC, which the Fayyad cabinet has failed to do, given the Hamas majority in the PLC (which has in any case been inactive since the takeover). In the case of the president’s dismissal of the prime minister, the latter would still function as the head of a caretaker government until a new cabinet has obtained the necessary majority in the PLC.⁴⁸ This interpretation provides Hamas with legal justification for its claims of being a caretaker government.

Hamas has sought to consolidate its role as a functioning and autonomous power by resisting the authority and interference of the Ramallah government in the administration of the Gaza Strip. But at the same time, Hamas remains dependent on some channels of communication to the outside world as long as few countries accept dealing with Hamas. Several services in Gaza can only be provided with the help of Ramallah’s involvement: obtaining internationally recognised passports and exam certificates that are accepted abroad require official stamps from Ramallah, and import of goods and movement of people across the Israeli border can also only be done with the involvement by the Ramallah government or international organisations.

3.1. Channels of communication

Sources in Gaza and Ramallah interviewed for this study claimed consistently that direct contact between the two rivalling governments is virtually non-existent at the political level. However, the same sources confirmed that the authorities in Gaza and Ramallah have indeed established mechanisms of co-ordination that ensure basic public services in the fields of education, health and social services for the benefit of the population in Gaza. The degree of contact varies between the different public sectors, and the contact is limited to the sectors in which Ramallah is still involved financially in providing services. In the judiciary, for instance, the Gaza–Ramallah relations have undergone a complete breakdown: it is against the regulations for the judicial employees in Ramallah to have any contact whatsoever with the new judiciary set up by the Gaza government.⁴⁹ By contrast, in the health and education sectors there are mechanisms for handling a minimum of information sharing, including communication of need assessments. The channels of communication facilitating such coordination include lower-level ministry officials, third-party involvement and personal relationships.

⁴⁷ Tonje Merete Viken, “Struggles for power and unity. Constitutional designs in the Palestinian Authority,” MA thesis, Oslo: Faculty of Humanities, University of Oslo, spring 2008, p.95.

⁴⁸ Nathan J. Brown, “What can Abu Mazin Do?” Carnegie Endowment for International Peace, 2007, <http://www.carnegieendowment.org/files/abumazinupdatejune1507.pdf>. This interpretation was also supported by two of the authors of the Basic Law, Attorneys Anis al-Qassem and Yugin Qatran. See Tone Merete Viken, 2008, p. 97.

⁴⁹ Interview with Ali Abu Diak, Deputy Assistant, Ministry of Justice, Ramallah, November 2009.

The day-to-day contact is based largely on communication between technical and administrative staff in the Gaza ministries and their counterparts at the same level in the Ramallah ministries. Within this framework, Ramallah follows the principle of communicating only with those officials they recognise as lawful representatives of the PA, meaning the original staff from before the takeover.⁵⁰ Hamas has apparently realised the value of keeping some of these Ramallah-loyal officials in their positions and silently accepting that they function as liaisons to the Ramallah government. Among the veteran ministry officials who were employed during the time of Fatah rule there are, furthermore, some individuals who are long-time members or supporters of Hamas. Having the privileged position of being fully trusted by Hamas while maintaining their ties with Ramallah, they found themselves in a unique position to take up the function as the main link in the communication between Ramallah and Gaza.

Gaza–Ramallah coordination is also in some cases facilitated by the involvement of international organisations, including UN bodies. Most of these organisations coordinate their work with the Ramallah government at the political level and with the Gaza government at the technical level to ensure efficiency and transparency and to minimise duplicity of aid. For instance, in the education sector UNICEF chairs a so-called “education cluster” in which UNRWA, UNESCO and other key contributors to the primary education system meet regularly with officials from the Gaza Ministry of Education and Higher Education.⁵¹ UNRWA has coordinated the entry of paper for printing textbooks not only for UNWRA schools but also for public schools. A UNRWA official in Gaza confirmed that “In terms of practicalities, UNRWA has high-level relations with the PA in Ramallah and deals as necessary with lower-level technical officials in the ministry offices in Gaza.”⁵² Although these organisations commonly reject having any intermediary role, they still constitute a *de facto* channel of coordination between the two authorities in the sense that they have communicated needs and provided for supplies to enter the besieged Gaza Strip.

3.2. Areas of coordination

Both the Gaza government and the Ramallah government have apparently learned to cope with the reality of political division by, on occasions, accepting pragmatic compromises to ensure the continuation of vital public services for the people in Gaza. Below are some cases that illustrate the sensitive topic of coordination between Ramallah and Gaza.

3.2.1. Medical supplies

On the critical issue of medical supplies there is close cooperation between the Gaza branch and the Ramallah branch of the Ministry of Health. The procedure is that the director general of the central drug store in Gaza submits the requests for medical supplies to the ministry in Ramallah in accordance with the needs reported to him by each of the Gaza hospitals. In this case, the communication has been facilitated by the fact that the responsible director general in the central drug store in Gaza happens to be a known Hamas supporter although he is a veteran official in the MoH from the era of Fatah rule.⁵³ He was not fired when Hamas took over and he did not lose his salary from Ramallah. The trust he earns from both sides empowered him to deal directly with the political leadership in Gaza and in the West Bank. He has also been able to travel to Ramallah to have high-level coordination meetings there.⁵⁴

There has furthermore been full cooperation at the technical level between the corresponding units in the ministries of Gaza and Ramallah with regard to a broad immunisation program. According to ministry officials in Ramallah, the Gaza government depends on the role of those

⁵⁰ Interview with Wasem A. Maani, Director General for International Cooperation, Ministry of Health, Ramallah, November 2009.

⁵¹ E-mail correspondence with a UN official in Gaza, March 2010.

⁵² E-mail correspondence with a UNRWA official in Gaza, March 2010.

⁵³ Interview with Omar Amin Al-Nasser, Director General of Public Relations, Ministry of Health, Ramallah, November 2009.

⁵⁴ Interview with ICRC officer, Jerusalem, November 2009.

functionaries who remain loyal to Ramallah as a channel of communication and therefore is not interested in removing them from their positions.⁵⁵

The transportation of medical supplies from Ramallah to Gaza is another task that the Gaza government cannot handle by itself, as it needs coordination with Israel to obtain permits to cross the Israeli crossings at the Gaza border. The transportation is organised by international organisations such as the UN and the Red Cross.⁵⁶

3.2.2. Patients' Referral Committee

A case of confrontation between Ramallah and Gaza that eventually was solved by a compromise was the work of the Referral Abroad Department of the Ministry of Health, responsible for ensuring treatment abroad for special cases that cannot find proper medical care in Gaza. Several thousand patients are transported out of Gaza every year for medical treatment in the West Bank, Israel, or neighbouring countries.⁵⁷ The department's function was disrupted when Hamas militia entered its offices and ordered the staff to leave in March 2009.⁵⁸ Hamas then tried to organise on its own the referrals of patients to Jordan, Egypt and even to Israel. However, none of these countries was willing to deal with Hamas on this matter.⁵⁹ After more than a month of deadlock – during which several patients died while waiting for urgent treatment⁶⁰ – civil society organisations intervened and successfully mediated a compromise between Ramallah and Gaza. The Referral Abroad Department was restructured, and Ramallah again took the responsibility of coordination with Israel. As part of the compromise deal Hamas was promised that one Hamas-affiliated doctor would be included in the committee in the future. Furthermore, owing to Ramallah's refusal to accept referrals signed by Hamas-appointed hospital directors, it was agreed that only the physician in charge of the patient and not the hospital director would sign the request for referral to the committee.⁶¹ Following this agreement there has been full cooperation between the director of the Patient Referral Committee in Gaza and the Patient Referral Committee in Ramallah. The Ramallah government covers all expenses for patients referred, in accordance with the agreement. In addition, the Gaza government does refer some patients to Turkey and Iran who are not covered by the Ramallah government.⁶²

3.2.3. Electricity

The electricity network of the Gaza Strip cannot be financed and operated without the cooperation between the PA in Ramallah and those controlling the ground in Gaza. The Gaza Electricity Distribution Company (GEDCo) is responsible for distributing the limited electricity that is partly provided through feeders from Israel and Egypt, and from Gaza's diesel-fuelled power plant. GEDCo is owned jointly by the municipalities (50%) and the Palestinian Energy Authority of the PA (50%).⁶³ As a result of the Gaza government's campaign to appoint Hamas loyalists to previously Fatah-controlled municipalities in 2008 and 2009, Hamas obtained a majority also in GEDCo's managing board through the local representatives, controlling five of eight board members.⁶⁴

⁵⁵ Interview with Qasem A. Maani, Director General of Public Relations, Ministry of Health, Ramallah, November 2009.

⁵⁶ Interview with Omar Amin Al-Nasser, Director General of Public Relations, Ministry of Health, Ramallah, November 2009.

⁵⁷ Interview with Omar Amin Al-Nasser, Director General of Public Relations, Ministry of Health, Ramallah, November 2009.

⁵⁸ Interview with Nabil Shawa, member of Referral Abroad Department, Gaza, December 2009.

⁵⁹ However, some private hospitals in Egypt agreed to receive patients referred by the Gaza government. Some patients were also sent from Gaza to Iran and Turkey. The Gaza government paid for these patients' treatment. Interview with Nabil Shawa, member of Referral Abroad Department, Gaza, December 2009.

⁶⁰ Palestinian Center for Human Rights, "10 people Die and Health Conditions of Hundreds Deteriorate as Gaza's External Medical Treatment Crisis Continues; PCHR holds Minister for Health in Ramallah Accountable and Calls on Palestinian President to Intervene," Press Release, Gaza, 19 April, 2009, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=1088:pchr-hold-minister-of-health-in-ramallah-accountable-and-calls-on-palestinian-president-to-intervene&catid=36:pchrpressreleases&Itemid=194.

⁶¹ Interview with Nabil Shawa, member of Referral Abroad Department, Gaza, December 2009.

⁶² Interview with Omar Amin Al-Nasser; interview with Nabil Shawa.

⁶³ Gisha, "Electricity Shortage in Gaza: Who Turned Out the Lights?" Tel Aviv: Gisha Position Paper, May 2010.

⁶⁴ Ibid.

Although the Gaza and Ramallah governments frequently traded accusations about the responsibility for recurrent and prolonged electric outages – especially after the EU in November 2009 discontinued its funding of diesel for the power plant – the two antagonists remained partners in GEDCo’s managing board.⁶⁵

3.2.4. The Tawjihi exam

In spite of the deep crisis in the education sector resulting from strikes, dismissals and employment of inexperienced replacement staff, the Gaza and Ramallah governments have managed to establish procedures for coordination on the implementation of the important *tawjihi* exam – the general secondary examination after 12 years of schooling. In the first exam after the takeover, in 2007, the Gaza government announced the *tawjihi* results without coordination with Ramallah, which led the Ramallah government to refuse approving the exam certificates. This created a serious problem for the students, as the Gaza-approved certificates were not recognised abroad.⁶⁶ The following year, Ramallah and Gaza agreed to coordinate all aspects of the exam, including the announcement of the results, which would be done simultaneously in Ramallah and Gaza by low-key officials rather than by the minister, as previously practiced. This arrangement solved the issue, and in 2008 and 2009 the Gaza students received valid certificates approved by Ramallah.⁶⁷

According to an official in the Ramallah education ministry, there is “close collaboration with the education system in Gaza, including some discussion with Hamas with regard to the *tawjihi* examination.” He considered, furthermore, this collaboration as crucial not only because of the certificate, but even more so because as long as the schools in Gaza adhere to the *tawjihi* exam, it limits Hamas’s ability to introduce their own curriculum. The official stressed that “this is a control mechanism in our hands that we use to prevent [Hamas] from creating any changes in the education system.”⁶⁸

3.2.5. Issuing passports

Among the many administrative procedures that were affected by the division of authority was the issuing of passports to Gaza residents. After the Hamas takeover, the Ramallah government demanded that Gazans should have their passports issued or renewed by the Ministry of Interior in Ramallah – not in Gaza as was practiced previously. Although the ministry in Gaza continued to issue passports, these were not accepted as valid travel documents by many countries. Consequently, people in Gaza had to submit their passport applications directly to Ramallah by mail or through private channels.⁶⁹ Hamas banned the widespread practice of applying for passports by mail and confiscated passports arriving from Ramallah for a period in 2009 but later reversed that decision and coped with the problem by ignoring the traffic.⁷⁰ Meanwhile, several private “passport service offices” were established in Gaza, run by previous employees in the Ministry of Interior, who handled and submitted passport applications to Ramallah. The owner of one such passport office explained that anyone who wants a new passport goes to a private passport service office in Gaza, supplies the required fees, and the papers are signed by previous employees of the Department of Passports [in the Ministry of Interior]. The documents are then carried to Ramallah by somebody who has the Israeli permit to travel. The documents are checked by the Security Department of Gaza Affairs in Ramallah to make sure that the person requesting passport is not from Hamas or working for the Gaza

⁶⁵ Gisha, 2010. “Electricity Shortage in Gaza: Who Turned Out the Lights?” Tel Aviv: Gisha Position Paper, May, p. 9.

⁶⁶ Interview with Fawaz Mujahed, Assistant Deputy Minister of Education and Higher Education, Ramallah, November 2009.

⁶⁷ Interview with Mohamed Abu Zeid, Deputy Minister of Education and Higher Education, Ramallah, November 2009.

⁶⁸ Interview with Basri Saleh, Assistant Deputy Minister of Education and Higher Education, Ramallah, November 2009.

⁶⁹ Amira Hass, “Passports are the latest weapon in the struggle between Fatah and Hamas,” Haaretz, 25 July, 2010, <http://www.haaretz.com/print-edition/features/amira-hass-passports-are-the-latest-weapon-in-the-struggle-between-fatah-and-hamas-1.303865>.

⁷⁰ Mohammed Omer, “A Trip to Nowhere: Gaza’s Passport Shortage Can Be a Matter of Life and Death,” Washington Report on Middle East Affairs, April 2010. <http://www.wrmea.com/component/content/article/349-2010-april/8820-a-trip-to-nowhere-gazas-passport-shortage-can-be-a-matter-of-life-and-death.html?tmpl=component&print=1&page=>

government. If approved by the security department, the Department of Passports issues the new passport and it is carried back to the private passport service office in Gaza.⁷¹

Apparently, Hamas coped with its impotence in this issue by silently accepting a de facto privatisation of a public service they are unable to provide due to lack of communication with Ramallah. It is also noteworthy that Hamas turned a blind eye to the fact that ex-functionaries of past governments maintained their role as providers of public services in a capacity as private individuals.

3.2.6. Hajj pilgrimage to Mecca

A symbolically important issue over which Gaza and Ramallah fought before finally accepting a sort of coordination was the arrangements for the *hajj* – the pilgrimage to Mecca. It is the PA Ministry of *Waqf* that normally handles the process of selecting pilgrims in accordance with quotas set by Saudi Arabia. Ahead of the first pilgrimage after the takeover, in December 2007, Ramallah and Gaza authorities battled over the mandate to select the pilgrims and to collect the registration fee. The PA arranged with Israel to allow some 2000 Palestinians from Gaza to travel to Mecca via Israel and Jordan, while Hamas – to the embarrassment of the Ramallah government – succeeded in coordinating directly with Saudi Arabia and Egypt the exit for additional pilgrims from Gaza via the Rafah crossing.⁷² The next year, Saudi Arabia turned its back on Hamas and provided visas only to pilgrims registered with the ministry in Ramallah while rejecting those who had registered with the Gaza ministry. Hamas responded by ordering its police to prevent pilgrims from approaching the border crossings; as a result almost no Gazans were able to perform the *hajj* in 2008. Finally, in 2009, the Ministry of *Waqf* in Ramallah and in Gaza decided to avoid confrontation and to coordinate with each other the selection process and the travel arrangements for the pilgrimage. According to a Gaza citizen who runs a “*hajj* office” – an enterprise that offers services related to the pilgrimage – a technical committee was set up with members both from the Gaza branch and the Ramallah branch of the Ministry of *Waqf*. The committee cooperated with the private *hajj* offices with regard to registration, visas and travel for pilgrims. Thus, the private *hajj* offices undertook the role of facilitating coordination between Ramallah and Gaza.⁷³ Eventually, the two authorities agreed on a list of 4500 participants who were able to travel to Mecca via Egypt in 2009.⁷⁴

3.2.7. Border crossings

The PA has been able to retain a tiny presence at the border crossings between Israel and the Gaza Strip, through the Ramallah-based Civil Affairs Authority which deals with Israel on permits and coordination of import and export of goods and passage of people. Their employees man the Palestinian side of the crossing points at Erez, Karni/Al Montar and Kerem Abu Salim. However, the PA has no presence at Gaza’s Rafah crossing to Egypt, which has been taken over by Hamas guards.⁷⁵ According to a PA General Intelligence Service officer from Gaza, the presence of the Civil Affairs Authority is accepted and supported by Hamas because they are not in a position to deal with Israel on these issues. “Our employees work at Erez and the other crossings and they get salaries from the PA – with the approval of Hamas. They work as coordinators between people in Gaza and the Israeli side,” the officer explained.⁷⁶ The presence of non-Hamas officials at the crossings makes it acceptable for Israel to operate the limited traffic that passes across the border.

The cases reviewed above represent a few examples of issues in which the level of coordination between Ramallah and Gaza has had a decisive impact on the services offered to the public. They also disclose to what extent each of the two rivaling governments balance on a fine edge between a desire for demonstrating authority and political prestige, on the one hand, and a

⁷¹ Interview with Salah Azzam, owner of private passport service office in Gaza, Gaza December 2009.

⁷² Ha’aretz, “Saudis welcome Meshal in bid to broker new Hamas-Fatah talks,” 10 December, 2007.

⁷³ Interview with the owner of a private office for pilgrimage services, anonymous. Gaza, December 2009.

⁷⁴ World Bulletin, “Palestinians unite for haj from Gaza under Israeli siege,” 6 November 2009. Available from: http://www.worldbulletin.net/news_detail.php?id=49586.

⁷⁵ Interview with Ali Abu Diak, Deputy Minister of Justice, Ramallah, November 2009.

⁷⁶ Interview with an officer from the PA General Intelligence Services who fled from Gaza to Ramallah following the Hamas takeover (anonymous), Ramallah, November 2009.

concern for displaying ability to deliver a minimum of public services to the people, on the other.

4. The Gaza economy

Hamas inherited an economy that had been in a state of crisis long before the movement's military takeover of the Gaza Strip in June 2007. Israeli restrictions on movement of goods and people had been in place to various extents since the early 1990s.⁷⁷ The Israeli closure regime was tightened dramatically after the outbreak of the intifada in 2000⁷⁸ and stiffened further with economic sanctions – which were largely accepted and adopted by the international community – after the legislative elections that brought Hamas to power in 2006. However, after Hamas's crushing defeat of the PA security forces loyal to President Abbas, the Gaza Strip was subject to a type of sanction not previously applied on the Palestinian Occupied Territories: the borders with Israel and Egypt were almost sealed off on a long-term basis, except for the entry of humanitarian aid necessary for preventing starvation and a humanitarian disaster. The embargo effectively suffocated the entire economic sector in Gaza. According to the Gaza Chamber of Commerce, 90% of local factories had to close down, as raw materials were no longer available. Commercial imports from Israel, which before the takeover included 9000 items, were reduced to less than 40 commodities of food and humanitarian material.⁷⁹ Similarly, the limited export of Gaza's agricultural products to Israel, West Bank and Europe came to a sudden standstill. As a consequence of these restrictions, 75 000 workers lost their jobs in the private sector,⁸⁰ contributing to a rise in the unemployment rate reaching 40% in 2008.⁸¹ A 2010 report from the International Labour Organisation says 75% of the population is food-dependent and 70% of the population lives under the poverty line of \$1 a day.⁸²

The Hamas government has absorbed a considerable portion of the vacant workforce in its rapidly growing bureaucracy and security force, which by 2010 had grown to include some 32 000 men and women.⁸³

4.1. Challenges of dependence

One of the main challenges Hamas faced in handling the disrupted Gaza economy was its lack of control over the main income sources. Importantly, the PA in Ramallah remained the biggest employer in the Gaza Strip also after Hamas's takeover, as Ramallah continued to pay regular salaries to its entire Gaza staff of 77 000 public employees.⁸⁴ Although most of these employees remained at home on the instruction of Ramallah and thus were of limited value as a workforce, the steady transfer of salaries to their bank accounts constituted a key source of capital influx into what was left of a market economy in Gaza. Another key employer was the United Nations Relief and Works Agency (UNRWA), which was able to uphold its activities in spite of the embargo and the internal Palestinian crisis. With its 10 000 local employees providing schooling and health services among the one million registered refugees in Gaza, UNRWA has been another major source of stable capital inflow to Gaza.⁸⁵

⁷⁷ Sara Roy, *The Gaza Strip: The Political Economy of De-Development*, Washington D.C.: Institute for Palestine Studies, 1995.

⁷⁸ Sara Roy, *Failing Peace: Gaza and the Palestinian-Israeli Conflict*, London: Pluto Press, 2007.

⁷⁹ Interview with Bassam S. Mortaja, Managing Director of Chamber of Commerce for Gaza governorates, Gaza, March 2008.

⁸⁰ Ibid.

⁸¹ The World Bank, "Palestinian Economic Prospects: Gaza Recovery and West Bank Revival. Economic Monitoring Report to the Ad Hoc Liaison Committee," 8 June, 2009,

<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/AHLCJune09Reportfinal.pdf>.

⁸² International Labour Office, "The situation of workers of the occupied Arab territories." Report of the Director-General, Geneva: ILO, May 2010, p.9, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_130550.pdf.

⁸³ Yezid Sayigh, "Hamas rule in Gaza: three years on," Middle East Brief No 41, Crown Center for Middle East Studies, Brandeis University, March 2010, <http://www.scribd.com/doc/28978427/Hamas-Rule-in-Gaza-Three-Years-On>.

⁸⁴ International Crisis Group, "Ruling Palestine I: Gaza under Hamas," Middle East Report No.73, 19 March, 2008.

⁸⁵ Interview with Yousef A. Al Zamer, Accountant General of the PA, Ramallah, November 2009.

⁸⁵ UNRWA, "Priorities, Programmes & Initiatives 2010," UNRWA Gaza Field Office, Gaza 2010, <http://www.unrwa.org/userfiles/2010042653732.pdf>.

With regard to the provision of public services, it is noteworthy that the transfer of salaries from Ramallah has not been limited to the majority who abstains from working but included also the most of the operative staff in the education and health sectors, even though the work is administered by the Hamas government. In the health sector, for instance, the Ramallah government paid the salaries of 7000 employees in the Gaza Strip in 2009. The Gaza government, for its part, covered the salary only for some 2000 additional health workers who were employed directly by the Gaza Ministry of Health after June 2007.⁸⁶ Similarly, in the education sector, in which the Ramallah government paid for 16 000 teachers in Gaza, the Gaza government paid their newly employed 2500 teachers and 500 administrative staff.⁸⁷ This “division of labour” between Ramallah and Gaza has left the latter in a position of economic dependence on the former. Ramallah is apparently well aware of the leverage it holds against Hamas by controlling the funds that go to the public sector in Gaza, mainly stemming from international aid. The deputy minister of Education in Ramallah admitted that the option of holding back funds for Gaza altogether as a means to force Hamas to capitulate has indeed been discussed within the ranks of Fatah: “We have radical elements among our people [in Fatah] who say we should stop financing the Hamas government in Gaza, because it is illegal.”⁸⁸ Such views were strongly represented at the Fatah Sixth General Conference, convened in Bethlehem in August 2009, by hardliners who argued for imposing “real sanctions” on Gaza, including cutting the 77 000 salaries paid by Ramallah to PA employees there.⁸⁹ However, so far, the prevailing strategy on the part of the Ramallah government remains to underpin its legitimacy with regard to the Gaza population by taking on the responsibility of providing basic services to the people.

The embargo, the external salaries to public employees and local employees of international agencies, and the humanitarian aid shipments were all factors that illustrated to what extent the Gaza economy had become subject to external forces far beyond the control of the government in Gaza.

4.2. Hamas responses

Hamas’s main strategy to counter the effects of isolation seems to have been to try to turn the embargo to its own advantage by securing economic and political control over the alternative channels of trade and commerce which emerged with the sudden evaporation of the formal economy. To Hamas’s advantage, the embargo damaged especially the private sector of businessmen who for years had fostered constructive contact with Israel through trade.⁹⁰ The rising smuggler-based business created a new, Hamas-controlled economic elite who built up its market shares on the direct expense of the previous business elite.⁹¹ This observation indicates that the embargo may actually have facilitated rather than hampered Hamas’s economic takeover in Gaza.

