



Ministry of Higher Education

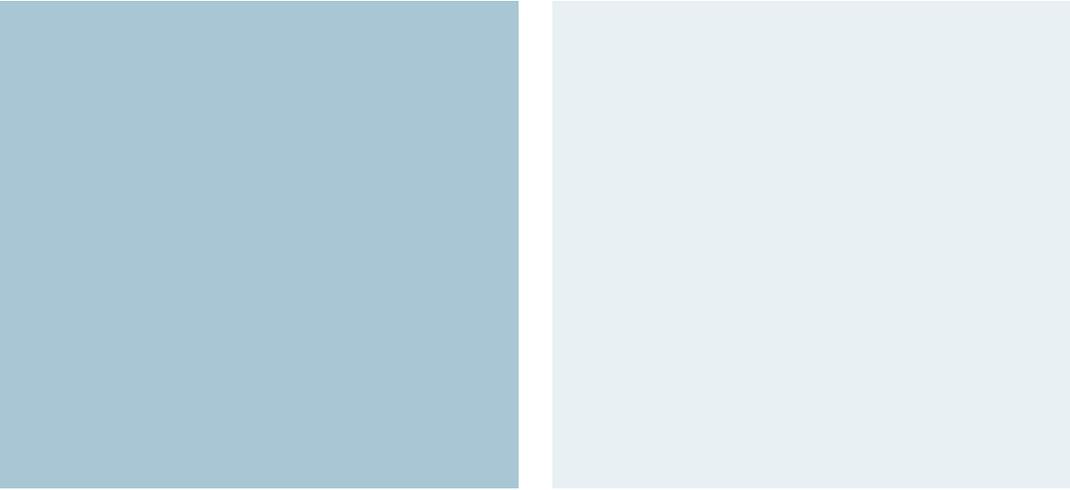
The Governance of the Higher Education system in Palestine

September 2008

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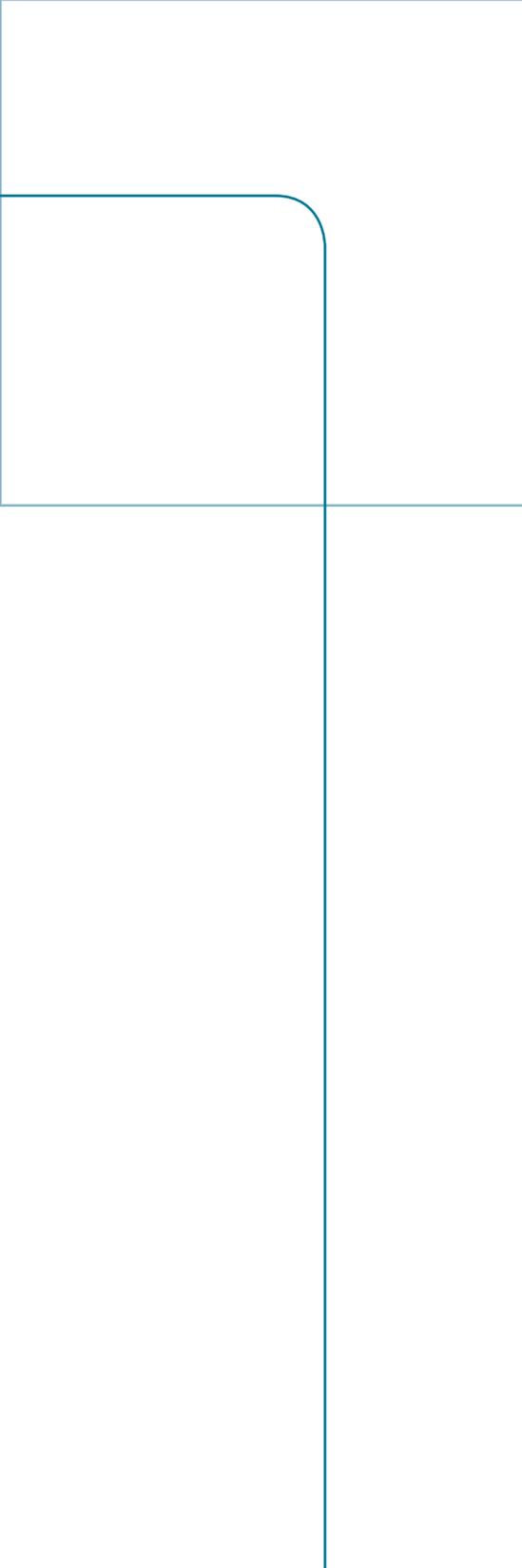
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Chapter I

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Summary of Conclusions and Recommendations

1. The higher education system in Palestine has developed remarkably, considering the extraordinary pressures which universities -- and society more generally -- have had to withstand. The Israeli occupation and the inhumane conditions that accompany it make day-to-day life a challenge, and it is extraordinary that universities have succeeded in operating with the degree of normality that they have achieved.
2. This study considers the governance of the university system at national level. It has been commissioned by the Ministry of Education and Higher Education, supported by the World Bank, who recognise that good governance is a necessary condition of a high-quality system. Good governance alone will not, of course, assure high-quality system, but without good governance a high-quality system is not possible.
3. Palestine has in place many of the features and structures necessary for good governance. It has in place a higher education law that provides the legal framework -- we recommend a number of changes that are needed to this framework, but the building blocks exist. Moreover, most of the bodies that are required for good governance are also in place -- in particular the Council for Higher Education, and the Accreditation and Quality Assurance Commission. The main problem in Palestine is that the law has not been implemented as was intended, and in many respects the governance bodies are not functioning optimally.
4. The law categorises universities into three groups -- Public universities, which are largely autonomous and owned and controlled by NGOs, Private universities of which there are just two, and Governmental universities, of which there are also two (but the university colleges are also Governmental institutions). This categorisation does not in principle cause problems -- indeed, the category of a "Public university", which is run by an NGO and is the predominant type of university in Palestine, is unusual and potentially highly beneficial.
5. There is one important respect though in which the categorization does cause problems. The Governmental universities are effectively treated as ministry entities and are bound by exactly the same processes as any civil service or ministry body, that in many ways are quite inappropriate for a university. As a result, these institutions are quite unable to be effective universities, and this aspect of their governance badly needs reform, in ways which are described below.
6. As far as the governance bodies are concerned, the Council for Higher Education (CHE) is the most important higher education governance body in Palestine, and its creation predates the establishment of the Ministry. In many respects, the creation of the Council for Higher Education, although in some ways a necessity, represents best international practice -- a non-Governmental body, separate from any Ministry, but which is the highest authority for the development of policy for higher education. Such Councils exist in various forms in most Middle Eastern countries -- Syria, Jordan and Yemen for example -- but in none of these do they have the required authority to be the ultimate decision making body. More successful examples exist in countries like India, Pakistan, Turkey and the United Kingdom, to name a few.

7. However, as things have developed in Palestine the Council for Higher Education is not playing the role that it should. Instead of concerning itself with major strategic issues to do with the size, shape and direction of the system as a whole, it spends most of its time, when meetings occur (and they do not occur as often as they should), discussing how the limited government funding should be distributed between universities and other issues of immediate concern, such as staffing and industrial relations matters. This in turn is to some extent because of the makeup of the Council, a significant proportion of whose members are the Presidents of the universities.
8. It would be far better to create a separate body as exists in many other countries to provide a forum for university presidents -- a Council Of University Presidents (CUP), as exists in many other countries, like the German Rectors Conference, Universities UK, the Association of Indian Universities and the Committee of Vice-Chancellors and Directors of Sri Lanka -- and to reserve membership of the Council for Higher Education for distinguished members of Palestinian society with a knowledge of higher education but who are not serving university presidents. That is the arrangement in India and Turkey, and also to an extent in the UK and Pakistan (where the majority of members of the Councils are not heads of universities). The Council for Higher Education's remit should be to develop strategy for the system as a whole, and related matters such as the distribution of government funding. This body should make recommendations to the Minister and the Minister should be required by law to implement its recommendations, and where he or she makes a decision that is at variance with the recommendations of the Council he or she should be required to give reasons for this contrary decision, and such a decision should be challengeable in the courts.
9. As far as the proposed Council of University Presidents is concerned, this would have a purely administrative relationship with the Ministry, but the Government will wish to take the advice of this body on appropriate issues, and the CUP will certainly want to advise the Government on a range of matters.
10. The Accreditation and Quality Assurance Commission (AQAC) is a body that parallels many such bodies that are now being created in other countries -- in Jordan and Syria for example, and the Quality Assurance Agency in the UK - but Palestine was one of the first to create such Council. The remit of AQAC is broadly correct, and its membership reflects the fact that it is an expert, not a policy or political, body. That is as it should be, and is something that should be emphasised. There are issues that may need to be addressed related to how it operates, but these are not governance matters, except that, as with all the other bodies, it is essential that its processes and procedures are transparent and set out in by-laws, which are then approved as required by the law.
11. One of the problems with all the bodies governing higher education in Palestine is that the by-laws that they have been required to publish have never been ratified by the Government.
12. As with the Council for Higher Education, AQAC should make recommendations to the Minister and the Minister should be required by law to implement the recommendations, and where he or she does not do so he or she should be required to give reasons for this contrary decision, and such a decision should be challengeable in the courts.
13. As far as the Higher Council for Technical and Vocational Education and Training is concerned, this is an important body with an appropriate remit. The main problem with this body is that it does not

function effectively, partly because it rarely meets, and the sub structures that it has decided to create are not yet working. If it were to begin working effectively, then in most respects it is an appropriate governance body.

14. The Student Loan Revolving Fund is essentially a tool to implement one leg of the Government's policy for higher education -- concerned with student financial aid. The Council of the SLRF is an appropriate body to oversee the workings of the fund, but the reality is that the fund has not operated effectively since its inception. Nothing has been repaid, and this is a measure of the ineffectiveness of the process. That is not necessarily a governance point, but the whole policy on student aid needs to be revisited and effective means put in place to fund students in a way that is sustainable and enables future generations of students to have loans available to them. That is not happening at present, and to some extent that is a failure of governance.
15. Finally, as far as the governance bodies are concerned, is the Council for Scientific Research (CSR). This is a body that is mentioned in the law, and the existence of such a Council is an important element in the in governance makeup of Palestinian higher education. It should be concerned exclusively with research in higher education -- initially at any rate, but since most research that takes place is in higher education institutions, this may become the most important scientific research body in the country.
16. The remit of the CSR should be to provide strategic direction for the conduct and development of scientific research in Palestinian universities, and it should support this strategic focus with project funding. That does not require a change in its remit, but it does require a change in its practice, and the makeup of the Council is not appropriate to enable this function to be carried out. The Council should be comprised of a small number of members who are distinguished in research and who are able to identify the research requirements of the Palestinian economy and Palestinian society. This top-level body should then create subject specific subcommittees to concern themselves with matters that require discipline knowledge, selecting between competing proposals, etc. That is the practice in the USA, with the National Science Foundation and the National Institute for Health, and in France with the CNRS.
17. Although the Basic Law is broadly a good one, it will require significant changes in order to give effect to the vision that this report describes. The vision is one of a largely autonomous higher education system where universities are free to develop their own strategies and priorities, and are responsible for their own futures, with the state playing a steering role and overseeing the development of the system more generally. The Ministry would delegate the majority of its powers to statutory non-Governmental bodies, comprised largely of experts and people who do not have a vested interest in the day-to-day running of universities, or in politics, but the Minister would retain ultimate political responsibility and authority. In order for this vision to be put into effect, the higher education law will need to be amended as summarised in the following paragraphs and set out more fully in the main report.
18. In future where the law requires secondary legislation (by-laws or regulations) the entity that is required to draw these up should be required to do so within 6 months of its establishment and the Government should be required to approve, amend or reject the proposed secondary legislation within a further 6 months. One of the least satisfactory aspects of the present situation is that

although many of the regulations and by-laws required by the 1998 Higher Education law have been drafted and submitted to the Government these have not yet been approved.

19. The law needs to be quite clear (and indeed by its silence is clear at present) that appointments of Trustees and University President are for the University alone – the NGO that owns them in the case of the appointment of Trustees, and the Trustees in respect of appointment of the University President. These are matters that should be covered in the by-laws of each university.
20. Mention has been made of the unsatisfactory governance arrangements concerning the Governmental universities. There is no reason why these should not be governed by broadly the same governance and management arrangements as the Public universities. This should be possible to achieve without undue difficulty. These Governmental universities should have exactly the same status as Public universities, except that instead of an NGO that is the ultimate owner it is the Government. In that case, the Government would appoint a Board of Trustees and the universities concerned would need to promulgate by-laws, in the same way as Public universities are required to do, and those by-laws would be subject to Government approval.
21. The university colleges should be subject to the same sort of revised governance arrangements that we think could apply to the Government universities -- that is ownership by the Government that appoints a governing Board of Trustees, with the requirement that the college produces by-laws that are approved by the Government.
22. There has been some discussion about whether a Ministry is required with responsibility for higher education, particularly in light of the existence of a number of non-Governmental bodies that carry out many of the functions that in other countries might be carried out by a Ministry. And if a Ministry is required whether there should be a single Ministry that covers all phases of education, including higher education, or if a separate Ministry of Higher Education is required. For reasons set out in the main report we have concluded that there should continue to be a single Ministry of Education and Higher Education in Palestine, and the structure beneath the Minister should be strengthened with the appointment of a professional Deputy, responsible specifically for higher education. Such a senior appointment would deputize for the Minister in all matters relating to higher education, and so ensure that higher education could be given the attention that it needs, despite the wide span of the Minister's responsibilities. By "professional" we mean that this should be a non-political appointment, and that the person concerned should have intimate knowledge of the higher education sector and the academic world, and who would carry respect and conviction among senior members of the academic community. If this is not possible, then the Ministry should be split, and a separate Ministry of Higher Education created.
23. At present the Council for Higher Education and AQAC are not legal bodies, in the sense that they are not specified in the law. In future these bodies should be specified in the law, but the law should provide a broad framework and describe their functions in general terms but then say nothing much more than that they should produce by-laws which should be approved by the Minister
24. As discussed above, and as at present, the CHE, AQAC and TVET Higher Council should continue to make recommendations to the Minister, who should be responsible for acting on their recommendations. However, the law should require the Minister to give reasons for his or her decision if that decision is

not consistent with the recommendations received from the advisory body, and the decision in such an event should be challengeable in law.

25. The fundamental roles of the CHE should be :

- *To set the strategy for the sector (including size and shape, growth in student numbers, etc)*
- *To fund institutions and support them to improve their capacity*
- *To ensure accountability (including accountability for their use of the funds provided)*
- *To ensure that the public interest is secured, and national priorities served, in a situation where institutions are autonomous and act in their own interest*
- *To act as a market/competition regulator.*

That is how the CHE equivalent bodies operate in countries like India, Pakistan, the UK, Turkey and New Zealand, where the system works well.

26. The law should require that the CHE Council should contain no fewer than 12 and no more than 20 members, and that no fewer than one third of the membership of the CHE should be people holding senior positions outside the academic community with a knowledge of higher education - former presidents of universities for example, senior lay representatives from business, civil society and the professions. Other members should include the Chairmen of AQAC and the TVET Council, and a representative of the Ministry. On the other hand, serving heads of institutions should be precluded from membership of the CHE, except that the Chairman of the Council of University Presidents (if such a body exists), should be a member. And the Chairman of the CHE should not be the Minister, but should be a senior and distinguished public figure.

27. The scope of the Council for Higher Education should cover all universities -- Public, Private and Governmental. In addition it ought to cover those university colleges, that provide diploma and bachelors level education, and where the majority of academic programmes are at diploma level or above. Such institutions should be designated higher education institutions (either a university or a university college) and should come under the CHE. Otherwise an institution (including all Technical Education Institutes and Community Colleges) should come under the TVET Council.

28. The law should spell out AQAC's broad mandate, that should cover:

- *Licensing of new institutions*
- *Accreditation of new and re-accreditation of existing programmes*
- *Quality Assurance*
- *Ongoing evaluation and assessment of licensed institutions and accredited programs.*

29. All AQAC's members should be independent, knowledgeable and credible to the higher education institutions. Without spelling out proportions or numbers, a good proportion will be experienced and respected academics, capable of making judgments about the quality and standards that they are to judge. Others will include people from the professions with detailed knowledge of some of the professional subjects that universities teach, but not civil servants unless they possess the academic and subject knowledge needed to make academic decisions.

30. As mentioned above, the law concerning TVET and the TVET Council is adequate at present and no recommendations are made for changes, except in one respect: CHE should be represented on the TVET Higher Council and by the same token, the TVET Higher Council should also be represented in the CHE council.
31. As at present the law should continue to make provision for the existence of a Council for Scientific Research (CSR). Although there appears to be unclarity at present between the functions of the CSR, the National academy of Science and the Higher Council for Scientific Research, if the law spelled out the mandate of the CSR that would help greatly to clarify matters. It would not remove overlap, but it would make any overlap more explicit. The mandate of the CSR should be spelled out in law as:
- *To assess the strategic priorities for conducting research in Palestine's universities*
 - *To develop policies for encouraging such research to take place, and*
 - *To provide funding to support such research.*
32. The law should require the Chairman of this body to be a public figure with a distinguished record in scientific research. Its members should primarily be distinguished academics, but should also include the Chairman of the Higher Council for Scientific Research and a senior official of the Ministry of Planning (or its successor bodies).
33. One other matter specifically considered in the course of the study was the Labour Law, and the extent to which it impinges on higher education in general and the Higher Education Law in particular. Our conclusion is that there is nothing significant in that law that directly impacts upon students and what they study, nor upon their exit to the labour market. To universities, its main relevance concerns them as employers of faculty and staff. Even here, our discussions with universities did not suggest any relevant issues, except possibly in one respect: because of tenure requirements, it may be necessary to dismiss faculty who do not satisfy the criteria for tenure, but who have been employed for longer than the minimum stipulated in the law for the purpose of certain permanent employee rights.. However, there has been no suggestion that this is a problematic or an inhibiting factor.

Introduction

34. Education is key to the development of a country into a knowledge economy. That is as true of Palestine as it is of others, and it has been well recognised by Palestine's leaders. Accordingly, Palestine is undergoing a substantial process of reform in its higher education system. In this process, it is supported by the World Bank, which is sponsoring a number of programs in Palestine aimed at improving the nation's human resources. In particular, the World Bank has supported the present review of the governance of the higher education system in Palestine.
35. The purpose of this review is to assess the current governance arrangements, and to make recommendations for reforms which will provide the structure and the institutional framework which in turn will enable the higher education system in Palestine to achieve its maximum potential. Governance reform alone will not ensure the success of the higher education system, but poor governance arrangements can undoubtedly hold back the development of a successful system: appropriate governance is a necessary but insufficient condition for a high quality and successful higher education system. This is recognised by the Minister for Education and Higher Education, Her Excellency Ms Lamis M Alami, who at a meeting with the consultants expressed the view that governance of the higher education system should be reformed in such a way as to enable universities to be responsible for their own destiny, benefiting from – and suffering – the consequences of their own decisions, with the Government exercising a light touch regulatory role. Such an approach would be in keeping with the Basic Law of Palestine that describes the country as being based on a liberal, social-market system.
36. Many countries are reforming the governance of their higher education systems - and generally for similar reasons. This study has been able to benefit from the experience of other countries, and arrangements overseas have been drawn upon where appropriate. However, each country has its unique set of circumstances, and it is neither appropriate nor possible simply to transfer arrangements from one country to another. But it is important to learn from others where appropriate, and this study draws lessons from overseas where these seem relevant and right for Palestine. At Annex D is an analysis of governance arrangements in three Middle Eastern countries, Indonesia and Bulgaria. This is not shown to provide direct lessons for Palestine, but to show some pertinent comparisons (some positive, some negative), that have informed this study, in addition to the personal experience of the reviewers.
37. This study begins by assessing the current governance arrangements and governance bodies in Palestine - as well as the current legislation. In the light of this analysis the study considers the strengths and weaknesses of the present arrangements in Palestine - strengths that should be reinforced and weaknesses that need to be addressed - and then proposes a vision for the development of governance in the Palestinian higher education system. It is this vision, combined with the analysis of the strengths and weaknesses, that then drives the recommendations for reform.

Methodology

38. Professor Bahram Bekhradnia, Director of the Higher Education Policy Institute at Oxford in the UK, Dr Ghassan Faramand and Mr. Hisham Kuhail were appointed consultants for this project, and Dr Isam Naqib was appointed to undertake quality assurance of the work as it neared its conclusion. The consultants also benefited greatly from interactions with a group of ministry officials led by Dr Fahoum Shalabi, Assistant Deputy Minister for higher education, and comprising also Dr. Mohammad Al-Subu', Head of AQAC, Mr. Abdelkareem Al-Zgheir, Minister's Assistant for Financial Policies, Mr. Nasr Awad, DG of Technical and Vocational Education), and ??? Director of the Student Loan Revolving Fund. They relied also on the advice and help of Dr Suha Khalili, Director of the Project. Invaluable discussions were held with numerous others, who gave freely of their time and expertise, and this project is deeply indebted to them. A list of those with whom discussions were held is at Annex A.
39. This report has been developed following an iterative process, with drafts and conclusions passing between the international consultant and his Palestinian counterparts for discussion, and further discussion with other stakeholders. The international consultant paid an initial visit to Ramallah in April-May 2008, during which he met the project director, his fellow consultants and the Assistant Deputy Minister. This was followed by visits in June and July where the consultants held further discussions with key individuals about their emerging conclusions, visited 9 universities and other institutions on the West Bank, held a video conference with universities in Gaza and conducted two workshops.
40. In conceptual terms, there are four distinct elements in this study:
- *Description of the background to the current state of higher education in Palestine*
 - *Description of the current governance arrangements of the higher education system in Palestine and their strengths and weaknesses*
 - *Analysis of the governance reforms needed to move from the current situation to implement this vision.*
 - *Description of legal arrangements underpinning the present governance arrangements, and the legal changes needed to give effect to the recommended reforms.*
41. The remainder of this report is divided into four sections each of which considers one of these elements.

Background

42. Palestinian institutions of higher education came into being under adverse conditions as an act of commitment and at the initiative of individuals and groups. Two-year community colleges were started, followed by the establishment of the major Palestinian universities beginning in 1971. There are at present 9 Public, 2 Governmental and 3 Private universities, alongside 14 university colleges, of which 6 Governmental, 2 UNRWA, 4 Private, and 2 Waqf.
43. Palestinian universities are young by international standards, the oldest being thirty seven years old and the youngest less than five years old (Annex B). The majority of these universities started as and have remained public non-profit institutions. The non-profit structure of the majority of Palestinian universities is a defining characteristic of the HE sector; in this respect, it is unique in the Middle East region and in much of the rest of the world where Governmental institutions prevail, often alongside a strong for-profit sector.
44. So, compared to other countries with longstanding relevant experience, higher education in Palestine is a new field of activity. Throughout its contemporary history, Palestine has been subjected to foreign rule and colonisation by various political regimes. The Israeli occupation of the Palestinian territory is also still in place. In addition to attempts made to prevent establishment of higher education institutions, the Israeli authorities have impeded expanded activity or development through numerous restrictions. Under various security pretexts, the Israeli occupation authorities did not issue licenses to establish new universities; closed a number of universities for long periods; raided higher education institutions; and arrested instructors and students. In effect, Palestinian universities could not keep in line with international developments in the higher education field, nor could they recruit competent experts from abroad.
45. Despite the restrictions described above and based on the Palestinian awareness, both individual and collective, of the significance of information as a tool that promotes Palestinian steadfastness, preservation of national rights of the Palestinian people, as well as the establishment of a Palestinian national identity, and development of Palestinian capacities, Palestinians have consolidated efforts towards developing the higher education process regardless of external impediments. In spite of scarce financial resources, the limited income of Palestinian citizens and their inability to cover tuition fees, Palestinians have managed to secure funds for higher education. Assisted by Arab States and by other friendly and supportive countries, the Palestine Liberation Organisation (PLO) provided financial aid to Palestinian higher education institutions. To cope with impediments posed by the Israeli occupation authorities to the building of new universities, Palestinians had to improvise stratagems and look for legal gaps, particularly in the Company Law and Law on Charitable Associations, that would help them inaugurate universities. Such circumstances shed light on the legal nature of Palestinian universities created under the Israeli occupation regime – which have mostly been non-Governmental and non-profit.
46. As the PNA was being formed in 1994, Palestinian universities were in a state of alert. Due to potential, direct impact on the legal status of higher education institutions and on the relations with the prospective government, universities were waiting for the constitution of the Palestinian government. With the establishment of the PNA Ministry of Higher Education, the existing administrative organisational

structure of higher education was maintained. Except for minor changes in its regulation and the number of members, the previously-established Palestinian Higher Education Council remained in function. And apart from the creation of new departments for higher education at the new Ministry of Higher Education, no substantive changes were introduced to administrative arrangements.

47. Shortly after it was constituted, the PNA became the hub of the educational process. In the past, the Israeli occupation authorities controlled educational activities. Israeli restrictions and arbitrary measures have effectively prevented the development of technical universities; prohibited designation of campuses at several universities; imposed financial control over financial resources; prevented higher education institutions from offering certain majors; and restricted their capacity to recruit external Palestinian experts who did not hold permanent residency cards in Palestine. Under numerous pretexts, Israeli military commanders also issued numerous orders as to close down Palestinian universities for months, or even years.
48. After 1994, Palestinian universities were raised to a new sphere in which they could develop and make further progress. At this point, higher education flourished; buildings were expanded, academic and administrative staff increased, new majors were launched, and the number of students increased.
49. In line with the political and economic transformation of the PNA-controlled territory over the past fifteen years, substantial, - quantitative and qualitative - developments have taken place in the higher education process. Following establishment of the PNA, the Ministry of Higher Education was created, new universities were built, the number of students enrolled at higher education institutions rose, and formerly-unavailable academic disciplines were offered. Increasing numbers of students led to a doubling of the number of university staff. Recent statistics released by the PNA Ministry of Higher Education show that 88,707 students, including 48,147 female students, were enlisted at Palestinian universities in BA programmes in 2006/2007. Additionally, 4,431 students, including 1,768 females, were enrolled in higher education programmes. Another 784 students, including 522 females, were registered in other educational programmes. The Ministry's data also reveal that 2,687 academic teaching staff members were employed at Palestinian universities. Of these, 1,885 instructors worked on a fulltime basis. Lastly, Palestinian higher education facilities employed 4,165 functionaries in other relevant fields of activity.
50. This growth has been remarkable. Just 14 years previously – in 1992/93 - 16,631 students were registered at 7 universities which employed 2,076 staff.
51. Except for the Council for Higher Education (CHE), there was no official mechanism available for national planning, stable funding, or impartial and systematic decision-making. During the Israeli occupation and its associated absence of a national legal system, Palestinian universities also lacked the legal foundation and framework for regulating their operations and providing them with institutional and professional protection. The CHE was established in 1977 and composed of educators, policy makers, and representatives of the private sector. In 1990 the Palestinian Liberation Organization (PLO) mandated the CHE to play the role of overseeing policy for the whole sector (General, Vocational/ Technical and Higher Education). In addition, the CHE was a vehicle for allocating funds to higher education institutions, and creating a unified system of fees for students and salaries for staff.

52. When the Ministry of Education and Higher Education was established in 1994, management responsibility for community colleges was transferred from the Council to the Ministry's Directorate of Technical Education and Community Colleges. In June 1996, the Palestinian National Authority (PNA) established the Ministry of Higher Education (MOHE) as part of the permanent executive structure, thereby terminating the Ministry of Education's responsibility for higher education and transferring the mandate of the CHE to the MOHE. In doing this, the PNA signaled its increased commitment to higher education as a national priority, both administratively and financially.
53. Soon after its establishment twelve years ago, the MOHE developed and achieved passage of the 1998 Law of Higher Education. This law specified, for the first time, the basic mission of the higher education system and the procedures and the authorities for governing the system. This law ratified the existing practice of differentiating between government institutions, public/non-profit and private institutions of higher education. It also defined the responsibilities and mandate of the MOHE being the body mandated with setting national policies, licensing and accreditation of HE institutions and programs, student aid programs, system funding, and limiting the numbers of students. In addition, the Law refers to – but is not explicit about - the establishment of the Council for Higher Education as an advisory body.
54. It should be noted that the Higher Education Law preceded the Basic Law of Palestine, and that this gives rise to a number of issues, discussed further below.
55. In 2002, the two ministries were merged into one Ministry of education and higher education (MOEHE). Although this merger seemed a step towards a more integrated educational system, the general feeling is that this merger has tended to further undermine the higher education sector. This is attributed to the fact that more attention is given to general education in terms of systems development and funding.