The main two components of the immediate Hamas response included, first, to establish control over – and expand – the smuggling business through underground tunnels at the town of Rafah at the Egyptian/Palestinian border and, second, to collect taxes on imported and smuggled goods as well as on domestic economic activity. In the longer run, however, the embargo turned out to be a catalyst for Hamas to revive its long-held vision of reducing Palestinian economic dependence on Israel. In the words of a middle-ranking Hamas operative in Rafah: “The siege is a blessing in disguise. It is weaning us off of Israel and helping us help

⁸⁶ Interview with Omar Amin al-Nasser, Director General of Public Relations, Ministry of Health, Ramallah, November 2009; interview with Hassan Abdel-Rahim Khalaf, Deputy Health Minister, Gaza, November 2009.

⁸⁷ During the strike in 2008, Hamas employed up to 4000 teachers on short-term contracts to replace those who were absent. Many of those had to leave when the strike was terminated and the PA-paid teachers returned. Interview with Riyad Sammour, Director General of Educational Administration, Ministry of Education and Higher Education, Gaza, November 2009.

⁸⁸ Interview with Muhammad A. Abu Zeid, Deputy Minister of Education and Higher Education, Ramallah, November 2009.

⁸⁹ International Crisis Group, “Palestine: Salvaging Fatah,” Middle East Report No 91, 12 November 2009.

⁹⁰ Chip Cummins, “Gaza Blockade Hampers Private-Sector Economy,” Wall Street Journal, 8 June, 2010. Available from: <http://online.wsj.com/article/SB10001424052748704749904575292733093715278.html>.

⁹¹ Yezid Sayigh, “Hamas rule in Gaza: three years on,” Middle East Brief No 41, Crown Center for Middle East Studies, Brandeis University, March 2010, <http://www.scribd.com/doc/28978427/Hamas-Rule-in-Gaza-Three-Years-On>.

ourselves.”⁹² Interestingly, when Israel took steps to ease the blockade in June 2010, Hamas responded with a set of protective measures: the Hamas minister of agriculture, Muhammad al-Agha, presented a long-term plan to make the Gaza Strip self-sufficient in food. To protect farmers from cheap Israeli products, imports of those vegetables that are also grown in Gaza would be restricted or banned. Hamas also stiffened customs and passport checks and limited exit permits for merchants.⁹³

In the meanwhile, Hamas remained highly dependent on external funds from friendly states and organisations worldwide. As banks in Gaza abode by the boycott of Hamas, most of the funds had to be smuggled into Gaza as cash through the tunnels.

4.3. The tunnel economy

Within weeks of the takeover in June 2007, Hamas’s military wing established oversight over the myriad of smuggler tunnels in Rafah which were controlled by various clans and political factions.⁹⁴ Hamas let some non-Hamas groups continue to operate tunnels but asserted restrictions as well as demands on what commodities to be imported. For instance, in December 2008, the Gaza interior ministry decreed that every tunnel must bring in one ton of cement per day. ⁹⁵ Hamas banned drugs and alcohol and tried to impose a monopoly on imports of weapons as a means to limit the access to armaments for rivaling groups. Guns, ammunition, personnel and cash were brought in through Hamas’s own tunnels, which were deeper, better built and more covert than the commercial tunnels.⁹⁶

The tunnel network became soon the lifeline of the Gaza economy.⁹⁷ World Bank officials estimated that by 2009, 80% of Gaza’s imports came through the tunnels,⁹⁸ which provided employment for some 15 000 Palestinians working at digging and operating the tunnels and transportation.⁹⁹ When the traders involved are included, the estimates of Gazans involved in the tunnel economy exceeds 40 000.¹⁰⁰ Ranging as the largest employer in the private sector,¹⁰¹ the tunnel business absorbed presumably a considerable portion of those who had lost their employment as a consequence of the embargo.

Goods from the tunnels penetrated the market in the Gaza Strip on a broad scale and thus counteracted the impact of the embargo. Whereas there was shortage of a range of basic commodities in late 2007, by 2009 the market was flooded with Egyptian substitutes – which in many cases were cheaper than the Israeli products. Fuel, clothes, food items, cement, motor bikes and even cars were smuggled underground from Egypt to Gaza. Although Gazans frequently complained that the cheap Egyptian products were of poor quality, the Egyptian substitutes brought a sense of normalcy to the besieged population.¹⁰²

A merchant involved in the textile industry in Gaza said many traders lost money and quit their jobs in 2007 and 2008. “But in 2009, business has been booming and much money invested,” he claimed. According to him, there were less than hundred tunnels before 2007, whereas after the embargo was imposed, the number of tunnels had multiplied to several hundreds in 2009. The increased supply of many commodities led eventually to a dramatic fall in prices and, consequently, to harder competition and less profit for the tunnel traders.¹⁰³ In that situation

⁹² Nicolas Pelham, “Diary: How to get by in Gaza,” London Review of Books, vol. 31, no. 20, 22 October, 2009, <http://www.lrb.co.uk/v31/n20/nicolas-pelham/diary>.

⁹³ The Economist, “Hamas is making ground again,” 24 June, 2010, http://www.economist.com/node/16439024?story_id=16439024.

⁹⁴ International Crisis Group, “Ruling Palestine I: Gaza under Hamas,” Middle East Report No.73, 19 March, 2008, p. 18.

⁹⁵ International Crisis Group, “Gaza’s unfinished business,” Middle East Report No. 85, 23 April, 2009, p. 31.

⁹⁶ Rex Brynen, “Gaza’s tragically peculiar economy,” *Foreign Policy*, 16 March, 2010.

⁹⁷ The smuggler activity through tunnels has existed at a lower scale at the border town of Rafah since the early 1980s.

⁹⁸ Nicolas Pelham, “Diary: How to get by in Gaza,” London Review of Books, vol. 31, no. 20, 22 October, 2009, <http://www.lrb.co.uk/v31/n20/nicolas-pelham/diary>.

⁹⁹ Interview with Saleh Basous, former government official.

¹⁰⁰ Harriet Sherwood, “Palestinian tunnel tycoons feeding demand for banned goods,” the Guardian, 15 December, 2009, <http://www.guardian.co.uk/world/2009/dec/14/palestine-israel-smuggling-in-gaza>.

¹⁰¹ Nicolas Pelham, “Diary: How to get by in Gaza,” London Review of Books, vol. 31, no. 20, 22 October, 2009, <http://www.lrb.co.uk/v31/n20/nicolas-pelham/diary>.

¹⁰² Telephone interviews with several Gaza residents in November 2009.

¹⁰³ Interview with textile tradesman and industry owner, Rafah, December 2009.

Hamas turned to protective measures and defended its market share by defining its own tunnels as “legal” – in contrast to non-Hamas tunnels, resulting in financial losses for the latter.¹⁰⁴ The vulnerability of the tunnel-based market was shown again in June 2010, when Israel relieved some of its restrictions on imports to Gaza, resulting in a further drop in demand for smuggled consumer goods from the tunnels.¹⁰⁵

Beyond building its own tunnels, Hamas reportedly encouraged people to invest in the smuggling business to counter the effects of the embargo.¹⁰⁶ As a typical tunnel cost around USD 70 000–100 000, this enterprise required huge investments. A private investment scheme was established to attract capital, and by the end of 2008 some 4000 Gazans had paid their savings to middlemen of tunnel owners, encouraged by prospects of returns of up to 25% per month, and supported by imams who recommended their worshippers to invest in the tunnels.¹⁰⁷ The whole investment affair, which turned out to be similar to a pyramid scheme, collapsed during Israel’s military campaign of 2008–9, resulting in enormous financial losses for the investors. The Hamas administration has confirmed that more than USD 100 million invested by Gazans was lost, whereas independent Gaza economists have estimated the losses to be closer to USD 500 million.¹⁰⁸ The Gaza government, which dismissed any responsibility for the fraud, arrested some 200 persons involved in the scam and offered some compensation to those who lost their savings. The affair illustrates the unpredictability and anarchistic nature of the underground economy, and most probably it contributed to Hamas’s subsequent decline in public opinion.¹⁰⁹

4.4. Taxation

Shortly after the Hamas takeover, President Abbas issued a decree exempting Gaza residents from paying taxes and fees in an apparent attempt to deprive Hamas of that income source.¹¹⁰ The Gaza government has subsequently struggled to establish its own tax collection system to underpin its economic fundament. Companies and donor-subsidised aid agencies were pressured to pay local taxes.¹¹¹ Both the formal imports through Israeli crossings and smuggled goods from the tunnels have been targeted for taxation. A Hamas figure made it clear already a few weeks after the takeover that “we take customs at the borders like any country, for cigarettes from Egypt and other goods coming in for sale. This is a right of any authority”.¹¹²

In terms of locally collected revenues, Hamas efforts were only partly successful. A Hamas legislator estimated that up to USD 60 million would be covered by local taxes while the remaining came from “gifts and outside assistance”.¹¹³ The Gaza Finance Ministry estimated in 2009 that USD 4 million was collected locally each month.¹¹⁴ This represented only 17.5% of the estimated monthly expenditure of USD 30 million.¹¹⁵ Furthermore, the Gaza government announced a budget of USD 540 million for 2010. PLC representative Ziad Abu Amr from Gaza commented that the money collection by the Gaza government goes beyond any regulations and is void of any transparency.¹¹⁶ According to a director general in the Gaza

¹⁰⁴ Avi Issacharoff, “Illegal’ Gaza tunnel owners suffer as Hamas economy grows,” Ha’aretz, 17 February 2010, <http://www.haaretz.com/news/illegal-gaza-tunnel-owners-suffer-as-hamas-economy-grows-1.263492>.

¹⁰⁵ Liam Stack, “For Hamas, an end to Gaza’s tunnel trade may be only the beginning,” Christian Science Monitor, August 16, 2010, <http://www.csmonitor.com/layout/set/print/content/view/print/319943>.

¹⁰⁶ Interview with a Director General in the Palestinian Central Bureau of Statistics, Ramallah, November 2009.

¹⁰⁷ Interview with Palestinian UN official who works in Gaza, Ramallah, November 2009. See also Jonathan Ferziger, “Hamas finds Gaza tunnels’ \$500 million loss worse than Madoff,” Bloomberg, 7 October, 2009, <http://www.bloomberg.com/apps/news?pid=20601109&sid=aFLJhn4jQA3k>.

¹⁰⁸ Peter Beaumont, “Tunnel fraud leaves Gazans on verge of financial ruin,” the Guardian, 7 June, 2009, <http://www.guardian.co.uk/world/2009/jun/07/gaza-tunnel-scams>.

¹⁰⁹ Ibid.

¹¹⁰ Ma’an News, “Abbas issues two presidential decrees to disband militias and exempt Gazans from taxes,” 27 June, 2007, <http://www.maannews.net/eng/ViewDetails.aspx?ID=197040>.

¹¹¹ International Crisis Group, “Ruling Palestine I: Gaza under Hamas,” Middle East Report No.73, 19 March, 2008.

¹¹² Interview with Ahmed Yousef, political advisor of Prime Minister Ismail Haniyeh, Gaza, August, 2007.

¹¹³ ABC News, “Gaza Hamas Rulers Approve \$540 Million Budget,” 2 January, 2010, <http://abcnews.go.com/International/wirestory?id=9463535&page=2>.

¹¹⁴ Interview with tax advisor Khaled al-Hosseini, citing information received from Deputy Minister of Finance Ismail Mahfouz, Gaza, December 2009.

¹¹⁵ Liam Stack, “For Hamas, an end to Gaza’s tunnel trade may be only the beginning,” Christian Science Monitor, August 16, 2010, <http://www.csmonitor.com/layout/set/print/content/view/print/319943>.

¹¹⁶ Interview with Ziad Abu Amr, independent PLC member and foreign minister in the National Unity Government in 2007, Ramallah, November, 2009.

Ministry of National Economy, one quarter of the taxes and fees collected in Gaza comes from cigarettes and fuel smuggled through the tunnels.¹¹⁷

4.4.1. Imports from Israel

One challenge for the Gaza government has been how to levy taxes on goods imported from Israel as long as the crossing points are still manned by Ramallah-loyal officials on the Palestinian side. A manager of Gaza Industrial Estate who is overseeing imports and exports at the Karni/Al Montar crossing explained that, although Hamas cannot deploy their forces and custom officials at the crossing itself, they have established a checkpoint along the main road leading from the crossing. Trading companies are required to register their imports at this checkpoint and subsequently present their documents at a governmental office in Gaza where they have to pay a 14.5% value-added tax.¹¹⁸ Notably, the taxes levied by Hamas come on the top of the VAT already deducted by Israel on behalf of the PA in Ramallah, leaving the Gaza customers to pay double taxes for imports via Israel.

4.4.2. Smuggled goods

The smuggling activity in Rafah at Gaza's border to Egypt has also been subject to tax regulations in several ways. One measure has been a license fee taken by the Hamas-controlled municipality of Rafah from those who dig and operate tunnels. The fee varies between USD 2000 and 3000 according to various sources.¹¹⁹ Wholesale traders are, furthermore, obliged to register their goods and pay taxes, whereas small-scale, private imports for personal consumption were for long not taxed in any systematic manner.¹²⁰ However, Hamas seems to have gradually introduced a stricter practice of collecting taxes on smuggled goods. In October 2010 the Gaza government doubled the taxes effectively levied on smuggled gasoline and diesel. The petrol companies need a permit from the Petrol Agency, a branch of Hamas's Finance Ministry, to import gasoline through the tunnels and pay the tax to the government in accordance with the quantity they wish to import. Tankers then distribute the fuel from Rafah to the gas stations across the Gaza Strip.¹²¹

It is not always clear who is the recipient of taxes collected locally. A UN official suggested that the taxes collected in Rafah consisted of two parts: one "local tax", collected by the municipality for tunnel licenses, and another "federal tax" on goods that go to the Gaza government.¹²² However, according to analyst Nicolas Pelham, it is Hamas as a movement rather than the government that collects and benefits from the taxes on smuggled goods, so that the Hamas activists in Rafah and the Hamas government in Gaza city may have conflicting interests in the tunnel business. "While [Gaza] government officials campaign for the lifting of the siege, Hamas operatives in Rafah have a financial stake in keeping the tunnel traffic moving," reasoned Pelham.¹²³

4.4.3. Tax on services, property and business

The Gaza government has levied fees on a range of public services, including auto license plates, drivers' licenses, and birth certificates.¹²⁴ Part of the fees is collected by the municipalities, such as on water, shop licences, building permits and property. An official in the Gaza Ministry of Local Governance reported that the new, Hamas-appointed municipality councils had been able to almost quadruple the municipalities' rate of local tax collection, from 15–20% in previous years to 60–70% by 2009, making the municipalities able again to pay the

¹¹⁷ Liam Stack, "For Hamas, an end to Gaza's tunnel trade may be only the beginning," *Christian Science Monitor*, August 16, 2010, <http://www.csmonitor.com/layout/set/print/content/view/print/319943>.

¹¹⁸ Telephone interview with General Manager of Gaza Industrial State at Karni/al-Montar crossing.

¹¹⁹ Interview with former government official [Saleh Basous], Gaza, December 2009.

¹²⁰ Interview with tax advisor [Khaled al-Hosseini], Gaza, December 2009.

¹²¹ David E. Miller, "Hamas makes a buck off Gaza's smuggled gasoline," *The Media Line*, 3 October, 2010, http://www.themedialine.org/news/news_detail.asp?NewsID=30177.

¹²² Interview with Palestinian UN official from Gaza, Ramallah, November 2009.

¹²³ Nicolas Pelham, "Diary: How to get by in Gaza," *London Review of Books*, vol. 31, no. 20, 22 October, 2009, <http://www.lrb.co.uk/v31/n20/nicolas-pelham/diary>.

¹²⁴ Daniel Williams, "Hamas funds Gaza with taxes, Islamic friends' help," *Bloomberg*, 8 March, 2008, <http://www.bloomberg.com/apps/news?pid=21070001&sid=aCSbmR8QCvPM>.

salaries of their employees and even to pay back debts.¹²⁵ After a decision by Gaza municipality to reduce the fees on water by 20% for those paying on time, the share of citizens who pay for water has reached 70%.¹²⁶ Legal action was taken against defaulters by new “municipal courts”.¹²⁷

The Gaza Electricity Distribution Company has had less fortune in collecting its bills. Only 20% of subscribers pay their bills, according to the PA.¹²⁸ Previous efforts by Hamas to tax electrical power in 2007 were reportedly thwarted by the EU, which covered the fuel for Gaza’s power plant at the time.¹²⁹ But the Accountant General of the PA in Ramallah still claims that Hamas indeed collect fees for electricity and “take the money for themselves”.¹³⁰ A Gaza citizen said that the Hamas Executive Force had been on his door together with a representative of the electric company to collect payment. “They accepted not to receive money only when they saw the receipts of paid bills,” he recalled.¹³¹

In the spring of 2010 Hamas started distributing bills for “vocational licences” to small-business owners such as shopkeepers, taxi drivers and falafel stands, provoking protests from activists.¹³² The Hamas administration denies having introduced any new taxes but says it has “activated a tiny section of the taxation system.”¹³³

4.5. Banking and insurance

While the commercial banks operating under the Palestinian Monetary Authority in Ramallah were barred from dealing with Hamas owing to the financial blockade, the Gaza government licensed the opening of a new bank in Gaza in April 2009. As the new bank, named the Islamic National Bank, was not accepted by the Monetary Authority and could thus not conduct any transactions with any other bank, it remained an autonomous financial entity in Gaza. An official of the bank explained that its main function is to implement the financial tasks of the Gaza government, including transferring salaries to public employees on the payroll of the Gaza government, who were previously paid through the post offices. The bank also offers saving accounts and loans to private customers.¹³⁴ The bank’s opening capital of USD 20 million was reportedly provided by local businessmen. Western diplomats have suggested that the new bank draws its liquidity from the cash-financed smuggling business.¹³⁵ The establishment of the bank apparently represented a formalisation of the tunnel economy.

Hamas has also established a profitable insurance company called Al-Multazim. When it took over Gaza, Hamas stopped asking drivers to insure their cars. But in 2009 the Gaza government renewed the requirement of car insurance through Al-Multazim.

The relations between the Gaza government and the formal banking sector have grown increasingly tense over the past year. When the Arab Bank, one of the largest financial institutions in Palestine, froze assets of organisations affiliated with Hamas, the Gaza government secured a court order to unfreeze the funds and sent in armed police to withdraw the cash, totalling USD 280 000. In another incident, gunmen entered the Arab Bank and demanded USD 400 000 in tax proceeds destined for the PA in Ramallah.¹³⁶ Such incidents

¹²⁵ Interview with Hosam Mahdi, Director of the Minister’s Office, the Ministry of Local Governance, Gaza, December 2009.

¹²⁶ Interview with Yaser al-Shurafa, member of Gaza municipality council, Gaza December 2009.

¹²⁷ International Crisis Group, “Ruling Palestine I: Gaza under Hamas,” Middle East Report No.73, 19 March, 2008, p. 17.

¹²⁸ Interview with Yousef A. Al Zamer, Accountant General, Ramallah, 2009.

¹²⁹ Daniel Williams, “Hamas funds Gaza with taxes, Islamic friends’ help,” Bloomberg, 8 March, 2008, <http://www.bloomberg.com/apps/news?pid=21070001&sid=aCSbmR8QCvPM>.

¹³⁰ Interview with Accountant General, Yousef A. al-Zamer, Ramallah, November 2009.

¹³¹ Interview with Gaza citizen in Nasser neighbourhood, Gaza, August 2007.

¹³² Rory McCarthy, “Hamas imposes new Gaza taxes to pay for burgeoning bureaucracy,” the Guardian, 8 April, 2010, <http://www.guardian.co.uk/world/2010/apr/08/hamas-taxes-gaza>.

¹³³ Daily Times, “Palestinian group warns Hamas ‘fear could lead to revolt’ in Gaza,” 29 April, 2010, http://www.dailytimes.com.pk/default.asp?page=2010%5C04%5C29%5Cstory_29-4-2010_pg4_7.

¹³⁴ Interview with official of the Islamic National Bank, Gaza, December 2009.

¹³⁵ Reuters, “First Hamas-licensed bank opens in Gaza,” Ha’aretz, 22 April, 2009, <http://www.haaretz.com/news/first-hamas-licensed-bank-opens-in-gaza-1.274601>.

¹³⁶ World Tribune, “Hamas raids two Arab Bank branches in Gaza, confiscates funds,” 28 June, 2010, http://www.worldtribune.com/worldtribune/WTARC/2010/me_hamas0578_06_28.asp.

may indicate that Hamas feels self-confident enough to take physical action to defy the blockade.

5. Case study I: The Judicial Sector

Hani Albasoos

5.1. Introduction

The broad objective of this chapter is to investigate the impact of the current constitutional crisis in the Palestinian Authority (PA) on the services offered to the public in the Gaza Strip in relation to the judiciary, as well as to analyse the policy responses and strategies adopted by the Hamas government to tackle the prevailing state of emergency. The chapter reviews the empirical experience of the Gaza government during the last two years of crisis management, and draws some conclusions about Hamas's political and domestic priorities.

Owing to the deficiency of secondary sources and accurate information on the judiciary that was established following Hamas's takeover in Gaza in June 2007, information for this chapter has been gathered by the author through semi-structured qualitative interviews. Three categories of interviewees were chosen: officials of the Gaza government, civil servants in the judiciary, and users of the courts. One challenge that faced the researcher was the political sensitivity of some of the subjects touched upon in the questionnaire, which led some of the respondents to refuse to disclose their names while others declined to answer some of the questions.

The chapter applies the main research questions of the research project to the judicial sector in Gaza. It investigates the progress of the judicial sector in the Gaza Strip, particularly since June 2007. The chapter, first, provides a brief introduction to the judiciary in Gaza. Second, it examines to what extent the judiciary has been subject to institutional discontinuity and disruption following the Hamas takeover, or to what extent previous practice and norms have been upheld in spite of the crisis. The third part deals with how the economic isolation of Gaza has affected the court system, while the fourth explores how Hamas has coped with the various challenges to its rule in Gaza. Finally, the chapter offers some views on what sort of long-term vision for the judiciary can be read out of Hamas's performance in power.

5.2. Background

The Palestinian judicial system is the outcome of a complex, accumulated heritage from different authorities since the time of the Ottoman Empire's rule of Palestine, followed by the British Mandate, the Egyptian and Jordanian administrations, the Israeli occupation, and finally the Palestinian Authority.

Palestinian Basic Law ensures the independence of the judiciary from the executive and legislative branches of authority. However, following the formation of the Palestinian Authority in 1994, after years of Israeli occupation, the new judicial sector did not escape the political realities of Fatah's all-embracing power. According to a Palestinian Legislative Council (PLC) representative from the Hamas movement in Gaza City,¹³⁷ the nascent Palestinian Authority, at the time completely dominated by the Fatah movement, restructured the judicial sector more around factionalism than around questions of professionalism and competence, consequently producing a lame judiciary that did not live up to the ideal of the judiciary's independence from the executive power. Court judgments were criticized for being based on nepotism and political factionalism.¹³⁸ Such views were held by many citizens and observers, expressed as a common form of criticism well beyond the circle of Hamas supporters.

¹³⁷ Interview with S. A., PLC member from Hamas, who preferred to be anonymous. Gaza, November 2009.

¹³⁸ Interview with S. A., PLC member from Hamas. Gaza, November 2009.

Some observers believe the Palestinian Authority and its security forces failed to carry out their responsibilities towards the protection of judges and the execution of judicial decisions. Criminal and civil lawsuits remained in courts for years without resolution, reflecting the weakness of the sector. Consequently, the judiciary was generally ineffective.¹³⁹

Few people in Gaza viewed the previous judiciary of the PA as neutral as it was set up as it was by and with Fatah loyalists. The system of “security clearance’ that was practised within the Palestinian Authority as a precondition for employment in the public sector targeted largely Hamas supporters, thus adding to the widespread suspicion among the latter towards the judicial institutions of the PA. This alleged bias was from the outset a source of tension between the judiciary on the one hand and the Hamas government on the other, setting the stage for the strained relationship between the two following the takeover by Hamas. The victory of Hamas in the 2006 parliamentary elections marked the end of Fatah’s decades-long monopoly of Palestinian politics, and had repercussions also for the judiciary. The practice of factional appointments within the judiciary and the applied “security clearance’ concept came under pressure as a result of Hamas’s domination of both the legislative branch, through its majority in the PLC, and the executive power of the government.¹⁴⁰ However, as Fatah remained in control of the presidency, represented by Mahmoud Abbas, the ideological differences between the two parties eventually resulted in a conflict over jurisdictions, including conflicting interpretations of the provisions of the Palestinian Basic Law. The situation produced deep controversies that remained unsolved, affecting the efficiency of the courts negatively as numerous cases were suspended for that reason.

The tenth Palestinian government, formed by Hamas in March 2006 with Ismail Haniyeh as prime minister, was unable to carry out its responsibilities. Ministers from Hamas were powerless to exercise their authority within their own ministries because their employees were following political directions from the president rather than the ministers. In an attempt to put an end to the political and military clashes between Hamas and Fatah, both parties agreed to establish a National Unity Government (NUG), which was inaugurated in March 2007, with Haniyeh taking a second term as prime minister. However, even this unity government failed to assert its authority on the ground. The Fatah-loyal security forces continued to ignore their duty to report to the minister of interior, who resigned after two months in office in protest against the continued security anarchy.¹⁴¹ This eventually led to the unexpected military takeover of the Gaza Strip by Hamas on 14 June 2007 and the subsequent formation of two separate Palestinian governments in Gaza and the West Bank, both claiming to represent the legal authority in the Palestinian territories.

5.3. Institutional Continuity or Disruption

The events of 14th June 2007 had disastrous long-term implications for the judicial sector, as employees of the Palestinian Authority began to go on strike. The first to strike were the security forces within Gaza Strip. Almost 95% of security and police officers in Gaza went on strike, refusing to serve in police stations.¹⁴² Officers feared that the Ramallah government (RG) would carry out its threats to terminate their salaries and pensions, which they received from Ramallah. Ahmad al-Mughanni, Attorney General of the Ramallah government confirmed that judicial and security staff who accepted working for the Gaza government “would lose all the years of services [pension] and there would be penalties against them from the Palestinian Authority’.¹⁴³ The Gaza government responded by offering to pay their salaries. However, even those who continued to strike could not be sure of receiving their salaries from the Ramallah government. As a captain in the police said, “Frankly, we were confused about the situation and unwilling to lose our salaries and pension, which were guaranteed by the RG. I

¹³⁹ Interview with A. D., researcher in legal affairs and director of the office of the Gaza branch of the training programme for judges and prosecutors in Palestine (1998–2001), Gaza, November 2009.

¹⁴⁰ Interview with Hisham Abu Nada, judge at Gaza Conciliation Court, Gaza, November 2009.

¹⁴¹ New York Times, “PA Palestinian Minister Quits, as Factions Battle On,” 15 May, 2007, http://www.nytimes.com/2007/05/15/world/middleeast/15mideast.html?_r=1&pagewanted=print.

¹⁴² Interview with captain in the Police, Gaza, November 2009.

¹⁴³ Interview with Ahmad al-Mughanni, Attorney General of the Ramallah government, Ramallah, November 2009.

have been working in the Palestinian Police from 1999. Despite this, my salary stopped in February 2008 because I was charged with supporting Hamas. I was lately employed by the Gaza government, and was appointed in the Police Unit in the central Gaza Court.¹⁴⁴

As a result of these developments, the Gaza government had to come up with a new security apparatus to keep control of security within the Strip. It began employing new security and police officers within the security services to fill the void of former employees who refused to work with it.

5.3.1. Attorney General and Judges Break with the Gaza Government

However, the Attorney General and prosecutors, judges and civil servants at Gaza's courts refused to deal with the new security force (the Executive Force). As the judges were ordered by the West Bank government to deal only with civil lawsuits, not criminal complaints, the situation within the judiciary became precarious.¹⁴⁵ The Ramallah government's decree apparently allowed criminals to act without prosecution and without punishment. The Attorney General in Ramallah defended its decision by arguing that dealing with criminal cases would imply cooperation with the Gaza government's Executive Force, which the RG considered illegal.¹⁴⁶ The Gaza government claimed, however, that the Ministry of Justice was authorized according to the Palestinian Basic Law to oversee the necessities and functionality of courts without interference from other institutions. The minister of justice in the Gaza government ordered the Attorney General to cooperate with other departments in the government and the police force. This order was rejected by the Attorney General and public prosecutors, creating a major obstacle for the functioning of the judicial sector.¹⁴⁷

All cases in which the Palestinian Authority was represented by the Attorney General were suspended owing to the cessation of the work of the Attorney General and his assistants. This included criminal cases and cases before the Court of Appeal to which the Palestinian Authority was a party. In addition, enforcement mechanisms were also suspended as a result of the decision by the president of the High Judicial Council to suspend the execution of court judgments in cases where police enforcement was required.¹⁴⁸

Owing to his refusal to comply with orders from the Gaza government, the Attorney General was suspended from his position by the minister of justice in Gaza. In response, all staff members working under the Attorney General's command conducted a simultaneous collective walkout, paralysing Gaza's already dysfunctional justice system. Hamas officers raided the office of Attorney General Ahmad al-Mughanni, who was detained for several hours by officers from the Executive Force. According to al-Mughanni, Executive Force members closed down all prosecution offices and requested that the 72 prosecutors and 140 administrative officers not go to their offices or try to reopen them. Al-Mughanni, who had continued to work in Gaza for a month and a half following the Hamas takeover, then moved to Ramallah, and all the activities of the prosecution department in Gaza were suspended by the RG.¹⁴⁹

The supreme judge of the Islamic Shari'a Court in Palestine, Tayseer al-Tamimi, stated that Gaza's religious courts, including with the Supreme Shari'a Court, which ruled on family matters and religious affairs, were also taken over by the Gaza government, and his colleagues experienced being evicted from their offices by armed men.¹⁵⁰ Hamas tried to convince the religious judges to cooperate with the Gaza government, but only 1 of 20 Sharia judges did so, while 19 remained at home, continuing to receive their salaries from the RG.¹⁵¹

¹⁴⁴ Interview with captain in the Police, Gaza, November 2009.

¹⁴⁵ Interview with S. A., PLC member, Gaza, November 2009.

¹⁴⁶ Interview with Ahmad al-Mughanni, Attorney General, Ramallah, November 2009.

¹⁴⁷ Interview with Osama Saed, Director General of legal and vocational affairs, Ministry of Justice, Gaza, November 2009.

¹⁴⁸ Interview with Ali Abu Diak, Deputy Assistant, Ministry of Justice, Ramallah, November 2009.

¹⁴⁹ Interview with Ahmad al-Mughanni, Attorney General, Ramallah, November 2009.

¹⁵⁰ Interview with Tayseer al-Tamimi, supreme judge of the Islamic Shari'a Courts in Palestine, Ramallah, November 2009.

¹⁵¹ Interview with Tayseer al-Tamimi, supreme judge of the Islamic Shari'a Courts in Palestine, Ramallah, November 2009.

5.3.2. Reorganizing the Judiciary

The Gaza government subsequently appointed a new, acting Attorney General and new public prosecutors to replace those on strike. The Ministry of Justice developed innovative responses to these challenges in order to reactivate the function of the public prosecutors. The rest of the judiciary sector received similar treatment. The process began with the appointment of Ismail Jaber as acting Attorney General on 29th August 2007, responsible for public prosecutions after the dismissal of the former attorney general, Ahmad al-Mughanni.¹⁵² Jaber noted that, “My obligation was to restructure the public prosecution department in coordination with the Ministry of Justice. I struggled for three months to persuade judges to deal with the prosecution department. Regrettably, almost all the employees in the judiciary sector declined my orders, especially in criminal cases, because they reject the legitimacy of the Hamas government.”¹⁵³

After the executive and legislative authorities in Gaza had approved Jaber’s appointment as the new attorney general, he initiated an employment process to appoint public prosecutors. Certainly, the prosecutors are part of the judiciary, but they are subordinate to and overseen by the minister of justice in accordance with the provisions of Article 47 of the Judicial Authority Law, which legitimates the active involvement by the ministry in this regard, according to Attorney General Jaber.¹⁵⁴

As the acting attorney general and the new public prosecutors began working to implement law and order in Gaza, the former judges refused to cooperate with them. Ahmad al-Mughanni believed that the courts were faced with a situation in which they could not be involved in criminal cases without acting against the law because it would not be possible to deal with criminal courts without also having to deal with the Hamas police, which he considered illegitimate. However, the judicial staff was willing to continue to process civilian cases as this would not require any contact with the police.¹⁵⁵ According to Osama Saed in the Gaza Ministry of Justice, the refusal by the judges and the prosecutors to cooperate represented a violation of the principle of political independence on the part of the judiciary. The non-cooperation was a result of the order made by the head of the High Judiciary Council, Issa Abu-Sharar, to all judges, barring them from working with Gaza’s attorney general and police forces. Dr Nafez Al-Madhoun, director general of the PLC, stated:

We wished that judges would stay away from political disputes, but due to their political affiliation with previous governments and their politically motivated appointment, they followed orders from the Ramallah government to leave their work. Judges, persecutors, and other staff members who refused to work in the judicial sector bear the responsibility and legal consequence and must be questioned before courts for these violations of the law.¹⁵⁶

The Gaza government argued that the attendance of former members of the judiciary in the courts was needless since they – by refusing to work on criminal cases – implicitly failed to function as independent judges without political bias. It began to appoint new judges from November 2007, while the former judges were ordered by the RG to remain at home.¹⁵⁷

The abstention of the judges led to a crisis that forced the Gaza government to take swift action to avoid a collapse of the judiciary. The newly appointed acting attorney general personally oversaw the selection committee that applied written and oral tests as the foundation of its selection criteria.¹⁵⁸ Initially, for about two months, it was difficult for candidates to apply for the post of judges owing to the precarious political situation in Gaza. Several cases were adjourned, too, because recently appointed judges were incapable of taking decisions. The first

¹⁵² Ahmad al-Mughanni moved to Ramallah where he retains the position as PA’s Attorney General.

¹⁵³ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

¹⁵⁴ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

¹⁵⁵ Interview with Ahmad al-Mughanni, Attorney General, Ramallah, November 2009.

¹⁵⁶ Interview with Dr Nafez Al-Madhoun, Director General of the Palestinian Legislative Council (PLC) and adviser for several legislative commissions, Gaza, November 2009.

¹⁵⁷ Interview with Osama Saed, Director General of legal and vocational affairs, Ministry of Justice, Gaza, November 2009.

¹⁵⁸ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

courts to be in a functioning state were the Conciliation Courts.¹⁵⁹ Higher courts were rendered inoperative for few months, because it took some time before judges were promoted from the Conciliation Courts to the Court of Appeal and then, finally, to the High Court of Justice.¹⁶⁰

Most of the newly appointed judges were practising lawyers with many years of experience. However, they lacked experience as judges. This constituted one of the key challenges for Gaza's judicial system. The non-attendance of former judges and employees thus caused chaos and controversy within Gaza's judicial sector, putting later public prosecutors and judges in a very difficult situation.¹⁶¹ In the process of distributing employment and new positions, Hamas was blamed for practicing favouritism by selecting judges associated with Hamas – and thus found itself being criticized for engaging in the very same malpractice that its own supporters had for years accused their predecessors in Fatah of.¹⁶²

Fearing a fate similar to that of the employees who had been replaced following their refusal to cooperate with the Gaza government, the lawyers' association in January 2008 suspended its strike, paving the way for its members to return to work. By February 2008, Gaza's criminal courts were functioning once again. They have since enforced rulings more quickly, and judges have apparently been working longer hours than previously, prompting one lawyer to say that "the courts are working better than before the takeover".¹⁶³

5.3.3. Performance of the Courts

All departments within the Ministry of Justice and all elements of the judicial system are currently fully operational. The new judges under the Gaza government maintain that they are interpreting and applying Palestinian law according to the same standards as the previous judges.¹⁶⁴ The deputy minister of justice in Ramallah has also confirmed that the Gaza judiciary still uses the original regulations of the PA as the legal basis for its judicial proceedings, although he suggested that new legislation may be being planned by Hamas.¹⁶⁵

Some have criticized the competence of the new judges, while others have praised their standards. Hamas supporters and other observers have argued that during the era of Fatah rule, the police would implement decisions against the poor, but not against the rich and powerful, and that the level of corruption was terrible. Others remained critical, however: A lawyer complained that "These courts are Hamas courts not legal ones. They were formed in violation of the law and their judges are breaking the law," claimed a lawyer in Gaza.¹⁶⁶ Lawyers expressed concern about executive interference, politicization of the judicial system and the longer-term consequences of separating Gaza's jurisdiction from Ramallah. For many, however, the existence of two rival jurisdictions left Gaza in legal limbo.¹⁶⁷

The new judges and prosecutors encountered obstructions, causing inefficiency in their work. Although the judges were fewer than before, their workload was even heavier. For instance, in the Conciliation Court in Gaza City where eight judges worked before June 2007, there were now only three judges – with an ever-increasing number of claims and grievances.¹⁶⁸ According to Abu Nada, a judge from Gaza, there is a backload of thousands of claims in Gaza courts awaiting adjudication, which have been accumulated over the years. This amplifies the burden on judges and the judiciary as a whole.¹⁶⁹ Mashharawi stated that "a judge is handling

¹⁵⁹ Interview with Dr Mohammed Al-Nahal, legal adviser to the Ministry of Justice and head of the Shari'a and Law Department at the Islamic University. Gaza, November 2009.

¹⁶⁰ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

¹⁶¹ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

¹⁶² Interview with A. D., researcher in legal affairs, Gaza, November 2009.

¹⁶³ Interview with Azmi Mashharawi, lawyer from Gaza. Gaza, November 2009; International Crisis Group, "Ruling Palestine I: Gaza under Hamas," Middle East Report No.73, 19 March, 2008.

¹⁶⁴ Interview with A. D., researcher in legal affairs, Gaza, November 2009.

¹⁶⁵ Interview with Ali Abu Diak, Deputy Assistant, Ministry of Justice, Ramallah, November 2009.

¹⁶⁶ International Crisis Group, "Ruling Palestine I: Gaza under Hamas," Middle East Report No.73, 19 March, 2008, p 13.

¹⁶⁷ International Crisis Group, "Ruling Palestine I: Gaza under Hamas," Middle East Report No.73, 19 March, 2008.

¹⁶⁸ Interview with Hisham Abu Nada, judge at Gaza Conciliation Court, Gaza, November 2009.

¹⁶⁹ Interview with Azmi Mashharawi, lawyer, Gaza, November 2009.

about fifty claims per day. He should not be dealing with more than ten cases. Consequently, the number of cases affects judges' performance and hinders effectiveness in the implementation of justice and the execution of law.'

5.3.4. Inexperienced staff

A key challenge for the Hamas-appointed courts is that most judges, prosecutors and civil servants in the judiciary are inexperienced and lack proper training and guidance. A female lawyer argued that the role of women, as lawyers and judges, is partly ignored. Most judges and lawyers are males because of the nature of Palestinian society, which favours males. Although most judges work with sincerity and dedication, the long hours they are forced to work affect their performance and cause exhaustion.¹⁷⁰

Though many of the police officers working in the Executive Judiciary Unit alongside the courts, responsible for the implementation of court decisions, initially had insufficient experience of serving people and were unable to perform their jobs professionally, this problem is said to have diminished.¹⁷¹ One of the new judges admits that the personnel, implementing officers and judges are now functioning, though not up to regular standards.¹⁷²

While there is awareness about the need for appropriate training within the judiciary, the siege imposed on Gaza by Israel represents yet another obstacle, as it has become almost impossible either to bring in international expertise to conduct courses or to send court officials abroad to enhance their qualifications.¹⁷³

Furthermore, the infrastructure of Gaza's judicial institutions is far from appropriate.¹⁷⁴ The court buildings are very old, and the basic equipment inadequate. In the Gaza Conciliation Court, the rooms are incredibly small. Judges find themselves together with criminals, police officers, lawyers and trainees in courtrooms that measure only 3x3 metres. Judge Hisham Abu Nada stated, "We face difficulty with computers. Very old fashioned. We do not have good IT facilities in the court. Occasionally, electricity goes off while I am taking witnesses' statements using a computer; thus, I may lose a written statement and have to acquire it again.' He added, "Sometimes I find myself with a criminal sitting alone in the courtroom and the police officers are not there, because of the lack experience of officers working at courts, where they do not know their duties. It can be dangerous to find yourself alone with criminals.'¹⁷⁵

5.3.5. The Role of the Palestine Legislative Council

The relationship between the Palestinian Legislative Council and the judiciary is based on the Palestinian Basic Law and on cooperation and a separation of powers between the three branches of authority. The PLC Legal Commission facilitates the work of the judiciary sector. Its recommendations constitute an integrated part of the judicial framework.¹⁷⁶ The function of the PLC has been obstructed by various Israeli military actions, including the detention of scores of PLC delegates and the physical destruction of the PLC building in Gaza. By targeting such institutions, Israel is apparently seeking to hamper legislative and judicial processes among the Palestinians. According to the general director of the PLC, the PA security forces in the West Bank are also conducting a war against Hamas-affiliated PLC members, including the council's speaker, as they banned them from attending their offices to perform their duties.¹⁷⁷ In response to this problem, the PLC in Gaza has established a system that enables the

¹⁷⁰ Interview with E. H., female lawyer from Gaza City. Gaza. November 2009.

¹⁷¹ Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University. Gaza, November 2009.

¹⁷² Interview with Hisham Abu Nada, judge at Gaza Conciliation Court, Gaza. November 2009.

¹⁷³ Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University. Gaza. November 2009.

¹⁷⁴ Interview with Azmi Mashharawi, lawyer, Gaza, November 2009.

¹⁷⁵ Interview with Hisham Abu Nada, judge at Gaza Conciliation Court, Gaza, November 2009.

¹⁷⁶ Interview with Dr Nafez Al-Madhoun, Director General of the Palestinian Legislative Council (PLC) and adviser for several legislative commissions, Gaza, November 2009.

¹⁷⁷ Interview with Dr Nafez Al-Madhoun, Director General of the Palestinian Legislative Council (PLC) and adviser for several legislative commissions, Gaza, November 2009.

ratification of PLC decisions via telephone conversations and the signature of the PLC's deputy speaker in Gaza on behalf of the speaker, who is located in the West Bank.

The PLC in Gaza has resorted to holding sessions to enact and improve law in summary procedures held in different governmental and public buildings in Gaza. It has established a system whereby PLC members who are prevented from attending a session can authorize another member to attend on their behalf. This system has enabled the Gaza PLC to convene and pass legislation, although the assembly now meets as a pure Hamas body because non-Hamas delegates have refrained from participating. On 7th November 2007, the PLC convened for the first time since the takeover as an exclusively Hamas body. Its first act was to cancel the 14 decrees issued by President Abbas since the Hamas takeover in Gaza. Meeting weekly and only in Gaza, it has passed a range of different bills. For instance, a bill on bankruptcy was the most recently modified piece of law by the PLC to keep up with developments in commerce. The Gaza PLC has passed 14 new laws since the crisis of June 2007, addressing both broad national objectives, such as the right to resistance against the occupation, as well as more trivial family matters, such as the authorization for women to use their maiden names in the official registry¹⁷⁸ and a *Zakat* law.¹⁷⁹ On security-related issues, the assembly has passed a bill on the formation of a military tribunal.¹⁸⁰

The RG disputes such legislative amendments, which it considers unconstitutional. Ziad Abu Amr, an independent PLC member from Gaza who has cooperated with Hamas in the past, emphasized that “any law has to be signed by the president in order to become valid legislation. As long as the PLC is not functioning, it is the president’s mandate that holds the power of legislation. Article 43 in the Basic Law says that if the council is unable to work, the president has the power to rule by decree until the PLC can be gathered. When the PLC meets again, they will review all the decrees by the president.”¹⁸¹ Yet, according to the director general of the PLC, questions of constitutional validity are the responsibility of the Constitutional Court,¹⁸² which is to make its decisions in line with the Basic Law and its contextual provisions.¹⁸³

5.3.6. No Contact Between Judiciaries in Gaza and Ramallah

A source at the Gaza court affirmed that there is no coordination between the courts in Gaza and the courts in the West Bank.¹⁸⁴ The West Bank government rejects any legal decisions made in Gaza and impeaches all of their provisions¹⁸⁵ while the Gaza government, for its part, rejects the jurisdiction of the West Bank as unconstitutional. There is no collaboration or communication between the Ministry of Justice in Gaza and its counterpart in the West Bank.¹⁸⁶ There is no cooperation between the two entities in any form, not even between public prosecutors from the two territories in the judicial follow-up in criminal cases.¹⁸⁷ Their geographical separation has reduced the need for contact between the two judicial sectors.¹⁸⁸ Physical isolation, in other words, has forced each of the two constituencies to work independently.¹⁸⁹

Historically, the judicial entities of Gaza and the West Bank were independently created and inherited from different foreign authorities in occupied Palestine, most notable Egypt for the former and Jordan for the latter. Nonetheless, approximately 95% of the legal system in Gaza

¹⁷⁸ International Crisis Group, “Ruling Palestine I: Gaza under Hamas,” Middle East Report No.73, 19 March, 2008.

¹⁷⁹ *Zakat* is proscribed by the Quran as an obligatory payment by each individual to the benefit of the poor. It is calculated as a yearly tax, proportional to the individual’s wealth.

¹⁸⁰ Interview with Dr Nafez Al-Madhoun, Director General of the Palestinian Legislative Council (PLC) and adviser for several legislative commissions, Gaza, November 2009.

¹⁸¹ Interview with Ziad Abu Amr, independent PLC member and ex-foreign minister in the National Unity Government in 2007, Ramallah, November, 2009.

¹⁸² The Constitutional Court is mentioned in the Basic Law, but has never been activated.

¹⁸³ Interview with Dr Nafez Al-Madhoun, Director General of the Palestinian Legislative Council (PLC) and adviser for several legislative commissions, Gaza, November 2009.

¹⁸⁴ Interview with civil servant at Gaza Court, Gaza, November 2009.

¹⁸⁵ Interview with Ali Abu Diak, Deputy Assistant, Ministry of Justice, Ramallah, November 2009.

¹⁸⁶ Interview with H. M., Director of ratifications and documentation, Ministry of Justice, Gaza, November 2009.

¹⁸⁷ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

¹⁸⁸ Interview with Osama Saed, Director General of legal and vocational affairs, Ministry of Justice, Gaza, November 2009.

¹⁸⁹ Interview with A. D., researcher in legal affairs, Gaza, November 2009.

and the West Bank has been unified under the Palestinian Authority. The separation has created an impediment in the legal and judiciary systems. There is broad political consensus among the various Palestinian factions that the division must stop, since it is causing serious political harm to the judiciary as well as to the Palestinian polity as a whole.¹⁹⁰

5.4. Coping with Economic Isolation

The Gaza government has faced many economic challenges. Alongside the Israeli embargo in place on the Gaza Strip, the PA in Ramallah has taken a number of steps to limit Gaza's sources of income. On 25 June 2007, the Emergency Cabinet in the West Bank decided to exempt residents of the Gaza Strip of fees for services rendered by the Palestinian Authority to prevent this source of income from falling into the hands of the Gaza government.¹⁹¹ Three weeks later, the president of the High Judicial Council called on judges and chief judges in civilian courts to implement the decision. The decision, however, was considered unwarranted and illegal by the Gaza government, and the judiciary in Gaza paid no attention to it.¹⁹²

Furthermore, while financial aid from the international community poured into the accounts of the Ramallah government, an economic blockade was imposed against the Gaza government and a siege enforced against Gaza. Hamas and its government thus face serious financial difficulties, as severe restrictions have been placed on their sources of income.

5.4.1. Half Salaries for Gaza Judges

The Gaza government's ability to pay the salaries of its employees in the judicial and security sector, was further jeopardized by the financial crisis, which has thus affected judges and other judicial staff. From the beginning, the new judges used to receive a salary of NIS 5,000, but in August 2009 Prime Minister Haniyeh decided to raise the salary of judges to 75% of what they had received under previous governments. Thus, because of financial difficulties salaries were reduced by 25% to help the Gaza government.¹⁹³ Judges at the Court of Appeal and the High Court of Justice have had their salaries increased, while salaries for judges at the Conciliation Courts have been reduced to NIS 4,500 a month,¹⁹⁴ a figure that is regarded as insufficient for a judge living in the Gaza Strip. The payments represent about half of what judges received under previous governments, when payments were about NIS 10,000 a month. It is also galling for judges to know that fellow judges employed by the Ramallah government have continued to receive their salaries while remaining at home since June 2007, in the longest political strike in Palestinian history. These circumstances make it difficult for judges to satisfactorily carry out their duties.¹⁹⁵

This problem of judges' salaries remains unresolved. At first, the government was unable to agree on a fixed salary rate. Although judges' salaries are regulated by the salary schedule included within the Judiciary Authority Law, none of the judges have received their full salaries. The Cabinet questioned the legality of old regulations and refused to pay the salaries approved by previous governments, since the salary schedule had been unofficially attached without being approved by the PLC.¹⁹⁶

5.4.2. The Budget of the Judiciary

There is no independent budget for the judicial sector in Gaza. The budget is a part of the general budget of the Gaza government. According to Palestinian law, the judiciary budget is provided by the High Justice Council – which has replaced the High Judiciary Council – to the

¹⁹⁰ Interview with Dr Nafez Al-Madhoun, Director General of the Palestinian Legislative Council (PLC) and adviser for several legislative commissions, Gaza, November 2009.

¹⁹¹ Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University. Gaza, November 2009.

¹⁹² Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University. Gaza, November 2009.

¹⁹³ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

¹⁹⁴ According to Dr Mohammed Al-Nahal, the government intends to pay judges at the Conciliation Courts the full salary specified by law.