The Current Governance Structure

56. The current governance structure of the Palestinian higher education system gives rise to a number of concerns that we encountered among a wide spread of different stakeholders. Despite the fact that several buffer bodies do exist within the HE governance structure, none of them has the legal framework to provide clear mandates and responsibilities. Thus the relation of these bodies and the Ministry is somehow vague and depends very much on personal attitudes. Among these bodies are: the National Commission for Accreditation and Quality Assurance (AQAC) established in 2002, the Student Revolving Loan Fund (SRLF) established in 2001, the Council for Scientific Research (CSR) established in 2000, and the Council for Higher Education (CHE) re-established in 1998. Of these only the Council for Scientific Research is explicitly required in the Law (although it could be argued that the Council for Higher Education is covered too). None of these buffer bodies has ratified by-laws and thus lack the legislative provisions granting them powers and authorizing their operation. Moreover, they are all chaired by the Minister, which raises questions about their separation from the Ministry.
57. The following is a description of the current governance arrangements, including the Ministry and the relevant buffer bodies.

The Ministry of Education and Higher Education (MOEHE)

58. The higher education part of the Ministry is managed by the Assistant Deputy Minister for Higher Education, who is responsible for overseeing the work of the different departments, including the DG for university education, DG for Scholarships, DG for Technical and Vocational Education, and the DG for Planning and Scientific Research. There are also specialized committees such as the committee for certificates' equivalence and the scholarships committee.
59. Apart from program accreditation, student aid, and institutional funding, the Ministry exercises no direct authority over Public and Private higher education institutions.
60. This is not the case with regard to Governmental institutions (universities and colleges) where the Ministry has to a large extent a centralized role in staff recruitment, procurement, even the disciplining of staff and students. In all these respects university managers are not able to act on their own authority, but they have to obtain Ministry approval for all aspects of their day-to-day operations - something that raises concern across those institutions.
61. Many higher education institutions, specifically university officials, believe that their relationship with MOEHE in general is limited to funding. Others believe that there is no need for Ministry, but for an empowered Council for Higher Education. They believe that the Ministry lacks the management capacity to deal effectively with the serious challenges that the HE sector faces. In light of its inability to attract qualified staff, because of the low PNA salary scale, to carry out many essential functions, including planning for expansion of the sector, there is no likelihood that this problem will be eased.

The Council for Higher Education (CHE)

62. The CHE is the most important of the bodies within the governance structure of the Palestinian HE system. The HE Law of 1998 did not actually establish the CHE by name. It said only that the Minister

may (not should) create a consultative committee. Accordingly, there is very little legal underpinning of the CHE, its status or its operations. There is, however, a by-law that was set by the MOEHE but again has not been ratified. This by-law addresses issues pertaining to its composition, its establishment, its mandates, and its management procedures. It would be a good by-law if it were to be operational.

63. According to its draft by-law, the CHE is chaired by the Minister and composed of all Public and Governmental university heads, one representative of Private universities, one two-year Community College Dean, the Deputy Minister of the Ministry of Finance, Deputy Minister of the Ministry of Planning, two representatives from the Ministry of Education, eight academic members, and a Secretary General. The CHE draft by-law mandates the CHE to undertake the following tasks and responsibilities:

- *To approve the general policy for higher education;*
- *To develop and evaluate higher education institutions in all aspects and to ensure coordination among these institutions;*
- *To lay down the general principles for students admission and limit their numbers on a yearly basis;*
- *To endorse the minimum and maximum tuition fees in the various academic programs at both Governmental and Public higher education institutions;*
- *To review the yearly budget of HEIs;*
- *To discuss yearly reports submitted by HEIs and identify their progress and difficulties and align them with the general HE policy;*
- *To endorse the general policy for the student aid programs;*
- *To endorse the national priorities for academic programs at HEIs; and*
- *To endorse the general principles for allocating funding allocation to HEIs.*

64. In theory, the CHE's draft by-law shifted a good share of the Ministry's mandates and responsibilities to the CHE, but in practice the CHE is exercising a very minimal role pertaining to setting out national policies and overseeing the HE sector at large. We discussed the CHE's agenda at its recent meetings with its Secretary General, and also with a previous Secretary General, and it is clear that what the CHE is actually engaged on can be best summarized as agreeing on funding allocations, endorsing admission criteria usually proposed by the Ministry, reviewing and discussing AQAC plans, discussing and agreeing on student aid programs and more specifically on loan allocations.

65. The CHE is intended to meet on a monthly basis, though in fact meets less frequently, and almost never considers the large strategic and policy questions concerning the future of higher education in Palestine, that is at the heart of its mandate. Instead it is very much occupied in addressing the financial crises of universities; more specifically the public ones. In that respect, the CHE represents a more of Rectors Conference rather than a body that deals with core national HE policies that respond to and integrate with the overall national developmental policies, strategies, and plans. This is undoubtedly in part attributable to the nature of the CHE's composition, with the majority of its members representing those universities that suffer from severe financial problems.

66. Furthermore, the CHE lacks the proper setup to address larger national policies. It has no basic capacity to analyse strategic policy issues. The only capacity that exists is represented by its Secretary General, who is housed at the Ministry and whose main role is the preparation of the meeting agenda, with

the Minister, and the dissemination of meeting minutes. This lack of capacity and support structures contributes to the ineffectiveness of the CHE and compounds the difficulty it has of fulfilling its potential.

67. Within the current practices that shape the relationship between the MOEHE and the CHE, CHE cannot be expected to assume its role as stipulated in its draft by-law. This practice is evident by examining the frequency of CHE meeting, the agendas of the meetings, and the duration of the meetings.

Accreditation and Quality Assurance Commission (AQAC)

68. The Law of Higher Education (1998) stipulated that quality assurance be achieved through “licensing” of new higher education institutions (Art. 17), in addition to a two-tier accreditation process – general and specific (Art. 18). With the establishment of the Ministry, institutions were required to be licensed before they could operate, and then to obtain accreditation of each new program of study, prior to admitting students into them.

69. In 2002, and in response to a decision of the Arab Ministers of Higher Education at their 8th Conference, MOEHE established an Accreditation and Quality Assurance Commission. The rationale was to provide a balance between highly centralized and decentralized accreditation systems. It was also envisaged that the AQAC would be responsible for reducing the possibilities of conflict of interest, and would promote improvement and development without losing the supervision of the basic accreditation process. The Commission was expected to carry the following major responsibilities:

- *Review applications to open new higher education institutions.*
- *Set up “Quality Assessment Teams”, one for each program of study, to review and evaluate all existing programs at HE institutions, within an agreed Plan of Action.*
- *Review requests to establish new academic programs.*
- *Review current Licensing and Accreditation criteria in comparison with international criteria, and based on the results of the quality assessment process.*
- *Initiate needs assessment studies of the rapidly changing Palestinian society and economy, and reflect the results of those studies in strategic recommendations concerning the status of various programs of study.*
- *Coordinate with similar international agencies, for the purpose of sharing information and periodic review of assessment criteria.*

70. AQAC was not established by the 1998 Law – it was created by administrative decision, and is an administrative, not legal, body. Nevertheless, it has drafted by-laws with very general provisions, which do not state clearly its degree of autonomy (Annex C). AQAC is headed by a chair who is appointed by the Minister, and has a Board of 12 professionals whose mandate is to take final decisions about licensing and accreditation — which get ratified by the Minister. Serving these is a group of professional and support staff.

71. The AQAC board is composed of 4 from local universities, 3 from related Palestinian organizations, 2 from the Ministry of Planning, 1 from UNRWA, 1 from the private sector, and 1 representing the technical and vocational education sub-sector. The Commission works under the umbrella of the MOHE, and is responsible directly to the Minister.

72. AQAC is undertaking its work with a very minimal staff which undermines its ability to develop and implement effective quality assurance mechanisms and a continuous evaluation process to ensure that accredited programs of study meet pre-established quality criteria. To the extent that this is so, it is not AQAC's fault, given its lack of resources to do more. This issue has been raised by a number of university officials who are not sure about AQAC's work. They believe that the current accreditation system is more of a checklist of certain (mainly input) criteria like the availability of staff, resources such as library, and to some extent program structure. They believe also that AQAC needs to do more to assist institutions and programs of study to improve the quality of the education they provide: it should not lose sight of its quality assurance function because it is overwhelmed with the demands of licensing and accreditation.

AQAC: Governance Issues

73. According to the current governance practices of AQAC, the commission is considered semi-independent. However, there are some concerns with regard to the setup, role, and practice of its board. Currently, the AQAC board does not exercise any significant policy making role; it is more of a body that endorses the decisions of the AQAC executive pertaining to institutions' licensing and program accreditation. Moreover, the fact that the AQAC chair is appointed by the Minister, together with the fact that it is rarely asked by the Minister to submit a policy paper to be submitted to the CHE for endorsement, means that AQAC is considered as tool to implement the decisions of Ministers. There is also concern about the selection of the ACAQ chair, which in most cases comes from among university staff. The same concern also arises with regard to the selection and appointment of board members; who are proposed by the AQAC chair and appointed by the Minister.

The Council for Scientific Research (CSR)

74. The Law of higher education refers to scientific research within the Ministry's responsibility for preparing national plans for higher education and scientific research in accordance with national needs. The Law stipulates that based on the recommendation of the Minister, the President of the PNA shall give permission to establish a Council for Scientific Research to assist the Ministry in drawing up its policy in this respect.

75. The Law also requires that scientific research centers be registered with the Ministry of Higher Education which shall grant them the official status to pursue their objectives in accordance with the regulations pertaining to scientific research centers. However, the law did not stipulate clearly what is meant by research centers, nor differentiate between scientific research activities within higher education institutions on the one hand and scientific research at the national level on the other. It is worth mentioning here that there are several national bodies claiming a mandate over national science and technology such as the Palestine Academy for Science and Technology and the Higher Council for Scientific Research.

76. The Council for Scientific Research at the Ministry is a body that was established and operates within a draft by-law set out by the Ministry that has not yet been ratified. The CSR is again chaired by the Minister and composed of a vice-chair nominated by the Minister, a Secretary General, the Director General for Scientific Research at the Ministry, all deans of research at Palestinian universities and 3

representatives of research centers registered at the Ministry. The draft by-law mandated the CSR to carry out the following tasks and gave it the following responsibilities:

- *To participate with relevant parties in drafting the general policies for scientific research in Palestine;*
- *To contribute with relevant parties to setting up the priorities for scientific research plans;*
- *To develop human resources in the field of scientific research in HEIs and in research centers registered at the Ministry;*
- *To assist in the provision of information and data on scientific research in Palestine, and at the Arab and international levels;*
- *To endorse scientific research priorities to be supported by the Council;*
- *To discuss the recommendation of the DG for scientific research pertaining to registration of research centers;*
- *To set up a clear and scientific basis for supporting research proposals submitted to a scientific research fund;*
- *To follow up the implementation of research funded projects;*
- *To suggest research incentives; and*
- *To promote the establishment of centers of excellence in the field of research, to provide the necessary support, and to ensure coordination between them.*

77. Given the huge task of the CSR and the limited resources it has, especially as regards funding, the CSR lacks both the potential to deliver its mandated tasks and the ability to perform its responsibilities. To that extent, one can say that the CSR is a forum of university representatives of scientific research officials with very limited room for delivering the anticipated goals stipulated in the draft by-law. Hence the Council has been ineffective from the beginning.

Student Revolving Loan Fund Board (SRLF)

78. There are two versions of a proposed by-law within the Ministry regarding student aid. The first is for the SRLF and the second is for the SRLF and student aid. Neither of these is yet ratified. The first initiative for establishing such a body came when the Ministry received a grant in 2001 to support Palestinian students to cover their tuition fees and the Minister of Higher Education's subsequent decision to use that grant to establish the SRLF. The SRLF board was then established and mandated the task of providing loans to needy students.

79. The board is chaired by the Minister and composed of the Palestine Governor of the Islamic Development Bank (IDB), an IDB representative, 3 university rectors in rotation, and 3 members of the Palestinian community chosen by the Minister. The SRLF is managed by a Director General, supported with a basic staff to prepare the proposed allocation modalities, to follow up fund transactions and to generate reports.

80. The draft SRLF board by-laws specifies the following responsibilities:

- *To set up the SRLF policy*
- *To issue executive, financial, and administrative procedures*
- *To deposit SRLF funds in Palestinian Banks*

- *To establish committees needed to assist in performing tasks*
- *To discuss yearly reports and*
- *To raise the necessary funds.*

81. The SRLF Board is inactive and has not met for some time. Most likely, the failure of the Board to meet indicates that the role of the Board is unclear, and possibly that its composition should be reviewed. There is also no policy framework in place. Decisions as to how funding is allocated is usually based on a simple formula that takes into account the total number of students and the average tuition fees. Then, each higher education institution gets its share according to the number of students who apply for loans. This allocation is then presented by the Ministry to CHE for endorsement.
82. So far, over US \$90 million have been disbursed in the form of loans since 2001; not a single loan has been repaid. Although, these loans are supposed to be revolving, no attempt to collect these loans from graduates has ever been made. In fact, not even a feasibility study or field research has been conducted to arrive at the best modalities for repayments. The general perception of these loans is that they are not repayable (they are even thought of as grants), and therefore repayments are not taken seriously either by students or by the HEIs.
83. It is fair to say that the SLRF has been effective in allocating money - \$90 million has been allocated. But it has been wholly ineffective in setting policy and in operating a revolving fund – what it was largely established to do. It is not in any case apparent that it is in a real sense a ‘governance’ body (in the way, for example, that the CHE and AQAC are governance bodies). Rather it is a tool or instrument for allocating those funds that the Government makes available for student financial aid.

The Higher Council for Technical and Vocational Education and Training

84. As part of the implementation plan of the national strategy for technical and vocational education and training (TVET), the Higher Council of TVET was formed in 2005. The council is composed of 16 members with equal representation of public, private, and other relevant bodies. The Council is chaired in rotation by the MOEHE and the Ministry of Labor (MOL), and mandated with establishing the overall policies and strategies for TVET, the definition of TVET national priorities, overseeing the implementation of the strategy, and securing the necessary financial resources. Since its establishment, the Council has held only three meetings under the chairmanship of the MOL.
85. To help the Higher Council, an Executive Board was formed consisting of technical and decision making members of the Higher Council. The Executive Board is responsible for putting together plans for TVET strategy implementation, coordination with the different training providers and relevant stakeholders, and proposing regulations, procedures and standards.
86. In addition, a TVET Planning and Development Center was proposed to act as the technical arm of the system. The main targeted tasks of the Center were the provision of technical support to the TVET system at large, including the Higher Council and the Executive Board and all other relevant TVET education and training providers. The Development Center was principally proposed to house eight units; including human resource development, standards, curricula, projects, monitoring and evaluation, information and communication, research, and management support. Unfortunately, this center has not materialized although a Ministerial decree to that effect was issued in 2005.

87. The establishment of the management bodies marked a very important step towards a genuine coordination and policy making process. However, through their short experience, these bodies cannot be considered to have been efficient and institutionalized. The TVET Higher Council met only twice during the year 2005, in which an important decision was taken to establish the TVET Development Center – a decision that was conveyed to the Cabinet for endorsement. The Council however, neither succeeded in pursuing its anticipated mandate to achieve coordination among the different TVET providers nor managed to set policy; nor did it secure the resources necessary to support the implementation of the TVET strategy. The Council was put on hold, following the 2006 legislative elections, and the subsequent political obstacles made effective governance difficult to achieve.
88. The TVET Executive Board on the other hand met three times during the year 2005 but again suffered from a lack of commitment, follow-up, and support at the political level. Furthermore, the Palestinian Development Center has not been established as planned, nor have the agreed upon planning units at relevant ministries. Hence, the system is still suffering from the absence of policy setting mechanisms, the necessary legislation, and the commitment of the main providers - namely, the MOEHE and the MOL - to abide by the main objectives and directions of the national strategy.
89. Nevertheless, the structures and the intentions are clear and appropriate, even though they have not been implemented.

Problematic Issues

90. In many respects the Palestinian higher education sector seems to have a good governance structure in place that includes the MOEHE as the executive agency along with other buffer bodies. This governance structure however, lacks the proper legal clarity that would empower the various bodies to perform the mandates stipulated in the Higher Education Law, and their respective by-laws, to ensure integration of policies and complementarity in governing, planning, and overseeing the HE system:
- *Although much of the appropriate structure – and the appropriate bodies - exist, they are not functioning*
 - *The current governance structure lacks the legal provisions to safeguard and empower the different buffer bodies*
 - *The governance bodies lack the necessary capacity to ensure efficient and effective delivery of services*
 - *The current governance structure enables, to a large extent, overlapping of powers and authorities*
 - *The current governance structure has little control and leverage over the activities of HEIs*
 - *The current governance system does not ensure minimal cooperation across the various bodies to arrive at integrated HE sector policies.*
91. One can conclude that the lack of legal clarity, the absence of proper relationships between the MOEHE and the various buffer bodies, and the overlapping of powers, mandates, and authorities has resulted in an inefficient governance system and management processes that shape and affect the policy formulation for the tertiary education system in Palestine.

92. A measure of the extent of the problems can be gauged by comparing the governance functions needed in a well functioning higher education system with the situation that exists in Palestine. In the course of a very helpful review of higher education governance, the World Bank has produced a table, reproduced below, of the main governance functions that need to be performed in higher education, and suggestions about who might perform these functions.

Key Functions of the State	Can be undertaken by any of the following				
	Ministry	Buffer Body	Specialized Agency	Council of Presidents/ VCs	Associations and lobby bodies (e.g. unions)
Setting the vision and goals for the HE system	X				
Agreeing on the size and shape of system (including setting total student numbers)	X				
Licensing new institutions (public and private)	X	X	X	X	
Research on HE policies and objectives	X	X	X	X	
Setting HE policies and objectives	X				
Agreeing universities' strategic plans	X	X			
Allocating resources	X	X		X	
Allocating resources for special programs	X	X			
Monitoring university performance/overseeing accountability	X	X	X		X
Collecting HE statistics	X	X	X	X	X
Assessing the quality of teaching		X	X	X	X
Assessing the quality of research		X	X		

Financial auditing	X	X			
Support with governance and management		X	X	X	

93. In addition to those functions mentioned in this table, there are a number of others that we have identified that need to be provided for in the governance arrangements in Palestine. These include:

- *Arrangements for student aid*
- *The funding and governance of scientific research*
- *The setting of tuition fees*

So we have summarised and expanded the list, below, making it appropriate to the Palestinian system, and also identifying who is mandated to conduct the various functions, and who is actually carrying them out.

Policy Level	Admission (No of Students)			Admission Criteria			Program Accreditation			Institutional Accreditation			Quality Assurance			Institutional Funding			Students Aid			Scientific Research			National Policies					
	M	N	P	M	N	P	M	N	P	M	N	P	M	N	P	M	N	P	M	N	P	M	N	P	M	N	P			
Governance Body	M	N	P	M	N	P	M	N	P	M	N	P	M	N	P	M	N	P	M	N	P	M	N	P	M	N	P	M	N	P
MOEHE																														
CHE																														
AQAC																														
QIF																														
SRLF																														
CSR																														
TVET																														

Legend: **M**: Mandate **P**: Practice **NM**: No Mandate **NP**: No Practice

MATRIX OF POLICY ISSUES AND THE ROLE OF GOVERNANCE BODIES

Notes:

The MoHE has bilateral relations with the Education Committee of the Palestine Legislative Council, and also with Donor agencies, but these are not governance functions, and neither are these bodies engaged in the governance of HE in Palestine

QIF is not in fact a governance structure, but an administrative tool. It is included here for convenience and completeness.

Similar to QIF, SLRF is not a governance body, but an administrative convenience. Again, it is shown here for completeness.

94. This representation clearly shows the overlapping roles of the different bodies in relation to key policy issues, and the gaps. Reforms are needed to operate an effective and more coherent governance system for the Palestinian higher education system in order to rationalize the sector towards a more integrated framework governing the relationship between the Ministry and its various bodies, on the one hand, and between the higher education institutions on the other hand. The proposals later in the report are intended to achieve this.

95. What this list does not contain are matters concerned with the internal governance of universities, and we have also taken that question to be beyond our terms of reference. Therefore questions relating to the internal governance of universities are not considered here.

Proposals for reform

Principles

Vision

96. Before consideration can be given to the bodies and functions that should govern higher education in Palestine, let alone the legislation that should underpin these, a clear vision is required of the desired nature of the higher education system and the policies that should be pursued to achieve this. These have not been articulated clearly as far as we have been able to establish, but we found widespread agreement among those with whom we had discussions about the key principles.
97. The present Minister, university heads and senior Government officials all agreed that Palestine needed a largely autonomous university system, with institutions running their own affairs and the Government exercising only a light touch where this was appropriate. In particular, in reply to the question whether universities should be regarded as state-controlled or autonomous, there was near unanimity that they were not state-controlled, nor should they be, and this view applied even to the Government universities that are notionally part of the Ministry.
98. By “State-controlled” we mean a situation – as in for example Syria or Yemen, though even in these countries the situation is changing – where every aspect of their operation – who they teach, what they teach, the curriculum and the appointment of senior and even teaching staff – is in the hands of Government bodies. That is not the situation in Palestine at present, and we found no enthusiasm for moving in that direction
99. That is not to say that the State has no interest in the university system, nor even in universities individually. Higher education is part of the national infrastructure, and in a country like Palestine that has few natural resources there is little that is more important to the future of the country than the quality and the success of its universities. Where moreover, a significant proportion of the population is touched by universities -- whether as students, alumni or parents of students -- it would be unrealistic, and wrong, to suggest that universities can be kept out of politics entirely. Furthermore, with the State paying a significant amount towards the cost of universities -- either directly through the grant that it provides to universities or indirectly through student loans -- it can hardly be indifferent to what happens in universities.
100. However, this does not mean that simply because the State contributes to the cost of universities it should control them. It is important that universities are given as much freedom as possible to run their own affairs, not simply to protect academic freedom, but also because, by and large, independent universities tend to be better universities than universities that are state-controlled. As a matter of pragmatism as well as principle, therefore, we should be looking for means to keep to a necessary minimum the extent to which the State controls how universities operate and keep to minimum the by-laws that the Government imposes.
101. Nevertheless, there are matters where even in an autonomous system it is legitimate for the State to maintain some degree of influence if not control. These include:

- *Strategic considerations that determine the shape and size of the higher education sector as a whole (including the establishment of new universities)*
- *Considerations related to the quality (and therefore the reputation) of the system as a whole*
- *Funding*
- *The regulatory environment in which autonomous and competing universities operate. In this sense the State operates as the champion of the consumer (student).*

The Government does not need to carry out these functions itself, but it needs to ensure that they are carried out.

102. There is widespread agreement about the principles of autonomy and of minimum State involvement. But there is widespread agreement too -- and understanding on the part of universities -- that a devolved and independent university system requires appropriate instruments of accountability. Accountability embraces not only accountability for finance and the proper use of resources, but accountability for the quality of what is provided in universities as well. This too is a principle that has guided our work.

103. By and large, in Palestine, the main pillars of good governance and university autonomy with appropriate accountability are in place. The “Public” universities have a status that is unusual, if not unique, in the world, in that they are effectively owned by NGOs (Non-Governmental Bodies – Literally bodies that are not part of the Government. These universities are not ‘owned’ by the Government or by the State, but by the individual or entity that set them up in the first place), but are in receipt of significant amounts of Government funding, and their operations are governed by by-laws that the law states should be approved by the Ministry. We see this as a positive governance feature. Moreover, the full range of governance bodies exist -- a Council for Higher Education theoretically separate from the Ministry, an Accreditation and Quality Commission, a committee for the administration of the student aid fund and a Council for Technical and Vocational Education. There is a legal problem in that the law does not in most cases prescribe their establishment, but to the extent that it does, again the law requires these bodies to operate within a framework of by-laws approved by the Ministry.

104. A major problem, as has been referred to above, is that although by-laws governing their operations have in all cases (as far as we are aware) been drafted, none have been approved, and so all these bodies – universities as well as governance agencies - are in effect operating without legal cover at present. That is unfortunate, since in principle the way the legal framework for governance operates at present is a good one -- an enabling law that sets in place a framework and establishes the main bodies that are to be retained whatever the changing external environment -- with bodies that are created as a result of the powers provided under the law that are to develop by-laws that govern their operations.

105. We think that this arrangement should in principle be retained in future, but it is absolutely essential that all the institutions that are required to develop by-laws do so, and in particular that the by-laws are then approved, or approved after amendment, to enable the institutions and the public bodies concerned to operate within a systematic and legal framework, and we recommend that in future where the law requires secondary legislation (by-laws or regulations) the entity that is required to

draw these up should be required to do so within 6 months of its establishment and that the Ministry should be required to approve, amend or reject the proposed secondary legislation within a further 6 months.

Classification of institutions of higher education

106. The higher education law of 1998 classifies higher education institutions into three separate groups -- Public, Governmental (including the university colleges), and Private. This classification seems to be a reasonable one, though there are a number of issues that arise from it. The law does not define what a "Public" or "Private" university is, while nevertheless prescribing aspects of their governance. That needs to be put right. In passing, we observe that other than in a small number of matters Public and Private universities operate in a very similar way, and are governed in a very similar way as well.
107. As has already been observed, Public universities are owned by NGOs, and in most cases these NGOs appoint Boards of Trustees as the ultimate governance authority of the university. Private universities on the other hand, according to the law, are governed by the boards of directors of the entity that owns them. However, in effect these boards behave very much like the Trustees of the Public universities and are in most respects indistinguishable from them. Both Public and Private universities may set their own fee levels, though Private universities tend to set higher fees because ultimately they are profit making, and we have been told that Public universities feel inhibited about the level of fee they should charge because of concerns about the social and political effects of raising fees.
108. In other respects too their governance arrangements are similar, although the details differ – in practice if not in law. In particular, both must produce by-laws that govern their operations and these must be approved and promulgated by the Ministry responsible for higher education. That much is clear and is covered by the law.
109. However there are other respects in which practice and the law are unclear and inconsistent. For example while some Public universities have their presidents approved by the President of the Palestinian National Authority, others have been approved by their Board of Trustees, and blessed by the President of the PNA. Similarly, while some Public universities have their Trustees nominated by the President of the PNA, in other cases it is the Trustees themselves who appoint new Trustees. In one case (An Najah) there is no effective NGO to appoint the Trustees.
110. The law needs to be quite clear (and indeed by its silence is clear at present) that such appointments are for the University alone – the NGO that owns them in the case of the appointment of Trustees, and the Trustees in respect of appointment of the university President. These are matters that should be covered in the by-laws of each university. That is the case in university systems around the world where universities have a high degree of autonomy – in the USA, UK, Australia and New Zealand, for example, and also in those universities in Indonesia where the Government has granted autonomy.
111. It is worth remarking that only two Private universities has been approved in Palestine in the past 10 years, and that is despite a number of applications. To the extent that this is because such

applications genuinely failed to address concerns about quality, as reflected in the accreditation criteria, then there is nothing wrong with this. However, there is a suspicion that this reflects a restrictive attitude toward private higher education and a presumption that higher education should be discouraged. That would be unfortunate if true.

112. There is no explicit policy with regard to the desirability or otherwise of establishing Private universities. Indeed to the extent that there is such a policy, it resides in the Basic Law, that encourages a liberal society and competition between entities. Nor would a restrictive attitude reflect the situation of Palestine, where the supply of places is limited, but demand increasing apace. Although there are understandable concerns about the profit motive in higher education, experience in other countries shows that private higher education institutions can be of high quality, comparable to the Public institutions, and they can have other benefits as well (apart from anything else they increase the provision of higher education at no cost to the State). It is important that the by-laws for establishing higher education institutions are rigorous and objective, and do not take a restrictive attitude towards their establishment.
113. But the main point we wish to make about this is not whether Private universities should be encouraged or not, but that there is at present no explicit policy at all about them -- about, for example, whether the growth in demand for university places in Palestine should be catered for by expanding existing universities or by opening new ones. There is a "policy gap", which is in fact common in other systems in the Middle East like Jordan (where there a good proportion of students attend Private universities) and Syria (where few do so). However, it is marked contrast to the UAE, where Private universities are positively encouraged.
114. Whereas we have said that the classification of universities does not, broadly, give rise to problems, there is one respect in which it does. The position of the "Governmental" higher education institutions (universities and university colleges) is anomalous, and their governance arrangements give rise to serious operational problems. Briefly, the fact that these universities are regarded as Ministry entities and in all respects are required to conform to the same rules and procedures as apply to the Ministry is a severe burden and greatly limits their ability to operate effectively.
115. So, for example, Governmental institutions are bound by rules for procurement that involve enormous bureaucracy and long delays; and their staff are civil servants, which makes a major difference when it comes to conditions of service like retirement, sabbaticals and promotions; and even disciplinary matters have to be handled through civil service rules and are in the hands of the Ministry - the university is not able itself to take disciplinary action but has to refer disciplinary matters to the Ministry. Broadly, rules and procedures that may be appropriate to the civil service are not necessarily appropriate for an effective university.
116. Again, there is nothing wrong with the Government "owning" universities that operate alongside the Public universities and Private universities -- although it needs to be clearly understood and articulated what it is that underlies the Government's motivation in establishing and owning such universities (motivation that could include, for example, the fact that the growing Palestinian population needs more higher education institutions and that the Private and Public universities are insufficient to meet the growing need). What would not be acceptable -- it would be counterproductive and pointless

-- would be if the Government were to regard the "Governmental" universities as universities where it could promote a particular ideology or exercise detailed control over their operations.