¹⁹⁵ Interview with Hisham Abu Nada, judge at Gaza Conciliation Court, Gaza, November 2009.

¹⁹⁶ Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University. Gaza, November 2009.

minister of justice, who then presents it to the government.¹⁹⁷ The Council has to plan, approve and supervise an independent budget for the judicial authority. This budget, however, is still dealt with through the minister of justice.¹⁹⁸ Officials in the Gaza government are prohibited from revealing information about the government's budget owing to the confidential nature of various sources of financial support and the expenses of the different governmental departments. Thus, it was hard for this researcher to obtain official figures on the budget. Osama Saed, general director of the Ministry of Justice, stated that “revenues collected by governmental departments, in accordance with the General Budget Law must be submitted directly to the public treasury in the Ministry of Finance. I do not have accurate details of the amount of income or the amount of court fees collected.’

Measures have been taken to provide basic public services in the judicial sector. The Gaza government has established a preliminary system of collecting taxes and fees, providing the government with income. Revenue from ratifications of official documentation go principally to the general revenue and then to the main treasury account. This is covered by Articles 24–29 of the Palestinian Financial System Law of 2005.¹⁹⁹ Judge Hisham Abu Nada stated that the courts are a good source of income for the Gaza government: “In one case, I delivered to the government NIS 9,000 that had been collected as a penalty,’ he revealed.

Internal funds from court fees and taxes do not provide sufficient income, however. Thus, as a movement, Hamas has its own sources of external financial support and funding from Islamic charities, some of which is used to provide public services in the judicial sector to keep it running.

5.5. Hamas Responses

The Gaza government has endeavoured to solve major problems by a variety of means in order to maintain a functioning judicial system. The attempt to restore the criminal justice system proved difficult, and faced a constant boycott by previous employees of the Palestinian Authority working in prosecution and elsewhere in the judicial sector.

The Gaza government established the High Justice Council, reactivated the traditional *sulha* conciliation committees, and appointed an acting attorney general, new prosecutors and judges – thus assuming the presidential responsibility of the Palestinian Authority to appoint or replace judges. It has been claimed that after months of confrontations and a paralysed judiciary, the head of the of the High Justice Council took over the Supreme Court, confirmed himself supreme justice and ordered judges to follow his instructions. By February 2008, the Council had appointed and promoted 24 new judges.²⁰⁰ Some of these were promoted from the conciliation courts to higher courts.

Hamas was careful to refer to the provisions of the existing legal system in its moves to restore the functioning of the judiciary. Officials claim that almost all the changes took place within the framework of the Palestinian Basic Law – except the appointment of judges, as the legislation states explicitly that these are to be appointed by the president of the Palestinian Authority. In Gaza, however, judges were appointment by the prime minister, an arrangement that has been justified by reference to the idea of a state of emergency.²⁰¹ Dr Nafez Al-Madhoun has stated in this regard:

Essentially, the refusal of the judicial employees to serve the Palestinian people was a shock, as this sector should not be abandoned for any reason, but cooperation exists between the PLC and a Judicial Committee to overcome and reconstruct the legal structure of the courts. We made efforts to find solutions to the negative response of

¹⁹⁷ Interview with Hisham Abu Nada, judge at Gaza Conciliation Court, Gaza, November 2009.

¹⁹⁸ Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University, Gaza, November 2009.

¹⁹⁹ Interview with H. M., Director of ratifications and documentation, Ministry of Justice, Gaza, November 2009.

²⁰⁰ International Crisis Group, “Ruling Palestine I: Gaza under Hamas.” Middle East Report No. 73, 19 March, 2008.

²⁰¹ Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University, Gaza, November 2009.

former staff of the courts. Sulha committees were able to solve many disputes, and thus we could help Palestinian citizens and urge them to use the court services.

5.5.1. Sulha: Traditional Conflict Resolution

On 22 July 2007, a police spokesperson in Gaza declared that the district attorney's office would be temporarily replaced by a *sulha* committee, a traditional, Islamic arbitration body.²⁰² By September 2007, Hamas was running about 30 such committees in Gaza, applying Islamic regulations in a moderate fashion. These originally represented a temporary solution to stimulate the judiciary.²⁰³ The *sulha* committees have an important function in resolving disputes, and there is significant cooperation between them and the judiciary, reducing the burden on the courts.²⁰⁴ “*Sulha* committees are supportive to judges and prosecutors in conflict resolution.”²⁰⁵

While the Gaza courts were unable to function, the *sulha* committees replaced the formal judiciary for 2–3 months, until new judges could be appointed.²⁰⁶ However, according to Dr Nafez Al-Madhoun, the committees neither replaced the judicial sector nor were working on its behalf. For him, the committees functioned as an instrument to provide law and order pending a reorganization of the judicial sector. The committees were established at a time when the police force in Gaza was not responding to the general public's grievances and claims for political and security reasons.

Sulha committees are traditional Palestinian bodies, responsible for conflict resolution within Palestinian society. The legal standards applied by *sulha* committees are norms, customs, traditions and Islamic values.²⁰⁷ Such bodies existed under the previous Palestinian governments in Gaza, performing similar functions. The committees were comprised of specialized and professional persons, such as lawyers, teachers and community leaders. According to Azmi Mashharawi, cases that came before them – generally civil cases and some simple cases of retribution – were adjudicated according to Islamic and Palestinian traditions. Decisions by the committees, however, were only binding when the parties to a conflict had no objection. The *sulha* committees in Gaza are a recently structured version of their traditional counterparts, containing more educated and professional members. The committees now serve as arbitrators to assist judges in simple cases.²⁰⁸ Under the Palestinian legal system, the establishment of these committees was governed by the Arbitration Act, allowing the principle of arbitration outside the courts. The goal is to reach a settlement based on consensus between both conflictual parties. There are claims that cannot be dealt with by arbitration, such as public order cases.

However, during the period of paralysis in the court system in Gaza, the conciliation committees filled the vacuum in the judiciary by processing cases which were beyond their normal jurisdiction. The International Crisis Group reported that by September 2007, Hamas was running some 30 committees which loosely applied Islamic codes. “In contrast to the formal sector, judgments were quickly rendered and implemented by Hamas's own forces. The system operated under Hamas's executive authority, eroding any resemblance of judicial independence,” it is claimed in the report.²⁰⁹

5.5.2. Replacing the High Judicial Council

The High Justice Council was established by the Gaza government to supersede the existing High Judicial Council. The Council sought to bridge the deficit of judges in the criminal courts by appointing conciliation judges to cover criminal cases. The basic task of the Council is the

²⁰² International Crisis Group. “Inside Gaza: The Challenges of Clans and Families,” Middle East Report No. 71, December 20, 2007.

²⁰³ International Crisis Group, “Ruling Palestine I: Gaza under Hamas,” Middle East Report No. 73, 19 March, 2008.

²⁰⁴ Interview with H. M., Director of ratifications and documentation, Ministry of Justice, Gaza, November 2009.

²⁰⁵ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

²⁰⁶ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

²⁰⁷ Interview with A. D., researcher in legal affairs, Gaza, November 2009.

²⁰⁸ Interview with Azmi Mashharawi, lawyer from Gaza. Gaza, November 2009.

²⁰⁹ International Crisis Group, “Ruling Palestine I: Gaza under Hamas,” Middle East Report No. 73, 19 March, 2008, p. 13.

appointment, supervision and follow-up of the work of judiciary.²¹⁰ The Council was established by a decree by the Gaza government following the walkout by former judges, and following the decision by the president of the Palestinian Authority to refrain from further judicial appointments.

The Gaza government founded the Council to represent the judicial authority in the Gaza Strip. The Council consists of a group of 7–9 members, who reconstructed the judicial entity, including by appointing and allocating new judges.²¹¹

It is noteworthy that the terms of the Palestinian Basic Law do not cover the formation of such a council, but the Gaza government considered its creation a necessary step to bring order to Gaza. The provisions of the Basic Law clearly stipulate that one council is to be set up, not two. However, Hamas officials argued that neither of the two councils is more constitutional than the other.²¹² Ismail Jaber commented:

There is a constitutional vacuum that exists in the country where there is no president [as the current president's term expired in January 2009], and there is no Legislative Council exercising its jurisdictions according to principles. But there is a real and effective power on the ground in Gaza which has the right to run any matter according to the law where the facts and constitutional principals in the world give this right in the presence of a constitutional emptiness.²¹³

It must be noted that the High Justice Council is not supposed to interfere in judges' tasks and does not have the authority to determine the law, as that is considered the mandate of the PLC.

5.5.3. Training and Education

Former minister of justice Dr Ahmed Shwaidah initiated the establishment of the Academic Institute for judiciary training and education, aiming to improve the competence of the newly appointed staff in the courts. Judicial, legal, administrative and academic plans were set up and approved by the Legislative Council. Courses were held for some judges to improve their judicial capacities efficiently. Sending judges abroad for training is not an option because of the large number of cases waiting to be brought before the courts, and because of the difficulties involved with travel.²¹⁴ The Academic Institute is formally under the Ministry of Justice and supervised directly by the minister of that department. Although the war on Gaza interrupted its work, it has later been reactivated.²¹⁵ However, Judge Hisham Abu Nada complained that he had received no training at the institute since its founding:

Judges have not received training courses, though all of us are in need for such courses. Most judges have experience as lawyers or legal experts but when we are taking on the responsibility as judges, it is something different; we need training.

Al-Madhoun stressed that the Academic Institute is indeed functioning and that he has delivered training to judges there. The institute was inactive for a period, however, because it had to relocate after it was shelled during the War on Gaza.²¹⁶

5.5.4. Increased Workload After Takeover

Significantly, compared to the pre-crisis situation, numbers of criminal and civil cases in the courts have greatly increased. According to Hisham Abu Nada, there were 1,300 civil cases in 2009 (until November), compared with 200 in 2005. In addition to these are the criminal cases,

²¹⁰ Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University. Gaza, November 2009.

²¹¹ Interview with Osama Saed, Director General of legal and vocational affairs, Ministry of Justice, Gaza, November 2009.

²¹² Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University. Gaza, November 2009.

²¹³ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

²¹⁴ Interview with Osama Saed, Director General of legal and vocational affairs, Ministry of Justice, Gaza, November 2009.

²¹⁵ Interview with Osama Saed, Director General of legal and vocational affairs, Ministry of Justice, Gaza, November 2009.

²¹⁶ Interview with Dr Nafez Al-Madhoun, Director General of the Palestinian Legislative Council (PLC) and adviser for several legislative commissions, Gaza, November 2009.

which number even more than this. This may be interpreted as an indication that people nowadays trust the judiciary system more than was previously the case.²¹⁷ This explanation was confirmed by several interviewees who expressed confidence in the execution of cases in the courts. For instance, a lawsuit over a land dispute could in the past take more than ten years to be settled in the courts, while currently it would take few months. Yasser Al-Shurafa, a Palestinian citizen, commented:

I have had a land dispute pending in court since 2000, where the case was overseen by the previous judiciary. The current government, in contrast, has accelerated dealing with this issue. In the past, the case was adjourned more than 15 times for unimportant reasons. A decision was taken to resolve it in 2008. I feel confident to a large extent of the new judiciary system.²¹⁸

Another factor mentioned as a reason for the increased number of cases was the execution mechanisms adopted by the police force. The Execution Department at Gaza courts is said to operate in close cooperation with the police.²¹⁹

The High Justice Council was established by the Gaza government to manage and supervise the judicial sector according to the laws and regulations applied in Palestine, and it continues to work despite the objections of the High Judicial Council in Ramallah.²²⁰

A civil servant at the Gaza Conciliation Court stated that the sincerity and dedication of judges has resulted in considerable trust among lawyers and the public. The achievements that have been accomplished in the judiciary and the prosecution have been exceptional. People in Gaza had lost confidence in the previous judiciary, but this has now been restored.²²¹ Ismail Hamdona, a Palestinian citizen who is waiting for a settlement to a ten-year-old civil lawsuit with a previous business partner of his father, said that the judiciary is receiving much attention from Palestinian society, where individuals have been given the opportunity to launch lawsuits and appeal previous decisions in the Court of Appeal. At last, the judiciary is treating people equally, without discrimination, he said. He is frustrated, however, because his case has been pending since 2000, and he blames both the previous and the current courts for not having been able to reach a conclusion.²²²

A UN officer from the Gaza Strip, currently working in the West Bank, believed that one of the challenges following the crisis in Gaza was indeed lack of trust in the court system and its lack of independence. He stated that many Fatah members were victims of injustice and retribution during the takeover, and that such cases have not been taken to court.²²³

Dr Mohammed Al-Nahal, adviser to the justice minister in Gaza, stated that judges are applying law and discretion in resolving disputes without interference from any official or unofficial bodies in Gaza.²²⁴ In addition, the director general of the PLC stated that there have been no complaints to the PLC about obstruction of the work of the judiciary.

5.5.5. Independence of the Judiciary

Judges and other staff members are dedicated in their efforts and committed to working extra hours.²²⁵ According to Dr Mohammed Al-Nahal, "All government departments and judicial institutions are functioning better than ... in the past."²²⁶ A female lawyer suggested that, prior

²¹⁷ Interview with Hisham Abu Nada, judge at Gaza Conciliation Court. Gaza, November 2009.

²¹⁸ Interview with Yasser Al-Shurafa, citizen from Gaza. Has a civil lawsuit in Gaza Court. Gaza, November 2009.

²¹⁹ Interview with Osama Saed, Director General of legal and vocational affairs, Ministry of Justice, Gaza, November 2009.

²²⁰ Interview with H. M., Director of ratifications and documentation, Ministry of Justice, Gaza, November 2009.

²²¹ Interview with civil servant at Gaza Court, Gaza, November 2009.

²²² Interview with Ismail Hamdona, citizen from Gaza, with a civil lawsuit at Gaza Court. Gaza, November 2009.

²²³ Interview with UN official, Ramallah. Ramallah, November 2009.

²²⁴ Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University. Gaza, November 2009.

²²⁵ Interview with Ismail Jaber, acting Attorney General in Gaza. November 2009.

²²⁶ Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University. Gaza, November 2009.

to 2007, there had been many interventions by the police, political parties and the executive authority in the work of the courts that harmed the independence of judiciary.²²⁷ Presently, judges are appointed on merit in accordance with legal standards, and neither favouritism nor bribery are present in the judicial apparatus. Measures are being taken to ensure that all judiciary staff are adequately trained.²²⁸ In addition, new judges are being appointed to the conciliation court, and the number of employees in the judiciary is rising.²²⁹ The increased number of claims being adjudicated in short periods of time demonstrates trust in the current judiciary.

According to Azmi Mashharawi, legal procedures practised in courts are compatible with Palestinian law and he argued that there is no external influence or interference. Furthermore, coordination with other governmental institutions has facilitated the functioning of the judiciary.²³⁰ According to al-Madhoun, corruption and bribery have disappeared and the security forces have stopped interfering in the judicial sector.²³¹ However, some dispute Hamas's assurances that the judiciary system in Gaza is independent. A researcher on legal affairs argued that "there is no independence [of the judiciary] now and there was no independence before, but at least it is better now than before".²³² However, the fact that the judiciary is not fully independent is not related to the administration of the pre- or post-June 2007 executive authority. Rather, the lack of full independence is due to the varying political orientations of the many judges. Nevertheless, despite varying political orientations and the judiciary's overall lack of independence, the law is applied without external influences or interventions, maintained a Gaza lawyer.²³³ Ahmad al-Mughanni, the attorney general in Ramallah, saw Hamas's failure to respect the independence of the judicial system as the root of the crisis: "If we wanted to question the root about the crisis, we should remember that the authority in Gaza did not respect the independence of the judicial system and they cancelled the judicial system, and appointed new people."²³⁴

5.6. The Long-Term Vision of Hamas

The long-term ambitions of the Gaza government with regard to the judicial sector are achieving justice and freedom for Palestinian society. In the short term, the goal has been to solve the enormous challenges to the state of law and order in Gaza through continuous personnel training programmes, cooperation with relevant institutions, and efforts to strengthen the rule of law that guarantees the protection of civilians' safety and interests. Hamas's slogan in the run-up to the 2006 parliamentary elections was "Change and Reform" in government, including the judiciary.²³⁵ In pursuit of this ambition, Hamas has sought to achieve independence rather than Islamization of the judiciary.²³⁶ Ziad Abu Amr believed that, as a branch of the Muslim Brotherhood, Hamas has always dreamed of creating an Islamic entity, and now is apparently their chance to do so.²³⁷ For Osama Saed, the term "Islamization" has been employed as a scarecrow to frighten the international community from dealing with the Gaza government. He maintained that Islam has been a major source of legislation since the establishment of the Palestinian Authority, and this is explicitly stated in Article 4 of Palestinian Basic Law.²³⁸

One issue that received considerable attention in international media was a declaration by the High Justice Council requiring female lawyers and judges to wear headscarves in the

²²⁷ Interview with E. H., female lawyer from Gaza City, Gaza, November 2009.

²²⁸ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

²²⁹ Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University, Gaza, November 2009.

²³⁰ Interview with Azmi Mashharawi, lawyer, Gaza, November 2009.

²³¹ Interview with Dr Nafez Al-Madhoun, Director General of the Palestinian Legislative Council (PLC) and adviser for several legislative commissions, Gaza, November 2009.

²³² Interview with A. D., researcher in legal affairs, Gaza, November 2009.

²³³ Interview with E. H., female lawyer from Gaza City, Gaza, November 2009.

²³⁴ Interview with Ahmad al-Mughanni, Attorney General of the Ramallah government, Ramallah, November 2009.

²³⁵ Interview with Osama Saed, Director General of legal and vocational affairs, Ministry of Justice, Gaza, November 2009.

²³⁶ Interview with A. D., researcher in legal affairs, Gaza, November 2009.

²³⁷ Interview with Ziad Abu Amr, independent PLC member and foreign minister in the National Unity Government in 2007, Ramallah, November, 2009.

²³⁸ Interview with Osama Saed, Director General of legal and vocational affairs, Ministry of Justice, Gaza, November 2009.

courtroom. In response to negative media attention, the director general of the PLC stated that the media had been misinformed and that the Council's decision meant that all lawyers had to abide by the provision of the court uniform specified under the Palestinian legal system.²³⁹ The decision intended to ensure commitment to the uniform code according to the law.²⁴⁰ A female lawyer from Gaza stated that

the issue of the headscarf was addressed by the High Justice Committee, which stated that female lawyers were required to wear suitable dress and headscarves. Nonetheless, this decision was not implemented, as we – female lawyers – can attend courtroom proceedings without a headscarf.²⁴¹

While government sources claim that the issue was exaggerated and blown up out of all proportion in international media, the High Justice Committee apparently backed down on the question by refraining from implementing the regulation.

Dr Nafez Al-Madhoun argues that no process of radicalization is taking place and that Palestinian law is more than 80% compatible with Islamic law.²⁴² Islamic legal principles are especially prevalent in the area of civil law.²⁴³ However, there is no indication that the Gaza government is intending to replace or change the nature of the existing laws. Yet, a great number of Palestinian people would be happy to have Islamic law gradually and slowly applied in Palestine.²⁴⁴ There is growing optimism among Gaza government officials about adopting Islamic law,²⁴⁵ particularly in the fields of criminal and commercial law. Muslim scholars believe that Islamic law covers all aspects of human behaviour and would provide justice, fairness and equity. The position of Hamas as a political movement is that Islam is a religion of unity, equality, tolerance and freedom, contributing to human civilization, and not hostile to the modern nation. Accordingly, the Hamas view is that living in an Islamic country would provide the ideal environment for coexistence between people of monotheistic faiths. Hamas's vision for the future would maintain its survival and continuity as a legitimate part of the Palestinian social fabric.²⁴⁶

Today, Hamas is looking towards a national unity with Fatah. It has called for dialogue to end the dispute and to restore unity under the concept of political partnership and the protection of national legitimacy. Hamas supports the idea of cooperation and coordination between all Palestinian factions to give priority to areas of common ground and to ensure the delivery of services in different aspects of Palestinian life, particularly the judiciary and the rule of law and order.

5.6.1. Return to Status Quo Ante

Despite the differences between the two parties, Hamas officials have repeatedly affirmed their respect for and appreciation of the Fatah movement. Regardless of the contemporary political and judicial situation, Hamas claims that it is seeking reconciliation with Fatah to return to the pre-crisis situation in a unity government.²⁴⁷ This would necessarily imply the reconstruction of the judiciary sectors in Gaza and the West Bank within the framework of the Palestinian Authority.

²³⁹ Interview with Dr Nafez Al-Madhoun, Director General of the Palestinian Legislative Council (PLC) and adviser for several legislative commissions, Gaza, November 2009.

²⁴⁰ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

²⁴¹ Interview with E. H., female lawyer from Gaza City, Gaza, November 2009.

²⁴² Interview with Dr Nafez Al-Madhoun, Director General of the Palestinian Legislative Council (PLC) and adviser for several legislative commissions, Gaza, November 2009.

²⁴³ Interview with A. D., researcher in legal affairs, Gaza, November 2009.

²⁴⁴ Ibrahim Abu Nadr, citizen from Gaza, who has an ongoing civil lawsuit in Gaza Court. Interview conducted on 15–21 November 2009.

²⁴⁵ Interview with Ismail Jaber, acting Attorney General in Gaza, November 2009.

²⁴⁶ Hani Albasoos, "Hamas Political Ideology: Towards a National Strategy," Gaza: House of Wisdom Palestinian Institute for the Study of Conflict Resolution and Governance (HOW), September 2009.

²⁴⁷ Hani Albasoos, "Hamas Political Ideology: Towards a National Strategy," Gaza: House of Wisdom Palestinian Institute for the Study of Conflict Resolution and Governance (HOW), September 2009.

One point supporting such a claim is that Hamas has consistently sought to justify its legal initiatives by arguing that they are in harmony with the Basic Law, and furthermore it has not sought to alter the basic foundations and principles of the legal sector.

The Gaza government may either return to the pre-crisis status in the case of a successful reconciliation with Fateh or, alternatively, opt for long-term control based on status quo in Gaza. In any case, Hamas will presumably seek to preserve the reform efforts that have taken place in Gaza since June 2007 as long as these are in accordance with the Palestinian Basic Law. However, it is hard to predict the fate of the reforms in Gaza following a possible reunification in the future. Asked whether the current legal system would be formalized on a permanent basis if the current political situation persisted indefinitely in Gaza, Dr Mohammed Al-Nahal replied that Gaza's judicial sector has been functioning in accordance with the Palestinian constitution. He also stated that recently appointed judges should not be dismissed from their positions as a result of any reconciliation agreement between Ramallah and Gaza. The judicial sector should remain independent and not be affected by political changes in the government. Any unity government, he argued, would have to accommodate former judges and prosecutors who are currently on strike.²⁴⁸ Both former and new judges should be incorporated within the judiciary following reunification.

5.7. Conclusion

Following Hamas's takeover in Gaza in June 2007, the judicial sector went through various challenges. These included a comprehensive strike among judges and prosecutors, refusing to deal with cases requiring police enforcement (as this would legitimise the Hamas police) and the subsequent suspension of the work of the attorney general and public prosecutors. The strike paralysed the courts which could no longer process criminal cases and cases before the High Court. The crisis also included conflicting interpretation of the Palestinian Basic Law. At the core of the problem was the refusal of the High Judicial Council to cooperate with the Gaza government and recently appointed judges and prosecutors. Institutional discontinuity, disruption and financial crisis prevailed in Gaza, with devastating consequences for the judicial sector.

The Gaza government responded to these difficulties by taking measures to restore the functioning of the judicial sector. Measures taken to provide effective public services included replacing members of the judiciary who were on strike with new staff, incorporation of the *sulha* committees within the judicial system, the establishment of the High Justice Council to take on the responsibility of the Ramallah-based High Judiciary Council, and the creation of the Academic Institute to improve the capacity of newly appointed judicial staff. All of these measures contributed to restoring the functions and efficiency of the judicial sector. Through a combination of emergency and permanent arrangements, the Gaza government has succeeded in reactivating the judicial system in spite of the withdrawal of almost all former personnel. It implemented long-term measures to provide legitimacy, law and order. Officials within the judiciary stated that the new courts set up by the Gaza government have introduced no new, Islamic-oriented practice in their interpretation of the law. However, Hamas has emphasized that Sharia is already a major source of legislation within the Palestinian Authority, and that Hamas's majority in the PLC represents a popular, legal mandate for strengthening the Islamic influence on legislation.

Gaza's government is not an ordinary government but was set up in response to a constitutional crisis. Hamas claims that it has adhered to the Palestinian Basic Law as far as was possible under a state of emergency, and has declared its readiness to reunite with Fatah within the framework of the Palestinian Authority's institutions. At the same time, the newly established judicial institutions – together with the rest of the governmental structures that were established by Hamas following its takeover in 2007 – would presumably enable the Gaza government to remain in power for an extended period of time. In the absence of political

²⁴⁸ Interview with Dr Mohammed Al-Nahal, legal adviser to the Minister of Justice and head of the Shari'a and Law Department at the Islamic University, Gaza, November 2009.

reconciliation in the Palestinian polity, the provisional arrangements taken by the Gaza government may thus have far-reaching repercussions for the judicial system in the Gaza Strip. The lack of coordination in the judiciary between the rival governments in Ramallah and Gaza may contribute to institutionalizing the territorial and political divisions between the West Bank and the Gaza Strip.