117. So whereas the existence of Governmental universities presents no problems of principle, what is damaging is the degree of control that the Government exercises over the operation and governance of those universities. In our view, in order to enable the Government universities to be successful and match the Public universities, they should far as possible be governed by the same governance and management arrangements as those universities. This should be possible to achieve without undue difficulty.
118. There is no reason why the Governmental universities should not have exactly the same status as Public universities, except that instead of an NGO that is the ultimate owner it is the Government. In that case, the Government would appoint a Board of Trustees and the universities concerned would need to promulgate by-laws, in the same way as Public universities are required to do, and those by-laws would be subject to Government approval. Such an approach would be entirely consistent with the Basic Law, which gives a Minister authority to delegate any of his or her functions. This would overcome the main problem faced by Government universities at present, that some of the minutiae of their operation is subject to civil service rules and Government control -- something that is as unwelcome to the Ministry as it is to the universities concerned.
119. So in the case of Governmental universities no less than Public and Private universities, the operation of the universities should be subject to by-laws that have been approved, which should require for example that there should be audit at the end of the year to ensure that in their operations they have conformed to the by-laws, and, of course, have behaved with propriety in their financial dealings. That is how universities operate in the best systems in the developed world – the USA and UK for example – and now there is new legislation in France and Japan along these lines; and German university systems (each Land has its own system) are being reformed in this way.
120. The university colleges have a status at present similar to the Governmental universities, in that they are treated in all respects as part of the Ministry. It is arguable that these are less sophisticated and mature bodies, and so cannot be allowed the same degree of freedom in their governance as universities. That may be so, but it does not mean that they could not be subject to the same sort of revised governance arrangements that we think could apply to the Governmental universities -- that is ownership by the Government that appoints a governing board or Trustees, with the requirement that the college produces by-laws that are approved by the Government. But these by-laws in turn could be more limited than those applying to universities and could require greater supervision by the Government.

Ministry responsible for higher education

The need for a Ministry

121. One question that was put to us several times in the course the study was whether there is actually a need for a Government Ministry responsible for higher education -- either as a separate Ministry concerned with higher education, or a Ministry that considers higher education alongside other levels of education. This question was raised in light of the existence in Palestine of a range of a

buffer bodies -- the Council for Higher Education and the AQAC in particular -- that carry out many of the functions that might otherwise be carried out by a Government Ministry.

122. The first thing that needs to be said is that Palestine is not by any means unique in having non-Ministry bodies that have a status and functions similar to the CHE and AQAC, yet in almost all other cases in the world there is thought to be the need for a Government Ministry in addition.

123. There are a number of reasons for this:

- *To provide a broad political steer for the higher education system (it has been explained above that as part of the nation's infrastructure it is impossible -- and it would be wrong -- to keep higher education entirely out of the political process).*
- *To ensure that higher education has a champion in Government when it comes to negotiations within Government, for example about how public funding is allocated. At the very least a Minister is required for this, and if there is a Minister, then a Ministry is required to support the Minister.*
- *To carry out residual functions that are not within the terms of reference of the non-Ministry bodies.*

124. We think that that is right for Palestine as well, and recommend that there should continue to be a Ministry responsible for higher education. One of the reasons the question is asked about the continuing need for a Ministry is dissatisfaction with the performance of the Ministry. This is an understandable concern, but is a short term consideration and should not be allowed to determine longer term decisions. We note that Palestine has veered between a Ministry uniquely responsible for higher education and an overarching education Ministry that includes higher education in its remit. and successful examples of both exist in the Middle East (Syria for example, Saudi Arabia and Jordan), as in the UK. But successful examples of the single ministry approach include France and Australia.

125. There are arguments on both sides. On the one hand a combined Ministry makes the co-ordination of policies between the different levels of education easier to achieve. On the other hand, a problem with the present arrangement is that the single Minister for education and higher education has a very great deal on her plate, and in Palestine as in other countries school level education has a higher profile and tends to require more political attention than universities, with the consequence that universities may be neglected and decisions concerning universities may not be taken as promptly as is required.

126. There is one possible solution to this, though, that would preserve the benefit of the co-ordination of policy offered by the single Ministry, while increasing the political attention that can be devoted to higher education. That would be to create an additional, professional, Deputy Minister, with appropriate support, beneath the Minister, with an exclusive focus on higher education. Such a senior appointment would deputize for the Minister in all matters relating to higher education, and so ensure that higher education could be given the attention that it needs, despite the wide span of the Minister's responsibilities. By "professional" we mean that this should be a non-political appointment, and that the person concerned should have intimate knowledge of the higher education sector and the academic world, and who would carry respect and conviction among senior members of the academic community.

Functions of the Ministry

127. We therefore on balance recommended that there should continue to be a single Ministry of Education and Higher Education in Palestine, so long as the structure beneath the Minister can be strengthened with the appointment of a professional Deputy. If not, then the Ministry should be split, and a separate Ministry of Higher Education created. We suggest that in broad terms the higher education functions of the Ministry – whether a separate Ministry or an integrated one - in the person of the Minister, should be as follows:

- *To give the political direction to the system*
- *To identify top-level political priorities and to make decisions that are properly political in nature, but then to leave it to the CHE to plan the system within those parameters*
- *To be responsible for student-related matters*
- *To be responsible for bilateral relations with other countries*
- *To be responsible for political relations with other Ministers*
- *To be responsible for negotiating the national budget to be devoted to higher education.*

128. In practical terms, the main function of the Ministry will be to oversee implementation of the decisions of the Council for Higher Education, AQAC and the other governance agencies, though as will be seen from the discussion of the Council for Higher Education below, technically (and in legal terms), the decisions will actually be decisions of the Minister, implementing the recommendations of the Council for Higher Education. In addition, the Ministry will have a number of residual functions that are not covered elsewhere -- such as to make decisions about student aid (the student aid revolving fund is an administrative body, not really a governance body, as is discussed below), and to be responsible for Government to Government relations with other countries.

129. It will be for consideration whether the Ministry should continue to have responsibility for stamping and authenticating degrees earned by students at Palestinian universities. On the one hand, if the student has been accepted by the university as sufficiently able to undertake a programme, and the programme that the student attended is one that has been accredited as being of sufficient quality, and if the student does sufficiently well on that programme and passes the university's examination along with other students, then there seems little justification for the Ministry subsequently being required to stamp the student's degree certificate.

130. On the other hand, the explanation that is given for this practice is that it is to ensure that students who have not obtained the minimum Tawjehi mark are not nevertheless admitted to university. That is an understandable and legitimate concern. It is in fact almost the only sanction the Government has to ensure that its requirements in respect of minimum Tawjehi scores are respected. So it is a matter of judgment whether this function needs to remain. Our inclination would be to drop the requirement -- that would be more in keeping with the notion of responsible and autonomous universities. But if the practice is retained, then that will continue to be a function of the Ministry.

Ministry's relations with external agencies

131. As far as the formal relationship between the Ministry and the non-Ministry bodies (such as the Council for Higher Education) is concerned, it is clear that at present these bodies are purely

administrative -- not legal bodies -- in the sense that there is no provision for their creation in the law. Even for the Council for Higher Education the law simply says that the Minister may create a consultative body. It does not specify that such a body has to be created, nor its functions or powers.

132. So these bodies are at present entirely administrative and advisory. That provides a degree of flexibility which is in many respects welcome, but we think that for the two principal bodies -- the Council for Higher Education and AQAC -- there is a case for their being specified in the law, but for the law to provide a broad framework and describe their functions in general terms (we describe below what the broad mandate might be) but then to say nothing much more than that they should produce by-laws which should be approved by the Minister. And as at present, we think that there is a strong case for these bodies to continue to make recommendations to the Minister, who should be responsible for acting on their recommendations.
133. Nevertheless, that should not give the Minister free range to do whatever he or she wishes despite the recommendations of the councils. Our recommendation is that the law should require the Minister to give reasons for his or her decision if that decision is not consistent with the recommendations received from the advisory body, and for the decision in such an event to be challengeable in law.

Council for Higher Education

134. The most important of the non-Ministry bodies is the Council for Higher Education. There is an increasing trend around the world to create to create "buffer" bodies to carry out many of the functions that would otherwise have been carried out by the Government in respect of the higher education, and in particular functions with respect to relations with higher education institutions.
135. Bodies like the Council for Higher Education exist in a number of countries in the Middle East -- Jordan, for example, Syria and Yemen. However, in none of these does the Council have the authority and the autonomy that characterizes such bodies in countries where the concept is best developed.
136. In Palestine both the nature and purpose of the Council for Higher Education are ambiguous. As has been mentioned already, in legal terms the Council does not have a firm basis for existence. It arises from Article 6, paragraph 2 of the 1998 law that says simply that the Minister may appoint a consultative Council, without saying anything more about its nature or its functions. As it has developed, the Council for Higher Education is clearly perceived as a senior and heavyweight body, and despite its lack of legal basis it is viewed as the authoritative policy-making body in higher education, whose policies it is the function of the Ministry to implement. However, as has also been pointed out earlier in this report, the reality is a long way from this.
137. There is no doubt that the Council for Higher Education is a senior body comprising some of the most distinguished members of the higher education community -- in particular the heads of all the universities. But its very membership gives rise to problems and is part of the reason why it does not perform the functions that such bodies ought to perform, and indeed do perform in other systems.
138. So, for example, the Council has spent very little time on strategic questions or major policy matters -- such as the nature of the higher education system that is required in Palestine, or the balance between different types of institutions and programme or, as was mentioned earlier, whether

Private universities should be encouraged, and the balance between extending existing universities and creating new ones. But rather, it spends its time dealing with immediate issues and problems, particular as they relate to finance and personnel. That is not surprising, given that these are important and immediate issues, and the Council for Higher Education brings together the heads of institutions that have a common interest in these matters.

139. But this does mean that in Palestine the benefits of a Council for Higher Education, separate from and semi-independent of the Government, are not being reaped. As has been said already, increasingly around the world such bodies are being created as the supreme policymaking authority for higher education. Turkey and England provide advanced examples of countries where most of the policymaking functions of Government with regard to higher education have been devolved to independent bodies - bodies that are legally separate from and take decisions independently of the Government. These buffer bodies are part of the machinery of Government, but are not part of the Government. Under such arrangements Governments give the broad political steer for the development of the higher education system, and then leave it to the buffer body to develop policies and implement them within this broad framework.

140. Leaving aside the Middle East, other countries with similar arrangements include:

- *Thailand*
- *Ireland*
- *India*
- *Pakistan*
- *Sri Lanka*
- *The Philippines*
- *New Zealand*

Advantages of a 'buffer body'

141. One of the most commonly stated reasons for the creation of a buffer body system is to protect the academic freedom of universities and to reduce the possibility of Government interference which might compromise academic freedom.

142. A second argument is that buffer bodies enable decisions to be taken about the development of universities and university systems outside the normal political cycle, particularly in an environment where Ministers change relatively frequently. Universities are bodies that can take a long time to implement change, and need a long time for developments to mature and become embedded. It does not make sense for short-term decisions to be taken as political fashions and political leaders change. Governments, particularly in democratic systems, find it difficult to take long-term decisions regardless of their immediate political impact, and the existence of buffer bodies enables this.

143. Related to this, buffer bodies can take difficult political decisions which Governments are often unable to take. It can often be helpful to a Government faced with controversial decisions affecting individual universities or the system as a whole, to be able to point out that the decision was not theirs, but was taken by an independent body which the law or even the constitution forbids them to control.

144. A further benefit of buffer bodies is that these enable decisions to be taken by experts. Not all decisions require experts, of course, and some are better taken by people who are not close to the topic, but it enables informed and expert decisions be taken when necessary.

145. A buffer body independent of the Government and outside the civil service is often able to be more flexible and responsive than would be the case with a Ministry. Where universities are autonomous and intended to behave flexibly they will need to be able to interact with a central body that is similarly flexible, both in its organization and structures and in its working methods.
146. Where buffer bodies operate, they have undoubtedly led to stability of policy and practice - the development of the higher education system in many important respects has continued independent of changes of Government and Ministers, and independent of day to day political considerations. On the other hand, the structure has allowed top level political decisions to be taken by Minister of the day.
147. There is, though, a risk that transferring responsibility for university funding and policy to a body outside the Government might be misinterpreted as the Government washing its hands of universities, or being less interested in universities than in other aspects of public policy. On the other hand such a move could be presented – rightly – as an indication of the importance that the Government attaches to universities – so much so that it has decided to take them out of the day to day political arena.
148. We think these considerations apply no less to Palestine than to other countries with buffer bodies, and that the Council for Higher Education should continue, with the characteristics of other buffer bodies described above.

Functions

149. In another review of HE Governance, the World Bank identified that the following functions were carried out by one or more buffer bodies in countries that had them:
- *Strategic Planning*
 - *Policy analysis/ problem resolution*
 - *HEI mission definition*
 - *Academic program review*
 - *Budget development/ funding advice/allocation*
 - *Program administration*
 - *Monitoring/ Accountability*
 - *Quality assurance/ standards review*
 - *Deciding the total number of student admissions*
150. In future, given the particular circumstances of Palestine, we suggest that the fundamental roles of the CHE should be
- *To set the strategy for the sector (including size and shape, growth in student numbers, etc)*
 - *To fund institutions and support them to improve their capacity*
 - *To ensure accountability (including accountability for their use of the funds provided)*
 - *To ensure that the public interest is secured, and national priorities served, in a situation where institutions are autonomous and act in their own interests*
 - *To act as a market/competition regulator.*

That is how the CHE equivalent bodies operate in countries like India, Pakistan, the UK, Turkey and New Zealand, where the system works well.

151. It will be seen that all of these functions concern the relationship between the Government and institutions. In particular, they do not touch upon issues related to students nor to the academic or other staff that work in universities. There are two reasons why this should be so. First, it will provide a far clearer focus for the Council for Higher Education and its work - the knowledge and expertise required for dealing with student matters and human resources are quite different from those that relate to institutions. Second, it is essential that the Council for Higher Education is - and is seen to be - a non-political body. Yet matters concerning students and staff, their pay and conditions are often highly politicized, and it would damage the Council for Higher Education's standing if it became involved in political disputes.
152. That is not to say that some aspects of relations with students and/or staff (student grants or loans, for example) might not be legitimate matters of concern to a Government, but it is suggested that any such matters should not be part of the terms of reference of the Council for Higher Education, but should be retained in the Ministry. The Council for Higher Education would be concerned exclusively with higher education institutions.
153. There are a number of specific functions that will need to be debated. For example, it is not clear whether there is any need to set a minimum Tawjih score or the maximum number of students that any university or program should be permitted to admit. On the one hand, there is an argument that in a situation where universities are mature, responsible and autonomous, and where there is a robust system of quality assurance, they should be permitted to decide these matters for themselves. On the other hand, universities are not islands, but exist within a political, economic and social environment, and their decisions impact upon and are impacted by the external environment.
154. So, there is an argument for national considerations to play a part in what are essentially local and individual university decisions. The precise terms of reference of the Council for Higher Education will need to be decided in the light of such considerations, but if matters like minimum entry scores and maximum numbers are to be imposed on universities, then those should be a function of the Council for Higher Education.
155. One of the functions of the Council should be to allocate public funding between universities. Even where public funds are as limited as in Palestine, for the sake of its own credibility, but also to ensure that limited resources are used to maximum advantage, it is important that the Council adopts an objective approach to setting grants, and in particular that the allocation of grant should be based on a formula that does not permit negotiations and favours to influence decisions.
156. More generally, the Council should be concerned with the system as a whole and with enabling universities to collaborate. That is not to say that it should try to override the independence of universities or the benefits of competition. However, it should put in place structures and incentives that enable universities to collaborate where that seems appropriate - for example in rationalizing programmes, or enabling students and staff to move between institutions.

Membership of the Council for Higher Education

157. As far as the membership of the Council is concerned, as we have already said, there is a real problem with the fact that it is dominated at present by serving heads of Public and Private universities. However well-intentioned and objective its members are, there must always be the potential for conflicts of interest, and its present membership is one of the reasons why the Council at present has confined its attention almost exclusively to short-term problems, and has neglected strategic and long-term issues.
158. There is no doubt that university heads need a forum where they come together to consider matters of mutual interest and agree on common courses of action, and we recommend below the creation of a Council of University Presidents. But for the Council for Higher Education, we recommend that the membership should preclude serving heads of institutions, except that the Chairman of the Council of University Presidents, that we recommend below, should be a member. That is the arrangement in India and Turkey, and also to an extent in the UK and Pakistan (where the majority of members of the Council are not heads of universities).
159. It is essential that the Council for Higher Education has a senior and authoritative membership of people who know and care about higher education -- former presidents of universities for example -- but should also include senior lay representatives from business, civil society and the professions, who can make objective and informed judgments and decisions, but who, because they are not involved in day-to-day university matters, can also concern themselves with longer-term and strategic questions. We suggest that the law should require that the CHE Council should contain no fewer than 12 and no more than 20 members, and that that no fewer than one third of the membership of the CHE should be people holding senior positions outside the academic community. Other members should include the Chairmen of AQAC and the TVET Council.
160. The Chairman of the Council will be an extremely important post. Our strong view is that it should not be the Minister, but should be a senior and distinguished public figure – that is the case in the most successful such bodies in other countries (India, Turkey and the UK, for example). There are a number of problems associated with having the Minister as the chairman, including the fact that the relatively rapid change of Ministers in Palestine brings discontinuity and a degree of destabilization. But the most important thing is that the Council should exercise its professional judgment and consider the matters with which it is concerned with authority, independence and objectivity. On the other hand it would make sense for the Minister to be represented on the Council (possibly by the Deputy Minister).
161. Beneath the Council itself, there may need to be a number of subcommittees -- for finance, for example, and planning. Such matters will be for the Council itself to decide, and it may decide on the contrary to deal with all matters as a full Council.
162. If the Council is to deal effectively with the strategic and planning issues that it ought, it will need expertise available to it that it does not have at present. There will need to be staff able to carry out policy research and analysis, and to make recommendations to the Council. Whether such staff should be staff of the Council itself, or part of the Ministry, is a matter of detail that will need to be decided separately. It is the availability of such skills to the Council that is important to enable it to develop good policies and make informed decisions.

163. As far as the legal status of the Council has concerned, we think that it ought to be a statutory body, created by law. It is an important - and we believe ought to be enduring - feature of the Palestinian higher education system. However, we also believe that it ought to make recommendations to the Minister, and not function as an executive body. That is a matter of judgment, but we judge that such an arrangement is likely to make it more politically acceptable in the Palestinian context. On the other hand, as we already said as well, that does not mean that the Minister ought to be able to disregard the Council's recommendations and make decisions capriciously. The law should make it clear that the Minister is expected to follow the recommendations of the Council and that if the Minister chooses not to then he or she should be under an obligation to explain publicly why that is the case, with such decisions being challengeable in the courts.
164. Finally, there is a question about the scope of the Council for Higher Education. It should certainly cover all universities -- Public, Private and Governmental -- but we think in addition it ought to cover the university colleges, that provide diploma and bachelors level education, and when the majority of academic programmes are at diploma level or above, such institutions should be designated higher education institutions (either a university or a university college) and should come under the CHE. So in future the TVET Council would cover those institutions like Community Colleges, the majority of whose students study for qualifications below higher education level. However, for such an arrangement to work there needs to be complete clarity about which institution falls to which Council. We noted that in the lists held by AQAC of the post-secondary institutions in Palestine a number of institutions appeared under several categories.

AQAC

165. The Accreditation and Quality Assurance Commission (AQAC) is a body that parallels many such bodies that are now being created in other countries – in Jordan and Syria for example, and the Quality Assurance Agency in the UK - but Palestine was ahead of many other countries in creating an agency responsible for accreditation and assuring the quality of institutions and programmes. However, the role of this agency seems at present to be limited to accreditation on the basis of minimum input factors (such as the amount of space per student and the faculty to student ratio) and it has only a limited role in quality assurance of the provision that is made. That is something that should evolve over time. Undoubtedly, accreditation is the first and most important initial function.
166. As with the Council for Higher Education, AQAC is at present a purely administrative body and has no basis in law. In our opinion that should change. Quality assurance and accreditation are sufficiently important functions and AQAC is a sufficiently important body, to be enduring, and likely to exist for a long time. For that reason, it should be put on a statutory footing and the Higher Education Law should refer to it explicitly. As with the CHE the law should spell out its broad mandate, that should cover:
- *Licensing of new institutions*
 - *Accreditation of new and re-accreditation of existing programmes*
 - *Quality Assurance*
 - *Ongoing evaluation and assessment of licensed institutions and accredited programs.*

167. We discuss the membership of AQAC below, but for its detailed operations (and in particular the criteria it will apply in reaching its judgments) it should issue by-laws, to be approved by the Minister.
168. The nature and the dependencies of AQAC, however, are matters that need to be considered. It should be an expert body, comprising members who are experts in education, about that there is no doubt. But beyond that, it could be
- *A freestanding agency that makes decisions, or*
 - *An agency that provide recommendations to the Council for Higher Education, which in turn advises the Minister, or*
 - *A body that provide recommendations directly to the Minister*
169. On balance, our view is that it should have the authority itself to make decisions about whether institutions and programmes have met its criteria -- and it should certainly be responsible for establishing the academic and professional criteria that need to apply -- but it should be the Council for Higher Education that decides whether universities or programmes should be eligible to be considered by AQAC at all, based on policies and criteria that the Council has decided. So, for example, the Council for Higher Education would decide that no further medical schools are to be approved, or that existing universities are to be encouraged to expand -- and AQAC will develop criteria and implement the policy. In that way, national policy decisions about the nature, shape and coverage of the higher education system will be with the Council for Higher Education, but the professional judgments about whether universities meet the Council for Higher Education's criteria are of a sufficient standard and quality for accreditation will fall to AQAC's professional judgments.
170. The main functions of AQAC are the right ones -- accreditation, licensing and quality assurance (both new and on-going). But more generally, it should be the body to which the Government and its agencies (like the Council for Higher Education) turn for advice about academic and professional matters. So, for example, although it may be tangential to its main functions, AQAC could be the body charged by the Government to provide advice about the equivalence of overseas degrees, but also to make representations about the standards and equivalence of Palestinian degrees to overseas Governments and agencies.
171. As far as the membership of AQAC is concerned, the most important thing is that all its members should be independent, knowledgeable and credible to the higher education institutions. A good proportion will be experienced and respected academics, capable of making judgments about the quality and standards that they are to judge. There is no reason why members should not include people from the professions with detailed knowledge of some of the professional subjects that universities teach, but there seems no reason to include as members civil servants without the academic and subject knowledge needed to make academic decisions.
172. One point that has been made concerning the membership of AQAC is whether there is a risk that a body composed largely of academic members will find itself involved regularly in situations where conflicts of interest arise, and whether it might not be better to have the AQAC membership largely composed of civil servants. This concern is understandable -- although it is relatively easy to legislate for situations where there is a clear conflict of interest (for example where a Council Member's

university is under discussion) it is less easy to make rules that cover more subtle conflicts (for example where a programme is under consideration that would compete with one in the University of a Council Member).

173. However, this is a common problem wherever professionals have to make judgements about their peers -- not just in the academic world, but most particularly so. University systems all over the world are coping with and have overcome this issue. Moreover, we did not encounter any concern about this among any of the people we met in any of the universities in Palestine, and there was strong opposition to replacing what is essentially an expert college of peers with a Ministry body. As it would be the universities themselves that would be affected by any such conflict of interest, we do not think that this is a concern that need influence decisions about the composition of AQAC. On the other hand, it is absolutely essential that provisions governing conflicts of interest should be included in the by-laws that govern its operation.
174. With an appropriate membership, the Chairman could be selected from among the members. As with CHE, and in accordance with the Basic Law the Chairman needs to be nominated by the Minister and appointed by the Cabinet.
175. AQAC is a very small body for a rather large task, and in particular it is unlikely that its membership is sufficiently wide to cover all subjects and disciplines that it is asked to make judgments about. We think that there would be merit, beneath the main AQAC committee, to have a number of discipline based subcommittees which can be responsible for making judgments in particular subjects. Decisions would always be made by the main board, but such specialist subcommittees could make recommendations.
176. In addition, AQAC needs a small permanent professional staff to service the professionals on the committees. This suggests a small core staff and subject-based committees.
177. Aside from the remit and coverage of a AQAC, we have not regarded it as part of our terms of reference to comment on the details of how it should work (for example the question of re-accreditation after four years). These are largely professional matters on which we are not qualified to comment.
178. We would mention, however, in passing that there have been complaints about an unduly bureaucratic approach. For example, because the rules require that faculty staff with PhDs should teach bachelors degree programmes it has been difficult for programmes for the training of midwives to obtain approval because by and large midwives do not have PhDs. It is not our business, but we do urge those responsible to ensure that AQAC is able to operate with sufficient flexibility but also with objectivity and rigour, to serve the Palestinian higher education system well. In particular, it is, it goes without saying, essential that AQAC operates with complete transparency, that it publishes its criteria and that its decisions are seen to be consistent with the published criteria.
179. Although we have spoken here about 'decisions' of AQAC, as with the Council for Higher Education we recommend that AQAC should in fact make recommendations to the Minister. However, the Minister should be required to give explicit reasons where he or she chooses not to follow those recommendations, and such decisions should be open to legal challenge.

Student Revolving Loan Fund

180. We have not considered the Student Revolving Loan Fund in detail, because, unlike the other bodies we have considered, it is not in a true sense a ‘governance’ body. Assisting students financially is in fact a central aspect of a more general financing strategy. Therefore, SRLF is rather an administratively convenient device for enabling the Government to administer the provision and distribution of the funds it chooses to make available for student aid. Moreover, its functions could easily be carried out by a private bank or other commercial body, unlike the functions of the other governance bodies considered here.
181. However, we believe that student aid schemes should be looked at more as a band aid or a helping hand for needy students. Distributed and used strategically, with conditions and limits attached to the financial assistance provided, student aid mechanisms can become a powerful tool that shape institutional policies, funding decisions and forward planning. Therefore, we recommend that the Ministry and CHE use student financial assistance mechanisms (loans and scholarships) to meet national HRD developmental objectives and priorities. In doing so, both MOEHE and CHE could exercise policy relating to education financing and funding according to policy priorities.
182. Nevertheless, if there is to continue to be a Revolving Student Aid Fund administering Government money, then the role of the Board need to be clearer, and possibly its composition should be reviewed and broadened to include representation from outside the Government and HEIs. In addition, the administrative setups at the Ministry level need to be strengthened. Reference should be made to the previous studies and reports pertaining to the development of SRLF, produced as part of the HE Project funded by the World Bank.

TVET

183. Palestinians developed a sound national TVET strategy and implementation plan that addressed the various interventions needed for TVET system reform. The Palestinian TVET strategy is the result of community consensus about what a future national TVET system should be.
184. The establishment of the management bodies marked a very important step towards a genuine coordination and policy making process. Also helpful is the clear TVET governance structure represented by the Higher Council for TVET as the policy setting body, the Executive Board as the body responsible for overseeing policy implementation, and the Development Center representing the technical capacity of the system. Such a governance structure is unique in the sense that is not a mere structure within a single Ministry, but more of a governance structure that cuts across a variety of institutions and stakeholders at large.
185. We believe that the composition, membership, and mandates of the TVET Higher Council and the Executive Board, has a fair and balanced representation, and clear cut mandates and responsibilities. Therefore, it can simply be said that this governance structure needs only a commitment from the Government to see the ratification of the by-laws of the Council and its Executive Board, and to support the establishment of the Development Center as the technical capacity of the governance body.

186. One recommendation though needs to be taken into account to ensure complementarity across the entire education system. We believe that CHE should be represented on the TVET Higher Council and by the same token, the TVET Higher Council should also be represented in the CHE council.

Council of University Presidents

187. The discussion of the Council for Higher Education above suggested that the composition of the Council in future should exclude serving university heads. The reasons for recommending this is that this would avoid any conflict of interest in future, and would also ensure that the Council focused its attention in future on strategic and longer term issues, rather than the immediate problems and short-term crises that dominate its agenda now.

188. However, there are many issues that university heads need to consider as a group, and there are issues that they need to develop common positions on for mutual benefit. The following is not a comprehensive list, but the issues include:

- *Matters to do with staffing*
- *Pay and conditions*
- *Responses to the government and political proposals*
- *Academic cooperation (such as the development of credit accumulation and transfer arrangements) and so on.*

189. Particularly in a situation where university employees are unionized, with a single body to represent them all, across all institutions, there is a good deal to be said for their employers having a similar grouping, to enable joint positions to be adopted, and even to allow common negotiations to take place.

190. Many other countries in Europe, North America and elsewhere have a “Committee of Rectors”, or “Council of University Presidents”, which is not part of the legal infrastructure - we do not suggest that such a body should be provided for in the Higher Education Law - but which is an important and integral part of the governance of the higher education system. These include the German Rectors Conference, Universities UK, the Association of Indian Universities and the Committee of Vice-Chancellors and Directors of Sri Lanka. However, such groupings are generally absent in the Middle East, where university presidents are typically, as in Palestine, part of the Council for Higher Education or equivalent body. However, particularly if our recommendation about the composition of the Council for Higher Education are adopted, there will be a strong need for such a body in Palestine, and we recommend that the Government should encourage the creation of such a body. The chairman of such a body could either be elected from among the members, or could be appointed in rotation – and we have already suggested above that he or she would be a member of the CHE.

191. In other countries such bodies as the Council of University Presidents are self-funded by universities paying a subscription. The cost of such a body need not be great -- it need only have a permanent staff of one or two people initially, and could be accommodated within a university - but in order to ensure that it happens some initial Ministry funding will be appropriate.

192. The proposed Committee of University Presidents would have a purely administrative relationship with the Ministry, but the Government will wish to take the advice of this body on appropriate issues, and the CUP will certainly want to advise the Government on a range of matters.
193. With the goodwill that exists around the world for Palestine it will not be difficult to identify an equivalent body that will be willing to advise on the establishment of a Council of University Presidents in Palestine -- the international consultant was involved in such a body in Bulgaria, for example -- and it is recommended that steps are taken to create links with equivalent bodies overseas.

Scientific Research

194. The evidence that we received suggests that scientific research in Palestine is underdeveloped. Its present condition is undoubtedly in part due to the lack of funding for research, but arguably it is also in part due to a lack of guidance and strategic direction for the national research effort. Indeed, it could well be that one of the reasons for the lack of funding is precisely this lack of top-level commitment.
195. The fact that the Higher Education Law makes provision for the creation of a Council for Scientific Research, and that indeed such a Council has been created, is positive in itself, and provides a structure that can be built upon. The Council for Scientific Research is a potentially important body, as scientific research is an important function of universities. We recommend that, with appropriate membership, this Council can evolve into a body that in guidance and helps the development of scientific research in Palestine's universities. That should be its focus -- not the strategy for research in Palestine as a whole are. On the other hand, as the majority of the research that takes place almost certainly does so within universities, the activities of this Council are likely to be decisive in the development of research in the country more widely.
196. Although there appears to be overlap at present between the functions of the CSR, the National Academy of Science and the Higher Council for Scientific Research, if the law spelled out the mandate of the CSR that would help greatly to clarify matters. It would not remove overlap, but it would make any overlap more explicit. The mandate of this Council should therefore be to assess the strategic priorities for conducting research in Palestine's universities (which should relate to Palestine's needs), to develop policies for encouraging such research to take place, and to provide funding to support such research. In pursuance of this role it should solicit funding for scientific research from Government, donors and from other sources too. And once such funds are available it should be the function of this body to identify priorities for research funding, it should invite proposals, and then select between competing proposals to allocate grant. Such bodies exist in other Countries -- the CNRS in France, the NSF in the United States and the Research Councils in the UK, for example.
197. In order to be able to carry out this role the Council will need an authoritative membership, that can be relied upon to identify priorities and judge relative quality between proposals, but it will also need to obtain advice on specific proposals in scientific fields that are beyond the knowledge and expertise of its members. Needless to say, the Chairman of this body will need to be a public figure with a distinguished record in scientific research. Its members should primarily be distinguished

academics, but should also include the Chairman of the Higher Council for Scientific Research and a senior official of the Ministry of Planning, both of whom should be able to provide advice about national research priorities.

198. So we think that the existing law's provisions in this respect are right, and should be put into effect. Indeed, once the CSR is a reality it can begin to solicit the funds it needs to justify its existence. As with the other bodies, with think it right that the law should (as it does) stipulate its creation, but that it should be responsible for drawing up by-laws, which the Government should then ratify.

Accountability

199. The other side of the autonomy coin is accountability. If universities are to be given increased autonomy, then the price of this must be a high degree of accountability. This is not only because universities receive a large amount of public funding. More generally, universities are a precious resource and are a part of the infrastructure of a country, and stakeholders more widely need to be satisfied that universities are doing the job that they are entrusted to do as well as is possible. One of the most important functions of the national governance bodies that are proposed below will be to ensure appropriate accountability among Public and Private universities. Dimensions of accountability include accountability for:

- *Finance (for which audit is needed)*
- *The employment of staff (appointments need to be made in a transparent way, and criteria for selection and contracts of employment are needed and need to be enforced). Laws and by-laws need to be reviewed and revised to ensure that organizations hire and fire staff based on qualifications and needs*
- *Stakeholder information (auditable data need to be published about important aspects of the university)*
- *Quality (society needs to be satisfied about the quality of what universities do).*

200. As far as we have been able to judge, the majority of these conditions are met in Palestine. The financial affairs of universities are transparent and audited (in the case of Private universities they are subject to company law); and the quality of what they provide is subject to quality assurance by AQAC. Based on our international experience we would say that in terms of accountability Palestine's higher education system performs reasonably well relative to international comparators, particularly other Arab countries.

Checklist of Functions

201. Turning again now to the governance functions listed in paragraphs 92-93 above, which in turn were based on the checklist produced by the World Bank, the table below lists the functions and identifies how these will be carried out in future, together with the additional functions identified in the course of this report, if our recommendations are accepted.

Student admissions	high level policy by che/individual decisions by universities
Admissions criteria	high level policy by che/individual decisions by universities
program accreditation	AQAC, based on che decisions about national need
institutional accreditation (licensing)	AQAC, based on CHE decisions about eligibility
institutional funding	CHE, based on Government decisions about totals to be allocated
student aid	Ministry via SLRF
scientific research	CSR
national policies	CHE, guided by Minister, who in turn will be advised by CHE
International relations	Ministry

Future Legal Framework

202. In this section we describe the broad legislative changes that we recommend should be introduced to give effect to the reforms that we have outlined in the previous section. Annex C contains a detailed critique of the present Higher Education Law.
203. It should be said at the outset that the overall principles underpinning the law – and its general style – seem to us to be just right: that is to say a fairly general enabling law that sets in place the framework for the governance of the HE sector without going into great detail, and which then relies on secondary legislation – by-laws and regulations – to govern the details. This seems to us to be an admirable way of proceeding: the alternative of a very detailed primary law would require changes in the primary legislation every time changed circumstance require changes to one or other of the details that have been legislated for.
204. One of the main problems in Palestine, of course, is that none of the regulations and by-laws have been ratified (although in most cases they have been drafted and submitted to the Ministry, as required). Another major issue is that a number of the main governance bodies that have been established subsequent to the 1998 Law were not described in that Law, and are administrative, not legal entities. We recommend that this should change.

Changes to the primary legislation

205. In the paragraphs that follow we summarize the main recommendations of the preceding section that require legislative changes, and describe in outline what these might be. It is not the purpose of this report to give a detailed brief to a legislative draftsman: but we intend that in future if it is decided to amend the law and implement our recommendation, those responsible for this should be able to go through this section and identify the legislative implications.
206. In future where the law requires secondary legislation (by-laws or regulations) the entity that is required to draw these up should be required to do so within 6 months of its establishment and the Ministry should be required to approve, amend or reject the proposed secondary legislation within a further 6 months.
207. The law needs to be quite clear (and indeed by its silence is clear at present) that appointments of Trustees and university president are for the University alone – the NGO that owns them in the case of the appointment of Trustees, and the Trustees in respect of appointment of the university President. These are matters that should be covered in the by-laws of each university.
208. The Governmental universities should far as possible be governed by the same governance and management arrangements as the Public universities. This should be possible to achieve without undue difficulty.
209. The Governmental universities should have exactly the same status as Public universities, except that instead of an NGO that is the ultimate owner it is the Government. In that case, the Government would appoint a Board of Trustees and the universities concerned would need to promulgate by-

laws, in the same way as Public universities are required to do, and those by-laws would be subject to Government approval.

210. The university colleges should be subject to the same sort of revised governance arrangements that we think could apply to the Governmental universities -- that is ownership by the Government that appoints a governing board or Trustees, with the requirement that the college produces by-laws that are approved by the Government
211. There should continue to be a single Ministry of Education and Higher Education in Palestine, and the structure beneath the Minister should be strengthened with the appointment of a professional Deputy. If this is not possible, then the Ministry should be split, and a separate Ministry of Higher Education created.
212. In broad terms the higher education functions of the Ministry – whether a separate Ministry or an integrated one - in the person of the Minister, should be as follows:
- *To give the political direction to the system*
 - *To identify top-level political priorities and to make decisions that are properly political in nature, but then to leave it to the CHE to plan the system within those parameters*
 - *To be responsible for student-related matters*
 - *To be responsible for bilateral relations with other countries*
 - *To be responsible for be responsible for political relations with other Ministers*
 - *To be responsible for negotiating the national budget to be devoted to higher education*
 - *To oversee implementation of the decisions of the Council for Higher Education, AQAC and the other governance agencies*
 - *To make decisions about student aid*
 - *To be responsible for Government to Government relations with other countries.*
213. The Council for Higher Education and AQAC should be specified in the law, but the law should provide a broad framework and describe their functions in general terms but then say nothing much more than that they should produce by-laws which should be approved by the Minister
214. As at present, the CHE, AQAC and TVET Higher Council should continue to make recommendations to the Minister, who should be responsible for acting on their recommendations.
215. The law should require the Minister to give reasons for his or her decision if that decision is not consistent with the recommendations received from the advisory body, and the decision in such an event should be challengeable in law.
216. The fundamental roles of the CHE should be
- *To set the strategy for the sector (including size and shape, growth in student numbers, etc)*
 - *To fund institutions and support them to improve their capacity*
 - *To ensure accountability (including accountability for their use of the funds provided)*

- *To ensure that the public interest is secured, and national priorities served, in a situation where institutions are autonomous and act in their own interest.*
- *To act as a market/competition regulator.*

217. The membership of CHE should preclude serving heads of institutions, except that the Chairman of the Council of University Presidents (if such a body exists), should be a member.

218. The law should require that the CHE Council should contain no fewer than 12 and no more than 20 members, and that no fewer than one third of the membership of the CHE should be people holding senior positions outside the academic community with a knowledge of higher education - former presidents of universities for example, senior lay representatives from business, civil society and the professions. Other members should include the Chairmen of AQAC and the TVET Council, and representative of the Ministry.

219. The Chairman of the Council should not be the Minister, but should be a senior and distinguished public figure.

220. The scope of the Council for Higher Education should cover all universities -- Public, Private and Governmental. In addition it ought to cover the university colleges, that provide diploma and bachelors level education.

221. In future the TVET Council would be limited to covering those institutions like Community Colleges, the majority of whose students are following programs leading to qualifications below higher education level and the Council for Higher Education would cover all institutions the majority of whose students are pursuing higher education level qualifications.

222. The law should spell out AQAC's broad mandate, that should cover:

- *Licensing of new institutions*
- *Accreditation of new and re-accreditation of existing programmes*
- *Quality Assurance*
- *Ongoing evaluation and assessment of licensed institutions and accredited programs.*

223. All AQAC's members should be independent, knowledgeable and credible to the higher education institutions. Without spelling out proportions or numbers, a good proportion will be experienced and respected academics, capable of making judgments about the quality and standards that they are to judge. Others will include people from the professions with detailed knowledge of some of the professional subjects that universities teach, but not civil servants unless they possess the academic and subject knowledge needed to make academic decisions.

224. The law concerning TVET and the TVET Council is adequate at present and we make no recommendations for changes, except in one respect: CHE should be represented on the TVET Higher Council and by the same token, the TVET Higher Council should also be represented in the CHE council.

225. As at present the law should continue to make provision for the existence of a Council for Scientific Research.

226. The mandate of this Council should be:

- *To assess the strategic priorities for conducting research in Palestine's universities*
- *To develop policies for encouraging such research to take place, and*
- *To provide funding to support such research.*

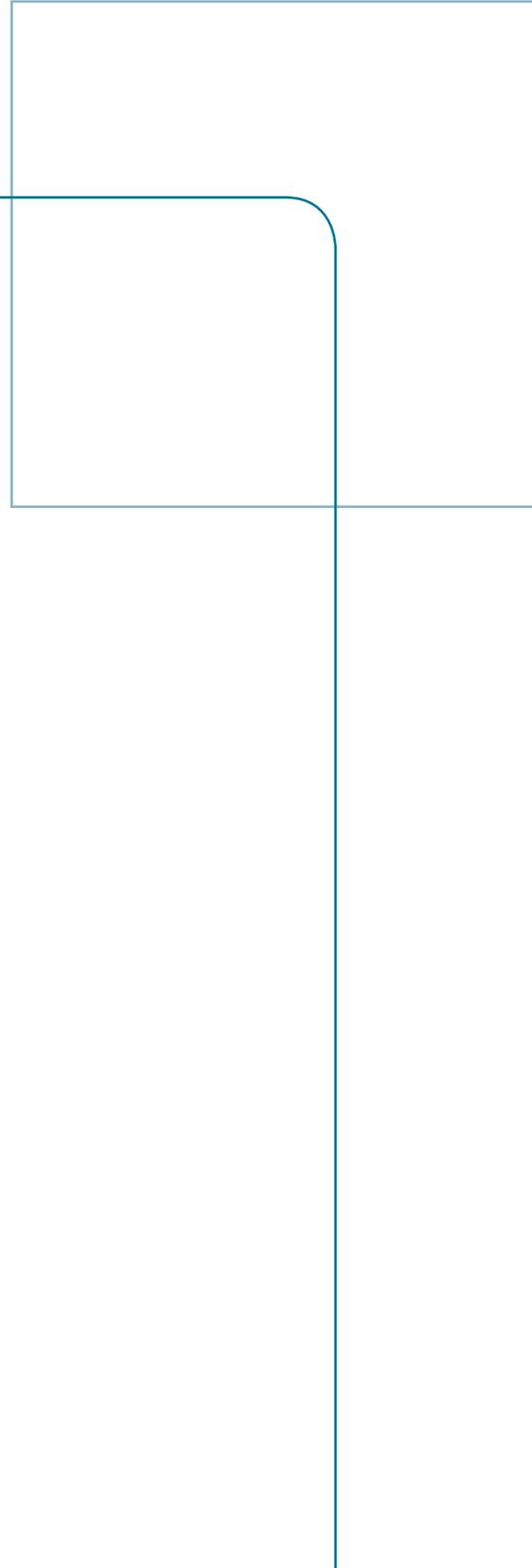
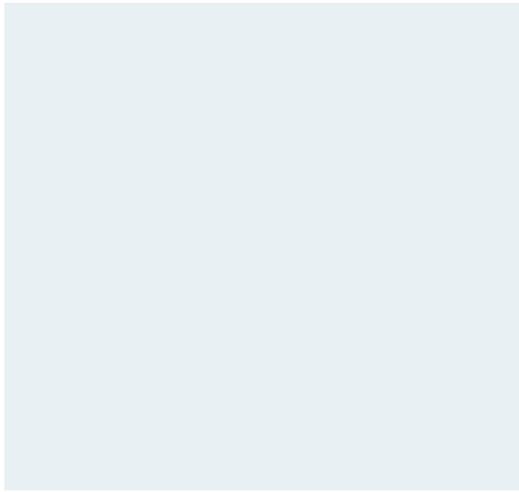
227. The Chairman of this body should be a public figure with a distinguished record in scientific research. Its members should primarily be distinguished academics, but should also include the Chairman of the Higher Council for Scientific Research and a senior official of the Ministry of Planning (or its successor bodies).

228. There is one further specific point to be made here that will need legislative provision. It will be seen from the discussion in Annex C that there are a number of points in the law where responsibility for the same – or similar – functions are given both to the Minister and to the CHE or another body. In such cases the law should specify that where the law, regulations or by-laws give powers and responsibilities to bodies created pursuant to this law, and where this law provides that the Minister shall have overlapping powers and responsibilities, the Minister shall be deemed to have delegated his or her powers and responsibilities to that body.

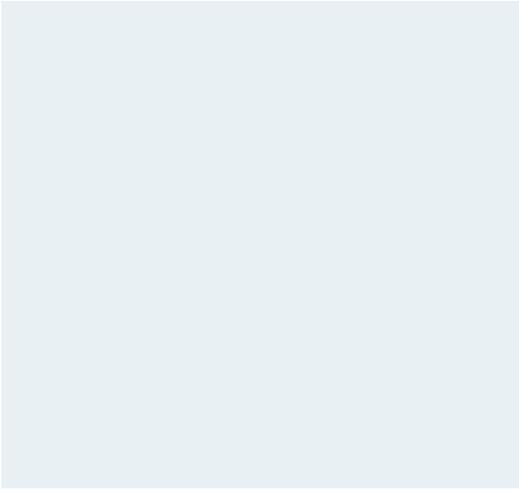
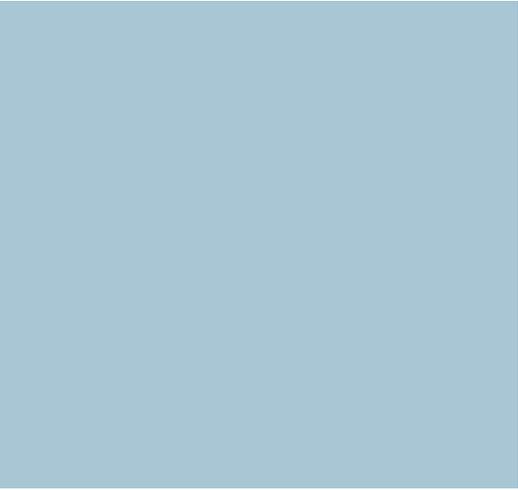
229. Alternatively the law could say that in such cases the responsibility of the council or other body created by the law shall be to make recommendations to the Minister about these matters, and the responsibility of the Minister shall be to implement these recommendations, or if he or she implements a decision that is at variance with these recommendations, the Minister shall be required to write to the Chairman of the relevant body giving his or her reasons for coming to a contrary decision, and such decisions shall be challengeable in law.

230. The discussion above has identified the main legislative changes needed to implement the recommendations of this report. A more detailed analysis of detailed changes that will be needed and a critique of the 1998 law is at Annex C.

231. One other matter specifically considered in the course of the study was the Labour Law, and the extent to which it impinges on higher education in general and the Higher Education Law in particular. Our conclusion is that there is nothing significant in that law that directly impacts upon students and what they study, nor upon their exit to the labour market. To universities, its main relevance concerns them as employers of faculty and staff. Even here, our discussions with universities did not suggest any relevant issues, except possibly in one respect: because of tenure requirements, it may be necessary to dismiss faculty who do not satisfy the criteria for tenure, but who have been employed for longer than the minimum stipulated in the law for the purpose of certain permanent employee rights. However, there has been no suggestion that this is a problematic or an inhibiting factor. At Annex E is an analysis of the Labour Law and its relevance to higher education. Our conclusion is that no significant changes are needed.

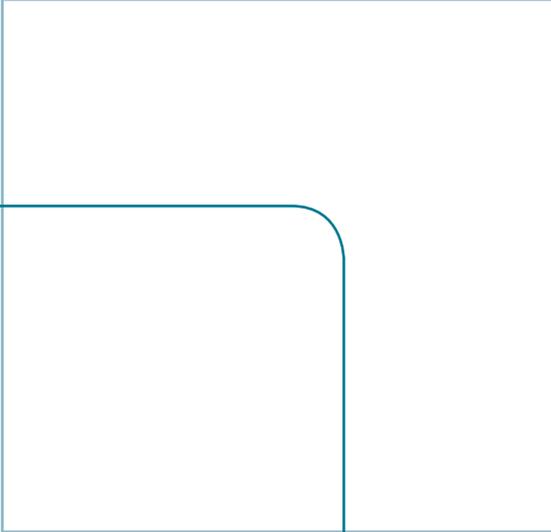


Annexs



Annex A

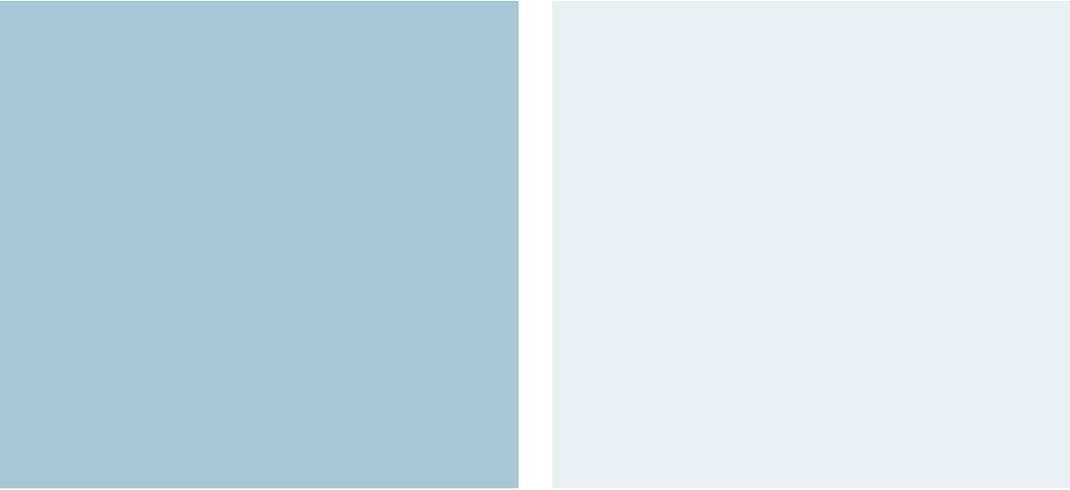
**List of individuals with whom
discussions were held**



List of individuals with whom discussions were held

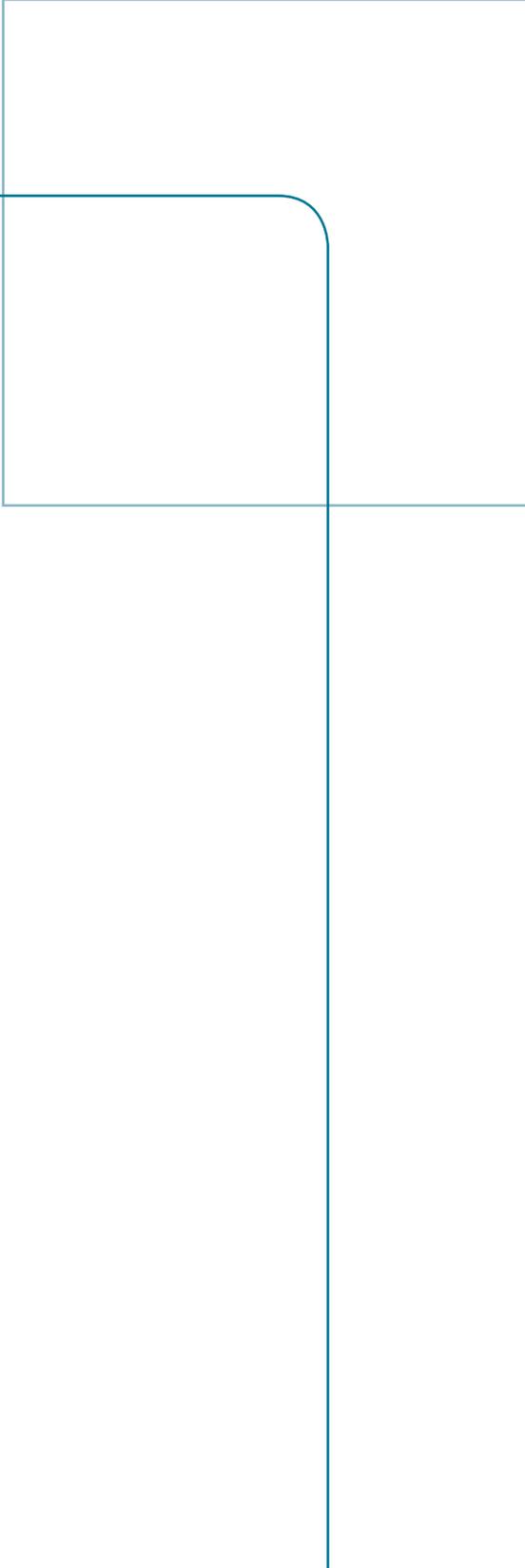
Ms Lamis M alami	Minister of Education and Higher Education	Ministry of Education and Higher Education
Dr. Fahoum Shalabi	Assistant deputy minister for higher education	Ministry of Education and Higher Education
Dr. Mohammad Al-Subu>	Head of AQAC	Ministry of Education and Higher Education
Mr. Abdelkareem Al-Zgheir	Minister's Assistant for Financial Policies	Ministry of Education and Higher Education
Mr. Nasser H Ghanim	Director, Development of Technical and Vocational Education	Ministry of Education and Higher Education
Mr. Abdelkareem Zgheir	Director, Student Loan Revolving Fund	Ministry of Education and Higher Education
Dr. Khalil Nakhleh	Former Director of AQAC	Ministry of Education and Higher Education
Dr Ali Safarini	Lawyer	
Dr. Jawad Wadi	President	Al-Azhar University
Dr. Abdelkareem Nigim	Vice President for Academic Affairs	Al-Azhar University
Dr. Jabr Da>our	Vice President for Administrative and Financial Affairs	Al-Azhar Universit
Dr. Ref>at Rustum	Vice President for Planning and IT	Islamic University of Gaza
Dr. Ali Abu Zahri	President	Al-Aqsa University
Dr. Salam Al-Agha	Vice President for Academic Affairs	Al-Aqsa University)
Dr. Hani Nigim	TEP Gaza Coordinator	
Dr. Hasan Dweik	Vice-President for Academic Affairs	Al-Quds University
Dr. Maher Al-Natsheh	Vice-President for Academic Affairs	An-Najah University

Dr. Sufian Kamal	Vice-President for Academic Affairs	Al-Quds Open Universities
Dr.Daoud Za'atari	President	Hebron Polytechnic University
Dr. Nabeel Kassis.	President	Birzeit University
Brother Daniel Casey	Assistant Vice President for Vice Chancellor	Bethlehem University
Dr. Irene Hazou.		Bethlehem University
Dr. Maher Natsheh.	Vice President for Academic Affairs	Al-Najah University
Dr. Hassan Dweik.	Executive Vice President	Al-Quds University
Dr.Adli Saleh	President	Arab American University
Dr. Amin Dawas	Vic-President for academic affairs	Arab American University
Dr.Waddah Bahbah	President	Palestine Technical University
Mr. Mahmoud Saleh.	Dean	Palestine Technical College/Ramallah Girls
Mr. Abdul Fatah Al Batran.	Faculty Member	Palestine Technical College/Ramallah Girls