6. Case study II: The education sector

Mkhaimar Abusada and Fakhir Abu-Awwad

6.1. Background

The emergence and development of the Palestinian education system has taken place amid frequent and long-term crisis, deeply affected by the Israeli occupation since 1967. In 1994, as a part of the Palestinian Authority (PA), the newly formed Ministry of Education and Higher Education (MEHE) initiated a formal process of building a genuinely Palestinian education system. Since then, the MEHE has been devoted to developing, advancing and providing quality education for every Palestinian child, including those at the margins of Palestinian society. Its policies have focused on constructing national Palestinian curricula, accommodating all children, and assisting schools with teachers, supplies and stationery. In addition, the ministry has devoted considerable resources to promoting education in academic, vocational and technical fields.²⁴⁹

The MEHE has also sought to implement continuous, renewable, participatory schooling processes that might contribute to strengthening respect for human rights, citizenship, development and morals among Palestinians. Hence, the ministry has worked on several urgent issues, including its administrative rebuilding process, budget allocation, coordination of donor support, construction of schools, preparation of curricula and textbooks, and teacher recruitment and professional development.²⁵⁰

However, interruptions caused by Israeli closures, loss of students' lives during Israeli incursions, allegations that textbooks were inciting hatred, internal Palestinian divisions, and weak competence have played major roles in holding back national plans for education.

In the Gaza Strip, compulsory basic education is provided for a period of ten years, followed by two non-compulsory years of secondary education that end with the general secondary school certificate (*Tawjihi*). Schools at all levels are predominantly single-sex.

Besides the MEHE, a number of other authorities are involved in supervising the operation of schools and managing the educational system in Gaza. These include the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and several private donors/investors. Statistics published in 2008–09 by the PA and UNRWA showed that the MEHE runs 383 schools in the Gaza Strip (60% of the schools in the area), with 53% of Gaza's students. For its part, UNRWA runs 34% of Gaza's schools, with 44% of all students. The private sector invests in about 5% of schools, with just under 3% of all students.²⁵¹ While the schools run by UNRWA do not provide secondary education, private educational bodies are responsible for all pre-school activities and almost all universities and technical and community colleges in the Strip.

²⁴⁹ Ramzi A. Rihan, "The Palestinian Educational Development Plan: Promise for the Future," *Palestine-Israel Journal*, Vol. 8, No. 2, 2001. Available at <http://www.pij.org/details.php?id=885>.

²⁵⁰ The World Bank, "West Bank and Gaza Education Sector Analysis: Impressive Achievements under Harsh Conditions and the Way Forward to Consolidate a Quality Education System," Washington D.C.: The World Bank, 2006.

²⁵¹ Palestinian Central Bureau of Statistics, "Number of Students in Schools by Region and Supervising Authority – 2006/2007." Available at www.pcbs.gov.ps/Portals/_pcbs/educatio/edua07.htm; Palestinian Central Bureau of Statistics, "Number of Schools by Region and Supervising Authority – 2006/2007." Available at www.pcbs.gov.ps/Portals/_pcbs/educatio/edua05.htm.

This study explores the approaches and mechanisms employed by the *de facto* government in tackling the challenges caused by the siege and isolation policies imposed on the Palestinian public educational system. UNRWA schools and private schools are not included in the study.

6.2. Gaza's Education System under Strain

Along with other public services, Gaza's education sector has been under considerable and increasing restrictions.²⁵² Israeli military activities and restrictions on movement have limited students and teachers' access to their schools and universities. Jointly, the directorates of education districts and the schools themselves have identified the shortage in the required resources to improve teaching process and/or to upgrade teachers' skills.²⁵³ They have lost their capacity to hold crucial staff training programmes, which negatively affects the quality of education.²⁵⁴

In the last couple of years, about half a million students started their schooling in overcrowded classrooms, with severe shortages of all school supplies, including paper, notebooks, textbooks, ink cartridges, school uniforms and school bags.²⁵⁵ The MEHE in Gaza has been suffering from shortages of spare parts for its officials' vehicles, as well as from the frozen delivery of its purchases, including computers and other school equipment. The shortage of educational supplies has prevented the reprinting of books and exam sheets.²⁵⁶

Repeated incursions by the Israel Defence Forces (IDF), especially into populated areas, have been affecting children's learning and undermining their belief that schools are safe places to attend.²⁵⁷ These violent incidents create psychological wounds that need special attention.²⁵⁸ However, owing to the general shortage of educational toys, drawing equipment and teachers' stationery, several national NGOs have halted their educational/psychosocial activities in the Strip.²⁵⁹

At the start of the 2008–09 academic year, political tensions between the authorities in Gaza and Ramallah were at a maximum. Fatah-affiliated teachers and ministry officials in the Gaza Strip protested against the Hamas government's administrative modifications within the MEHE itself and its subsequent transfer of dozens of teachers to different schools.²⁶⁰ The procedures were explained as part of the Hamas movement's policy of giving its supporters key posts in the education system.²⁶¹ About 50% of Gazan PA teachers adhered to the initial strike.²⁶² The move disrupted all aspects of the public school system in Gaza. On the other side, by the end of the school year, the salaries of about 700 out of 10,604 teachers working with the MEHE in Gaza had been cut off by the PA in Ramallah, the teachers being accused of being Hamas sympathizers.²⁶³ The MEHE in Ramallah confirmed that teachers were indeed dismissed as a result of information provided by the security branches. A large part of those in question, according to sources in Ramallah, were teachers employed by the first Hamas

²⁵² Susan Nicolai, "Fragmented Foundations: Education and Chronic Crisis in the Occupied Palestinian Territory," UNESCO, International Institute for Educational Planning and Save the Children UK, 2007. Available at <http://unesdoc.unesco.org/images/0015/001502/150260e.pdf>.

²⁵³ Interview with Education Ministry official, Gaza City, November 2009.

²⁵⁴ Interview with Education Ministry official, Gaza City, December 2009.

²⁵⁵ Mohammed Omer, "Textbook Injustice in Gaza," *New Statesman*, 7 October 2009." Available at www.newstatesman.com/education/2009/10/school-supplies-israel-gaza.

²⁵⁶ Interview with Education Ministry official, Gaza City, November 2009.

²⁵⁷ UNICEF, "Situation of Children in Gaza Remains Precarious 100 Days After End of Conflict"; News note, 28 April, 2009, www.unicef.org/media/media_49515.html.

²⁵⁸ Hatem Shurrab, "The Psychological Effects on Children in Gaza," *Global Health Network*, 21 January 2009, www.thelancetglobalhealthnetwork.com/archives/60.

²⁵⁹ Save the Children, "Children of the Gaza Crisis: Education Fact Sheet," 24 February 2009, gazasiège.org/docs/jan09/SavetheChildren_Gaza_FactSheet_I_6_09.pdf; UNICEF, "UNICEF Provides Educational Supplies and Safe Spaces for Children in Gaza," News note, 6 January, 2009, www.unicef.org/media/media_47523.html.

²⁶⁰ Interview with Education Ministry official, Gaza City, November 2009.

²⁶¹ Fox News, "Hamas Purges Gaza Schools of Rival Fatah Teachers," 27 August, 2008, www.foxnews.com/story/0,2933,411601,00.html.

²⁶² Interview with Education Ministry official, Gaza City, November 2009.

²⁶³ Interview with Education Ministry official, Gaza City, November 2009.

government in 2006 and 2007.²⁶⁴ Confusion and disarray have plagued the education system, and standards of education in Gaza schools have been the subject of deep concern.²⁶⁵

According to UNICEF, the prices of school uniforms and supplies increased by 50–100% in 2008 as a result of the blockade. The number of pupils and students unable to pay the school fees required for enrolment has doubled.²⁶⁶

Owing to the fuel limitations, students have to learn in classrooms with no electricity. This affects their concentration and the quality of learning, and also puts the visually challenged in an even more difficult situation.²⁶⁷ The lack of electricity at schools has badly affected science and computer classes, many of which have been cancelled.²⁶⁸ Also, electricity blackouts at home left some children unable to complete their homework. While the planned renovation of several schools was halted owing to the lack of materials, many schools' sanitation facilities have been affected by the lack of water.²⁶⁹

With the majority of the population of Gaza Strip under the age of 18, children and youth have borne the largest share of the impact of the Israeli military operations. Schools continue to be the target of attacks by the Israeli army and to sustain damages. For example, an assessment by Save the Children and UNICEF concluded that a total of 245 schools and kindergartens were severely or partially damaged during the Operation Cast Lead in December 2008/January 2009.²⁷⁰ The most severely damaged ones included 8 government schools, 2 private schools and 8 kindergartens. Another 156 government schools, 12 private schools and 60 kindergartens were partially damaged. With all schools being closed during the three weeks of aggression, the schools' final examinations for the first semester were disrupted.²⁷¹ Travel to and from school remains dangerous for both students and teachers owing to the presence of explosive remnants.²⁷² Attendance rates are usually disrupted during Israeli military operations, especially in the North Gaza and Gaza governorates. The private American International School has been completely destroyed. Its students have been accommodated in an alternative space that is cramped and overcrowded.²⁷³

In January 2008, Israel announced that it would not allow any students to exit the Gaza Strip to pursue tertiary education.²⁷⁴ Thus, the ongoing blockade has negatively affected the ability of Gazan students to pursue university degrees abroad.²⁷⁵ This has caused hundreds of students to be trapped in the Strip, with the number of students who can exit via Rafah being severely limited by the sporadic nature of the openings of the crossing.²⁷⁶ Restrictions on movement also constrained the ability of visiting scholars and technicians working for the manufacturers of international equipment, thus affecting students' abilities to acquire new knowledge and skills.²⁷⁷

²⁶⁴ Interview with Muhammad A. Abu Zeid, Deputy Minister of Education, MEHE, Ramallah, November 2009.

²⁶⁵ Interview with teachers and high school students, Gaza, November–December 2009.

²⁶⁶ UNICEF, Occupied Palestinian Territory, UNICEF Humanitarian Action Update, 23 October, 2008, www.unicef.org/infobycountry/files/oPtHAU23Oct2008.pdf.

²⁶⁷ OCHA, "The Humanitarian Monitor: occupied Palestinian territory," Number 22, February 2008.

²⁶⁸ Interview with Education Ministry official, Gaza City, December 2009.

²⁶⁹ Oxfam, "Restoring Safe Water, Sanitation and Pre-School Buildings for Children in Gaza," (undated), www.oxfam.org.uk/oxfam_in_action/.../gaza09/.../project_gaza09.pdf.

²⁷⁰ The Humanitarian Monitor, United Nation Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, May 2009.

²⁷¹ Interview with Education Ministry official, Gaza City, November 2009.

²⁷² OCHA, "The Humanitarian Monitor: Occupied Palestinian Territory," Number 33, January 2009.

²⁷³ OCHA, "The Humanitarian Monitor: Occupied Palestinian Territory," July 2009.

²⁷⁴ Gisha, "Obstacle Course: Students Denied Exit from Gaza," July 2009, www.gisha.org/index.php?intLanguage=2&intItemid=930&intSiteSN=113.

²⁷⁵ The Palestinian Centre for Human Rights, "Gaza Students Face Denial of International Education Opportunities," Gaza, 5 February 2008.

²⁷⁶ Interview with Ghazi Hamad, head of crossings in the Gaza Strip, Gaza City, December 2009.

²⁷⁷ The authors' own experience with their universities and students. The Islamic University of Gaza (IUG) has been without science and engineering labs since both colleges were bombarded by Israeli jets in January 2009. Also, academics working at the IUG have been informally banned from US-sponsored scholarships, such as those of the Fulbright programme.

6.3. Research Questions

This chapter analyses and comments upon the views expressed by interviewees in relation to three major concerns identified in connection with the Gaza Strip's education sector. Specifically, these concerns involve, first: how has the *de facto* government in Gaza coped with the challenges of providing public services in the education sector while facing the challenges of embargo and isolation? Second, to what extent is the *de facto* government seeking to secure continuity of the previous education system – and to what extent has it introduced new content to the public school in terms of curriculum, norms and practice? Third, are there any signs from the Gaza government's conduct in the education sector that would indicate to what extent Hamas is preparing for permanent, or at least long-term, control as opposed to administrative measures of crisis management?

6.4. Information Collection and Analysis

A survey was the main method used for collecting data for this study. A structured questionnaire was applied for the interviews with the respondents, who included government officials, staff/employees at schools, parents of primary school students, and students and staff at high schools.

The bulk of the information is drawn from about twenty different interviews conducted during the period of 15 November to 15 December 2009 with key informants, including individuals from the MEHE, UNRWA, the private sector, nongovernmental organizations and students. Also, visits were made to conduct field interviews at schools in the three directorates of West Gaza (Rimal), Middle Gaza (Nussairat) and North Gaza (Jabalia).

Needless to say, the likelihood that a given informant may have been oppressed by or sympathize with either Fatah or Hamas may colour his or her responses to the issues explored, including the impact of the siege on the education process.

Interviews were conducted in Arabic, after which informants' answers were translated into English. A content analysis of the questionnaires and interviews was then carried out.

To ensure that the present study was objective, trustworthy and transparent, the authors sought to interview many of the high-level staff at MEHE in Gaza. Several major issues – including adopted policies, in-field mechanisms and tools, and strategic vision and planning – were explored in the questionnaire's 25 questions.

Unfortunately, different factors – including lack of willingness to participate – reduced the number of interviewees it was possible to reach.

It turned out that the interviewees' opinions mostly reflected severe political polarization, rather than professional standards of schooling and education management.

6.5. Findings

The study finds that despite the harsh economic siege imposed on Gaza and the political embargo on the ruling movement, the approach adopted by the Hamas government in relation to the education sector is quite similar to that of the Palestinian Authority. The commonalities between the two sides regarding their perspectives on education far outweigh the differences. The interviewees' opinions tended to reflect severe political polarization, rather than professional standards of schooling and education management.

6.5.1. The Ministry of Education and Higher Education

Both Dr Reyad Samour,²⁷⁸ the director general of the educational administrations in MEHE of Gaza, and Fathi Kallob,²⁷⁹ the head of the directorate of education in middle Gaza, have

²⁷⁸ Interview with Dr Samour, MEHE offices, Gaza, 23–24 November 2009.

²⁷⁹ Interview with Mr Kallob, Gaza, 9 December 2009.

continued to receive their salaries from the Ramallah government without pause. They replied almost identically on the questions regarding the challenges facing their offices since mid-2007.

Identifying the main challenges confronting the MEHE in Gaza, Samour related how “after June 2007 (...) an acting minister of education was named by the government in Gaza. However, Dr Mohamed Shuqair, the local deputy general of the MEHE, ran the ministry – with full contact with the MEHE in Ramallah.”

The fragile coordination between the two sides lasted until August 2007, when disagreement over who should publish the final results of *Tawjihi* exams broke out in open conflict.²⁸⁰ Ultimately, Shuqair’s office decided to publish the results in Gaza unilaterally.

“By the beginning of the new school year, late August 2007, a crucial wave of new hiring was established to fulfil our administrative requirements and to fill the vacancies in the schools. In spite of the *Tawjihi* crises, enrolment took place according to long-term standards and mechanisms, and with full cooperation with the other side in Ramallah,” declared Kallob.

Samour added that at the beginning of the academic year 2007–08, Dr Shuqair was able to convince the teachers in Gaza to call off their strike so that schooling could start normally, as scheduled. “The required textbooks were supplied mostly by the Ramallah government while limited editions were printed locally, and the MEHE in Ramallah had to pay their costs along with other supplies,” said Samour.

A few months later, Mohamed Askoul, a professor of education at the Islamic University of Gaza (IUG), joined the Hamas government in Gaza as minister of education.²⁸¹ The school year 2008–09 was uniquely bad, as a general strike hit the schools from the first day. Thus, the already weak ties with the MEHE in Ramallah became strained, and all further coordination was suspended.²⁸²

In his answers on how the embargo has affected schools in Gaza, Dr Samour listed four major elements: deficiencies in school buildings; shortages in educational facilities, including computers and scientific labs, along with outdated appliances; the halt in ongoing staff training; and the cessation of international funding and scholarships. “While the annual Gazan birth rate is 4%, no single school has been built since June 2007. Classrooms have become very crowded, with 45–55 students, while 95% of the schools work two shifts per day,” stated Kallob.

Samour commented that “the government in Gaza could provide us with minimal urgent supplies and stationery, including printers, fax and copy machines. New teachers and administrative staff were urgently recruited to fill the vacant positions”. For his part, Kallob brought up the lack of capacity to provide training workshops and long-term guidance for new employees at all levels. “Several undeclared scholarships sponsored by Islamic countries such as Sudan were distributed privately on the basis of political affiliation,” Samour revealed.²⁸³

On the subject of ties with international organizations, Samour revealed that there has been a professional coordination with UNRWA which can successfully contact both authorities in Ramallah and Israel regarding supplies and crossings. A team of four high-level staff members has been formed within UNRWA’s education department in Gaza to liaise with their counterparts from the MEHE in Gaza.²⁸⁴ Apart from clarifying misunderstandings, the team coordinates common school activities and learning components for the best interest of the students in both government and UNRWA schools including scheduling exams and holidays jointly. “On several occasions, supplies and projects are funded by UNICEF. It has funded

²⁸⁰ Interview with Education Ministry official, Gaza City, 12 December 2009.

²⁸¹ In June 2008, Ismail Haniya expanded his cabinet by appointing five new ministers.

²⁸² Interview with Education Ministry official, Gaza City, 23 November 2009.

²⁸³ Authors’ discussions with H., a student who had been granted a place at the school of medicine at Sudan’s University of the Red Sea. Other students were confidentially informed of their admissions in Indonesia or Turkey.

²⁸⁴ Authors’ meeting with UNRWA administrative officer, Gaza, December 2009.

several proposed educational projects and training courses for the new teachers and the schools' headmasters," added Kallob.²⁸⁵

Regarding school expenditures, Kallob stated that all purchases that are not covered by an international organization or by the ministry in Ramallah are paid for by the ministry in Gaza. This includes the salaries of staff appointed during the last three years. "We have the monthly income of the school cafeterias. It is a good and persistent income," he said. Also, the director general of financial affairs in the MEHE in Gaza has been in full contact with his counterpart in the ministry in Ramallah, with the result that payments by Ramallah have been made for all common daily expenses, including vehicle maintenance, furniture, desks and chairs. However, according to local statistics for the 2009–10 school year, there are about 300 employees, including new teachers, on the payroll of the Gaza government.

While there have been very few cases of employees being caught receiving two salaries from the governments in both Gaza and Ramallah, several people on strike tried working in the private sector, for NGOs or with UNRWA. There seemed to be a pattern whereby some Ramallah-paid employees engaged in private business while on strike. Similar challenges were also reported in the health sector.²⁸⁶ "Our coordination with UNRWA has terminated such cases," claimed Samour.

In spite of the instability in Gaza, the MEHE in Gaza succeeded in restructuring and reorganizing both employees and directorates within the education sector. Several administrative measures have been taken, including the redistribution of the existing 160 schools in the metropolitan Gaza City into two directorates, namely East Gaza and West Gaza. At the management level, there have been established two new positions of deputy assistants of the minister. Notably, the newly created administrative positions in the MEHE have been mostly filled by Hamas officials.²⁸⁷

The Gaza MEHE has been hiring new teachers to address the strike's consequences. Up to 4000 teachers were hired on short-term contracts during the peak of the strike in 2008.²⁸⁸ This hiring took place after the MEHE had devoted considerable effort to bringing teachers and staff back to their posts. "We have failed in this regard. We moved to the next mandatory step," says Kallob. Successful applicants for the new teaching posts have been appointed on a temporary basis and are paid about half of the normal salary.²⁸⁹

Compared with the veterans, the new teachers lack experience, which negatively affects their efficiency and hence the whole learning process for students. Therefore, training sessions were urgently conducted to improve the teachers' skills. Additionally, supervisors are continuously evaluating the performance of the newly appointed teachers and relocating them accordingly.²⁹⁰

A productive coordination between the examination departments in both Gaza and Ramallah has been implemented in the general high school examination of *Tawjihi*. Coordination committees with members appointed from both sides have been managing the issues of final exams, grading and the issuing of certificates.²⁹¹ The financial departments of both sides are jointly coordinating the transfer of donations, including textbooks, exam papers and school supplies. In a similar fashion, the director general for administrative affairs in Gaza is in regular contact with his counterpart in Ramallah.²⁹² "Many mobile phone bills for Gaza staff

²⁸⁵ Interview with Education Ministry official, Gaza City, December 2009.

²⁸⁶ See chapter on the health sector in this report.

²⁸⁷ For example, Jamal Abu Hashim, previously a member of Hamas's political bureau, is now assistant undersecretary for the administration and development department.

²⁸⁸ Interview, Riyad Sammour, Director General of Educational Administration, Gaza, December 2009.

²⁸⁹ Tamer Institute for Community Education, "Right to Education Fact Sheet," August–October 2008, www.tamerinst.org/news_file/Right%20to%20Edu%20fact%20sheet.pdf.

²⁹⁰ "UNICEF supported the 30 hours induction training for the new teachers including those substitute teachers who have recently got permanent employment," according to Meeting Minutes, Education Cluster, UNICEF, Gaza Office, 28 April 2009.

²⁹¹ Interview with Education Ministry official, Gaza City, November 2009.

²⁹² Interview with Education Ministry official, Gaza City, December 2009.

are still being paid by the MEHE in Ramallah,” Samour said. He added that his textbook department updates the Ramallah office with the numbers of textbooks required for each subject in each grade.

However, things are not completely satisfactory. “We should not overestimate the outcome of this minimal coordination,” says “A” from the MEHE offices of North Gaza.²⁹³ As an example, he gave is the annual retirement of about 600–700 employees from the Gaza education system, where the government in Gaza must hire replacement for those retired and then pay their salaries.²⁹⁴ He insisted that the Gaza government had not applied any changes to the existing curriculum and that coordination between Ramallah and Gaza has governed the revision of the Palestinian curriculum to best serve the interests of students in both territories.

Regarding whether female students were required to wear the *hijab*, Samour and Kallob agreed that there had been no official memo on this from the policymakers inside the MEHE of Gaza. They pointed at “H”, a regional general director of education in Gaza, who had campaigned for imposing the *hijab* in the schools.²⁹⁵ Acting on the basis of oral instructions from the directorate, the headmasters of several schools had posted memos to inform girls of a change in dress codes. However, “no decision has been taken inside the MEHE,” Samour said. “H” issued an oral memo to inform girls about the new dress code. “Our minister has not issued any memos or declaration in this regard.... On the contrary, he reprimanded those who were responsible,” Samour verified.

Similarly, at the beginning of the 2009–10 school year, a number of male teachers were transferred from girls’ to boys’ schools. No decision was taken at the ministerial level about such segregation. “It was the same selfish motives behind the rumours,” Kallob insisted. Very few of the teachers refused to abide by the move. According to Dr Samour, Prime Minister Ismail Haniyeh instructed the minister of education to cancel the step. However, about 35 teachers stayed at their new schools.²⁹⁶ The MEHE in Gaza may adopt such a policy in the future in an indirect fashion in relation to girls’ schools, whereby retirees will be replaced by female teachers.²⁹⁷

Regarding a long-term vision consistent with Hamas’s philosophy of schooling, both Samour and Kallob denied being aware of anything beyond their tasks inside their directorates.

6.5.2. Teachers’ Own Experiences of Their Schools

Eight teachers, including three headmasters, equally divided between males and females, were interviewed for this study to describe their first-hand experiences from the educational sector under the rule of Hamas. Three major issues – policies adopted, the financial situation and Islamic/cultural demands – were covered in these interviews.

“I am in an era that is characterized by extreme complexity and uncertainty,” commented Waleed Salih, the headmaster of Osman bin Afan High School in North Gaza.²⁹⁸ “This situation would be even more aggravated by extending the ongoing Palestinian political division,” he added. Salih concluded that although the same syllabuses and textbooks are being assigned today as before the rule of Hamas, the educational environment has changed for the worse and has become more security-oriented during the last two school years, when Hamas has been in power. “The imposed embargo with its subsequent lack of teaching facilities and overcrowded classrooms has directly and negatively affected learning achievements,” he continued.

²⁹³ Interview with Education Ministry official in North Gaza (anonymous), North Gaza, 10 December 2009.

²⁹⁴ Interview with Education Ministry official, Gaza City, December 2009.

²⁹⁵ Interview with Education Ministry official, Gaza City, December 2009.