Annex B

**Higher Education Institutions
in Palestine**

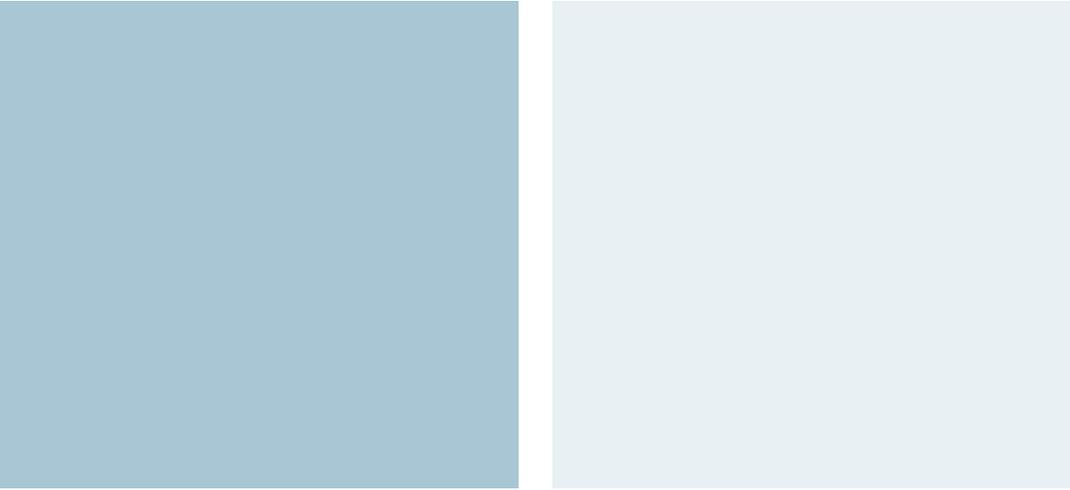


Higher Education Institutions in Palestine

No.	Institution	Naturew	Year of Establishment	Location
Universities				
1	Hebron University	Public	1971	Hebron
2	Birzeit University	Public	1972	Birziet
3	Bethlehem University	Public	1973	Bethlehem
4	Al-Najah University	Public	1977	Nablus
5	Palestine Polytechnic	Public	1978	Hebron
6	Islamic University	Public	1978	Gaza
7	Al-Quds University	Public	1984	Jerusalem
8	Al-Azhar University	Public	1991	Gaza
9	Al-Aqsa University	Gov.	1991	Gaza
10	Arab American University	Private	1997	Jenin
11	Palestine Technical University	Gov.	2007	Tulkarem
12	Palestine University	Private	2006	Gaza
13	Gaza Girls University	Private	2007	Gaza
Distant Learning				
1	Al-Quds Open University	Public	1991	Jerusalem
University Colleges				
1	Palestine Nursing College	Gov.	1976	Gaza
2	College of Science & Tech.	Gov.	1983	Khanyonis
3	Women College of Educational Sciences	UNRWA	1992	Ramallah
4	College of Educational Sciences	UNRWA	1992	Ramallah
5	Palestine Technical College	Gov.	1995	Arroub
6	Palestine Technical College/Ramallah Girls	Gov.	1996	Ramallah
7	Palestine Technical College	Gov.	1996	Dir ElBalah
8	Ibn Sina Nursing College	Gov.	1997	Ramallah
9	Islamic College	Waqf	1999	Kalkilya
10	Islamic College	Waqf	1999	Gaza
11	Bethlehem College	Private	2000	Bethlehem
12	Abu Gharbiya Institute	Private	2004	Jerusalem

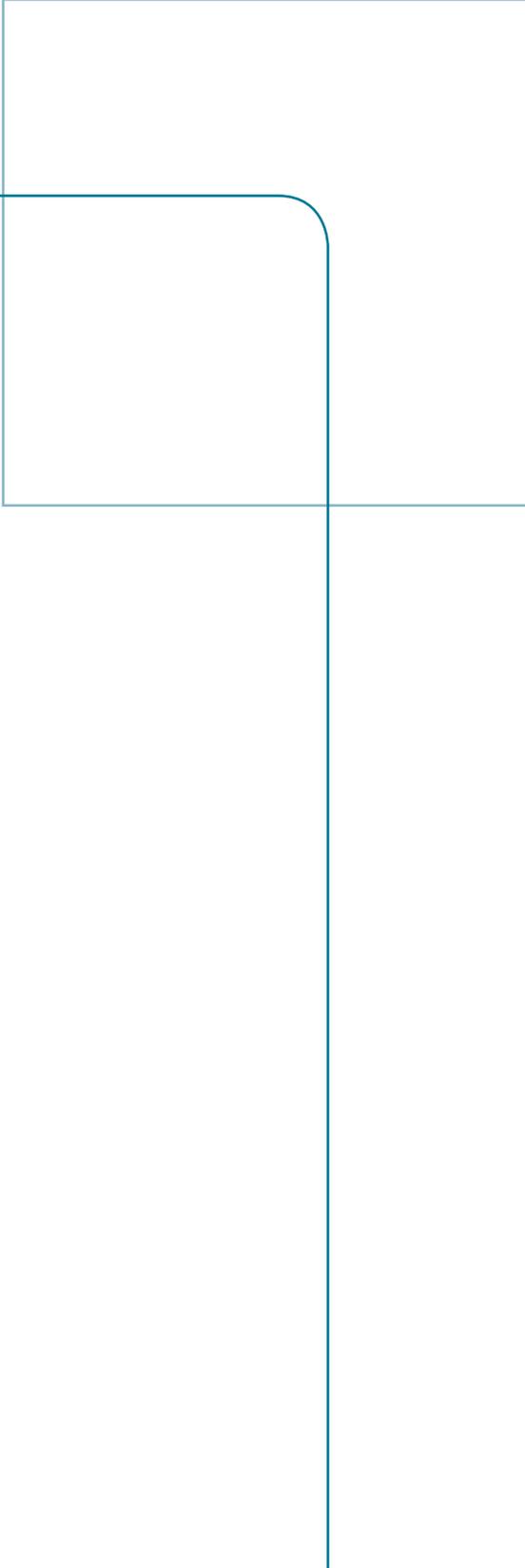
13	Palestine university College	Private	2007	Bethlehem
14	College of Applied Sciences	Private	2007	Gaza
Community Colleges				
1	Al-Ummeh Community College	Gov.	1952	Jerusalem
2	Gaza Training	UNRWA	1953	Gaza
3	College of Nursing	Private	1970	Hebron
4	Andaleeb Al-Amad Nursing/In'ash Al-Usrah	Public	1970	Nablus
5	College of Intermediate Studies	Public	1978	Gaza
6	College of Vocational and Applied Sciences	Public	1979	Gaza
7	Modern Community College	Private	1982	Ramallah
8	Al-Rawda Community College	Private	1982	Nablus
9	Ibrahimeya Community College	Private	1983	Jerusalem
10	Al-Najah Community College	Public	1990	Nablus
11	Arab Commuity College	Private	1990	Rafah
12	College of Applied Professions	Public	1992	Hebron
13	Community Health College	Private	1992	Ramallah
14	College of Nursing/ In'ash Al-Usrah	Public	1999	Ramallah
15	Hijawee Technical College	Private	2000	Nablus
16	College of Nursing/Karitas	Public	2000	Jerusalem
17	Taleeta Community College	Public	2000	Bethlehem
18	College of Nursing/Makasid	Public	2000	Jerusalem
19	Gaza Tourism College	Private	2004	Gaza
20	College of Humanity Sciences	Private	2007	Rafah

Source: AQAC, Ministry of Education and Higher Education



Annex C

**Detailed analysis of the 1998
law**



Palestinian Draft Constitution

1. Article 58 under the Draft Constitution provides that:

The State shall protect the independence of institutions with scientific goals and universities in a manner defined by law in order to guarantee the freedom of scientific research and encourage it.

2. In addition, Article 59 prescribes:

The State shall, within the limits of its capacities, provide assistance to students who are financially unable in order to pursue their education.”

The Basic Law

3. Article 24 under the PA Basic Law provides for the following:

- *Every citizen shall have the right to education. It shall be compulsory until at least the end of the basic level. Education shall be free in public schools and institutions.*
- *The National Authority shall supervise all levels of education and its institutions, and shall strive to upgrade the educational system.*
- *The law shall guarantee the independence of universities, institutes of higher education, and scientific research centres in a manner that guarantees the freedom of scientific research as well as literary, artistic and cultural creativity. The National Authority shall encourage and support such creativity.*
- *Private schools and educational institutions shall comply with the curriculum approved by the National Authority and shall be subject to its supervision.*

The Law on Higher Education

4. Promulgated in 1998, Article 2 Of the Palestinian Law on Higher Education prescribes:

- *Higher education is a right for every citizen who meets the educational and objective conditions which are set in this Law and the regulations issued pursuant thereto.”*
- *As such, the aforesaid Law is congruent with relevant international treaties and conventions in regard of objective eligibility criteria stipulated for the higher education stage. Moreover, the Law prescribes the objectives of higher education, the powers of the Ministry and Minister of Higher Education, the specific nature of higher education institutions, and the manner of their management. The Law also devotes two chapters to academic degrees and certificates conferred by higher education institutions, as well as to the establishment of a scientific research centre to help achieve the Ministry’s policies.*
- *An analysis of the different sections of the law is at Annex X of this report.*

Objectives of the Palestinian Higher Education System

5. For the first time, the Palestinian National Authority (PNA) became responsible for the educational process throughout the territory it controls in August 1994. The PNA inherited a deteriorating educational infrastructure. Like other rights, Palestinians’ rights to education were subject to ongoing violations, thereby threatening to destroy the whole educational system and undermine any real

prospect of development. Established in 1996, the PNA Ministry of Higher Education assumed responsibilities and played the role previously assigned to the Palestinian Higher Education Council.

6. Taking charge of its major duties in the educational sector, PNA has ensured uninterrupted provision of the education service in various stages for over a third of the Palestinian population in the West Bank and Gaza Strip. Since established, the Ministry of Higher Education has defined its main procedures related to the promotion of higher education and academic research as follows:

- *Enhancing the quality of higher education;*
- *Improving and developing administrative bodies at higher education institutions;*
- *Promoting cooperation between higher education institutions and the private sector;*
- *Focusing on the applied dimension of the Palestinian higher education system; and*
- *Concentrating on academic research as a pillar of higher education.*

7. In addition, Article 4 under the Palestinian Law on Higher Education sets objectives of higher education as follows:

- *Open the way for all qualified students to join the higher education, follow up and develop the educational capabilities domestically and abroad.*
- *Encourage the writing, translation and scientific research movement as well as support the continued education programmes which are provided by the Palestinian higher education institutions.*
- *Enable the Palestinian society to deal with, invest and develop the scientific, technological and information new developments.*
- *Participate in the fulfillment of the Palestinian society's needs from amongst the qualified human cadres in the various scientific and cultural fields.*
- *Bolster the scientific cooperation frameworks with the scientific and international bodies, support and develop the higher education institutions and scientific research centres.*
- *Look after the study of the Arab and Islamic civilization, lend to students the critical thinking skills, encourage scientific creativity and innovation, ability to research and investigate as well as keep up with the scientific progress.*
- *Develop the scientific and spiritual values and raise individuals who are affiliated to their country and pan Arabism as well as strengthen the spirit of collective cooperation and work with the students*
- *Contribute to the progress of science, maintenance of freedoms, uprightness of scientific research and building the State on basis that ensure the rule of law, respect of rights and public freedoms.*

8. However, the aforesaid Law entails several shortfalls and defects. The following shortcomings can be listed:

- *The Law does not explain how the board of any university should be formed, thereby allowing each university to establish its respective board without reference to the Law.*
- *Powers of university presidents are not identified in the Law.*
- *The Law leaves the drafting of regulations related to teaching staff without making clear the relevant rules or laws, which regulate their functions.*
- *The Law does not make reference to the "Higher Education Council", which was established in 1977 before it was enacted. Described as an advisory board, the Council remained marginalized. In addition, the Law on Higher Education in force does not contribute to safeguarding intellectual and*

academic freedoms. As such, the PNA Ministry of Higher Education has not taken action to curb violations against academic freedoms, plagiarisms, and detected counterfeit academic degrees. Moreover, the Ministry has not enforced disciplinary measures against offenders because the Law on Higher Education does not address these issues.

9. The first three 'shortcomings' are debatable. Arguably these are matters that can properly be left to each university to address in its by-laws. The problem of course is that no university at present has by-laws that have been approved. The fourth shortcoming is real, substantial and serious.

Comparing the Law on Higher Education with the Jordanian Law of 1964

10. The Jordanian Law of 1964 Concerning Higher Education can be deemed to be the historical ancestor of the Palestinian one.
11. Additionally, a comparison of the Palestinian Law to the Jordanian Law No. 4 of 2005 on Higher Education highlights a number of issues, as follows:

The Higher Education Council

12. Article (5) under the Jordanian Law provides for the establishment of a Higher Education Council to be responsible for making higher education policies, as well as following up on the incorporation of higher education institutions and relevant programmes. Members on the Higher Education Council include the Minister of Education, chairpersons of universities, secretary general of the Ministry of Education, as well as experts and specialists in the field of higher education.
13. Despite the fact such a council contributes to enhancing quality of the higher education process, the Palestinian Law does not include such a provision.

The Academic Research Support Fund

14. The Jordanian Law establishes a fund to support academic research. Resources of the fund are appropriated to develop the academic research process. Palestinian legislators may well take this notion into consideration. In reality, such a fund will serve the compelling need of supporting and developing academic research.

Council for Higher Education

15. The Law on Higher Education No. 11 of 1998 includes reference to the formation of an advisory council for higher education. Having reviewed operative Palestinian legislation, the team has located a number of regulations that govern the Higher Education Council, including:
- *Presidential Decision No. 6 of 1994 Concerning the Formation of the Higher Education Council.*
 - *Presidential Decision No. 8 of 1994 Concerning the Formation of the Palestinian Higher Education Council.*
 - *Decision of the Council of Ministers No. 6 of 1999 concerning the Formation of the Advisory Board for Higher Education.*
16. The Ministry is applying a draft regulation that was not officially published in the Palestinian Official Gazette. Before addressing the content of legal provisions of the relevant regulation, it should be emphasised that the draft regulation of the Palestinian Higher Education Council does not state the

legal basis in accordance with which it has been promulgated. In reality, a secondary piece of legislation should be issued in order to implement a law. This normally takes place by two types of referral, which may be featured in the original law. General referral is stated in the form of an article under the Chapter on “Conclusive Provisions” in the original law. In contrast, specific referral is prescribed under an article in the body of the law. Such an article usually regulates a certain topic and refers to the promulgation of the secondary item of legislation, which is necessary to enforce the topic in question.

17. However, no reference is made under the Law on Higher Education No. 11 of 1998 to the formation of the Higher Education Council. Still, Article 6, which prescribes powers of the Minister of Education and Higher Education, states that the Minister would “recommend an advisory council for higher education which shall be formed upon a decision from the Council of Ministers and shall have its exclusive regulation.” In relation to the Draft Regulation in question, two points need be raised:

- *If the draft regulation is legislated to enforce the aforementioned provision, a clear reference should be made thereof in the body of the regulation. It should be noted, however, that the Law on Higher Education provides for establishment of an “advisory council”. This title (i.e. Advisory Council of Higher Education) is stated under the Decision of the Council of Ministers No. 8 of 1994 Concerning the Formation of the Palestinian Higher Education Council.*
- *The phrase “and shall have its exclusive regulation” refers to the bylaw relating to the operation of the Council, not to a secondary item of legislation.*

Formation of the High Education Council

18. Article (3) of the draft regulation in question states the following:

Article (3)

The Higher Education Council shall be established under the presidency and with membership of each of [the following]:

- » *Presidents of Palestinian governmental and public universities – by virtue of the position [they occupy].*
- » *The president of a Palestinian private university “alternately” – by virtue of the position.*
- » *The dean of one of the vocational and technical community colleges “alternately” – by virtue of the position.*
- » *Undersecretary of the Ministry of Finance by virtue of his position.*
- » *Undersecretary of the Ministry of Planning by virtue of his position.*
- » *Two representatives of the Ministry of Higher Education to be nominated by the Minister.*
- » *Eight Palestinian academic figures.*
- » *Secretary General of the Council.*

19. The word «established» stated under Article 3 of the draft regulation is not consistent legally with other effective Palestinian legislation. Essentially, establishment of public bodies takes place according to laws. The verb to be used in the preamble to this Article should have been «formed» since establishment is conducted under a law. Formation, on the other hand, can also take place in line with secondary legislation.

20. Again, this issue raises debate about the legal basis on which the draft regulation in question relies. If such a legal basis is Article 6 (2) under the Law on Higher Education, a phrase like “The Higher Education Council shall be formed ...” should have been incorporated in the regulation.
21. Article 4 point 3 also states that the duration of membership of persons prescribed in the last 3 points under the previous Article (namely representatives of the Ministry, academic figures and Secretary General) will be a period of renewable four years. In this context, two issues should be highlighted:
22. What about the duration of membership of the remaining persons? With particular reference to alternating members, is membership permanent?
23. Supposing that membership of the representatives of the Ministry and academic personalities is temporary, position of the Secretary General is obscure. In reference of other provisions under the Regulation, the Secretary General is the only member on the Council who assumes the status of a full time functionary thereon, which contradicts the status of his temporary membership.
24. Finally, the text of this Article can be replaced with the text, which the team proposes below. The proposed text already features provisions of Articles 3 and 4 under the Draft Regulation.
25. Finally, drafting of the Article above is weak. Therefore, the team proposes the following text:
- A. A board to be comprised of a chairperson and no fewer than 12 and no more than 20 members shall assume the administration of the Higher Education Council. These shall be:
- a. A Chairperson (Distinguished Public Figure); and
 - b. The following members:
 - *Deputy Minister for Higher Education.*
 - *Former Presidents of Palestinian governmental, public and private universities.*
 - *A member from the Ministry of Finance.*
 - *A member from the Ministry of Planning.*
 - *Palestinian academic figures to be nominated by the Minister, but excluding serving university presidents, except that the Chairman for the time being of any Council of University Presidents that may be established in Palestine shall be a member.*
 - *The Chairman for the time being of any Council of University Presidents that may be established in Palestine*
 - *Secretary General of the Council.*
- B. Representatives of the Ministry and academic personalities shall be appointed on a regular basis for a period of (four years) by a decision from the Council of Ministers based upon a recommendation from the Chairperson of the Council, provided that the following is taken into account in the selection of the academic figures:
- *Expertise of a range of the major institutions working in the field of education.*
 - *Coverage of the activities performed by these institutions.*
 - *Geographical distribution.*
- C. The board shall be appointed by a decision from the Council of Ministers.

Powers and Responsibilities of the Council

26. Article (5) of the draft regulation states the following:

The Council shall assume the following powers and responsibilities:

- » *Approve the general policy of higher education in Palestine.*
- » *Work towards developing and appraising Palestinian higher education institutions in all fields and liaise between them.*
- » *Set forth the general bases pertaining to the admission of students to higher education institutions as well as the numbers of those admitted on a yearly basis.*
- » *Approve the minimum and maximum limits of tuition fees collected by the higher education institutions from students in various programmes at governmental and public universities.*
- » *Review the annual budgets of higher education institutions.*
- » *Discuss annual reports of the higher education institutions so as to identify their achievements and the difficulties they encounter as well as conform them to the general policy of higher education.*
- » *Approve general policies of students' aid.*
- » *Adopt national priorities in relation to educational programmes at higher education institutions.*
- » *Approve general principles for the allocation and distribution of financial support in various fields to higher education institutions.*

27. Article 5 (1) under the Law on Higher Education provides that the Ministry of Higher Education will be responsible for the “general planning for the higher education and scientific research in light of the homeland needs”. In comparison, which of the two authorities (i.e. the Ministry or the Council) will be responsible for setting the relevant general policies of higher education in Palestine? What would be the probable solution in case of conflict between matters approved by the Council and those approved by the Ministry?

28. Addressing the general policies related to the admission of students to higher education institutions and their number on a yearly basis - point 3 under the Article above - is not consistent with Article 5 (17 and 18) under the Law on Higher Education. Powers given to the Council and Ministry are in fact contradictory or, more precisely, conflicting each other. According to Article 5 under the Law, these same powers are granted to the Ministry. Which of these two authorities will be charged with the final decision making in this context? Legally speaking, the Ministry will be responsible for the powers mentioned above in light of the hierarchy of legislation, which places laws at a higher status than regulations.

29. Other powers stated under the Article above are not available in the Law on Higher Education. In general, however, some provisions under the Law entail such powers, including Article 5 (5, 8, and 15), in addition to Articles 19 and 4 under the Law on Higher Education.

Duties of the Council Chairperson

Article (6)

The Chairperson of the Higher Education Council shall assume the following powers and responsibilities:

- » *Represent the Council locally and internationally.*
- » *Chair and manage meetings.*
- » *Follow up with the decisions and recommendations issued by the Council.*
- » *Propose priority issues on the Council's agenda.*
- » *Appoint the Secretary General of the Higher Education Council.*

30. Point 5 under this Article is abstract and unproblematic. If connected, however, to the rest of articles under the draft regulation, it contradicts Article 4 (1) as well as Article 12 (3) under the draft regulation.
31. Article 4 (1) under the draft regulation states, that the Council will be established by a decision from the Council of Minister based on a recommendation from the Minister. Of course, however, the Secretary General is a member on the Council.
32. On the other hand, Article 12 (3) under the Draft Regulation states that in case the position of the Secretary General is vacant, the Minister will make a recommendation to the Council of Ministers to fill the vacancy. This, in fact, contradicts Article 6 (5) under the Draft Regulation.

Deputy Chairperson

Article (7)

The Chairperson shall ascribe to a member on the Council the mission of the Deputy Chairperson in order to carry out functions of the Chairperson in case of his absence. He/she shall enjoy the powers and responsibilities ascribed to him/her as well as perform the duties assigned to him/her.

33. This provision can be redrafted as follows:
- » *Upon a recommendation from the Chairperson, the Council shall be entitled to appoint one or more Deputy Chairperson(s).*
 - » *The Chairperson shall delegate, in case of his absence, the Deputy Chairman to run matters of the Council.*
34. In addition, Article 7 above could be replaced with Article 3 under the Law on Higher Education, which prescribes independence of higher education institutions by giving them a judicial personality.

Duties of the Secretary General of the Council

Article (8)

Duties of the Secretary General of the Council

The Secretary General of the Council shall carry out the following duties:

- » *Develop the agendas of the Council's meetings.*
- » *Follow up with administrative issues related to the activities of the Council.*
- » *Follow up with the operation of committees established by the Council and present it to the Council.*
- » *Review the correspondence dispatched to the Council in order to present it to the Council.*
- » *Prepare and document minutes of the meetings of the Council and subcommittees established by the Council.*

35. Of particular interest, the Article above makes reference to subcommittees, which have not been provided earlier under the Draft Regulation. As such, the team proposes that a provision or clause be added as to render the Council capable of forming subcommittees on need basis. The proposed text can read as follows:

- *The Council shall form specialised subcommittees that will be responsible for examining any field or sector relevant to the educational activity on need basis.*
- *The subcommittees shall present their reports to the Secretary General.*
- *The specialised subcommittees shall seek assistance from experts as needed.*
- *The Council shall set forth the instructions necessary for the progress of work of such subcommittees.*

The Council's Meetings

Article (9)

- » *Meetings of the Council shall be held on a monthly basis.*
- » *The Council shall convene upon a call from the Chairperson or his Deputy in the event the Chairperson is absent. The meeting shall be in case quorum with the presence of the majority of members.*
- » *The Chairperson of the Council shall have the right to dispatch a call for an urgent meeting, in which he describes the agenda of the urgent session.*
- » *One third of the members on the Council shall have the right to call for an urgent meeting with the agenda of the urgent meeting.*
- » *The Council shall issue forth its decisions and recommendations with a majority vote. Preponderance shall be given to the side with which the Chairperson votes.*

36. Drafting of the Article above is poor. It is proposed that it be replaced with the following texts:

Article ()

1. The Council shall hold a regular meeting at least once a month upon a call to be dispatched by the Chairperson of the Council by one week prior to the date prescribed for the convention of the meeting, provided that he or she details therein the date and place of the meeting and encloses the agenda therewith.
2. An exceptional meeting of the Council may be held based upon a request from its Chairperson or upon a request signed by one third of the members.
3. Convention of the Council shall be in case quorum if attended by the majority of members.
4. The Secretary General shall attend meetings of the Board of Directors and prepare minutes thereon.

Article ()

1. Decisions of the Council shall be reached by an absolute majority of the number of present members. In the event votes are equal, the Chairperson votes shall have a second, casting, vote.
2. Other than as provided in subsection 1 above, each member on the Council shall have one vote.

Article ()

In the event coercive circumstances prevent the holding of the meeting on the allotted date, the Secretary General must notify members thereof as well as state the reason of postponement. In this case, a new date shall be fixed for holding the meeting. Members shall be served by [relevant] acknowledged means.

Cessation of Membership**Article (11)**

Membership on the Council shall cease in any of the following cases:

- » *Resignation.*
- » *Commission by the member of a violation of the regulations and goals of the Council.*
- » *Absence from three consecutive regular meetings without an excuse that the Council admits.*
- » *Death.*

37. The above provision is defective in terms of drafting. The preamble of the Article provides for the cessation of membership in respect of certain persons but not for others. It ought to be clear about the rules for all members, not just some
38. On the other hand, other reasons may justify the cessation of membership. Therefore, the team proposes that the Article be redrafted as follows:
39. A member on the Council may resign his position at any time in accordance with a written notice which he or she submits to the Council's Chairperson. The Council must adjudicate the application for resignation within a period of not more than one month from the date on which it was submitted. In case of non-response, the resignation shall be deemed to have been accepted.

1. Membership of Council's Chairperson or Deputy or any of its members shall expire by default in the following cases:
 - a) In case he or she is convicted of a misdemeanor or offence of moral turpitude.
 - b) In case a court judgment is issued as to deem him or her ineligible.
 - c) In case he or she is absent from the attendance of three consecutive meetings or six inconsecutive meetings without an acceptable excuse.
 - d) In case he or she loses for any reason the status based on which he or she was appointed as member on the Council.

Scientific Research Council

Draft Regulation on the Scientific Research Council

40. Article 22 under the Law on Higher Education No. 11 of 1998 provides for the constitution of a scientific research council. This section elaborates on the Draft Regulation on the Scientific Research Council that again was not officially published in the Palestinian Official Gazette, but de facto applied by the Ministry of Education.
41. Before addressing the content of legal provisions, it should be emphasised that the draft Regulation makes reference to the legal basis in accordance with which it has been promulgated, namely Article 22 under the Palestinian Law on Higher Education. However, Article 1 under the draft Regulation in question entails a constitutional abnormality as it is inconsistent with provisions of the Basic Law. Article 22 under the Law on Higher Education provides: "Upon the recommendation of the Minister and decision of the President of the National Authority, a Scientific Research Council shall be established to assist the Ministry in developing its policy in this regard." According to Article 69 (9) of the Basic Law, such a power is exclusively given to the Council of Ministers.
42. The reason behind such inconsistency might be that the Palestinian Law on Higher Education had been promulgated before the Basic Law.

Formation of the Scientific Research Council

Article (3)

The Scientific Research Centre shall be established at the Ministry of Higher Education in the following manner:

- » *The Minister of Higher Education as Chairperson of the Council.*
- » *The Deputy Chairperson by appointment by the Minister as Deputy Chairperson.*
- » *The Secretary of the Scientific Research Council at the Ministry as Secretary*
- » *The Director General of the Public Administration of Development and Scientific Research at the Ministry as a Member.*
- » *Deans of scientific research at Palestinian universities or those delegated by the university as a Member.*
- » *Representatives of private scientific research centres – 3 members to be selected in accordance with Article 14 under this Regulation.*

43. The word «established» stated under this Article does not denote legal consistency among effective Palestinian legislation. Essentially, establishment of public bodies does not take place except under laws. The verb to be used should have been «formed» since establishment is effected by primary legislation. On the other hand, formation takes place in line with secondary legislation.
44. Numbering used in the Draft Regulation is not consistent with the system applicable to other Palestinian legislation.
45. In respect of the formation of the Council, the Article states that the Deputy Chairperson is appointed by the Minister as Deputy Chairperson, without identification of the status of such position. As it is drafted at present, it seems that it would be possible to provide that the Director General or Deputy Minister of the Ministry be a Deputy Chairperson.
46. The Article also provides that deans of scientific research at Palestinian universities will be members on the Council. However, it does not define the types of these universities (i.e. public, governmental or private). Again, as at present drafted this means that all deans of scientific research at all universities will be members on the Council.
47. The Article also prescribes that representatives of private scientific research centres will be selected as members in accordance with Article 141 under this draft Regulation.

¹ Please note that all articles comprising the Draft Regulation are 12; article 14 is missing!

Goals and Responsibilities of the Council

Article (4)

The Scientific Research Council shall aim at supporting and rejuvenating scientific research at higher education institutions in Palestine by:

- » *Drafting general policies of scientific research at higher education institutions in Palestine.*
- » *Setting forth and defining priorities of scientific research plans at higher education institutions.*
- » *Providing financial support to research projects implemented by higher education institutions and relevant scientific research centres from the fund of the Scientific Research Council, in line with the priorities defined by the Council as well as the budgets allocated for this purpose.*

48. Point 1 under this Article is similar to Article 5 (1) under the Law on Higher Education No. 11 of 1998. The power to exercise general planning for scientific research is given to the Ministry. Therefore, these provisions need be reconciled and one of them should be amended.

49. Point 3 refers to a “special fund of the Scientific Research Council”. Take into account that such a fund is not prescribed under the Law on Higher Education nor under Articles of this draft Regulation itself. In particular, the draft Regulation does not address financial resources of the fund.

Meetings of the Council

Article (5)

- » *The Council shall hold its meetings once every three months upon a call from its Chairperson. The Council shall convene in case quorum with the presence of two thirds of its members, including the Chairperson. Its decisions or recommendations shall be issued forth with a majority vote of the present [members]. Should the votes be equal, the side with which the Chairperson votes shall be given preponderance.*
- » *If the case quorum is not met within one hour of the time of the meeting, it shall be postponed to the next week. The Secretary of the Council shall contact members on the Council as to fix the new time. The meeting shall be in case quorum if it is attended by half the number of members.*
- » *The Council shall convene in an exceptional manner whenever necessary and upon a call by the Chairperson or by one third of the members.*

50. Provision of point 1 under this Article renders convention of the Council’s meetings impossible without presence of the Chairperson. The provision also associates the case quorum of the meeting with the presence of two thirds of the Council’s members, including the Chairperson. However, this provision contradicts practical needs – a meeting can be held even if the Chairperson is not available.