²⁹⁶ Interview with Education Ministry official, Gaza City, December 2009.

²⁹⁷ Interview with Education Ministry official, Gaza City, November 2009.

²⁹⁸ Interview with Waleed Salih, Gaza, December 2009.

“There was total chaos in September 2008, when 15 out of 27 teachers joined the strike in my school,” stated Ms Itidal, an experienced teacher working at Al Falouja High School for Girls in North Gaza and currently a supervisor in English.²⁹⁹ “Several teacher replacements took place in my school, and the MEHE recruited anyone with a university degree, even if they lacked experience”. She added, “They [the MEHE] kept replacing inefficient teachers with much skilled ones while sending the inefficient ones to primary schools.” In relation to her headmaster’s follow-up, she continued: “She replaced the Arabic language teacher five times, seeking a skilled one. She was very concerned for the reputation of the school and the welfare of the pupils.”

Lamia Gaiyad continues to be paid by the PA in Ramallah. Until 2007 she was a headmaster and an experienced physics teacher at high-school level.³⁰⁰ “I am horribly concerned about the future of education in the Gaza Strip,” she said. She blamed the Hamas-run MEHE for this, reasoning that recruiting inexperienced teachers was an irrational decision and a catastrophic move. In her opinion, such a strategy only serves political interests, while no improvements are made inside the schools. “Hamas is using the educational system to benefit its supporters (...) It’s the students and the people who lose out in these education and health sector strikes,” Gaiyad lamented.

Itidal agreed with Gaiyad, saying: “I do not feel comfortable about the newly appointed teachers, all their concern with getting a tenured position”. However, she expressed her satisfaction because teachers with religious backgrounds are currently being employed. “In my school, teachers who had kept their political beliefs in secret came out and declared them publicly,” she said, adding that the new appointed teachers advocate voluntary Islamic teachings and Quran studies after school hours.

“F” was recently employed as an English teacher at Al Shaima High School for girls, and thus receives her salary from the Gaza government.³⁰¹ “When I joined my new school for the first day, only three teachers were there, including the newly designated headmaster. The others were on a strike,” she recalled. “The headmaster was very committed and very well organized. She asked me to keep order in one part of the school,” she added. “F” pointed out that the least skilled of the new teachers were asked to move to primary schools. “In the second term, several teachers suspended their strike and came back to work in place of the new teachers, who were either transferred to other schools or terminated from employment,” she added in agreement with other interviewees. Being a new teacher, “F” could not compare issues before and after the Hamas *de facto* government came to office. In regard to her salary, contrary to her PA-affiliated colleagues, F said that from September to July of 2008, she has been regularly paid a total of 1,000 NIS (\$270) per month by the Gaza government. “In this school year, 2009–10, I have been appointed permanently by the MEHE but have been paid nothing yet,” she complained.

“The situation was very difficult at the beginning of the school year 2008–09 owing to the strike. Only 5 out of 25 teachers came to my school, including myself. In the first couple of weeks, our duties were limited to monitoring the pupils only, with zero teaching activity,” said Nazer Hassan, a teacher at Hafssa Bint Omar Primary School for boys.³⁰² He also did not join the teachers’ strike and has been paid by the Ramallah government. In his comment on the new recruitments, Nazer said, “I am very comfortable with the new teachers; they are very energetic, disciplined and devoted to their work. Their lack of experience is being treated through training workshops by MEHE supervisors or by approaching fellow teachers with more experience.”

Mariam Al Mzian was the headmaster of the Al Quds High School in Rafah until she joined the strike.³⁰³ “Despite the fact that Hamas seized control of the Gaza Strip, the school year 2007–08 went well. There were experienced and well-qualified teachers affiliated with all Palestinian

²⁹⁹ Interview with Ms Itidal, November 2009.

³⁰⁰ Interview with Lamia Gaiyad, North Gaza City, December 2009.

³⁰¹ Interview with “F”, North Gaza, November 2009.

³⁰² Interview with Nazer Hassan, North Gaza, November 2009.

³⁰³ Interview with Mariam Al Mzian, Gaza City, November 2009.

factions in the schools,” stated Mzian. However, she added that many teachers have been worried about their monthly salaries, and therefore limited themselves to teaching duties only and did not cooperate fully with the MEHE in Gaza. “I worked for the benefits of both students and our society without paying any attention to politics which must not drive the teachers’ attitude” she declared.

According to Al Mzian, politically derived clashes among students and staff have marked the new era of Hamas. “Reactions due to individual opinion differences were on the rise as a result of the political split.... I am extremely unhappy with the mechanism of replacing old teachers with new ones. They were asked to join their schools without professional systematic selection,” she added.

Walid Abu Shamleh, an Arabic-language teacher for children in the 3rd grade, continued to receive his salary from the Ramallah government despite his joining the teachers’ strike for a whole school year. The directorate of education in north Gaza allowed him to return to the position he held before the strike. “There was no sort of punishment for me,” said Abu Shamleh.³⁰⁴ “The school was badly damaged as a result of the Israeli war on Gaza, which had a negative impact on the pupils and teachers. The pupils were shocked by the scenes before their eyes. The school is under full control now. The only problem is the damage from the war,” he added. Abu Shamleh pointed out that the headmaster, newly appointed by the MEHE in Gaza, is one of the veteran staff members of the school who did not join the strike. “The previous one is either still on strike or the ministry in Gaza refused to give him his position back,” he explained. “I have quite good relations with the newly recruited teachers,” he concluded.

In her answers, “B” was very tough on Hamas policies in the Gaza Strip.³⁰⁵ She is a teacher of Islamic education at the high-school level in Gaza City and is paid by the Ramallah government. “It was very difficult for me at both the psychological and the administrative level. Relations between teachers and students have been tense, associated with feelings of insecurity and fear of the reactions of Hamas-affiliated teachers. (...) My relationship with the headmaster is formal and tough, as she tends to carry out orders without no mutual discussion, in accordance with the rule “Sit at home if you do not like it,” “B” said. Regarding the newly recruited teachers, “B” said that these lacked adequate skills, with most of them only being recruited because they were Hamas-affiliated. She added: “It was not easy for me to integrate with them while hearing the students’ complaints of their average performance.”

6.5.3. Teachers’ Comments on Tendencies Towards Islamic Teaching

In her comment on the so-called *hijab* issue, “B” stated: “Yes, the headmaster asked the female students to wear the *hijab*. I understood that there are instructions from the director generals of the MEHE in Gaza to impose the dress forcefully.” She continued, “In my view, these political decisions have been dealt with behind closed doors without any written letters owing to the hostile media campaign launched in Gaza and worldwide”. She added that the adoption of this new policy was left up to the headmaster herself, who is Hamas-affiliated and committed to Hamas’s cultural perspective.

“I confirmed that a written announcement with regard to the new dress code was posted two weeks after the end of the school year, around the middle of June. My headmaster attributed the announcement to the MEHE in Gaza,” stated “F”, who added that most girls adhered to the new policy, while those who refused to do so were asked to wear less tight-fitting clothes. Summarizing the tendency toward Islamic teachings, “F” said that her headmaster asked teachers to speak in their classes about issues that strengthen Islamic values among students. “There is a specific room for the prayer in the school, but it is voluntary,” “B” summarized.

“My new headmaster who is very close to Hamas instructed the girls from the very first day to wear the Islamic *hijab*,” said Itidal. However, a week later, the headmaster softened the strict

³⁰⁴ Interview with Abu Shamleh, Gaza, November 2009.

³⁰⁵ Interview with “B”, Rimal/Gaza, December 2009.

instructions. “It is OK with the girls who do not adhere to the new dress, as long as they dress modestly, wide clothes,” she quoted her headmaster as saying. She pointed that, in a refugee camp such as Jabalia, family mores are quite conservative, and hair cover is therefore a must for most families. Girls, she adds, are usually taught Islamic teachings and Quran studies, where they are commonly appreciated and honoured for memorization.

6.5.4. Teachers’ Readings of Tactical Change

The extended construction of Islamic educational institutions, including kindergartens and universities, has been employed as a primary systematic tool for replacing the secular curricula of former veterans. Similarly, there is considerable interest in whether Hamas has begun to institute any forms of tactical change within Gazan schools.

“Nothing dramatic has taken place,” declared Gaiyad. “The only obvious changes are the facts on the ground due to the blockade and Israeli aggression,” she added. She agreed with Itidal, who said that “the blockade has affected the performance of the pupils, sometimes there are shortages of textbooks and school supplies. Pupils have become more frustrated, apathetic and reluctant to participate in classroom. Some of the pupils do not do their homework, and many of them are very rebellious, especially with new teachers.” In regard to the new generation of teachers, Itidal believes that most of the new Hamas-affiliated teachers are very young, energetic and very motivated with regard to their tasks.

“The education system has completely changed as a result of the strike and the replacement of veteran teachers,” said Al Mzian. She added that the headmasters that have been appointed since the strike are very close to Hamas or consider themselves affiliated to the movement. Also, she continues, students’ performance has declined as a result of the teachers’ strike and the replacement of old and experienced teachers with new ones without experience. The *Tawjihi* output in the school year 2008–09 was a good example of the failure.

Contrary to Al Mizian, Nazer and Abu Shamleh appreciated the changes taking place in the education process. “Yes, there are changes in many good ways,” says Nazer. He indicated that the newly assigned headmaster in his school was very well organized and much more disciplined, a description similar to that given by Abu Shamleh. “He follows up with the new teachers closely.... Some teachers were reprimanded by him when they were late for their classes or did not prepare well for their subjects,” added Nazer. He emphasized that he thought the situation was in a much better shape than before Hamas seized control of the Gaza Strip in June 2007, because teachers’ consciousness is the leading tool of good education now.

However, the views expressed by “B” were very much in line with those of Al Mzian. “Yes, schools and the educational system have been negatively impacted since June 2007,” said “B”. “Most of the headmasters are Hamas-affiliated or Hamas members, and therefore they implement the policies of the MEHE in Gaza entirely for the political benefit of Hamas, not the educational process.” Teachers, as she saw it, should not stick themselves to routines instead of education’s quality. “B” gave another two examples of the evolving centralized education system: students, including females at high-school level, are obliged to clean their own schools, and teachers and supervisors are often transferred in an arbitrary fashion.

Salih, for his part, was reluctant to make any comment on this matter. “There is a mixed feeling in the schools today,” he stated, adding that though it seems to be an educational operation, the school system was in fact turning into a young dictatorship. “Our kids are missing the values of reconciliation and open thinking. They are intimidated by their Hamas-affiliated classmates,” he said. “What sort of future generation should we expect?” he asked.

6.5.5. Family Members’ Views of the New School System: Are the Children Happy?

In the last three years, there has been lively and ongoing debate among family members in Gaza regarding the current political conditions and how they have affected daily life in Gaza, including the efficiency of the education process. The level of satisfaction with schools, their

staff and any changes implemented were the major topics of a four-part questionnaire submitted to six students and two parents.

In the 12th grade, Salah was shocked when a pro-Hamas classmate intimidated him during class after he criticized Hamas policies: “You deserve punishment, you’ll see after school is finished,” quoted Salah.³⁰⁶ “Several teachers have also sided with pro-Hamas students,” stated Salah, adding that such incidents have created a boorish atmosphere inside the classes.

Jenin, a girl student in the 12th grade at Bashir El-Rayyess High School of Gaza, was disappointed by the headmaster’s actions. “I am not happy at all. She is very radical and cannot go easy when it is a Fatah–Hamas-related issue,” said Jenin.³⁰⁷ She added that corporal punishment was becoming a daily phenomenon, with some pupils being punished in an unfair fashion on the basis of prejudice.

“I’m not happy at school, I think there are many internal security informants monitoring pupils’ political activities there,” says A. Hamam, an 11th-grade pupil in Gaza City.³⁰⁸ He recalled that “on 11 November, the anniversary of Yasser Arafat’s death, a clash between pro-Fatah and pro-Hamas students took place in the school when pro-Hamas students prevented the others from commemorating the anniversary.” He continued: “Fortunately, the headmaster, together with my teachers, was able to soften the tension without the intervention of the police forces already deployed around the school.” In her comments on related events, Jenin stated: “We had a very similar thing in our school. While our headmaster forced the girls to remove their keffiyehs, a Fatah symbol, a little child wearing a military uniform and the logo of the Al-Qassam Brigades was allowed to join his student sister to celebrate a Hamas anniversary inside the school.”

“C” is another girl student at Bashir El-Rayyess High School. Asked whether she was happy with her school, she replied cautiously: “I am not happy in my school. There used to be much fun and joy in the school.³⁰⁹ Now something wrong is happening in the system.” She added that the new teachers are not experienced; they just deliver the course, and she demanded more experienced ones. “School has become irrelevant,” said “C”, adding that many students were therefore enrolling for home schooling in the afternoons.

In contrast, both 11th-grader Abdul Rahem and 12-grader Reem openly declared their happiness at school: “The school is under complete control with enforced order and discipline.” Similar comments were made by another three high-school students in Deir al-Balah city: Maisaa, Anas and Nida.³¹⁰ “The headmaster and teachers keep an eye on the pupils’ dress, haircuts and behaviour,” said Abu Shمله.³¹¹ Reem, however, was seeking more than that: “I like it there, but I still expect much more than a chalk women [referring to her teacher]. I really need a mentor teacher.”³¹²

Among the reasons given by Fathi, another 11th-grade pupil, for why he was unhappy with his school were that the mobile phones of students who were not pro-Hamas were confiscated, the headmaster insulted students both physically and/or verbally, and students were not allowed to celebrate national anniversaries. “This is a prejudice policy,” he declared.³¹³ Fathi added that while the Hamas police may intervene in political-based clashes among the students, sometimes his headmaster invited the assistance of Hamas-affiliated community associations to convince pro-PLO students to halt their activities.

³⁰⁶ Interview with Salah, Rimal/Gaza, December 2009.

³⁰⁷ Interview with Jenin, Rimal/Gaza, December 2009.

³⁰⁸ Interview with Hamam, Gaza, November 2009.

³⁰⁹ Interview with “C”, Gaza, November 2009.

³¹⁰ Interview with the three students, Deir al-Balah, December 2009.

³¹¹ Interview with Abdul Raheem, North Gaza, November 2009.

³¹² Interview with Reem, Rimal/Gaza, December 2009.

³¹³ Interview with Fathi, North Gaza, November 2009.

“Yes, life inside the schools has changed,” most of the students replied, each suggesting different ways: “Excluding male teachers from working in schools for girls, the attempt to impose the Islamic dress and *hijab* for all girl students, including Christian one,” indicated “G”.³¹⁴ “This was never fruitful. Two weeks after the start of schooling, girls were allowed to wear denim skirts and blue shirts,” she added. She related how the deputy of the minister of education had visited her classroom to survey the students’ opinions in the two issues. “You should be ashamed of yourselves,” she quoted him as saying after he was asked to bring back male teachers to their schools.

“Before the Hamas takeover of Gaza, we used to sing the Palestinian national anthem every morning, but not anymore. It has been replaced with pro-Hamas songs and religious speeches that mostly include incitement against Fatah and the Ramallah government,” said Abdullah. He added that students are repeatedly encouraged to pursue Islamic education and Quran-recital classes in the summertime. Also, pro-Hamas students do not allow their pro-Fatah classmates to wear their symbolic keffiyehs.

While Abdul Raheem limited his reasoning of the enhancements made in the schools to the newly adapted strict relation between the headmaster and his teachers Fathi raised the issue of the way in which the cafeteria is managed and the extent of its services inside the school. “It has become the property of the MEHE rather than a privately owned one. It serves only hot tea and falafel sandwiches,” he stated.

In regard to religion-based changes inside the school, Fathi reported that students were obliged to pray during the break. “We were told that those who pray will pass their courses, while those who do not pray will be treated differently,” he said. While Jenin did not list any symptoms of change inside the school, both “S” and Reem used their own words to paraphrase their classmates’ observations.

“S” responded: “In my school, we are led by Hamas-affiliated students; they should be held accountable for their deeds toward us. They have employed their own big gatherings to impose their celebrations and to attack the other students. They should be held accountable for their deeds.”

Regarding the achievements of the new teachers, Fathi said: “We have five new teachers this year; two of them are good, while the other three have little experience.” He concluded that veteran teachers could better understand his problems and concerns. “Students rely mostly on themselves to understand the material,” stated Abdul Raheem. In total agreement, “S” said that there were incompetent new teachers who did not master their topics, quickly revealed their lack of experience, and were always completely confused.

“This year I have fewer new teachers than last year. I have only two new teachers, while last year all of my teachers except one were new people,” stated Abdullah. He added that the last year’s schooling was a very bad experience for him. However, Jenin’s personal experience of the new teachers was better, with several of them being sufficiently competent.

“My English-language teacher was substituted several times to find a better one,” summarized “G”. She claimed that some of the new teachers in her school had never received college degrees, and thus in the first few days of the term they opted to discuss the easy topic of Islamic education the whole day long. “While they had minimum potential and zero experience, things are much better this year,” she said regarding the new teachers.

6.6. Conclusion

In the last three years, Gaza has been well identified with poverty, siege, restrictions on movement and lack of services. In principle, like most political Islamist movements, Hamas has been aiming at a gradual Islamization of Palestinian society based on Islamic religious law,

³¹⁴ Interview with “G”, North Gaza, December 2009.

the *Shari'ah*. The unique social and political features of the Gaza Strip have provided an optimal atmosphere for such an aim. Should such Islamization happen, Hamas would implement and promote its *Shari'ah*-based political and cultural philosophies.

Ever since it formed its first Palestinian government, Hamas has been confronting a number of internal and external challenges that have delayed any moves toward achieving civil life in Gaza. Among the major challenges it has faced are the “cultural” variances between the movement’s various bodies, such as the differences between the Hamas-affiliated government and the *da'waa* (religious outreach); the intensifying siege on Gaza strip, which has been accompanied by frequent Israeli invasions; and the impacts of the internal Palestinian political division, including the threatening activities by the rival government in Ramallah. These challenges have led to a dramatic deterioration in the daily social services provided for Gaza’s civilians.

After Hamas’s military takeover of the Gaza Strip in June 2007, in order to meet the first of these challenges, Hamas has been obliged to manoeuvre between its fundamental vision as an Islamic movement, on the one hand, and the pragmatic policies required of a government, on the other. This puzzling status has forced the governmental part of Hamas to display pragmatism in most of its daily conduct, including in the education sector. Such an approach was consistently employed by the de facto government of Gaza in the hope that it might avoid eliciting further rage or criticism from internal or external opponents.

The education sector in the Gaza Strip has been directly affected by the ongoing challenges in various aspects. Therefore, in the last couple of years, there have been a number of indications that the education sector is now less efficient than it used to be – or than it could be.

If things were solely in Hamas’s hands, the Islamic movement and its affiliated government would reshape the educational system according to its own vision of education, as set out in Article 16 of its 1988 charter, which states that

We must give the [young] Islamic generations in our area an Islamic education based on the implementation of religious precepts, the conscientious study of the Book of Allah [Quran], the Study of the Prophetic narration (*sunna*), and the study of Islamic history and heritage from its reliable sources (...). It is also necessary to study conscientiously the enemy (...) so that the fighting (mujahid) Muslim would live his life aware of his purpose, objective, way and what happens round him.³¹⁵

In a consistent show of power in the Gaza Strip in the few past years, and partially in response to the strike by veteran teachers, the de facto government had tightened its grip on the education system in Gaza. Moves have included replacing several hundred Fatah-affiliated teachers, school principals and educational supervisors with Hamas-supporting individuals, and leaning towards forcing schoolgirls to wear Islamic dress (*hijab*). Obviously, along with a policy of promoting only staff members affiliated to Hamas, feminizing schools for girls and commemorating the assassinations of the movement’s leaders inside schools, these procedures may be seen by Hamas’s opponents as manifestations of a process of Islamization of the education system, and thus of the whole society. However, we believe that these are morphological changes only, and that they represent no fundamental modifications of the educational process. It has become evident that Hamas has been maintaining control of Gaza through reliance on authoritarian rule and an emphasis on conservatism as a philosophy, the latter being a cultural component rather than a religious one, as it would be in the case of Islamization. The de facto government has approached the crisis in education by taking over the institutions throughout the Gaza Strip accompanied by full replacement of the employees, regardless of the consequences.

³¹⁵ The Charter of the Islamic Resistance Movement (Hamas), English translation in Mishal, Shaul and Avraham Sela, *The Palestinian Hamas. Vision, Violence, and Coexistence*. New York: Columbia University Press, 2006, p. 186.

In the education sector, the hiring of a huge number of inexperienced Hamas-affiliated teachers at the beginning of the academic year in 2008 to fill the positions left by thousands of striking veteran teachers is an obvious example of the approach described above. The move was preceded by a separate round of replacements for schools headmasters and senior staff in the MEHE in Gaza. The primary aim of Hamas has been to keep the educational sector running at any cost, regardless of its output, to avoid a sharp failure or a further collapse in social services. The de facto government succeeded in its efforts to fill the vacancies in the education sector through an overwhelming cooperation with various bodies of Hamas, including the students' Islamic Block, the teachers union and the security apparatus.

There are no obvious signs that the educational process in Gaza has been functioning well, especially in the period 2007–09. Inexperienced teachers, overenthusiastic principals, feelings of insecurity on the part of students and lack of proper emergency plans have seen to that. The current situation has caused further confusion and objections among parents, who have repeatedly complained about how their children are being treated, especially in relation to secondary education. The subsequent growth of the market for the private teaching at home has been an inevitable and very public phenomenon.

It must be emphasized here that the relative stability of the education process from the start of the academic year in 2009 could not have happened without the cooperation of the Palestinian government in Ramallah, which has provided textbooks, stationery and some operating expenses, as well as continuing to pay the salaries of teachers returning from the strike. Along with the coordination of UNRWA, UNESCO and others, such support has contributed to alleviating the effects of the Israeli blockade and the internal political division between Hamas and Fatah. However, in the shadow of a politically erratic situation, real progress toward achieving a healthy educational process is not expected soon.

In short, the de facto government of Hamas has been able to limit some of the damage caused by embargo imposed on Gaza. However, there is no sign that the government in Gaza has been able to manage the erupting crisis in the education. Therefore, in the last three years, the most that Hamas and its affiliated government in Gaza have been able to achieve has been to maintain an average level of education services without the system suffering a sharp collapse. Recruiting the Hamas affiliated teachers beside the activities of extended Islamic student block and the overriding internal security system has insured and guaranteed this control. According to Hamas, the ongoing crisis in Gaza is not the result of its actions, and thus the solution cannot be Hamas's sole responsibility. The international community and the Israeli occupation should be held accountable for the sequence of events that have taken place.

7. Case study III: The Health Sector

Mahmoud ElMadhoun

7.1. Historical Background

Israel took control of the health care facilities of the Gaza Strip and the West Bank following its occupation of these territories in 1967. Israel focused mainly on basic prevention and primary health care services. Noticeably less attention was devoted to the development of hospital services. During these years, foreign donors of humanitarian aid had no official authority with which to collaborate and offered aid by supporting local non-governmental organisations. As a result, they helped foster the expansion of the NGO sector, which in turn became organised into different associations, depending on the goals and orientation of the sponsoring organisation. This pattern of outside donors shaping the health delivery system in Palestine through their funding activities continues to this day. The end of direct Israeli operation of the health care system and the establishment of the Palestinian Authority (PA) in 1994 led to a major expansion of the governmental health sector all over Palestine. Palestinian entrepreneurship led to the creation of several large, and many small, non-governmental health organisations and medical practices. These were established during a period of economic optimism with hope for growth and prosperity in the new environment, along with profitable opportunities for offering new and better services.³¹⁶ However, the escalation of Israeli military operations during the Intifada of 2000 brought the positive economic trend to a halt and led to dramatic changes in the health sector. Israeli closures and travel restrictions have seriously cut the Palestinians' access to health care down in size, complicating the work of the health facilities in the governmental as well as the private and NGO sectors. Rising unemployment has also been a factor in shifting utilisation away from providers who require out-of-pocket payments.³¹⁷ The Ministry of Health (MoH) has responded by upgrading some hospitals to provide health care for the populations whose mobility is now seriously restricted. Furthermore, the Intifada has had a major impact on the health insurance system. An increasing problem was that, because of the loss of jobs in Israel and the rising rate of unemployment, many citizens stopped paying the insurance fees. Government efforts to support certain local NGOs through expanded referral of patients for treatment that is covered by the PA have placed added financial burdens on the MoH. In Gaza, the ratio of refugee population per centre is 95,627, whereas the MoH has 24,423 persons per centre.³¹⁸ The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and other NGOs focus on comprehensive preventive and primary health care. The health system in Gaza is characterised by a high capability in responding to emergency situations and dealing with a high level of uncertainty. The chronic state of uncertainty has made long term health planning impossible. Although access to health services is normally secured, the quality of many services is low. There has, however, been no health system collapse.³¹⁹

7.2. The Challenges of the Health Sector in Gaza

Following the victory of Hamas in the election of January 2006 Ismail Haniyeh became the prime minister of the first Hamas government, which was inaugurated in March. Israel announced that it would not deal with the new government and urged the world community not only to do the same but also to stop all financial assistance to the new government both for paying the salaries of thousands of its employees and for covering its operational expenses and

³¹⁶ Gaza MoH, Annual Report, 2007.

³¹⁷ Gaza MoH, Annual Report, mid 2009

³¹⁸ UNRWA, "Annual Report, 2007," New York, 2008, <http://unrwa.org/userfiles/20100118141933.pdf>.

³¹⁹ Majdy Ashour, public health and health policy specialist, lecture delivered at Islamic University, Gaza, March 2009.

implementing new development projects in the Palestinian territories. Under pressure from the USA, which labelled Hamas a terrorist organization, most of the donor countries terminated all assistance and communication with the new government and redirected both diplomatic relations and economic assistance from the government of the PA to the president's office. Israel applied a policy of strangling the population of Gaza and the West Bank economically, by withholding the VAT and custom fees imposed on goods imported via Israeli ports and collected by Israel on behalf of the PA. After the crises of June 2007, Israel announced the Gaza Strip to be "enemy territory" and imposed a severe embargo on Gaza.

Moreover, some international NGOs working in the health sector in Gaza chose to sever relations with the Gaza government following the crises of June 2007. For example, the Merlin Foundation terminated its relationship with the MoH in Gaza, and the Canadian Aneera Foundation decreased its work in Gaza to a minimum. Officials in the MoH in Gaza related this shift to the American administration's support for the siege imposed on the Gaza government.³²⁰

7.2.1. The Israeli Embargo

The Israeli embargo of the Gaza Strip has had a detrimental effect on the movement of Gaza patients to access health care services on the West Bank, in Israel or abroad. The permanent closure has also reduced training opportunities for medical personnel by denying them permits to leave Gaza to participate in educational or professional seminars which are not available in Gaza.³²¹ During the Gaza war in 2008/09, working together with visiting foreign surgeons in the operating theatre was considered a rare opportunity for training and development of qualifications.³²²

The strictly imposed embargo includes, furthermore, the import of fuels, energy, construction materials, equipment and spare parts, thus hindering the regular performance and the development of health care facilities.³²³ Shifah Hospital reported that heart surgery operations had to stop because the heart pump could not be replaced, and that diagnosis and magnetic resonance tools have been out of order since August 2008, even though the only thing they need is new software. The CT machine is also not functioning. Qatar Red Crescent has now provided Shifah Hospital with a second desalination unit because the existing unit was not working for a long time.³²⁴

The siege has led to a rise in unemployment, which has caused a dramatic increase in the poverty level among Gazans. This has affected the citizens' ability to afford expenditures on health services, forcing people to move toward using public health services at the expense of private services, which put the MoH and the Gaza government under pressure in terms of increasing demand for public health services. Medical sources report long waiting lists; some patients have had to wait for more than 6 months or even a year to have simple surgery.³²⁵

Malnutrition is another precarious problem, as 40% of Gaza's children have anaemia, according to sources in the Gaza MoH.³²⁶ Furthermore, physicians in Gaza have observed the outbreak of illnesses that did not exist before, due to the Israeli use of the prohibited weapons such as white phosphorus and depleted uranium during the Israeli military attacks of December 2008/January 2009.³²⁷ The scope of Israeli policy in the Strip is, according to a public health specialist, characterised by three vetoes: "No humanitarian disasters, no normal life, and no development".³²⁸

³²⁰ Interview with administrative officer of the Gaza MoH, Gaza, November 2009.

³²¹ Interview with Moawia Hassanien, Director General of Emergencies, MoH, Gaza, November 2009.

³²² Majdy Ashour, public health and health policy specialist, lecture delivered at Islamic University, Gaza, March 2009.

³²³ Interview with Moawia Hassanien, Director General of Emergencies, MoH, Gaza, November 2009.

³²⁴ Interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

³²⁵ Interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

³²⁶ Interview with Medhat Abbas, Director General of International Cooperation at MoH, Gaza, November 2009.

³²⁷ Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009.

³²⁸ Majdy Ashour, Public health and health policy specialist, lecture delivered at Islamic University, Gaza, March 2009.

The crises of June 2007, followed by the establishment of two rivalling governments – one in Gaza and another on the West Bank – had dramatic repercussions in the health sector. The most important effects of the division are reviewed below.

7.2.2. Salary Cuts

Hundreds of MoH employees experienced that their salaries were cut by the Ramallah government from the end of June and during the following months. Sources in the MoH in Gaza claim that this move was based on the employees' alleged loyalty or sympathy either to Hamas or to Gaza government. In total, 1433 employees had their salaries stopped by the end of 2008 by Ramallah government, and the waves of salary cuts by the Ramallah government continue till this day.³²⁹

The policy of the Ramallah government has apparently been to pay employees in all the governmental ministries for staying away from their offices, with the exception of the social affairs, health and education sectors, which in spite of several strikes backed by the Ramallah government still remain largely run by Ramallah-paid staff. Furthermore, every month the Ramallah government has provided a small stipend to compensate for 16 months of unpaid wages during the rule of the first Hamas government (March 2006 to March 2007) and, afterwards, the National Unity government (March 2007 to June 2007). Those who continued to work during the strike at hospitals, schools, police stations and other public institutions had their wages withheld by the Ramallah government. Security agents of the Ramallah government are believed to have classified all the employees on the basis of their political affiliation.³³⁰ The first category of employees to lose their salary included employees who were allegedly collaborating with the Gaza government – irrespective of how long they had been employed.³³¹ A case in point is the veteran health worker Khalil Shakfah (see spelling below), the Director of the Nursing Department of the Ministry of Health in Gaza, who said, “My salary was cut in July 2007 with an accusation of cooperating with the Gaza government although I have been an employee of the Ministry of Health since the establishment of the PA in 1994.”³³² Another category of employees who lost their salaries from the Ramallah government was those who did not support the first strike that was launched in August 2007. Even professional employees such as physicians who were not affiliated with either Hamas or Fatah lost their salaries because the moral code of their profession required them to treat their patients rather than to go on strike. After the strike, moreover, the payment of salaries was allegedly terminated on the basis of reports provided by the Palestinian General Intelligence.³³³ In many cases the accusation of “collaboration” with Hamas was related to their acceptance of promotions in their positions offered by the Gaza Ministry of Health. “The reason the Ramallah government cut my salary is that the Gaza government made me the director of the referrals centre,” said Ziad Khozendar, Director of the Referrals Abroad Department³³⁴

The employees of the ministry were shocked by the extent of the political division and by the fact that salaries were being used as a political card. Employees became suspicious of anyone who might report on their political views: colleagues, friends and even family members. Some employees whose salaries had been cut started to look for *wasta* (personal contact within the Authority) to get their salaries back. “Some of them went into depression, psychological shocks and became dispirited,” said an administrative officer.³³⁵ The fact that many employees lost their salaries without any understandable reason has created widespread resentment against the Ramallah government.

³²⁹ Interview with Hussam Dahdooh, deputy of the Director General for Financial and Administrative Department of the MoH in Gaza, Gaza, November 2009.

³³⁰ Interview with Mohamed Shehab, PLC member from Hamas, leader of Health Committee in the PLC, Gaza, November 2009.

³³¹ Interview with Director of Nursing Khalil Shakfah, Gaza, November 2009.

³³² Interview with Director of Nursing Khalil Shakfah, Gaza, November 2009.

³³³ Interview with Mohamed Shehab, PLC member from Hamas, leader of Health Committee in the PLC, Gaza, November 2009.

³³⁴ Interview with Ziad Khozendar, Director of Referrals Abroad Dept., Gaza, November 2009.

³³⁵ Interview with administrative officer in Gaza MoH, Gaza, November 2009.

7.2.3. Strike in the Health Sector

In August 2007 the health sector suffered badly from a general strike, which was joined by 60% of the administrative staff and 40% of the nurses and physicians³³⁶. To compensate for the shortage, the Gaza government employed new staff, reducing the shortage to 5% among physicians, 20% among nurses, and 30%–40% among administrative staff.³³⁷ Hussein Ashour, Director General of Shifah Hospital, said, “They wanted the health services to collapse, but the MoH and Shifah Hospital stood bravely by until the physicians, nurses and administrative staff started to break the strike. Now we offer more services using fewer resources than under the previous governments.³³⁸ The strike became a turning point in the future of the health care system in Gaza, especially when aggressive measures were taken by both conflicting parties during the strike. “I remember that the Intensive Care Units in the Paediatric Hospital were left with six patients in the incubators; they just simply left their work. This is a crime, a deliberate action to kill,” recalled an official in the International Cooperation Department at the MoH, who claimed that the medical staff was blackmailed by the Ramallah government.”³³⁹

The strike had a negative effect on the employees of the MoH and created uncertainty in medical services. Employees complained about the extra work they had to do to cope with the new reality. During the strike the medical staff would work short days. According to the deputy minister of the Gaza MoH, “It was a crime committed by the Ramallah government when medical staff had to leave their work and stay home because they were afraid that they would lose their salary from Ramallah if they did not abide by the strike. They left their jobs in hospitals, including intensive care units, at 10 o’clock every day.”³⁴⁰ In the beginning, the Gaza MoH ordered physicians who were on strike to close their private clinics and laboratories to force them to return to work. “My private lab was closed. Some employees were brought from their homes to work by the police,” said an employee at the medical laboratory department of the MoH.³⁴¹ Such procedures were carried out by the MoH in Gaza to force employees to end the strike. The Gaza government also took action against those who refused to work; for example, physicians who refused to resume work were not allowed to open their private clinics and were prevented from doing any other job. That procedure was undertaken to protect the health sector³⁴². The problem of the strike was solved by recruiting volunteers and appointing recent graduates and students in their final year at the university. The new staff worked in the hospitals and clinics.

Medical services were decreased during the strike, but the MoH in Gaza managed to overcome the crisis and find solutions and strategies to limit the damage.³⁴³ The strategy of the MoH was to keep the employees who were paid by Ramallah government in their positions, where they had important jobs to do. The MoH in Gaza was reluctant to appoint additional staff because of its limited budget. However, after many strikes by the employees, the MoH changed its strategy to employing new staff, especially administrative employees and nurses. Furthermore, when the strike ended, the Gaza MoH allowed most of the employees to return to their jobs, while those who were seen as “troublemakers” were prevented from returning.³⁴⁴ When the Gaza government started appointing new employees, the Ramallah government asked its employees to go back to work to prevent their being replaced by others.³⁴⁵ Now there is no strike, but there is a mutual suspicion between the employees paid by Gaza government and those paid by the Ramallah government, reflected in the weak loyalty the latter display toward their jobs. According to an employee at the medical laboratory department at MoH, “the Gaza government only takes care of its own employees and looks at the Ramallah-paid employees with suspicion;

³³⁶ Interview with Khalil Shakfah, Director of the Nursing Department, Gaza, November 2009.

³³⁷ Interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

³³⁸ Interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

³³⁹ Interview with Medhat Abbas, Director General of International Cooperation at MoH, Gaza, November 2009.

³⁴⁰ Interview with Hassan Khalaf, Deputy Minister of Health, Gaza, November 2009.

³⁴¹ Interview with employee at medical labs department at MoH, Gaza, November 2009.

³⁴² Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009.

³⁴³ Interview with Hani Wehaidi, Director of Nursing in Clinics, Gaza, November 2009.

³⁴⁴ Interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

³⁴⁵ Interview with administrative officer at MoH, Gaza, November 2009.

the party affiliation is more important than the professional consideration. That is why some new employees appointed by the Gaza government are not qualified to fill their positions.”³⁴⁶

None of the medical staff at the MoH – neither those paid by the Ramallah government nor those paid by the Gaza government – has been removed from their jobs because of the strike, on the contrary.³⁴⁷ Some complaints from employees paid by the Ramallah government about these employees being moved to other departments in the Ministry were presented to the MoH in Gaza.³⁴⁸ The walkout of several employees has affected the people of Gaza, who were looking for a solution to this tragedy in the health sector. The MoH in Gaza found itself compelled to appoint several new employees. Government sources stressed that the new employees had been chosen on the basis of their efficiency and experience and in accordance with the laws of the General Personnel Council and of the Ministry of Health.³⁴⁹ However, there is no doubt that the quality of the medical services offered to the public suffered during the strike, due partly to fewer staff at being at work and partly to less qualified staff among the replacement personnel.

Following the crisis in 2007 there was a shortage of everything – medicines, medical instruments, and the experience of the new employees³⁵⁰. Some people complained about the mistakes that occurred in their medical analysis³⁵¹, either because of the malfunctioning of the devices used or because of the new employees’ lack of experience.

7.2.4. Lack of Coordination of Donations

A large amount of medicines and medical materials was sent to Gaza by various countries after the 2008/2009 Gaza War. Members of the MoH staff were not able to deal with some of the equipment because they lacked experience. Moreover, the donations were not organized by the various donors, causing confusion about the types and quantity of medicines needed in Gaza. Frequently, the same types of medicine came in large quantities, whereas there were shortages of other drugs. As a result, some of the donations expired or were damaged without providing any benefit for the health sector in Gaza.³⁵²

7.2.5. Access to Treatment Abroad

Gaza patients’ access to specialized medical services outside the Gaza Strip, which has been restricted for years owing to Israeli travel restrictions, has been even more limited by the current political division between the Gaza and Ramallah authorities. The internal conflict has produced a bureaucratic process that all patients must go through when applying for referral. The process is incredibly time-consuming, and it may take months from a patient’s application is submitted until the final decision is taken and financial coverage is secured. The MoH in Gaza accused the referral employees, paid by the Ramallah government, of bias, corruption and double standards with regard to the Palestinian patients. The Gaza government decided to remove the staff in the referrals department and replace them with new, more loyal employees. The Ramallah government accused Hamas and the Gaza government of intervening in the referrals department’s affairs. In 2009 the MoH in Gaza and the MoH in Ramallah reached a compromise by selecting an independent committee for referrals, to facilitate the work of this department in referring patients for treatment outside Gaza.³⁵³ This arrangement is considered a unique example of coordination between Gaza and Ramallah for the benefit of the Palestinian people.

7.2.6. Drug Shortage

By July 2009, 77 of 480 essential drugs and 140 of 700 essential medical supplies in Gaza’s health ministry were out of stock as a result of the harsh siege against Gaza, according to the

³⁴⁶ Interview with employee at medical labs department at MoH, Gaza, November 2009.

³⁴⁷ Interview with Hassan Khalaf, Deputy Minister of Health, Gaza, November 2009.

³⁴⁸ Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009; interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

³⁴⁹ Interview with Hussam Dahdooh, deputy of the Director General for Financial and Administrative Department, Gaza, November 2009

³⁵⁰ Interview with employee at medical labs department at MoH, Gaza, November 2009.

³⁵¹ Interview with employee at medical labs department at MoH, Gaza, November 2009.

³⁵² Interview with administrative officer at MoH, Gaza, November 2009.

³⁵³ Interview with Hussein Ashour, Director General of Shifah Hospital, November 2009.

WHO. The International Committee of the Red Cross (ICRC) funds and supplies 30% of medications and medical supplies in Gaza. Most of the remaining 70% of medicines and medical supplies come from the MoH in Ramallah, paid for by the PA, according to Tony Laurance, head of the WHO's West Bank and Gaza Office in Jerusalem.³⁵⁴ Israel prevents medicines and new equipment from getting into Gaza. In some cases supplies have been held at the Erez crossing between Israel and the Gaza Strip for over 6 months before Israel allowed them to enter into Gaza. "The Ramallah government delayed the release of medicines to our stores; we cannot predict whether the medications will come or not. Sometimes, because of the late response of the Ramallah government, the MoH was forced to request the same medications from another place, either from the local market, if available, or from abroad. Sometimes the same type of supplies arrive from the Ramallah government and from abroad simultaneously, which creates a problem for us because a double quantity exceeds our requests, and some medicines expire before use," Moawia Hassanien, Director General of Emergencies, said. The World Bank pays for most of the medicines and the medical materials, whereas Ramallah pays a small part. In addition, the MoH in Gaza buys medicine from the local market if they run out of a drug in their own supplies.³⁵⁵

The price of medicines in the local market in Gaza fluctuates greatly due to variations in availability. Medicines found in the local market may be up to four times of the true cost. This is because these medicines were smuggled into Gaza through the tunnels between Gaza and Egypt.³⁵⁶ Following the Gaza War, the prices decreased as huge quantities of medicine were imported from abroad and others came to Gaza as humanitarian aid.

7.2.7. Electricity Blackouts

Power cuts have been another problem for the MoH in Gaza. The blackouts became more frequent after Israel declared Gaza "an enemy entity" in September of 2007. Hospitals and clinics use uninterruptible power supply (UPS) systems as backups, but these require batteries, which are often not available due to border closures with Israel and Egypt. Shifah Hospital is still in a crisis situation because of frequent blackouts. During the 2008/2009 Gaza War generators worked for more than 14 hours a day. Electricity blackouts put the staff and the patients in a very risky situation, as incubators for newborns, ICUs, and operating rooms may shut down and cause the immediate death of patients. "Three hundred kidney patients could face death within a week" warned a hospital director in Gaza.³⁵⁷ An additional problem is that in some cases the generators are harmful for instruments.

7.2.8. Double Fees for Health Insurance

For a year and a half following the Hamas takeover, the health insurance of the employees at the MoH who received their salaries from the Ramallah government constituted a problem. Every month a sum was deducted from their salary by the Ramallah government to cover their public health insurance. However, the MoH in Gaza did not recognize this insurance and forced them to pay an additional fee for the insurance to the Department of Insurance in Gaza. However, after the Gaza war, the Gaza government changed this practice by agreeing to provide free treatment for employees with insurance from Ramallah, although this was not announced publicly. Sometimes it was up to the staff in the health centres whether to accept treating these patients, free of charge or not.

7.3. The responses of the MoH to face the challenges

The Gaza MoH effected several initiatives to prevent the health sector in Gaza from collapsing after the June 2007 crises and to ensure the provision of basic health services to the public.³⁵⁸ In spite of the crisis, there has been an increase in the number of medical centres and other facilities. This includes more beds in hospitals, increasing from 1491 in 2006 to 1907 in 2008,

³⁵⁴ Majdy Ashour, public health and health policy specialist, lecture delivered at Islamic University, Gaza, March 2009.

³⁵⁵ Interview with Moawia Hassanien, Director General of Emergencies, MoH, Gaza, November 2009.

³⁵⁶ Majdy Ashour, public health and health policy specialist, lecture delivered at Islamic University, Gaza, March 2009.

³⁵⁷ Interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

³⁵⁸ Interview with Hassan Khalaf, Deputy Minister of Health, Gaza, November 2009.

and in special care units, increasing from 12 to 30 beds.³⁵⁹ New hospitals and clinics were also established, such as Prince Nayef Diagnostic Hospital, Rantisi Specialized Hospital, new operating theatres, and new ICUs.³⁶⁰ “We succeeded in opening new health sections and centres in Shifah Hospital and in Dr. Rantisi Children’s Hospital, including a cardiac centre, and in the European Hospital a reconstruction project was initiated. These improvements are considered considerable achievements under our present conditions,” Hassan Khalaf, Deputy Minister of Health, said.³⁶¹ The Ministry established a new “Palestinian Medical Board,” which oversees extensive training courses for professional specialization and ensures the efficiency of the staff in the health sector.³⁶² This is part of a reform program that the MoH has called “the educational and training revolution” inside its hospitals to improve the efficiency of physicians and nurses. The program also includes 4 or 5 years of education for students in medical fields.³⁶³ In addition, the MoH approved an operational framework for its employees and prepared a budget for the MoH, which was approved by the cabinet in Gaza.³⁶⁴ The budget decreased the operational expenses to the minimum required by ending such extra expenses as overtime, motivation costs and bonuses. Furthermore, steps were taken to stop the financial corruption, which was widespread during past governments.³⁶⁵

Efficient utilization of the available human and non-human resources was effected by enforcing the role of the monitoring and evaluation department in the MoH. The Gaza MoH had appointed 2564 new employees after June 2007. Employees paid by Ramallah totalled 7296, of which 2146 were still absent from work by November 2009.³⁶⁶ The old employees were responsible not only for compensating for the shortage of employees but also for training the new employees.³⁶⁷ Although there is a severe deficit in the quantity and quality of many services, the basic services are provided for by the ministry, secured though the dedication and sincere efforts exerted by all employees in the public health sector³⁶⁸. The discipline of the medical staff is better than it was in the past. There is a self-supervision among the staff, perhaps out of fear of punishment.³⁶⁹

The MoH in Gaza has established routines to ensure that nobody receives salaries from both the Ramallah and the Gaza government. There was some confusion involving cases of double salaries immediately after June 2007.³⁷⁰ Every employee is obliged to bring transcripts of bank accounts, which shows any financial transactions. This is done occasionally for monitoring purposes. There is, furthermore, efficient coordination between the MOH and the WHO and other health institutions in Gaza. “We don’t forget the efforts of the UNRWA, the WHO and ICRC, which provided medical materials during the Gaza war,” Moawia Hassanien, Director General of Emergencies, stated.³⁷¹ Much equipment arrived in Gaza through UNRWA and WHO as well as from international NGOs. UNRWA also pays for some of the staff, to fill the gap in some positions like nursing. These employees are assigned on renewable 6-month contracts.³⁷² The international organisations assist in providing transportation of medicines and medical equipment from the West Bank to Gaza through Israeli crossings, supplying the MoH in Gaza with the required quantity of fuel, and providing some training courses to improve the medical and administrative ability of the MoH staff.

The question of the quality of health services provided following the Hamas takeover is a controversial issue among both employees and patients. According to several of the patients

³⁵⁹ MoH, Annual Report, mid 2009.

³⁶⁰ Interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

³⁶¹ Interview with Hassan Khalaf, Deputy Minister of Health, Gaza, November 2009.

³⁶² Interview with Hani Wehaidi, Director of Nursing in Clinics, Gaza, November 2009.

³⁶³ Interview with Hani Wehaidi, Director of Nursing in Clinics, Gaza, November 2009.

³⁶⁴ Interview with Hassan Khalaf, Deputy Minister of Health, Gaza, November 2009.

³⁶⁵ Interview with physiotherapy employee at MoH, Gaza, November 2009.

³⁶⁶ Interview with Hussam Dahdooh, deputy of the Director General for Financial and Administrative Department, Gaza, November 2009.

³⁶⁷ Interview with employee in nursing department, Gaza, November 2009.

³⁶⁸ Interview with employee in nursing department, Gaza, November 2009.

³⁶⁹ Interview with pediatrician at MoH, Gaza, November 2009.

³⁷⁰ Interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

³⁷¹ Interview with Moawia Hassanien, Director General of Emergencies, MoH, Gaza, November 2009.

³⁷² Interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

interviewed in this study, improvements can be observed in the cleanliness of the hospitals and in the staff response and behaviour towards patients. “There is quiet and comfort: the bathrooms are clean but need some repairs,” said the mother of a child patient.³⁷³ “The treatment of the medical staff is good, although they do not come on time. This is may be because by the pressure of the work,” said another mother.³⁷⁴

However, the absence of some of the most experienced employees, and their replacement with less qualified staff, was observed as a weakness by several patients. “I wish they would bring more professional physicians back to work,” said one patient.³⁷⁵ Another patient complained that the food served was not good: “The food comes without a cover. I do not eat it.”³⁷⁶

The prevailing shortage of professional medical staff and of advanced equipment has increased the need to send patients either to some local, private clinics or abroad for special treatment not available in the public sector in Gaza.

There is also a shortage of some simple, essential items for the patients, such as blankets and pillows, which the patients have to bring from home. Some windows are without glass as a result of the last war in Gaza. Needed renovation of walls and ceilings has also been postponed until building material becomes available.

Still, government officials claim the situation is improving in several fields. “The quality today is better than before, and if you want to know why, you should go to the hospitals and see how clean, tidy and organized they are. We have been collaborating with the international NGOs in certain aspect such as renovations and cleaning. Here I speak about scientific indicators,” Medhat Abbas, Director General of International Cooperation, said.³⁷⁷ “We concentrate our vision on training and education for qualification enhancement and best performance appraisal. We focus on computerizing the process in the Ministry of Health to attain electronic government, and we start implementing the re-engineering process in some divisions,” Hassan Khalaf, Deputy Minister of Health, said.³⁷⁸

After the crises of June 2007, there was a breakdown in the relations between the two main political parties, Fatah and Hamas. The political impasse affected the health sector badly in several ways. Gaza patients in need of treatment abroad could not be transported out of Gaza without coordination by the two parties. Transportation of medical supply also required coordination with Israel, as did the import of fuel for generators and ambulances.