51. The Article is not drafted accurately. It can be redrafted as follows:

Article ()

- » *The Council shall hold a regular meeting at least once every three months upon a call to be dispatched by the Chairperson of the Council by one week prior to the date prescribed for the convention of the meeting, provided that he or she details therein the date and place of the meeting and encloses the [respective] agenda.*
- » *An exceptional meeting of the Council may be held based upon a request from its Chairperson or upon a request signed by one third of the members.*
- » *Convention of the Council shall be in case quorum if it is attended by the majority of members.*
- » *The Secretary shall attend meetings of the Board of Directors and prepare minutes thereof.*
- » *Decisions of the Council shall be issued forth by the absolute majority vote of the number of present members. Should the votes be equal, the Chairman shall have a second, casting, vote.*
- » *Other than as prescribed in subsection 5 above, each member on the Council shall have one vote.*

Tasks of the Secretary General of the Council

Article (8)

Tasks of the Secretary General of the Council shall carry out the following tasks:

- » *Prepare the agenda of the Council's meetings and follow up on all administrative issues relating to the tasks and activities of the Council.*
- » *Follow up with the implementation of the decisions and recommendations of the Council.*
- » *Follow up with the operation of standing and temporary committees established by the Council as well as present them to it on a prioritized basis.*
- » *Review the correspondence dispatched to the Council in order to present it to it.*

52. Of particular interest, the Article above makes reference to standing and temporary committees – a provision that has not been stated earlier in the Draft Regulation. As such, the team proposes that a provision or clause be added as to render the Council capable of forming subcommittees as necessary. The proposed text can read as follows:

Article ()

- » *The Council shall form specialised subcommittees that will be responsible for examining any field or sector relevant to the scientific research on a need basis.*
- » *The subcommittees shall submit their reports to the Secretary.*
- » *The specialised subcommittees shall be entitled to seek assistance from experts as needed.*
- » *The Council shall set forth the instructions necessary for the progress of work of such subcommittees.*

The Deputy Chairperson

Article (9)

The Chairperson shall ascribe to a member on the Council the mission of the Deputy Chairperson in order to carry out functions of the Chairperson in case of his absence. He or she shall enjoy the powers and responsibilities ascribed to him or her as well as perform the duties assigned to him.

53. This provision can be redrafted as follows:

- » *Upon a recommendation from the Chairperson, the Council shall be entitled to appoint one or more Deputy Chairperson(s).*
- » *The Chairperson shall delegate, in case of his or her absence, the Deputy Chairman to run matters of the Council.*

54. In addition, Article 9 above could be replaced with Article 3 under the Law on Higher Education, which prescribes that higher education institutions will be independent by giving them a judicial character.

Lending and Students' Aid Fund at Higher Education Institutions

55. Before tackling the content of relevant legal provisions, it should be emphasised that the draft Regulation makes reference to the legal basis in accordance with which it has been promulgated, namely Article 28 under the Palestinian Law on Higher Education No. 11 of 1998. The latter article provides: "The Ministry shall issue forth the regulations and decisions necessary for the enforcement of the provisions of this Law". The draft regulation was not published in the Palestinian Official Gazette, but the Ministry of Higher Education is applying its provisions.

56. This provision prescribes general referral to the secondary legislation necessary for enforcement of the Law. However, this does not mean that the provision grants absolute power to the Executive Authority as to promulgate any piece of secondary legislation (including bylaws and regulations) on issues not originally stated in laws. This is indeed the case with the draft Regulation in question. The Fund is established in accordance with a secondary item of legislation that will be issued according to a provision of general referral, stated at the end of the original law, not in its respective articles. As a result, the draft Regulation is legislatively inharmonious with the primary legislation, namely the Law on Higher Education, and it is important that an appropriate provision is made in the Higher Education law to cover this...

Establishment of the Fund

Article (3)

The Regulation on Lending and Students' Aid Fund shall be established in Palestine at higher education institutions for the supporting of needy students, promotion of academic distinction and development of students' capacity to rely on themselves.

57. The word «established» stated under this Article does not denote legal consistency between effective Palestinian pieces of legislation. Essentially, establishment of public bodies is regulated by laws. If such a fund is to be established, the sound legal action will be to amend the Law on Higher Education itself so as to provide for its establishment. Operation of the created fund would then be governed by respective bylaws and regulations.

Article (8)

Article (8)

Establishment of the Fund

For implementation of the State's strategies in the sector of higher education, the Fund shall offer good loans and aid ...

58. This provision uses the expression «good loans»², which has not been mentioned earlier in the Regulation. In addition, the Article does not explain what a good loan is, and whether it another type of a loan.

Article (18)

Article (18)

Amendment of the Regulation

The Board of Directors shall be entitled to amend this Regulation in line with the interest of operation of the Fund.

59. According to this Article, the Fund's Board of Directors will be authorised to amend the Regulation. According to recognised legislative rules, however, the authority which is entitled to promulgate legislation shall also be empowered to amend or repeal it. This procedure is also applicable to higher authorities. To give the power to the Board of Directors to amend the Regulation in question contravenes provisions of the Basic Law, which prescribes that the promulgation (as well as amendment) of regulations is the sole jurisdiction of the Council of Ministers.

60. It needs to be borne in mind, though, that the above Article can be replaced with the general rules of legislation.

Accreditation and Quality Assurance Commission (AQAC)

61. According to the provisions of the Law of Higher Education (1998) quality assurance can be achieved through the licensing of new higher education institutions. Nonetheless, the licensing process is not described in the law.

62. The Ministry has established an Accreditation and Quality Assurance Commission that should carry out the following responsibilities:

- *Review applications to open new higher education institutions.*

² *Qard Hassan (Good Loan) is a loan extended on a goodwill basis, and the debtor is only required to repay the amount borrowed. However, the debtor may, at his or her discretion, pay an extra amount beyond the principal amount of the loan (without promising it) as a token of appreciation to the creditor. In the case that the debtor does not pay an extra amount to the creditor, this transaction is a true interest-free loan. (See <http://www.answers.com/topic/islamic-banking?cat=biz-fin>, visited on 6 July 2008)*

- *Set up “Quality Assessment Teams”, one for each program of study, to review and evaluate all existing programs at HE institutions, within an agreed Plan of Action.*
- *Review requests to establish new academic programs.*
- *Review current Licensing and Accreditation criteria in comparison with international criteria, and based on the results of the quality assessment process.*
- *Initiate needs assessment studies of the rapidly changing Palestinian society and economy, and reflect the results of those studies in strategic recommendations concerning the status of various programs of study.*
- *Coordinate with similar international agencies, for the purpose of sharing information and periodic review of assessment criteria.*

63. The same can be said regarding the draft regulation as mentioned under the different sections above. The Ministry is applying a draft regulation, although not published in the Palestinian Official Gazette. The draft regulation does not state the legal basis in accordance with which it has been promulgated. Also no reference is made under the Law on Higher Education No. 11 of 1998 for the formation of the Accreditation and Quality Assurance Commission. The draft regulation is in terms of drafting very poor and should be redrafted in order to fulfill the envisioned mandate of the AQAQ in a transparent way, and proposals have been made for this above.

The Relation between the Labour Law and Law on Higher Education

64. Are staff members of public, private and governmental higher education institutions governed by provisions of a single law?
65. Article 3 under the Palestinian Labour Law No. 7 of 2000 provides: “The provisions of this Law shall be applicable to all workers and employers in Palestine with the exception of the functionaries of the Government and local bodies, provided that their right to form unions of their own is safeguarded.”
66. Public higher education institutions are subject to the Palestinian Law No. 1 of 2000 Concerning Charitable Associations and Civil Society Organisations. Article 2 under the said Law defines a charitable association or civil society organisation as an “independent judicial character, established upon the agreement of not less than seven persons to achieve legitimate goals of public interest, without aiming at financial profit-making with the objective of sharing it between members or achievement of a personal interest.”
67. Article 10 under the aforementioned Law also provides: “The relation of the associations and organisations with the competent Ministries shall be established on the basis of coordination, cooperation, and integration for the public interest.”
68. Article 18 also prescribes capacities of boards of directors in respect of the management of the affairs of charitable associations or civil society organisations, appointment of necessary staff members, defining of their tasks or termination of their service in accordance with provisions of the Law, and development of expedient bylaws, regulations and instructions.
69. Besides being subject to the Law on Higher Education, higher education institutions are regulated by provisions of the Company Law No. 12 of 1964 in force in the West Bank as well as the Company Law No. 18 of 1929 operative in the Gaza Strip.

70. Staff members of public and private higher education institutions are also governed by the Palestinian Labour Law No. 7 of 2000. In contrast, functionaries at governmental higher education institutions are subject to the Law of Civil Service No. 24 of 1998.
71. On the other hand, Palestinian public and private higher education institutions have adopted respective regulations in all aspects of operation, including regulations specific to member of the teaching staff as well as regulations on university staff. As a result, provisions pertaining to each of these categories, in terms of appointment, probationary period, working hours, leaves and promotions, have been distinct.
72. These regulations were derived from Jordanian laws concerning governmental universities. In Jordan, however, provisions of the laws of each university are applicable to staff thereat. In case a provision under the Jordanian Regulation on Civil Service is in conflict with a university's law, the latter law will be put into effect. In Palestine, if a provision under the Labour Law contradicts regulations of public or private universities, provisions of the former law must be enforced, thereby creating conflict between certain articles under university regulations and provisions of the Labour Law. Consequently, relevant provisions under the Labour Law and Law on Higher Education need be amended. On the other hand, the Law of Civil Service No. 24 of 1998, along with its respective amendments, is applicable to the staff of governmental universities. In effect, the team proposes either that a special law on governmental universities be enacted, or that the HE law be amended so that these universities can compete in line with prevalent conditions of the Palestinian education market.

Regulation on Vocational and Technical Education and Training:

73. Article 4 (4) of the Law on Higher Education provides that higher education aims, inter alia, to contribute to meeting needs of the Palestinian society in the field of qualified human cadres in various scientific and cultural domains.
74. Entitled "Employment", Article 7 under the Labour Law prescribes: "The Council of Ministers shall form a tripartite advisory committee under the presidency of the Minister of Labour as well as an equal number of the three production parties (the Government, employers and workers). It shall be named the Committee of the Labour Policies and shall be tasked with the proposition of public policies, particularly in the field of employment, training and occupational guidance." In its Decision No. 169 of 2004, the Palestinian Council of Ministers promulgated the Regulation on Occupational Guidance and Training".
75. The Decision of the Council of Ministers No. 145 of 2004 Concerning the Plan on the Application of the Regulation on Vocational and Technical Education and Training provides for establishment of a specialised unit that accredits and licenses programmes of vocational and technical education and training within the National Commission Quality Assurance. In this line of activity, the Ministry of Higher Education will be responsible for vocational, technical and specialised training. In addition, the Ministry of Labour will launch an information system on the supply and demand indicators in the labour market, thereby enabling development of necessary policies to design and develop vocational and technical education and training programmes in Palestine. The aforesaid Plan also provides for constitution of the Higher Council of Vocational and Technical Education and Training as well as the National Centre for Development of the Vocational and Technical Education and Training. The Higher Council for Vocational and Technical Education and Training will consist of the following:

- *Ministry of Labour;*
- *Ministry of Education;*
- *Ministry of Social Affairs;*
- *Ministry of Finance;*
- *Ministry of Planning;*
- *Ministry of Tourism;*
- *UNRWA;*
- *Chambers of Commerce Union;*
- *Palestinian Federation of Industries;*
- *Labour unions;*
- *A representative of civil society organisations; and*
- *2 – 4 local experts.*

76. The Council is also tasked with the development of plans necessary for general policies and is responsible for supervision. It also approves policies, provides financial resources, and ensures implementation of the National Strategy for Vocational and Technical Education and Training.

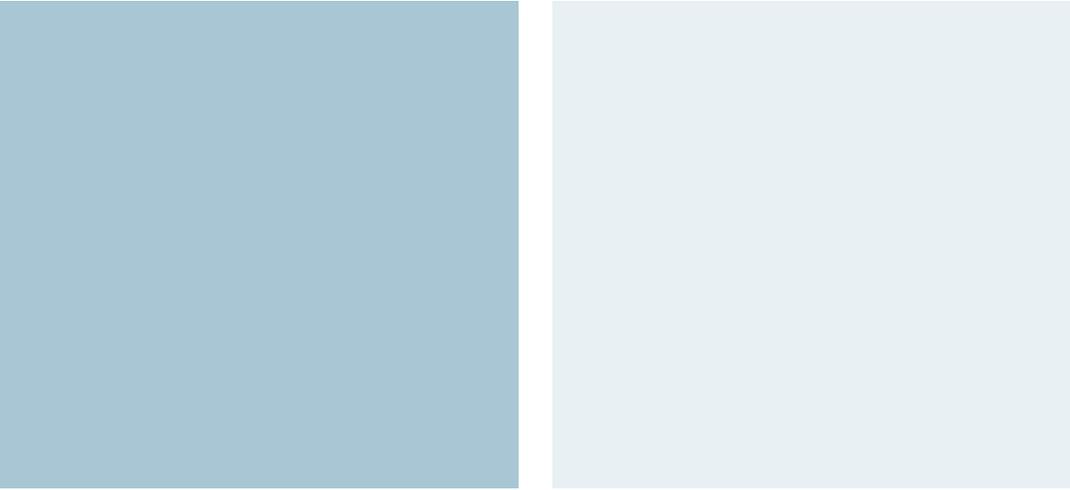
77. Moreover, the Steering Committee prescribed by the Regulation on Vocational and Technical Education and Training comprises the following:

- *Ministry of Education;*
- *Ministry of Labour;*
- *Ministry of Economy;*
- *Ministry of Social Affairs – to be represented by a director general or deputy chairman;*
- *Chambers of Commerce Union;*
- *Palestinian Federation of Industries; and*
- *Labour union*

78. The Steering Committee is also responsible for proposing regulations, approving development projects, and ensuring consistency and harmony.

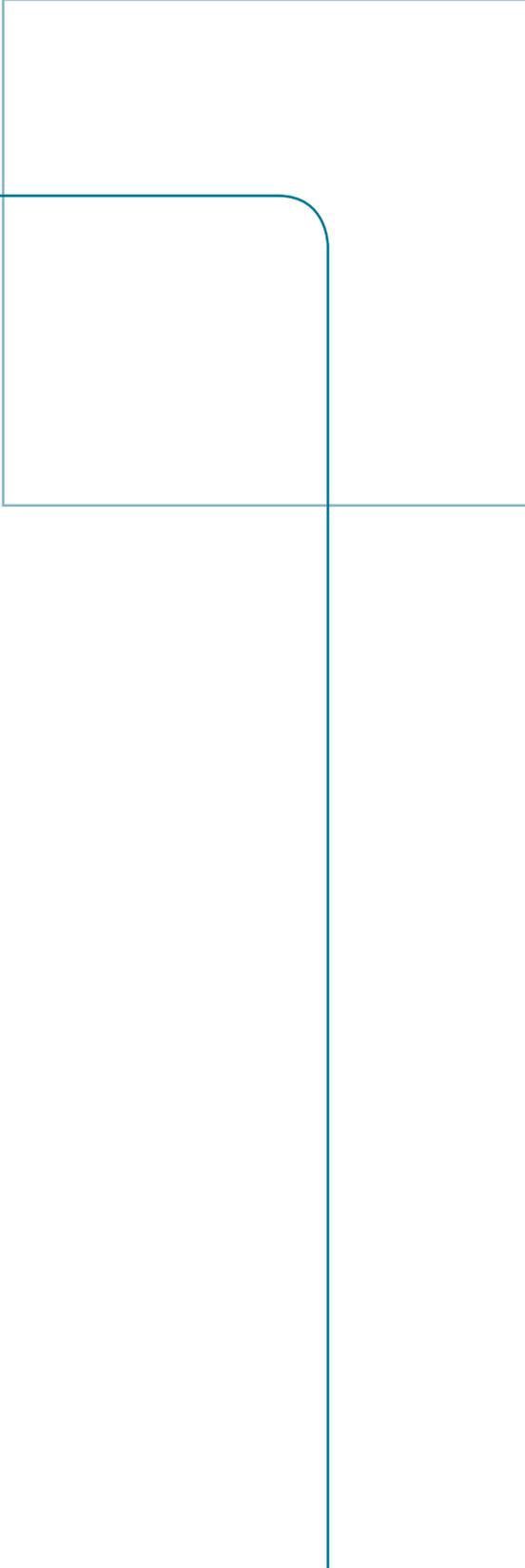
79. The legal framework of the Plan of the Regulation on Vocational and Technical Education and Training is in place as a general framework. Especially in relation to creation and operation of official bodies that are responsible for management and follow up on application of the Plan, implementation is unsatisfactory. For example, the Steering Committee prescribed by the Regulation on Vocational and Technical Education and Training, as well as representatives of other ministries, employers and labour unions and public and private stakeholders providing vocational and technical education and training, which all implement relevant policies and plans, are inactive.

80. In order to carry out its assigned tasks and in line with provisions of the aforementioned Plan, the Steering Committee should establish a specialised technical centre to develop vocational and technical education and training within the framework of the Ministries of Labour and Education.



**Annex 1 to
Annex C**

**The Law Concerning Higher
Education: A Review**



The Law Concerning Higher Education: A Review

Introduction

This annex contains a more detailed review of the present Law on Higher Education, that underpins the recommendations in the main report.

On 28 December 1998, the Palestinian Law on Higher Education was promulgated and published in Issue No. (27) of the Palestinian Official Gazette. The law sets forth the legal regulation of higher education issues in the controlled territory of the Palestinian National Authority (PNA). This paper sheds lights on some aspects related to this Law. Approximately ten years of enactment, the Law on Higher Education must be revised in light of recent developments.

Description of the Law on Higher Education

The Law comprises 30 articles distributed over 8 chapters, as follows:

Chapter I: Definitions and General Provisions (Articles 1 – 3).

Chapter II: Objectives of Higher Education (Article 4).

Chapter III: Powers of the Ministry (Articles 5 – 6).

Chapter IV: Higher Education Institutions (Articles (7 – 13).

Chapter V: Management of Educational Institutions (Articles 14 – 19).

Chapter VI: Academic Certificates and Degrees and System of Study (Articles 20 – 21).

Chapter VII: Academic Research Centres (Articles 22 – 25).

Chapter VIII: Transitional and Conclusive Provisions (Articles 26 – 30).

Research Methodology:

In line with the objective of this paper and in order to achieve relevant desired effects, the research activity will be divided into phases in line with the following methodology:

1. Examination of the formal aspects of the law

In consistency with sound rules and methods of legislative drafting, all formal aspects of the Law on Higher Education will be reviewed. Legislative drafting rules documented in the IoL Legislative Drafting Manual will be adopted. In addition, the acknowledged drafting style of promulgated Palestinian legislation will also be consulted.

In this phase, the following themes will be highlighted:

- *Preamble*
- *Definitions*
- *Consolidation of terminology*

2. Analysis of legal provisions and testing internal harmony within the Law

In order to assess the extent of consistency between various provisions of the Law on Higher Education, the research team will prepare an objective, analytical examination of all provisions under the Law. In addition, the research team will examine how harmonious these provisions are with the general legal rules of the Palestinian legal system.

The research team will also scrutinize the Law's provisions in line with the order adopted by the relevant drafters. This means that each article will be examined in accordance with its respective consequential order. Provisions derived from these articles will be compared with provisions of other articles.

3. Comparison with provisions under the Jordanian Law on Higher Education

In order to develop an analytical study of the Palestinian Law on Higher Education, the research team has examined and analysed other laws. In this context, the Jordanian Law on Higher Education was selected as it bears certain relations with the Palestinian Law in force.

Breakdown of the Study:

According to the research methodology, this paper is divided into three sections as follows:

- *Formal aspects of the Law.*
- *Internal consistency of the Law's provisions.*
- *Comparative study of the Law's provisions.*

1. Formal Aspects of the Law on Higher Education

The following observations can be made on the examination of the formal aspects of the Law on Higher Education:

(i) Preamble:

In respect of the preamble to the Law, which entails a number of phrases and references, the remarks below can be highlighted:

- *The preamble is not consistent with acknowledged, current rules of legislative drafting. This might be the case because the Law on Higher Education was promulgated before the Palestinian Basic Law.*
- *The preamble states that the Law is submitted by the Minister of Higher Education. It should have, however, stated that it is presented by the Council of Ministers.*
- *The preamble does not state the date on which the Palestinian Legislative Council approved the Law.*

(ii) Definitions and Consolidation of Terminology

The following observations can be emphasised:

- *It is not preferred that more than one article on definitions be used under the selfsame law. On the contrary, one article should encompass all terms mentioned and used in the law. The Law, however, does not abide by this preference; it includes more than one article on definitions, thereby creating confusion in implementing its provisions.*
- *Consolidation of terms used in the Draft Law is defective. The drafter incorporates different*

expressions and terms to signify a single concept. Despite the fact that the drafter intends to give the same meaning to a single concept – even though varying expressions and terms are used – the drafter has not succeeded in many instances. For example, the Law uses the term «certification» at the beginning. Later in the middle and last sections of the Law, the term «endorsement» is used.

- *The Law incorporates several terms that need be defined. The drafter does not define such terms in the body of the Law. Examples include campus, open higher education, etc.*

II. Internal Consistency of the Draft Law Provisions

Having analysed provisions set forth in the Law, this section sheds light on problems associated with internal consistency. The section is divided into items, each of which comments on articles under the Law according to their sequential order, as follows:

1. Chapter I: Articles (1 – 3)

Article (1)

Article (1)

Definitions

In implementing the provisions of this law, the words and expressions mentioned (herein) shall have the meanings assigned thereto hereunder unless the context provides otherwise:

Ministry: Ministry of Higher Education

Minister: Minister of Higher Education

Higher Education: Every regular academic or professional study in a recognized higher education institution of not less than one complete year of study or two terms after obtaining the general secondary education certificate or the equivalent thereto.

Institution: Every higher education institution that undertakes higher education according to the provisions of this law.

Head of Institution: Head of the higher education institution.

Institution's Board: It is the Board of the University which is composed of the chancellor, his deputies, deans or Board of the Faculty which is composed of its chairman, his deputy and heads of departments.

Educational Programme: A set of educational subjects whose period of teaching is not less than two terms of study in one of the higher education institutions.

Licensing: The granting of the Ministry of the permission for the establishment of a higher education institution to undertake the teaching of specific educational programmes according to the licensing regulations.

Accreditation: The Ministry's declaration that the corporate entity which is licensed by the Ministry is a higher education institution which is qualified to undertake the teaching of specific educational programmes according to the accreditation regulations.

Certification of Certificates: The Ministry's annotation on the educational certificate that it is authentic according to the certification instructions.

Recognition: The Ministry's declaration of the legality of existence of the foreign higher education institution and its programmes according to the law of the State of its citizens provided that the same are not contradictory with this law and the regulations emanating therefrom.

Equalization: It is the Ministry's equivalence of the educational degree with the parallel Palestinian educational degree which are conferred by the Palestinian higher education institutions pursuant to this law.

Scientific Research: Any organized activity carried out by a researcher or researchers in a higher education institution or a research centre with the object of forming, developing, transforming or utilizing of knowledge.

Scientific Research Centre: It is an institution established for conducting the scientific research.

In the definition of the 'Institution's Board', the Law states only two types of higher education institutions, namely universities and colleges. Especially in relation to the definition of the 'higher education institution', these types are not inclusive of all such institutions. As they deliver higher education, institutions of

higher education, defined as such, do not cover institutes, for example. As such, are institutes (at which post-school education continues for more than one year) considered as higher education institutions or not? Are these subject to the provisions of this Law?

Definition of the term 'recognition' states that recognition is given to foreign higher education institutions, but not to Arab institutions. However, Article (5) under the Law (which regulates the Ministry's powers) provides that the Ministry is also responsible for granting recognition of both Arab and foreign higher education institutions. In light of such a legislative confusion, are Arab higher education institutions recognised by the Ministry, or are they not obliged to obtain such recognition?

Article (2)

Article (2)

The Right of Higher Education

The higher education is a right to every citizen who meets the educational and objective conditions which are set in this law and the regulations issued pursuant thereto.

This Article provides a guideline, which is usually provided by Basic Laws and Constitutions. Provisions prescribed by ordinary pieces of legislation are determinative; i.e. they prescribe an obligation, give a right and make clear the executive mechanisms of such an obligation or right.

In addition, Article (2) does not state the penalty imposed on the violation of such right, nor does it make clear the mechanisms needed for the execution of the obligation prescribed thereunder.

The Law on Higher Education does not mention the right to education prescribed under Article (22/2) under the Basic Law for some categories (including the handicapped, prisoners, injured persons, etc.). The reason might be that this Law was enacted before the Basic Law.

Article (3)

Article (3)

Independence of the Higher Education Institutions

The higher education institutions and scientific research centres enjoy autonomy according to the provisions of this law which ensures the freedom of scientific research, literary, cultural and technical creativity and the National Authority endeavours to encourage and assist them.

This Article sets a guideline, which is normally provided by Basic Laws and Constitutions. Provisions prescribed by ordinary pieces of legislation are determinative; i.e. they prescribe an obligation or give a right and make clear the executive mechanisms of such an obligation or right.

Additionally, Article (2) does not state the penalty imposed on the violation of such right, nor does it make clear the mechanisms needed for the execution of the obligation prescribed thereunder.

This Article also prescribes the same provision under Article (24/3) of the Basic Law³, taking into account that the latter provision also entails another type of higher education institutions, namely higher institutes. Therefore, articles under the Law on Higher Education should be harmonised.

2. Chapter II: Article (4)

Article (4)

Objectives of Higher Education

The higher education aims at realizing the following:

- » *Open the way for all qualified students to join the higher education, follow up and develop the educational capabilities domestically and abroad.*
- » *Encourage the writing, translation and scientific research movement as well as support the continued education programmes which are provided by the Palestinian higher education institutions.*
- » *Enable the Palestinian society to deal with, invest and develop the scientific, technological and information technology new developments.*
- » *Participate in the fulfilment of the Palestinian society's needs from amongst the qualified human cadres in the various scientific and cultural fields.*
- » *Bolster the scientific cooperation frameworks with the scientific and international bodies, support and develop the higher education institutions and scientific research centres.*
- » *Look after the study of the Arab and Islamic civilization, lend to students the critical thinking skills, encourage scientific creativity and innovation, ability to research and investigate as well as keep up with the scientific progress.*
- » *Develop the scientific and spiritual values and raise individuals who are affiliated to their country and pan Arabism as well as strengthen the spirit of collective cooperation and work with the students*
- » *Contribute to the progress of science, maintenance of freedoms, uprightness of scientific research and building the State on basis that ensure the sovereignty of law, respect of rights and public freedoms.*

Probably closely related to higher education, other objectives are not stated under this Article. These include enhancing the quality of higher education as well as that of educational programmes.

³ *This Paragraph provides: «The Law shall guarantee the independence of universities, institutes of higher education, and scientific research centres in a manner that guarantees the freedom of scientific research as well as literary, artistic and cultural creativity. The National Authority shall encourage and support such creativity.»*

3. Chapter III: Article (5 – 6)

Article (5)

Article (1)

Definitions

In implementing the provisions of this law, the words and expressions mentioned (herein) shall have the meanings assigned thereto hereunder unless the context provides otherwise:

Ministry: Ministry of Higher Education

1. Minister: Minister of Higher Education
2. Higher Education: Every regular academic or professional study in a recognized higher education institution of not less than one complete year of study or two terms after obtaining the general secondary education certificate or the equivalent thereto.
3. Institution: Every higher education institution that undertakes higher education according to the provisions of this law.
4. Head of Institution: Head of the higher education institution.
5. Institution's Board: It is the Board of the University which is composed of the chancellor, his deputies, deans or Board of the Faculty which is composed of its chairman, his deputy and heads of departments.
6. Educational Programme: A set of educational subjects whose period of teaching is not less than two terms of study in one of the higher education institutions.
7. Licensing: The granting of the Ministry of the permission for the establishment of a higher education institution to undertake the teaching of specific educational programmes according to the licensing regulations.
8. Accreditation: The Ministry's declaration that the corporate entity which is licensed by the Ministry is a higher education institution which is qualified to undertake the teaching of specific educational programmes according to the accreditation regulations.
9. Certification of Certificates: The Ministry's annotation on the educational certificate that it is authentic according to the certification instructions.
10. Recognition: The Ministry's declaration of the legality of existence of the foreign higher education institution and its programmes according to the law of the State of its citizens provided that the same are not contradictory with this law and the regulations emanating therefrom.
11. Equalization: It is the Ministry's equivalence of the educational degree with the parallel Palestinian educational degree which are conferred by the Palestinian higher education institutions pursuant to this law.
12. Scientific Research: Any organized activity carried out by a researcher or researchers in a higher education institution or a research centre with the object of forming, developing, transforming or utilizing of knowledge.
13. Scientific Research Centre: It is an institution established for conducting the scientific research.

Under the Articles on Definitions, the term ‘recognition’ states that recognition is given to foreign higher education institutions. Paragraph (11) under the Article above, however, states that recognition is granted to both Arab and foreign higher education institutions. The status of Arab institutions is consequently confused. Do these institutions need such recognition?

Again, Paragraph (12) defines conditions according to which foreign higher education institutions can inaugurate branches in Palestine. Still, the Article does not provide for the status of Arab higher education institutions. Does this mean that such Arab institutions are not eligible to open respective branches in Palestine?

Paragraph (14) states that the Ministry is empowered to recommend consultants and attachés in order to build cultural relations with Palestine’s sister and friendly countries. Are the Ministry of Higher Education’s powers overlapping with those of the Ministry of Foreign Affairs?

Lastly, are these powers exclusive? Can the Ministry of Higher Education carry out any task that is not prescribed under this Article?

Article (6)

Article (6)

Powers of the Minister

Looks after the activities of the Ministry and its various departments as well as the overall responsibility for implementing all the authorities vested therein under the provisions of this law and the regulations issued pursuant thereto.

Recommends a consultative council for higher education which shall be formed by a resolution of the Council of Ministers and shall have its special regulation

In accordance with provisions of the Law, this Article prescribes the Minister’s powers. It should be noted, however, that such powers are short and do not reflect the actual role to be played by the Minister. Compared to this Article, Article (71) under the Basic Law provides general details of the Ministers’ capacities and powers.

4. Chapter IV: Articles 7 – 13

Article (7)

Article (7)

The Corporate Entity of Higher Education Institutions

The higher education institutions shall enjoy, according to the provisions of the law, a corporate entity.

This Article could have been removed and incorporated under Article (3), which provides that higher education institutions are independent and enjoy a corporate entity.

Article (8)**Article (8)****Immunity of the Campus of Higher Education Institutions**

Every higher education institution shall have a campus with immunity in accordance with the provisions of the law.

This Article prescribes a very important issue; higher education institutions are given a safeguarded immunity against any potential violations. However, the Article does not define what a «campus» is. Although such immunity is granted in accordance with provisions of the Law, it does not make clear the limits of the immunity. Moreover, the Article does not identify the penalty prescribed for the aggression against or infringement on such immunity.

Article (9)**Article (9)****Official Language**

The Arabic language is the official language in the Palestinian higher education institutions and may decide to teach some of the subjects or programmes in other languages.

This Article provides that Arabic is the official language at Palestinian higher education institutions and allows them to teach some courses or programmes in other languages. In this context, if a foreign higher education institution launches a respective branch in Palestine, will it be forced to teach in Arabic?

Given that the Article permits higher education institutions to teach some courses or programmes in foreign languages, what is the percentage of such courses or programmes to be taught in those languages?

Taking into account that the official language of Palestine is Arabic, the provision of this Article is in line with Article (4/3) under the Basic Law.

Article (10)**Article (10)****Classification of Higher Education Institutions**

1. The higher education institutions shall be classified in so far as the set up to:
 - » *The governmental higher education institutions which shall be established by a resolution from the Council of Ministers of Palestine and shall be administratively, financially and legally attached to the Ministry.*
 - » *The public higher education institutions which shall be established in accordance with the provisions of this law*
 - » *The private higher education institutions which shall be established in accordance with the provisions of this law*
2. The higher education institutions shall be classified, in so far as the educational programmes which are being taught, to:
 - » *Universities: They are the institutions where each of them is comprised of not less than three intermediate university colleges and provide educational programmes that end by granting the Bachelor degree. "first university degree" and the university may provide higher study programmes that end in granting the diploma, Master of Doctorate degree. It may provide educational programmes that end in the granting of the diploma certificate according to the diploma regulations.*
 - » *University Colleges: They are the institutions which provide academic or professional educational programmes that end with conferring the Bachelor degree. The university college may provide educational and/or professional and/or technological programmes for a period of two or three years that end with the conferring of the Diploma certificate according to the regulations of the diploma.*
 - » *Polytechnic: They are the institutions which provide professional and/or technological programmes that end with the conferring of the diploma certificate according to the instructions of the diploma. The polytechnic may provide technological and/or professional programmes and end with the conferring of the Bachelor and/or Master or Doctorate degree in the professional and/or technological specializations.*
 - » *Community Colleges: They are the institutions which provide academic and/or professional and/or technological educational programmes of a minimum period of study of one academic year that end with the conferring of the academic, professional or technological diploma according to the regulations of the diploma.*

This Article clearly defines governmental higher education institutions. Others, including public and private higher education institutions, are not concisely identified in the Law. Furthermore, the distinction between both these categories is blurred.

The Article, though, does not address some types of higher education institutions, including institutes or higher institutes stated under the Basic Law.

Categories of educational programmes are not accurately differentiated. Therefore, such categories may be confused.

Article (11)**Article (11)****Boards of Higher Education Institutions**

Every public higher education institution should have a Board of Trustees and every private higher education institution should have a Board of Directors. Every governmental higher education institution may form an Advisory Board provided that the duties and authorities of these Boards are determined according to special regulations that do not conflict with the provisions of this law.

The Article above makes clear various types of boards in charge of the management of higher education institutions. However, these boards differ in line with each type of institution. Whilst a higher education institution is managed by a board of trustees, a private education institution is administered by a board of directors. A governmental higher education institution may also establish an advisory board. Although Article (14) under Law provides that each governmental higher education institution is managed by an institution's board, this Article does not feature a similar prescription. In addition, Article (10) does not highlight potential consequences of varying managements of higher education institutions.

5. Chapter V: Articles 14 – 19**Article (14)****Article (14)****Management of Governmental Higher Education Institutions**

- » *Every governmental higher education institution shall have a Chairman and the Institution's Board. It may form an advisory council.*
- » *The Chairman of the governmental higher education institution shall be appointed by a decision from the Chairman of the National Authority as well as its advisory council upon the recommendation of the Minister.*
- » *The authorities of the Institution's Chairman, councils thereof and the various affairs relating thereto shall be determined by a regulation to be issued pursuant to this law.*
- » *The governmental higher education institutions shall be administratively, financially and legally attached directly to the Ministry.*

Paragraph (2) under this Article provides that the President of the Palestinian National Authority is responsible for appointing chairpersons of governmental higher education institutions. Given that the Law on Higher Education was issued before the Basic Law, Article (69/9/B) under the latter Law provides that the Council of Ministers will have the power to appoint chairpersons of governmental bodies and institutions.

Paragraph (3) above provides that powers given to chairpersons of higher education institutions will be identified in accordance with a regulation. However, it does not stipulate that the Ministry approves such a regulation. To cope with such a defect, the Ministry should endorse the regulation in question.

6. Chapter VI: Articles 20 – 21

Article 20

Article (20)

Academic Certificates and Degrees

The higher education institutions shall each confer, within its field of competency, the following academic certificates and degrees:

- » *Diploma: It is a certificate conferred subsequent to completing a minimum study of thirty credit hours after the general education certificate or the equivalent thereof according to the diploma regulations.*
- » *Bachelor: It is a degree conferred subsequent to completing a minimum study of one hundred and twenty credit hours or the equivalent thereof after the general secondary education certificate or its equivalent.*
- » *Higher Diploma: It is a degree conferred subsequent to completing a minimum study of thirty credit hours or the equivalent thereof after obtaining the bachelor degree.*
- » *Master: It is a degree conferred after completing a minimum study of thirty six credit hours or the equivalent thereof after obtaining the bachelor degree.*
- » *Doctorate (of Philosophy): It is a degree conferred subsequent to completing a minimum study of forty five credit hours in addition to the doctorate (of philosophy) dissertation after obtaining the master degree.*

This Article classifies academic degrees conferred by higher education institutions. It should be noted, however, that such degrees are categorised in line with the number of credit hours for each respective degree. Furthermore, the Article does not prescribe a time limit for obtaining any academic degree.

Article (21)

Article (21)

Accredited Education System

The accreditation education system in the higher education institutions is the regular actual attendance which operates by the study credit hours system. However, the open higher education institutions shall have their own special system.

This Article establishes open higher education institutions. However, the Law in question does not provide a specific definition of such type of institutions. Since reference is made to open higher education institutions under this Article only, further clarification need be made.

7. Chapter VIII: Articles 26 – 30

Article (28)

Article (28)

Promulgation of Regulations and Decisions

The Ministry shall issue the necessary regulations and decisions for the implementation of the provisions of this law.

This Article is inconsistent with provisions of the Basic Law. Although the latter Law exclusively endows such a power to the Council of Ministers, the Article above provides that the Ministry will issue forth the regulations and decisions necessary for enforcement of this Law. Such inconsistency might have been created by the fact that the Law in question was promulgated before the Basic Law. At any rate, such a legislative inconsistency should be removed.

III. Comparing the Law on Higher Education

Provisions of the Palestinian Law on Higher Education are now compared to the Jordanian Law of 1964 Concerning Higher Education. The latter Law can be deemed to be the historical ancestor of the Palestinian one.

Additionally, a comparison of the Palestinian Law to the Jordanian Law No. 4 of 2005 on Higher Education highlights a number of issues, as follows:

1. The Higher Education Board

Article (5) under the Jordanian Law provides for the establishment of a Higher Education Board to be responsible for making higher education policies, as well as following up on the incorporation of higher education institutions and relevant programmes. Members on the Higher Education Board include the Minister of Education, chairpersons of universities, secretary general of the Ministry of Education, as well as experts and specialists in the field of higher education.

Despite the fact such a board contributes to enhancing quality of the higher education process, the Palestinian Law does not include such a provision.

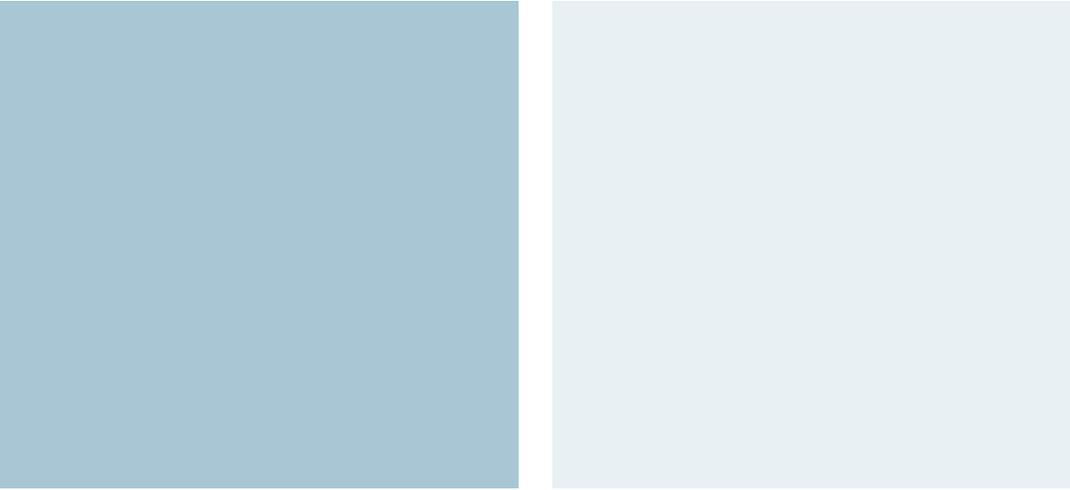
2. The Academic Research Support Fund

The Jordanian Law establishes a fund to support academic research. Resources of the fund are appropriated to develop the academic research process. Palestinian legislators may well take this notion into consideration. In reality, such a fund will serve the compelling need of supporting and developing academic research.

3. Fees

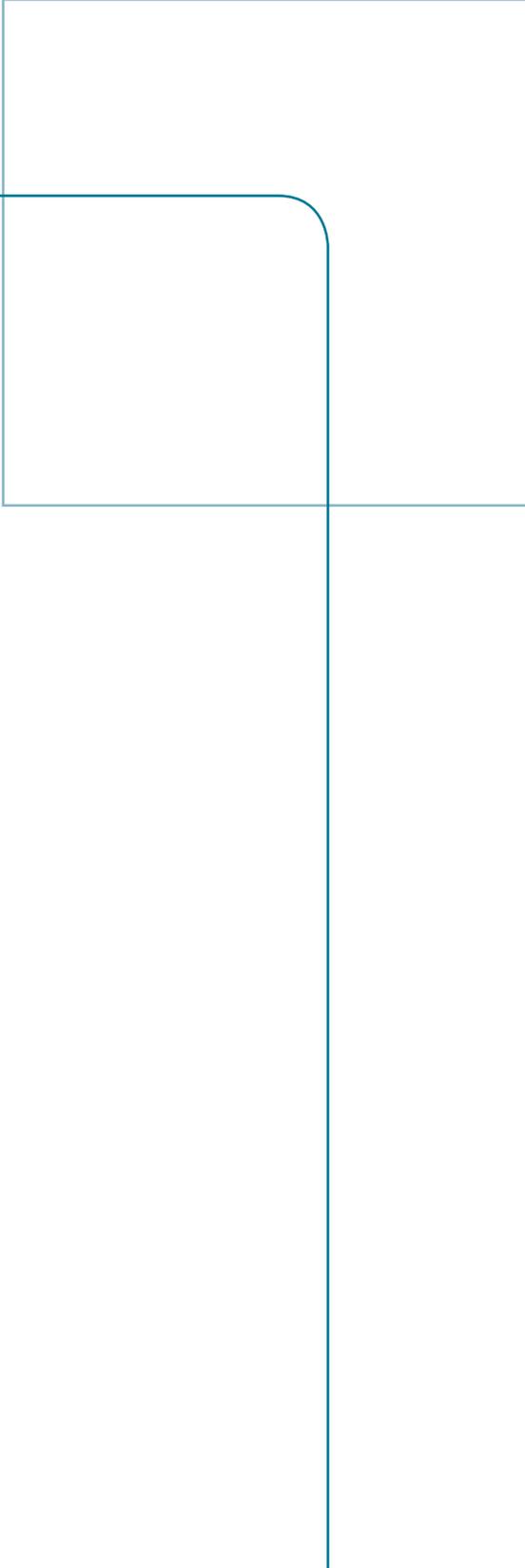
Contrary to the Palestinian Law, the Jordanian Law sets fees to be collected by the Ministry in consideration of licensing higher education institutions. It should be emphasised, however, that the Palestinian Basic

Law prohibits that any fees be imposed except by law. So that the Law on Higher Education becomes consistent with provisions of the Basic Law, the latter should be amended as to entitle the Ministry to collect fees in return of the services it delivers.



Annex D

**Governance arrangements in
5 comparator countries**



YEMEN

Legal framework

The legal framework for higher education in Yemen is based on Law no. 45 of 1992 for Education, Law no.(18) of 1995 for Public Universities, Law no. 13 of 2004 for Private Universities, Law no. 5 of 1996 for Community Colleges, Law no. 19 of 2003 for Scholarships, By-Law no, 137 of 2004 for the Ministry of Higher Education. There are in addition other laws, by-laws and regulations which are relevant to higher education and scientific research.

These Laws and By-Laws have given the Ministry of Higher Education And Scientific Research jurisdiction over all higher education institutions through coordinating, supervising and approving of all planning, policy formulation, programs, quality and ensuring that all institutions are in compliance with all Laws, By-Laws and Regulations in force in the area of higher education. They also give the Ministry of Technical and Vocational Education similar responsibility for Community Colleges and Technical Institutes

National governance

In 1990 the Ministry of Higher Education and Scientific Research (MoHESR) was created, which had responsibility for universities until it was abolished in 1994, when responsibility for universities was absorbed by the Ministry of Education. The MoHESR was re-established in 2001. The community colleges⁴ and technical institutes are the responsibility of the Ministry of Technical and Vocational Education, also created in 2001. In addition, the Ministry of Finance plays a vital role - not only the role that is traditional in other countries of fixing the total budget of the sector, but actually deciding on the amount to be paid to individual universities, and exercising detailed control over their expenditure. Within each university, the Department of Financial Affairs is staffed by personnel from the Ministry of Finance, and is responsible for processing every single payment.

Above the Ministry of Higher Education and Scientific Research is the Supreme Council for Universities (SCU), chaired by the Prime Minister, and composed of 8 other Ministers (MoHESR (Vice-chair), Vice-Minister of MoHESR, Finance, Planning, Civil Service, Education, Technical and Vocational Training, Social Affairs), the 7 Rectors of the public universities, a deputy from the MoHESR, 1 representative of the private universities, 1 representative of the private sector, and 3 "scholars". It meets very seldom, lacks a permanent secretariat, and has not played an effective role in the steering, development and reform of the higher education system.

The current arrangements mean that higher education has a Ministry which can act as its champion, and which has developed knowledge and expertise specifically about the sector. However, the weaknesses are numerous. Because of the separation of responsibilities, there is no sense of tertiary education in Yemen as is increasingly common in other countries. The present details of ministerial "ownership" and responsibilities would be of secondary importance if there were planning and coordination between the sectors, but there is not. The reason that this will matter increasingly in future is that as the number of secondary school leavers increases, it will be neither possible nor appropriate to accommodate them all in universities. On the other hand, for the sake of the country and the students themselves, it will be necessary to give them some additional high-level skills and knowledge, and it may well be appropriate

⁴ Until 2004 the Community Colleges were the responsibility of the Ministry of Higher Education and Scientific Research, but from then they have been the responsibility of the Ministry of Technical and Vocational Education.

to do so in community colleges or technical institutes. Provision of post-secondary education needs to be planned as a whole.

As far as the Ministry of Higher Education and Scientific Research is concerned, the Ministry itself is clear that its role is not to exercise detailed control over universities but to exercise strategic guidance and to steer the sector. However, its terms of reference, remit and purpose are unclear to many, and it needs to clarify this. Nor does it yet have the skills available to it, or the internal structure, to play the expanded role that this strategy recommends. One detailed, but important, shortfall at present is in the information that is available to the Government on the basis of which to make policies. Basic information – for example the number of students by subject, gender, age, etc - is not available in a systematic way, nor is information about the number of staff by speciality, their ages, etc, nor information about university income and expenditure.

The role of the Ministry of Finance is unusual. It is anyway for consideration whether the sort of detailed control that is exercised over university finances is appropriate, but if it is judged to be so, then it is very unusual for that control to be exercised by a Ministry of Finance, when a Higher Education Ministry exists.

Institutional governance

Autonomy

In law, Yemeni universities are characterized as being wholly autonomous. Article 3 of the University Law states that “public universities are administratively, financially and academically independent”. Article 53 of the same law explains the financial resources of public universities, and Article 54 explains the financial systems which ensures the autonomy of universities. Nevertheless, as regards finance they are heavily constrained - they are given line item budgets by the Ministry of Finance, and there is a Ministry of Finance employee in each university (who in turn appoints a financial manager in each college) to ensure that they do not spend money designated for one budget item on another, unless it has prior approval from the Ministry of Finance. If universities have not spent the individual budgets at the year-end, they may not carry them forward to the next year, but must return them. This can be a serious issue. A study carried out for the World Bank in 2002 found that in five universities, out of a total budget of YR 258 million earmarked for the acquisition of new books in 1998, less than 50 per cent of the amount was used, and the rest was returned to the Ministry of Finance, making an already underfunded situation even worse⁵. In recent years about 10 per cent of the higher education budget has been returned to the Ministry of Finance in this way (and in some universities the figure is much higher). Moreover, if universities earn money of their own, although in some circumstances the Ministry of Finance may allow a university to keep it, that is not consistent or universal.

The present unsatisfactory situation is not necessarily the fault of the Ministry of Finance. At present universities lack the capabilities to give the Government the confidence that they will budget and spend resources appropriately. On the other hand this is in part because of the close control to which they have been subjected. But in other countries even where this is so, if a Ministry of Higher Education exists, such responsibilities belong to that Ministry, not the Finance Ministry.

⁵ World Bank 2002 *Op Cit*, quoting *Al-Mutami (2000) Background Report of Higher Education in Yemen*.

It is indeed true that the autonomy of universities is heavily constrained because of the close control exercised over their financial affairs. As regards other aspects of autonomy, universities have and exercise their own control over things like staff appointments, curriculum and so on, though they must obtain the approval of the Ministry of Higher Education and Scientific Research to establish new colleges.

Governance

In terms of governance, the supreme decision-making body of universities is essentially controlled by academics, with little or no external membership. Rectors and Vice-Rectors are appointed by the President, and Deans by the Prime Minister (both in his capacity as Prime Minister and as Chairman of the Supreme Council for Universities). The appointments processes are not particularly transparent, nor the criteria for the success of the appointees, and in as far as they are accountable, they are not accountable to the university but to others. This in turn may influence the appointment and promotion of Deans and Departmental Chairs within the university.

The disadvantages of the present arrangements are numerous. First, the degree of detailed control that is at present exerted over the expenditure of universities leads to a lack of flexibility and slow decision-making. It also means that university leaders do not make decisions needed for the efficient running of their university, although they often have the power to do so. Even the limited autonomy that they have is not used. On the other hand, the expertise and skills required to exercise greater autonomy are lacking and will need to be available in universities if they are to exercise greater autonomy as will measures to ensure full accountability for all aspects of the university's performance – financial, pedagogic, quality, as well as administrative.

To have the academic body, and in reality only the senior management, as the supreme authority falls well short of international best practice, and runs the risk of decisions being taken in the interests of the “producers”. Because there is no external input into the governance of the university, there is a widespread feeling that they have become insular and unconnected with the outside world and its needs.

JORDAN

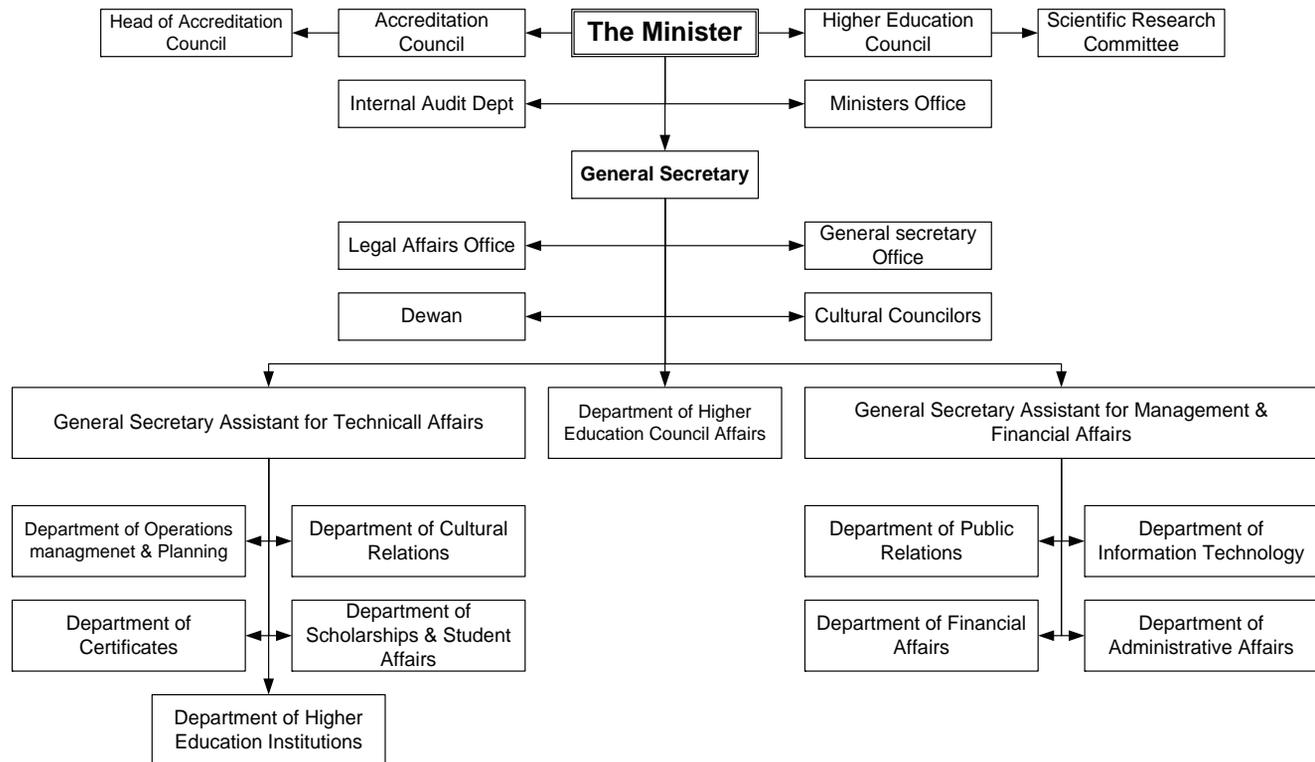
There have been substantial changes in higher education in Jordan in recent years.

National governance

Ministry of Higher Education and Scientific Research

The creation of the Ministry of Higher Education and Scientific Research is a relatively recent development, the Ministry having been created in 2001. However, the Ministry was originally created in 1985, but then subsequently dismantled in 1998. The reason for this instability is undoubtedly in part that other government agencies exist which carry out some of the functions that might be carried out by a Ministry of Higher Education and Scientific Research. In particular, the Higher Education Council and the Higher Education Accreditation Council are high-level bodies and are discussed below.

The Ministry of Higher Education and Scientific Research is headed by a Minister who is a senior member of the Government and who provides political leadership to the higher education sector and the various agencies that regulate and control it. The Ministry has a staff of about 200, organised as follows:



Higher Education Council

The Higher Education Council is a longstanding body, having been created in 1982 - it has existed for longer than the Ministry of Higher Education and Scientific Research - and is effectively an executive body responsible for making decisions in respect of matters to do with universities, community colleges and their development.

It is to the Higher Education Council, for example, that applications have to be made to create new private universities or new programs within private universities, and it is the Council that establishes the criteria for decisions about such matters. It is also the Council that decides on the allocation of funds between public universities, and for all universities (public and private) the entry standards that should be applied in any year and the number of students to be admitted. Having taken these decisions, the decisions are passed down to the Ministry of Higher Education and Scientific Research for implementation. More surprisingly, all senior appointments in public universities have to be approved by the Higher Education Council, as well as the Presidents of private universities.

One of the functions of the Council could be to coordinate the provision of higher education in Jordan, to avoid duplication and to ensure that the national interest is served. It has such considerations in mind when considering applications for new universities and programs, but there is no indication that plays a proactive role in relation to existing provision.

There has been some comment in the past about the apparently anomalous arrangement whereby a semi-independent Council takes decisions which it then falls to the Ministry to implement. However,

as the Council is chaired by the Minister of Higher Education, this arrangement is less anomalous than it might appear. On the other hand, the fact that the Council is chaired by the Minister means that it cannot have one of the main advantages that such councils have in other systems - namely independence from the Government and from the political process more generally. In addition, the Secretary-General of the Ministry is a member of the Council, and the Council is staffed by civil servants from the Ministry. Moreover, the Council's membership, which includes all the Presidents of the public universities and four Presidents of private universities, means - whether fairly or unfairly - that it cannot be seen to be objective and independent, and it is certainly true that conflicts of interest must regularly arise.

Higher Education Accreditation Council

Whereas the Higher Education Council has the power to grant licenses for the establishment of new universities as well as licenses for the establishment of new programs in existing private universities, it is the role of the Higher Education Accreditation Council to satisfy itself that the criteria for the licenses have been met by the universities concerned, and having done so to accredit the universities and programs. The role of the Higher Education Accreditation Council is limited to checking compliance with minimum input standards - things like facilities, space and staff:student ratios. It has no broader responsibility for assessing the quality of what is provided or for enhancing quality more generally. However, quality assurance is not unknown to Jordanian higher education. Many universities have in place internal quality assurance systems, and Jordanian universities participated in the highly successful UNDP-sponsored region-wide Higher Education pilot project to explore the development of common processes and structures for quality assurance in the Arab region.

More importantly, the Higher Education Accreditation Council has not had any responsibility for public universities - either at institutional or at program level. So hitherto there has been no quality assurance of public universities in Jordan, but that is changing. The Higher Education Accreditation Council is effectively a department of the Ministry of Higher Education and Scientific Research, and is chaired by the Minister, drawing its staff from the staff of the Ministry. Other than the Secretary General of the Ministry and the Ministry's Director-General for Accreditation, its members are drawn from the academic community.