The challenge of importing fuel has been solved with the involvement of the World Bank, which funds the fuel. The World Bank pays the importer of fuel in Gaza directly, whereas the Gaza government is not involved in the process. As the fuel provided by the World Bank is not enough, the Gaza government sometimes pays from its own budget to make up for the shortage.³⁷⁹ The quantity provided by the World Bank is 10,000 litres of petrol, 10,000 litres of diesel and about 150,000 litres of diesel for the generators per month. However, the needed amount is 25,000 litres of benzene and 20,000 litres of diesel. “The reduction in fuel caused trouble for our ambulances. In certain periods, 50% of the ambulances could not move,” an official in the Gaza MoH said.³⁸⁰ The Gaza Ministry blames the Ramallah government for causing obstacles in increasing the quantity of fuel imported to Gaza.³⁸¹

There is a limited, ad-hoc coordination between the Gaza MoH and Ramallah on specific issues. For instance, the Directory of Pharmacy in Gaza coordinates with Ramallah to bring

³⁷³ Interview with Bostan, patient’s mother, Gaza, November 2009.

³⁷⁴ Interview with mother of the patient “Basma,” Gaza, November 2009.

³⁷⁵ Interview conducted by UN staff with patient at Al-Aqsa Hospital, Gaza, November 2009.

³⁷⁶ Interview with mother of patient “Basma,” Gaza, November 2009.

³⁷⁷ Interview with Medhat Abbas, Director General of International Cooperation at MoH, Gaza, November 2009.

³⁷⁸ Interview with Hassan Khalaf, Deputy Minister of Health, Gaza, November 2009.

³⁷⁹ Interview with Hussam Dahdooh, deputy of the Director General for Financial and Administrative Department, Gaza, November 2009.

³⁸⁰ Interview with Hassan Khalaf, Deputy Minister of Health, Gaza, November 2009.

³⁸¹ Interview with Moawia Hassanien, Director General of Emergencies, Gaza, November 2009.

medicine and medical supplies to all hospitals in the Gaza Strip.³⁸² The Directory in Gaza receives orders from all hospitals in the Gaza Strip and submits requests for supplies from Ramallah in accordance with the reported needs. There is also some indirect contact between the MoH in Ramallah and that in Gaza through international organisations working in Gaza, such as the WHO. Furthermore, deliveries must be approved by the Israeli Ministry of Defence through the Coordinator of Government Activities in the Territories (COGAT) before being allowed into Gaza.³⁸³ Thus the Gaza government MoH is dependent on two unstable and unpredictable factors to secure the import of medicines: one is the supply chain depending on Israel's ever-changing policies, and the other the tense relationship between Hamas and Fatah.

Another key point of direct coordination between the Gaza MoH and the Ramallah MoH is the issue of referral of patients for treatment abroad, as mentioned above. The arrangement is a case of successful coordination between the Gaza and Ramallah governments, as the two parties managed to establish an independent committee with members from both sides to oversee the selection and transportation of patients through the Erez crossing.³⁸⁴ Israel refuses to deal with Hamas officials, but it accepts contact with officials in Gaza who represent the Ramallah government. Thus, the Ramallah-loyal officials who remain in the Gaza MoH have an important function in their ability to deal with Israel. For transportation of patients for treatment in Egypt, the Gaza government coordinates directly with Egyptian authorities. The cost of the treatment abroad is paid by the Ramallah government or some Arab and Islamic NGOs.³⁸⁵

The contact between the ministry in Gaza and the ministry in Ramallah is usually organised through employees in the Gaza administration who are paid by Ramallah government. Given the importance of the practical coordination between the two sides, there is no objection by the Gaza government to those Ramallah-loyal functionaries who operate as "liaison" between Gaza and Ramallah.³⁸⁶ Some of the contact is also based on personal relations between officials in Ramallah and in Gaza.³⁸⁷

Employees in the Gaza health sector report that they receive their salaries regularly, either from the Gaza government or the Ramallah government. This income source is crucial not only for the employees and their families but also for the Gaza economy at large, as about 75,000 employees of the Ramallah government and 30,000 of the Gaza government are now receiving such salaries. The Hamas movement and the Gaza government collaborate to secure the funds either for salaries or for operational expenses. It is noteworthy in this regard that there is no clear-cut separation between Hamas as a movement and the Gaza government.³⁸⁸ Some funds come from various Arab and international NGOs, such as the Association of Arab Doctors and some donor countries either through the WHO or other UN agencies.

The MOH in Gaza has established direct coordination with many Islamic charity organizations, such as Doctors' Syndicate in Egypt, Arab Doctors' Union, Charity Works Association, Jordanian syndicates, and Islamic Charity Association. These organisations contributed both by sending medicines, medical instruments, and physicians to Gaza and by receiving injured patients for treatment in Islamic countries.

7.4. Institutional Continuity or Disruption

To the extent that the Gaza government has implemented changes in the health sector in Gaza, government officials justify their policies by referring to the fact that the Hamas movement won the last general election in 2006 and that it carried out its decisions in accordance with its democratic mandate to apply its election programme of "change and reform". Consequently, Hamas had the right to restructure and reform the existing structure of the public health

³⁸² Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, November 2009.

³⁸³ Majdy Ashour, public health and health policy specialist, lecture delivered at Islamic University, Gaza, March 2009.

³⁸⁴ Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009.

³⁸⁵ Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009.

³⁸⁶ Interview with Hani Wehaidi, Director of Nursing in Clinics, Gaza, November 2009.

³⁸⁷ Interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

³⁸⁸ Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009.

institutions.³⁸⁹ It is noteworthy that, although Hamas officials argue that the Gaza government indeed had the right to conduct reforms, the actual process appears to be a reactive measure of crisis management rather than a case of well-planned strategic reform. The goal of the reforms was to facilitate the daily work in the Ministry in an emergency situation. It was the lack of employees due to the strikes that forced the Gaza government to conduct a radical downsizing of the staff.³⁹⁰ The outcome may still be labelled as the largest restructuring of the Ministry since the establishment of the PA in 1994.³⁹¹ “We are proud that we managed to set up this new structure and hierarchy; the health sector is well organized and working well. We reduced the number of Director Generals from 20 to 14. Many of the 20 were not working; they were corrupt,” claimed the Deputy Minister of Health in Gaza.³⁹² The restructuring clearly caused some difficulties in several fields, but the Ministry had no choice but to implement order to keep the Ministry working and prevent a total collapse of the public health services.³⁹³ The Palestinian Legislative Council, functioning in Gaza as an exclusive Hamas body, followed up the recruitment procedures to ensure that appointments were conducted in accordance with the law.³⁹⁴ Several leading figures were moved, or appointed, to key posts in the MoH, including the deputy minister of health, director generals and directors, to strengthen the professional structure of the hierarchy.³⁹⁵ All appointments were carried out with the approval and supervision of the General Personnel Council (GPC), which is a body headed by a Hamas appointee.³⁹⁶ The reforms in the Ministry also included improving job descriptions in most of the departments and the chain of orders. Furthermore, the MoH took over some NGO health facilities like the Jordanian Royal Field Hospital during the Gaza War which was given to the Fetaa Hospital, and the Patients’ Friends Hospital, whose management was changed by the MoH to ensure its loyalty to the government.

With regard to the question of whether the Gaza government has an agenda of introducing more traditional, Islamic values within the health sector, government officials dismissed that there were any compulsory changes in that respect. However, Gaza is a conservative society, and there may be social pressure on females to wear what is perceived as modest dress, without any compulsory regulations from above. “The work is totally professional, and we don’t have any religious intolerance,” Hussein Ashour, Director General of Shifah Hospital, said.³⁹⁷ “The health minister has not introduced any Islamic regulations,” said the leader of the PLC Committee on Health.³⁹⁸

Interviewees among the health personnel presented conflicting opinions on the issue of Islamic regulations. One nurse in the Ministry claimed that there is no difference between or separation of the genders and that within the Ministry there is no enforcement of Islamic rules. She explained that in her department some female employees are indeed wearing “non-Islamic” clothes and that there are female and male employees in the same office.³⁹⁹ However, an administrative officer in the same Ministry said that “the Gaza government tries to separate the female from the male employees and to give them separate rooms and offices”.⁴⁰⁰ An employee at al-Aqsa Hospital referred to the Hamas-appointed employees as the source of pressure for Islamisation, saying that “all the newly hired staff are Hamas supporters, and they try to force their customs on the hospital.”⁴⁰¹

A director of nursing in Gaza agreed that it is recommended that the staff adhere to Islamic codes of behaviour but refuted that there has been any enforcement through regulations. “In

³⁸⁹ Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009.

³⁹⁰ Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009.

³⁹¹ Interview with employee in physiotherapy at MoH (anonymous), Gaza, November 2009.

³⁹² Interview with Hassan Khalaf, Deputy Minister of Health, Gaza, November 2009.

³⁹³ Interview with Hassan Khalaf, Deputy Minister of Health, Gaza, November 2009.

³⁹⁴ Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009.

³⁹⁵ Interview with Hassan Khalaf, Deputy Minister of Health, Gaza, November 2009.

³⁹⁶ Interview with Hussam Dahdooh, in charge of the Director General for financial and administrative department, Gaza, November 2009.

³⁹⁷ Interview with Hussein Ashour, Director General of Shifah Hospital, Gaza, November 2009.

³⁹⁸ Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009.

³⁹⁹ Interview with Nurse at MoH, Gaza, November 2009.

⁴⁰⁰ Interview with administrative officer at MoH, Gaza, November 2009.

⁴⁰¹ Interview conducted by UN staff with employee at Al-Aqsa Hospital, Gaza, November 2009.

some hospitals the female and male nurses work together even on the night shifts – for example, in the intensive care units,” he said, while offering several examples showing that that there has been a trend towards segregation: “We managed to separate the female students from the male students in the nursing faculty. In some hospitals all the nursing staff in the maternity department are female nurses.”⁴⁰²

7.5. The Long-Term Vision of Hamas

Hamas has realised that it cannot govern Gaza alone because not only the international community and Israel but also the Arab countries will not deal with it as a government. Hamas is seeking, and needs, reconciliation with Fatah – but not without gaining something in return. Hamas’s strategy is apparently to use the time while in power to secure achievements and changes on the ground before the reconciliation is eventually achieved. Hamas was suffering from its exclusion from employment in the public sector from 1994 to 2006. Consequently, the Gaza government is trying to compensate for this imbalance by reforming and securing its control over all governmental institutions, including in the health sector. Hamas and the Gaza government will not surrender to the heavy external pressure trying to foil its success. This is perceived as a matter of survival for the Hamas movement. Consequently, Hamas and the Gaza government will have to continue the struggle to appear trustworthy to their people.

The present key issue for the Gaza government and the Hamas movement is the handling of the challenges of ruling the Gaza Strip. The MoH and the Gaza government are trying to prevent further deterioration in health affairs and to continue to provide basic health services for the people of Gaza. Meanwhile, the Gaza government and Hamas are trying to keep Gaza physically and economically secure, as mentioned in the Hamas political programme. Hamas’s vision is to upgrade the medical level efficiently and make the health services more comprehensive, to follow the rest of the world in the medical sphere, with all patients being treated in Gaza.⁴⁰³ Hamas and the Gaza government did not expect this oppressive siege with all its aspects.⁴⁰⁴ After all, it seems a miracle that the health sector is still working despite the siege.⁴⁰⁵ There is a debate about the long-term vision for the health sector among all the stakeholders – Hamas, the Gaza government, the MoH and the PLC – based on each party’s function. This is a healthy debate that may contribute to improving the performance of services provided to the people in Gaza.⁴⁰⁶

⁴⁰² Interview with Khalil Shakfah, director of nursing in Gaza MoH, Gaza, November 2009.

⁴⁰³ Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009.

⁴⁰⁴ Interview with Hassan Khalaf, Deputy Minister of Health, Gaza, November 2009.

⁴⁰⁵ Interview with Mohammed Shehab, PLC member in charge of Health Committee in PLC, Gaza, November 2009.

⁴⁰⁶ Interview with Hussam Dahdooh, deputy of the Director General for financial and administrative department, Gaza, November 2009.

8. Conclusion

The consequences of Hamas's military takeover of the Gaza Strip in June 2007 have been devastating for the 1.5 million residents of the territory living under the tension of two rivaling Palestinian governments – one based in Ramallah and the other in Gaza City – and under the burden of a strict embargo put in place by Israel and Egypt controlling the borders of the Gaza Strip, supplemented by international sanctions. Furthermore, the Gazans have paid a heavy price for the enmity between Hamas and Israel, as the latter has engaged in recurring military operations against targets in the Gaza Strip, including a major military assault on Gaza in December 2008 which killed some 1400 people and destroyed tens of thousands of dwellings. These were the conditions that also constituted the environment in which the de-facto government of Hamas, led by Ismail Haniyeh, has struggled to establish its authority and run a functioning public administration.

This study has explored the means and strategies by which Hamas has consolidated its control in Gaza within the context of economic and political isolation, including its institutional set-up, its channels of communication with the PA in Ramallah, and its economic responses to the embargo. Furthermore, the study has investigated the provision of public services under Hamas in Gaza through three case studies looking into the state of affairs in the judicial sector, the education sector, and the health sector.

Now, has this analysis produced any answers to our initial questions: Do the institutions of the de-facto government in Gaza represent a continuation or a disruption of the preceding governmental apparatus? How has Hamas managed to survive economically and politically under international isolation? How have public services been affected by the rule of the unrecognised Hamas administration? And last but not least: have we seen the shape of an Islamic emirate emerging in Gaza through a proactive process of Islamisation, or, on the contrary, is what we have witnessed a case of a political leadership conducting a reactive struggle of crisis management, fighting for its own survival while challenged by economic embargo, political isolation and superior military pressures?

These questions have complex answers, and this study does not offer clear-cut answers to all of them. The key findings suggest, however, that, first, Hamas has maintained the overall structure of the governmental institutions it took over. A strategy of maintaining and ruling through the PA institutions ensured a certain degree of constitutional continuity, even though large segments of the public-sector employees were replaced with new people recruited by Hamas. The judiciary represented an exception, as the Gaza government could not legally control it and therefore chose to establish a parallel judicial apparatus for Gaza.

Second, the Gaza government responded to the economic challenge of the Israeli embargo by establishing an alternative economic space based entirely on goods smuggled through tunnels under the Egyptian border. As the smuggled goods over time replaced most of the previously imported goods via Israel, a relative sense of normalcy was re-established in the market. In addition, the Gaza government created its own mechanisms for taxing imports, smuggled goods, and business and property.

Third, basic public services in the sectors of education and health were maintained under Hamas through a delicate “division of labour” between the Gaza government and the Ramallah government. Whereas the expenses within these two public sectors, including salaries for the bulk of the staff, were covered by the Ramallah government, the Gaza government paid salaries for additional staff employed without coordination with Ramallah. However, in the judicial sector the whole staff was replaced and fully covered financially by the Gaza government. The provision of health and educational services was facilitated through coordination between Gaza and Ramallah by the technical staff in the respective ministries, in spite of the declared policy of

no political contact. The quality of services in all fields suffered from the large-scale evacuation of qualified staff from their offices.

8.1. Continuity or disruption: ruling through PA institutions

Hamas's Gaza government made efforts to appear as the continuation of the preceding National Unity Government, whose legitimacy was uncontested as it had obtained a solid vote of confidence from the PLC. The new cabinet of the deposed Prime Minister Ismail Haniyeh consisted initially of five of the Hamas ministers from the preceding government, while six additional members were added later. The PLC, which has not functioned since the takeover, was revived as an exclusive Hamas body in Gaza. The "Gaza PLC" has established a practice of allowing PLC members in Gaza to vote on behalf of PLC delegates imprisoned in Israel, while other lawmakers in the West Bank may participate and vote by phone. These measures were apparently taken to strengthen the legitimacy of the sessions of the incomplete PLC which were held in Gaza.

The impression of institutional continuity has, however, been challenged by accusations from critics that the government of Hamas lives in a symbiosis with the movement of Hamas and that it is far from obvious for the people which of these two bodies is behind policy decisions.

Hamas secured political control of ministries and other governmental institutions by replacing the staff – in part or in full – with Hamas appointees. In several ministries this process was facilitated by the fact that the original staff evacuated their offices on orders from the Ramallah government. However, within the vital public services of health, education and social affairs, most of the previous staff remained in their positions – or returned to their work when a long-term strike ended in early 2009. In all sectors, including in those in which the Ramallah-paid staff remained in office, Hamas imposed firm control by systematically removing all key personnel at the management level and appointing new Hamas-loyal leaders in their place.

Furthermore, the police force was completely replaced by Hamas's own forces, mainly the Executive Force (Tanfithiya), which was a unit set up by the first Hamas government more than a year before the takeover. In October 2007 the Executive Force was officially dissolved and subsequently completely integrated into the pre-existing PA Civil Police structures. One of Hamas initial successes after the takeover was the quick return of order and security to the streets. However, the improved order was obtained at the direct expense of political freedom, which has been dramatically reduced, with recurring incidents of persecution of political opposition – including arbitrary arrests, torture and extra-judicial killings.

8.2. Coping with isolation

After Ismail Haniyeh's refusal to comply with President Mahmoud Abbas's dismissal of him as prime minister in June 2007, the Gaza government was faced with almost total isolation. The PA in Ramallah, Israel, and most of the international community refused to have any contact with the deposed Gaza government at the political level. However, as both Ramallah and Gaza apparently sought to display commitment to the well-being of the people in Gaza, the two rival governments established some contact at the technical level to ensure the most basic public services for the Gazans, including education and health services. While Ramallah insisted on communicating only with those officials in Gaza who were employed before Hamas's takeover and who remained loyal to the Ramallah government, the Gaza government realised the value of keeping some of the Ramallah-loyal officials in their posts and let them function as Gaza's liaisons with Ramallah. The preservation of such channels of communications made it possible for the Gaza government to convey the most pressing medical needs to the outside world; to secure the referral of patients in need of treatment outside Gaza; and to organise the same final exam for the secondary school pupils simultaneously in Gaza and the West Bank. Furthermore, the Gaza government has accepted the continued presence of Ramallah-loyal PA guards at the border crossings between Israel and the Gaza Strip, as their presence is a condition for Israel keeping the crossings open for the movement of goods and people. The Gaza government was, in other words, able to display a certain degree of pragmatism in handling the challenge of political isolation.

When Israel responded to the Hamas takeover by imposing a tight embargo on the Gaza Strip, the economy of that territory entered an unprecedented state of paralysis, leaving more than 90% of the local industry inoperative. The Gaza economy became completely dependent on external sources of income, including continued payment by Ramallah of salaries to public employees and on humanitarian aid shipments.

Hamas responded to the challenge of dependence by facilitating the growth of smuggling activities through tunnels under the border with Egypt and establishing control over alternative sources of income. The smuggling business would gradually replace most of the goods that were previously imported via Israel and created simultaneously a Hamas-dominated economic elite, while the traditional merchant class that had fostered business ties with Israel was diminished. Another economic response of the Gaza government was to collect taxes from smuggled items and imports, and from licenses for enterprises, car registrations and the like. Public protests against the introduction of new taxation were reported – indicating that the tax mechanisms were effective. However, in spite of a growing number of income sources through taxation, Hamas and the Gaza government remain largely dependent on donations from friendly states, organisations and individuals.

8.3. Public services

The impact of the Hamas takeover varied among the three public sectors analysed in this study. The most heavily affected sector was the judiciary. In contrast to the situation in the health and educational sectors – which were simply ruled by Hamas through its firm control of the Ministry of Health and the Ministry of Education and Higher Education – the judiciary was beyond the jurisdiction of the government. As an independent body of governmental authority, the judiciary is run by the High Judicial Council and cannot be instructed by the government. The Gaza government had consequently no legal way of gaining control over that sector. Hamas solved that challenge by defying the High Judicial Council and replacing it with a parallel institution, named High Justice Council, with the task of filling all the vacant posts of judges, prosecutors, and attorney general. Some of these posts were filled by inexperienced graduates, affecting the competence of the courts negatively. Some powers that are attributed to the president according to the Palestinian Basic Law, such as employing judges, were transferred to the prime minister.

As a measure of crisis management, during a period when the courts were hardly functioning, the Gaza government reactivated the traditional *sulha* (conciliation) committees to solve civil disputes between individuals or between families.

Well aware of the fact that setting up a separate judicial structure for the Gaza Strip deviated from the provisions of the Basic Law, Hamas officials have defended the move by referring to the state of emergency, to the pressing need for restoring order, and to the fact that the election terms of the president and the PLC had expired without new elections being held, creating a legal void that had to be filled. In spite of having taken steps with regard to the judiciary beyond the provisions of the Basic Law, Hamas apparently has tried to avoid being seen as ignoring the Palestinian law. Also with regard to the performance of the new courts in Gaza, Hamas has emphasised that judgments are based on the valid Palestinian law and has dismissed the suggestion that they soon intend to introduce an Islamic law code.

The education sector has also undergone dramatic changes. Thousands of veteran teachers who went on strike in 2008 were replaced by inexperienced people appointed by the Gaza government to avoid a complete breakdown in the educational system in Gaza. The Gaza government succeeded in filling the vacancies through close collaboration with the Hamas movement, including the students' Islamic Block, the teachers' union and the security apparatus. After the strike ended in 2009, not all teachers and administrative staff were allowed to return to their previous positions but were often degraded or offered alternative posts. The strike presented the government with an opportunity to change Fatah-affiliated school principals and educational supervisors – an opportunity the Gaza government effectively

exploited for this purpose. There has furthermore been a trend within the schools for girls to be ordered to wear Islamic hijab, although it is not clear whether such orders originate from the school principal, from the government or from the Hamas movement.

Importantly, though, Hamas has not applied any initiatives to change the curriculum, and the Gaza government has coordinated the holding of the yearly secondary examination for pupils after 12 years of schooling.

The education sector remains economically dependent on Ramallah, as the latter has continuously paid the salaries of most of the teachers and the staff in the MoEHE also after the Hamas takeover.

The health sector has experienced many of the same problems as the educational sector: a strike in 2008 led to many replacements of experienced medical staff with less experienced or unqualified staff. In the health sector, too, administrative managers of the old administration were systematically replaced with less experienced personnel in a bid to secure political control. When the strike was over, many previous leaders were deprived the option of returning to their original posts and were offered degraded positions.

The health sector, too, has largely been funded by the PA in Ramallah. The Gaza government and the Ramallah government have, furthermore, agreed to keep channels of communication open at the technical level for the sake of crucial health services, such as medical supplies and referral of patients for treatment abroad.

The health sector has not been spared an ongoing trend in Gaza society towards adherence to more conservative cultural-religious norms, including more segregation of males and females and some pressure for respecting the Islamic dress code. However, this often appears more as an activist-driven campaign advocating “good Islamic behaviour” as understood in the conservative segments of society rather than as enforced directives from the government. It would, however, be an exaggeration to label this trend as an “Islamic revolution” in the health sector of Gaza.

8.4. The long-term ambitions of Hamas

Finally, with regard to the more elusive question of Hamas’s long-term ambitions, it is noteworthy that Hamas has, so far, not conducted any grand redesign of the governmental institutions in Gaza in accordance with Islamic principles. It would be inappropriate to label the transformation that has taken place an Islamic revolution. However, the process of restructuring that has been conducted stands indeed out as far more wide-ranging than what would be required for the mere purpose of temporary crisis management. Hamas has used a combination of economic, administrative and military means to consolidate its power in Gaza. Defending their achievements and securing regime survival may well be the main concerns of the rulers in Gaza. That is more than crisis management. But the process may rather be labelled a display of power politics aiming at defending Hamas political power than an Islamic revolution in motion.

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How has the Islamic Resistance Movement (Hamas) tackled the challenge of ruling the Gaza Strip in a context of almost total isolation? In 2006 Hamas won a parliamentary election; the year after, infighting with its long-time rival, Fatah, resulted in a complete military takeover of Gaza by Hamas forces. The victorious Palestinian Islamists were, however, soon challenged by inter-national boycott, Israeli

Three case studies reveal the impact of the takeover on three public services in Gaza: the judiciary, the education sector and the health sector. Through extensive fieldwork interviews with politicians, employees and users of these public sectors, it is investigated to what extent the rivaling governments in Gaza and the West Bank have established mechanisms of coordination to ensure a minimum of basic public services.



Peace Research Institute Oslo (PRIO)
PO Box 9229 Grønland, NO-0134 Oslo, Norway
Visiting Address: Hausmanns gate 7

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embargo and military assaults, Palestinian division and economic paralysis. As a response, Hamas sought to fortify its control on the ground by a range of administrative, military and economic moves.

This report explores Hamas's restructuring of governmental institutions after its takeover, its strategies for economic survival, and its handling of the delicate relationship with the appointed Fatah-affiliated government in the West Bank, which enjoys international backing.

Can any long-term ambitions on the part of Hamas be determined by its conduct in power? The Islamic movement's practice may offer some indications as to what extent Hamas is preparing the ground for long-term Islamic rule in Gaza or merely applying temporary measures while awaiting political reconciliation.