Higher Council for Human Resource Development

A recent, and welcome, development is the intention to create a Higher Council for Human Resource Development, which will provide an overarching body to coordinate and oversee the activities and development of the various bodies responsible for education and training at all levels in Jordan. So, it will provide an umbrella, for the Labour Council, the Education Council and the Higher Education Council. It remains to be seen how this development works out in practice, but in principle, if it can really oversee the development of human resources for Jordan as a whole, and if it can coordinate the activities of bodies that have previously been concerned with education and training at different levels without much regard to others working in sectors outside their own, then this will be a most welcome innovation.

Scientific research

There are a number of bodies responsible for scientific research in Jordan, but there is little coordination between them, nor any mechanism for encouraging and coordinating the development of scientific research in universities or of seeking and selecting proposals for funding. Nor is there any body that takes a strategic overview of the direction of scientific research which has the funds and structures to

implement its strategic vision. As a result the scientific output of Jordanian universities is not anything like as strong as it might be. The main bodies responsible for the governance of scientific research in higher education are as follows:

- *The National Council for Scientific Research*
- *The Royal Scientific Society*
- *The Higher Council for Science and Technology.*

The Higher Council for Science and Technology was created in 1987 with a remit to foster the development of science and technology in Jordan. It is a high level body – consisting of, among others, eight ministers and the Commander in Chief of the Jordanian Armed Forces, and is chaired by His Royal Highness Prince Hassan. Although it does have a budget and a remit to fund research projects, it is not an expert body, and does not have the sub-structure needed to issue calls for proposals and select between competing bids for funding.

The National Council is a body created by the Ministry, the key function of which is to establish, monitor and develop new national journals in given and specific fields that will replace the current system whereby every deanship of scientific research in a given university publishes a journal in which topics in all fields are published. This is regarded as a most important function that will need to continue to be carried out in the future, whatever the structures that replace the present.

The Royal Scientific Society is essentially a learned body that itself undertakes research, and cannot really be considered part of the governance structure for funding and regulating research in Jordan.

Institutional governance

Although in principle universities in Jordan have a degree of autonomy, they in fact operate with fairly severe constraints on their freedom of manoeuvre. Among other things, the Higher Education Council tells them how many students they may admit and the minimum grades (in the school leaving examinations) that are required for admission. These requirements - which are different for state and private universities - can be subject to significant fluctuation from year-to-year, and this can make forward planning extremely difficult for the universities concerned - especially in the private universities which do not have the public university equivalent of parallel students.

For private universities the Higher Education Council and the Higher Education Accreditation Council between them also impose certain requirements concerning the inputs into their provision (space per student, staff:student ratios, etc) . It is also the Higher Education Council that nominates the President of public universities to the Prime Minister, and confirms nominations of the Presidents of private universities and the senior posts of the public universities. For example, deans of public universities are in effect appointed by the Higher Education Council, which seems an extraordinarily detailed level of involvement in the affairs of universities.

Nevertheless, within these constraints public universities in Jordan enjoy more freedom of action than is the case for universities in many other systems. For example, they can set their own curriculum, they are not required to spend their budgets in predefined ways, and they may transfer their income between budget years. Universities in Jordan enjoy a form of constrained autonomy.

Trustees

All universities have Boards of Trustees, which until recently were responsible for and had ultimate responsibility for the governance and strategic direction of the university. However, this arrangement was found to be unsatisfactory for a variety of reasons - it was found that many of the people appointed to the Boards of Trustees of universities abused that position: in some cases trustees were unable or unwilling to take an objective view of the interests of the institution or to think strategically about its interests, sometimes confusing their own interests with those of the university; and in other cases the Trustees simply did not meet sufficiently often to carry out their functions effectively. For these and other reasons, the 2001 Higher Education Law reduced the role of the Trustees, and their functions are now effectively carried out by the University President and the Council of Deans, together with the HEC. For example, it is now the President of the university that proposes appointments for senior positions to the Higher Education Council.

University Councils and Council of Deans

University Councils exist in one form or another in almost all university systems around the world, and Councils of Deans are relatively common as well. In Jordan they have a particular significance in the absence of effective Boards of Trustees, and potentially can play an important role in the governance of the university if the trustees are not playing this role. However, by their nature Councils of Deans comprise only academic members of staff. University Councils too tend to be dominated by academic members of staff, and although they usually include members of the local community, students and some others, it is not good practice to give a decisive governance role to a body dominated by the employees of the institution. In actual fact University Councils do not have the 'decisive governance role' that they might, but if that were contemplated, their composition would make that unwise. Similarly, while it is quite proper that the Council of Deans should make decisions about academic matters as they affect the institution, and such decisions are properly reserved to a group of senior academic members of staff, their role ought not to extend further.

Staff appointments

The appointment of senior staff the university - the President, vice Presidents, deans, etc are now in the hands of the Higher Education Council - and, in the case of the Presidents of public universities, these are appointed by Royal Decree on the advice of the Higher Education Council. That is unfortunate, although - in the absence of effective Boards of Trustees - understandable: it is essential that universities - which are complex bodies - have in leadership roles the most able and suitable people for the job, appointed following a rigorous process of selection. In principle, it would be far better if appointments were made by people who know the local circumstances and local needs.

Community colleges

The governance of community colleges has evolved in an unusual, but pragmatic, way, with the result that all public community colleges are in effect colleges of a single "applied" university - AL-Balqa' Applied University. Although each college has its own Dean, the colleges do not have trustees or other governance boards of their own, and whether as a result of this relationship with a single university or for other reasons, one recent development that is to be regretted is the growing number of community colleges students who have undertaken a bachelors qualification either at the college or subsequently on

leaving, when they have transferred to the university for a “top up” bachelors degree course instead of entering the job market.

AL-Balqa’ Applied University was established in 1998 as a body to coordinate the community colleges, but has over the years developed its own facilities and now offers its own degrees, undermining what was intended to be its unique function. Under these circumstances, it is not surprising that craft and technical education has suffered, and that there are declining numbers taking this level of higher education. The review of the community colleges undertaken in 2005 by Dr Roger Pearson on behalf of the HEDP concluded that the community college system had suffered from “deviation from the community college mandate in terms of high numbers of students transferring to university programs, questionable program quality, and no performance accountability mechanisms”. This criticism was noted by the Ministry, the HEC and the university authorities, and measures are now in place to counteract it.

These measures comprise two streams. The first is to renew and update the content of programs, courses and specialities to reflect current theoretical and applied knowledge, and to give students practical know-how and experience, in order to achieve a real match with labour market requirements. In addition, the university will open new programs, and close others on the basis of labour market signals. The second stream is to decentralise management of the colleges, putting more responsibility on the deans, while enriching their experience. The intention is to enable colleges to reflect local market needs and the needs of the community. It is also the intention of the university to create good links with local industry, including the creation of contract training centres and standing consultative committees comprising appropriate people from the industrial and business sectors.

Private universities

As might be expected, private universities are private entities, whose ownership is in private hands, and may be for profit. On the other hand, private universities are subject to a large amount of state control. Before a private university can be established the Higher Education Council has to grant a license, and in granting a license it has regard to national and local needs for further provision of the kind that is being proposed. However, the criteria and the application of decisions concerning the creation of new universities are not objective and consistent, and there have been cases where a change in minister has overnight led to a change in decision. Other controls on private universities preclude most of them from offering postgraduate programs (although some have been granted licenses to give MSc degrees and there are two that are licensed to offer only postgraduate programs) and - more difficult to understand - all academic agreements with overseas universities have to be vetted by the Ministry.

There is strong feeling among private universities that official attitudes towards them are at best ambivalent, and in some respects actually negative. Certainly, it seems to be the case that private universities are subject to many more controls than public universities. These controls undoubtedly had their origin at a time when private universities were unknown quantities, and there may have been concern that the profit motive would weigh more heavily than educational considerations. Such concern still exists, although it should also be noted that some of the best private universities have existed for longer than some public universities, and have demonstrated over the years that they can make high-quality provision, which moreover is cost-free to the state.

While it is true that private universities have intakes that are of lower quality than those of public universities (in that their attainment in the school leaving exams is lower), the data are not available to be able to judge if their outputs (in terms of the university exit examinations) are lower or higher than would

be expected, given their intakes. It is of note that students would appear to prefer to pay to be parallel students at public universities than to be fee-paying students at private universities, which indicates that their reputations are not high. However, these reputations have been formed in the absence of objective information, and some of the proposals in this report are intended to correct that.

Other weaknesses of the private universities – for example the instability of staffing – may be due to instabilities caused by government action. Again, some of the recommendations in this report are intended to address that as well, in particular the suggestion that in due course public and private universities should be treated the same unless for good reason.

Legislation

The current state of the legislation that governs the higher education sector in Jordan is somewhat confusing, and there are numerous laws, provisional laws and draft laws that are in place. Each public and private university is governed by its own legal regulations, which is not unusual practice in other countries. However, there are other laws which are in place and have never been repealed, but which no longer apply, having been overturned by provisional legislation that has never been endorsed by Parliament.

The application of provisional legislation is permitted under the Jordanian constitution which allows the Cabinet, if Parliament is not in session, to put in place provisional legislation that is urgently required.

The main law that governs higher education in Jordan is Law No 41 enacted in 2001, which established the MoHESR and took control of the entire higher educational sector.

The law also covers the Higher Education Council, the Higher Committee for Scientific Research and the Higher Education Accreditation Council.

SYRIA

National Governance

1. At national level the Ministry of Higher Education is the Government department responsible for universities and Intermediate Institutes, but the main role of governing higher education falls to the Higher Education Council, which is in theory an independent body, but is chaired by the Minister and which has a very high-level membership that includes, for example, senior government officials and the Presidents of all public universities. The Council has 12 sub-committees (reducing to 10), which are concerned with issues like curriculum, budgets, quality, admissions and so on. Each sub-committee is headed by a university president. These sub-committees have to consider a whole range of detailed proposals from universities concerning their administration. For example, each curriculum change the university might wish to make – in addition to the new programs that it might want to introduce – has to be considered and approved by the curriculum sub-committee⁶. The consequence of this detailed level of control is that in many cases the Higher Education Council acts as a rubber stamp, because it is unable to deal effectively with the large workload that falls to it.
2. Although the policy and strategy of the Syrian government is overall to move towards a social market economy and to reduce central controls, and although the new law of higher education does provide certain new powers and flexibility to universities, in general universities in Syria are still closely

⁶ It should be noted that the situation used to be much worse: until the reforms of two years ago the process for modifying a curriculum used to take two years and required a presidential decree. Now it can be decided by the Higher Education Council and need take no more than 2-3 months.

controlled by the Government in many of the respects in which universities in other systems exercise their own decisions.

3. The other major national governance body is the Higher Council for Inclusion, which, among other things, is responsible for deciding on the pass mark for entry to universities in different subjects – and effectively therefore how many students go to university and how many to Intermediate Institutes. This Higher Council is chaired by the Prime Minister, which reflects how important the question of admission to university is in political terms. This body effectively tells universities how many students they must admit to their normal programs
4. In the past, there has been no Accreditation or Quality Council, nor any national structure for directing and funding research. However, with the new laws that is changing, and an accreditation function is being created. Moreover, in 2005 the Higher Commission for Scientific Research was created with a remit to steer and guide the development of scientific research in Syria.

Autonomy

1. There is a move around the world towards giving universities a greater degree of freedom to manage their own affairs, and to free them from the detailed control exercised by the state in the past. This tendency often accompanies a more general move from a centrally controlled to a market or social-market economy. In Syria too, where the Government's policy is to move towards a social-market economy, the Government has expressed a desire to grant greater autonomy to universities.
2. Autonomy has three broad dimensions – academic, managerial and financial - and in all three respects the Syrian universities have a long way to go to achieve the Government's aspiration.

Academic autonomy

1. Institutions that have academic autonomy are able to decide what programs to run, the curriculum of those programs, and whom to appoint to academic and other positions.
2. In Syria on the other hand, if a university wishes to change a program in any respect, let alone establish new programs or new faculties within the university, it has to obtain the approval of the Higher Education Council. That applies equally to private universities as to public. Student admissions are considered below, but in a system with a high degree autonomy, universities themselves decide which students to admit, whereas in Syria universities are told which students they must admit, and how many.

Managerial autonomy

1. There are many respects in which managerial autonomy is limited as well. For example, while universities decide the number of staff they need, they may not implement the process for appointing those staff – that process is in the hands of the Ministry. The Presidents of universities are decided by the Government, and whereas the President of a university may propose the appointment of senior colleagues, these appointments too are in fact decided by the Government. This matters, because it is important for universities to have in post the very best people for the job for the university concerned, and, whether fairly or not, there must be a suspicion that appointments are made on grounds other than strict merit.

Financial autonomy

1. As far as financial autonomy is concerned, there have been some recent improvements in this respect, but autonomy remains limited. Until recently, universities have relied on the state for 100 per cent of their income. That is now no longer so, and there have been a number developments to reduce this dependence.
2. First, the arrival of private universities means that there are small but significant numbers of students paying relatively large sums of money for their higher education.
3. Second, since 2004 public universities have been able to admit “parallel students” – that is to say students who do not meet the criteria set down by the Government for admission to a particular program, but who are admitted to the program on payment of a relatively high fee (which covers more than the cost of the program on average).
4. Third, regular students in public universities also pay a fee. Although the fee is a small one, that nevertheless generates additional income for the university beyond what is provided by the state
5. Under the new law, universities may keep much of the additional income that they obtain, though the law prescribes how that must be used. Nevertheless, that represents a distinct improvement on the past. In other respects, though, the financial autonomy of universities is heavily limited. The budget of each university is set by the Government – as is right and proper – but in addition to setting the overall budgets, the Government also limits in a rather precise way how the budgets must be spent – so much for salaries, so much for conferences overseas, and so on – and the flexibility of the institution to use its budget to meet changing needs as it sees fit is limited.
6. So universities are subject to strict control by the state. However, the reasons for this are understandable to a large extent. Unlike in other countries where university autonomy is substantial, universities in Syria have no internal governance arrangements that would permit the Government to allow them a large degree of freedom in the confident knowledge that that freedom was going to be properly used, and not abused. In particular, universities in Syria do not have independent Trustees who in other countries represent the ultimate source of authority in the university and the highest level of governance. A system of Trustees can provide the assurance that a government needs that university Presidents and senior managers will not abuse the freedom to manage themselves and the freedom to deploy resources.
7. One particular complaint heard regularly from university Presidents concerns the bureaucratic processes that have to be overcome in order to spend the money provided in university budgets for investment. In the past that has led to a significant part of the budget being unspent. That is less of a complaint now, though it still exists, and there remains a serious complaint that so much of the time of senior university leaders is spent on the bureaucracy associated with incurring expenditure.
8. Beneath the President, universities have the full panoply of internal structures – University Councils, Deans Councils, Deans and Heads of Department, but in many respects their power is limited and their role is to propose, not to decide.

Appointments

1. In Syria, as elsewhere in the region, the process for appointments at all levels (national and

institutional) lacks transparency and owes too much to patronage and personal contacts. It is rare for proper job descriptions and person specifications to be drawn up, search committees formed and for whoever makes an appointment to feel bound to be objective in making it, and constrained by such considerations.

INDONESIA

Directorate General for Higher Education (DGHE)

The DGHE is organised into five units (four directorates and a secretariat), each of which have four sub-directorates which in turn each have two or three sections. The five directorates (including the Secretariat) are organised as follows.

Secretariat

- *Planning (to prepare the national higher education budget and negotiate it with the Ministry of National Education)*
- *Financial (mainly concerned with the current budgets of institutions, including writing cheques on behalf of DGHE)*
- *Human resources (dealing only with civil service, but not academic, ranks)*
- *General internal (dealing with internal administrative matters and university facilities, so far as these are Government assets).*

Academic directorate

- Curriculum and study programs (approving proposals to establish new study programs).
- Students (for example running competitions and providing scholarships for existing students).
- Teaching quality and standards (concerned to improve the quality of programs and the teaching and learning process, and also the facilities available).
- Academic evaluation (receiving reports from universities about their academic management).

Research and community services directorate

- *Research (providing grants in response to research proposals)*
- *Community service (providing grants in response to proposals for community service)*
- *Information Systems and publications (providing grants to enable staff to publish, maintaining a database of publications, research abstracts, etc)*
- *Student creativity (giving grants to students in respect of research and entrepreneurial activity).*

Human resources directorate

- *Planning and information (concerned with allocating quotas for the recruitment of new staff)*
- *Academic career development (concerned with academic – that is not civil service - promotions)*
- *Development (scholarships for graduate programs, etc, for existing staff, both within Indonesia and overseas - also provides funds for attendance at overseas seminars)*

- *Teacher training colleges.*

Development directorate

- *Higher education institutional organisation (approving the creation and the structure of new institutions and faculties, and enforcing conformity to regulations)*
- *Student organisations (funding student activities, and approving the activities of student organisations, in universities)*
- *Cooperation between institutions (both within Indonesia and overseas)*
- *Empowerment of universities (helping institutions – by the provision of project grants and through other means – to improve their management and governance and ultimately their performance).*

A significant amount of the activity – for example, approving study programs, approving civil service and academic promotions separately, allocating quotas for the recruitment of staff, approving the structure of new faculties - are functions that are unlikely to be required in an increasingly autonomous environment. Some of these arise because university staff are civil servants, and the Government controls the number, salaries and conditions of civil servants. It could be that these functions will continue to be required - even when budgets are devolved - so long as university staff remain civil servants. There is a move to devolved budgets and there does not seem any good reason why, when budgets are devolved, universities should not take responsibility themselves for the number of staff they recruit or the number and structure of their faculties and other administrative units - they will have to do so within their allocated budgets, and there should be no public expenditure implications.

Board of Higher Education

A substantial part of the effort of the Board of Higher Education is devoted to running competitions for funding teaching and research activity. For this purpose it has established two Councils - for Education and for Research - chaired by the Directors of the DGHE Academic and Research directorates (who also serve as vice-chairmen of the Board), and supported by their staff. These Councils rely on a pool of about 200 peer reviewers - selected in open competition following advertisement - who review proposals and make recommendations for support. The peer review pool process has proved problematic in some ways (variable performance of reviewers, for example, and inadequate skills to make budgetary judgements), but that is not the subject of this study.

The Board of Higher Education's role in selecting and funding research proposals is facilitated by the Research directorate of the DGHE, and similarly the programs of the Education Council of the Board are facilitated by the Academic directorate. These functions will continue to be required, and indeed as competitive funding increases it is possible that these functions will expand.

The Board's Development Council performs a unique function that will need to be continued - it is essential that someone is thinking long-term about sector-wide higher education policy issues in the country.

The other thing that the Board does is to establish ad hoc Commissions to consider proposals from universities for autonomous status. The need for such judgements will continue – and as more universities seek autonomy this need will expand: some structure will therefore continue to be needed to evaluate university proposals for autonomy.

BULGARIA

Autonomy and governance

1. Until 1989 the university system in Bulgaria, like so much else, was closely controlled, and universities were part of the state apparatus and were subject to detailed control and regulation from the centre. One of the first acts of the Government that followed the 1989 changes was to introduce an Autonomy Act which removed most of the controls under which universities worked previously, without putting much in their place. Since then the succeeding legislation has changed the balance between control and freedom, and the university system has been subject to a degree of instability in this respect. That is understandable, as the disadvantages of the different approaches were experienced, but what is badly needed now is a period of stability which enables universities to exercise the maximum degree of self rule and to identify their own futures, in a way which is compatible with the interests of the state.
2. Looking at the three dimensions of autonomy:
 - *Autonomy over management and governance for example, whether universities own their assets; who has ultimate control over the mission and strategic direction of the university; who appoints the Rector.*
 - *Autonomy over academic matters, including programmes and curriculum: for example, whether the university has the power to decide what programmes to run; the curriculum for these programmes; what programmes to close and which programmes to open; what teaching method to adopt, what students to admit, and so on.*
 - *Autonomy over financial matters for example, if universities are free to spend their income as they decide, and not according to budget items set by the Ministry; the ability to raise their own income and spend it as they decide; the ability to build up reserves; the freedom to borrow money; the freedom to decide how many students to admit and how much to charge them as fees.*

Against the majority of these dimensions Bulgaria scores relatively highly:

- Public universities can own their own assets (although they do not, in fact, own the majority of their buildings – those that they inherited from the state) and can decide for themselves on key issues concerning the future direction of the university. The ultimate authority of the university is the Academic Senate (or in formal terms the General Assembly) and universities appoint their own Rectors without any interference from the state.
- Until recently, the position on programmes and curriculum was less clear, since the state required that all programmes offered be approved by being registered in a State Register. It also required that universities adhere to centrally prescribed controls over things like the number of contact hours and the content of the programme. Such detailed control ran the risk of inhibiting innovation and responsiveness to changes in the market and student demand. Since 2002 that has changed, and universities are free to start their own programmes, and they are not bound by any State Requirements concerning the content of the curriculum or the pedagogical approach ⁷.
- As far as financial controls are concerned, universities enjoy a fair amount of freedom. They receive funds from the Government as a block grant, which they are free to spend as they wish (that is in

⁷ Except in a small number of 'regulated professions'

contrast to many systems around the world where they receive line item budgets which require them to spend fixed amounts on different items); they are free to raise their own funds and spend those as they wish without limit. Moreover, they enjoy the freedom, which many universities in other countries do not, to carry forward money from one year to the next and to borrow money. But they are tightly constrained by the Ministry as regards the number of students that they can recruit. This control over student numbers is understandable, since the number of students in the system has major implications for public expenditure, but it is a constraint on autonomy nevertheless. And the level of fee that can be charged by public universities to undergraduate students is controlled by the state as well, though again in this respect in Bulgaria is no different from other countries - in virtually no country does the state give public universities a free hand in deciding on the level of the student fee. As far as postgraduate students are concerned, Bulgarian universities are in fact free to set their own fees beyond the small number of places provided by the Government – a freedom not available to universities in all other European countries.

3. On the face of it then Bulgarian universities appear to enjoy a substantial amount of autonomy. This is confirmed when looking at an OECD review which compared a number of higher education systems and the autonomy that they enjoyed. Below is a table from the OECD publication (Education Policy Analysis, 2003) which identifies a number of features which define the degree of university autonomy, and assesses for a number of countries where each sits in these terms.

	Own their buildings and equipment	Borrow Funds	Spend budgets to achieve objectives	Set academic structure/ course content	Employ and dismiss staff	Set academic salaries	Decide size of student enrolment	Decide level of tuition fees
Mexico	√√	√	√√	√√	√√	√	√√	√√
Netherlands	√√	√√	√√	√	√√	√√	√√	√
Poland	√√	√√	√√	√√	√√	√	√√	√
Australia	√√	√	√√	√√	√√	√√	√	√
Ireland	√√	√	√√	√√	√√	√	√√	√
UK	√√	√	√√	√√	√√	√√	√	√
Denmark	√	√√	√√	√	√√	√	√√	√
Sweden	√	√	√√	√√	√√	√√	√	
Norway	√		√√	√√	√√	√	√√	
Finland	√		√√	√	√√	√√	√	
Austria	√		√√	√√	√√	√√		
Korea			√	√		√	√√	

Turkey				√	√		√	
Japan				√	√			
Legend – Aspects in which institutions								
√√ Have Autonomy								
√ Have autonomy in some respects								
OECD (Education Policy Analysis, 2003)								

4. Bulgaria was not one of the countries reviewed, but if the autonomy of Bulgarian universities is assessed against these criteria the Bulgarian system would probably look as follows:

	Own their buildings and equipment	Borrow Funds	Spend budgets to achieve objectives	Set academic structure/ course content	Employ and dismiss staff	Set academic salaries	Decide size of student enrolment	Decide level of tuition fees
Bulgaria	√	√√	√√	√√	√√	√√	√	√

5. So Bulgarian universities appear on the face of it to enjoy a considerable amount of autonomy, and sit fairly well among OECD comparators. Unfortunately, a similar analysis has not been done of EU countries nor the Accession States in particular, but there is no reason to think that those countries enjoy more autonomy than the OECD as a whole, and therefore it is reasonable to conclude that Bulgarian universities are at least as autonomous as most in the EU, and probably enjoy more autonomy than many.
6. Despite this generally favorable picture, Bulgarian universities remain subject to some very detailed controls, and there must be a concern that these may inhibit the ability of universities to respond flexibly and rapidly to market conditions. For example, the law on scientific degrees and titles gives the State – through an appointed institution – the power to decide on the titles of members of the academic profession, and the criteria for conferring these titles. This is an extraordinary function for a central body in a decentralized and largely autonomous university system, and it seems an anomalous power to retain when so much else – particularly the control over State Requirements – has been relinquished.
7. Similarly central government decides not only how many students each university may recruit, but also the number of students in each subject area. To control the number of students may be necessary for the control of public expenditure; and control by the Government of the number of places provided in each subject may not seem an unnecessary control to a government that is concerned about whether the university system is producing graduates in subjects that the economy needs. This remains an area where the Ministry exercises detailed control over what universities do. And the law also prescribes the detailed organisation that a university must have – for example its division into faculties.
8. In a market economy, it must be presumed that the market will do some of the things that at present are done by legislation. However, there are strong views among some in Bulgaria that the market may not be effective because of its immaturity and in particular because of the inadequacy of the

information that is available to inform the market. Certainly, for the market to work well good information is needed as a mechanism to counter market failure, and at present in Bulgaria market information is not good. So some of the controls that the Government exerts (for example specifying the degree titles and the length of course) may be justified on the grounds that if these things were not controlled then the market would not be able to distinguish between products with the same title but with rather different content, process, etc. An important priority for the country in the long term is to ensure that the market is better informed in the future, to enable this sort of control to be reduced.

9. In many respects, in Bulgaria, some of the conditions for autonomy are not met. Autonomy without a proper infrastructure, or without the framework or mechanisms for exercising it, risks serious damage to the system. It is not an absolute good. In a number of key respects, Bulgaria lacks the framework for the exercise of full autonomy, and it is recognised that this needs to be improved if autonomy is to be exercised to full effect and to the benefit of the nation.

Management

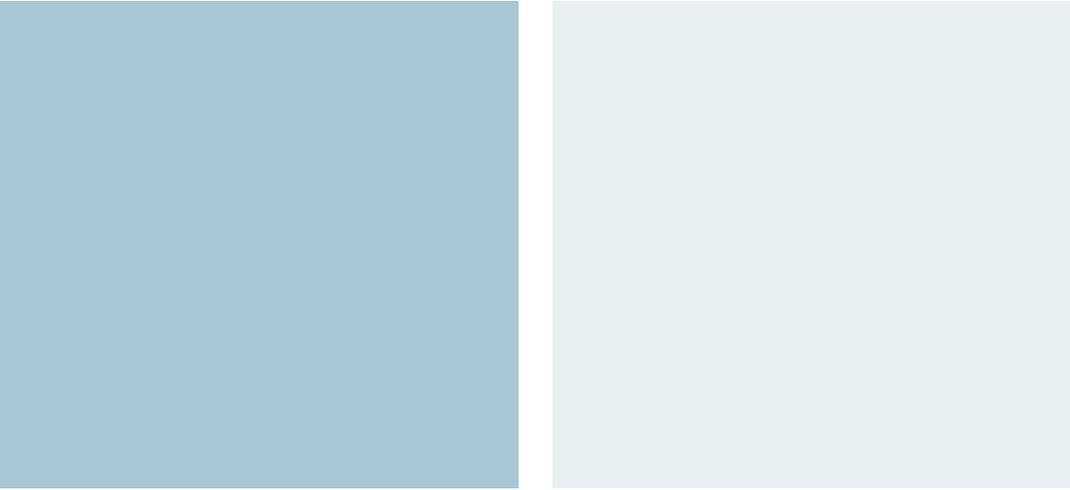
10. A university is a complex and often large enterprise, and requires the full range of management skills in order to be run successfully. These include, for example, financial, personnel, estate and strategic management capabilities. One of the early mistakes of the post-1989 legislation was to grant so much autonomy to institutions which lacked the management capabilities to exercise it, and this was a recipe for doing more damage than good. Universities need urgently to review the management skills at their disposal and to ensure that those that are lacking are made good; and the Government needs to ensure that they do so.

Governance

11. Universities in Bulgaria have moved away from a position where they are controlled by the Government, but they have not replaced that with a mechanism for ensuring governance that is likely to be good for the university in the long run or for society as a whole. To make the ultimate authority of the university a body that comprises very largely the staff of the university, is to ensure that universities will be run very much for the benefit of the existing staff, which is incidentally also a recipe for inertia and conservatism. There is no one model of governance that is correct, but it is clear that the present arrangement is potentially very damaging indeed, particularly when coupled with the degree of autonomy that universities currently enjoy, let alone the increased autonomy that they may enjoy in the future.
12. Related to this is the position of the Rector, and the way the Rector is appointed. Universities, as has been mentioned, are serious and often very large-scale enterprises, with a turnover in some cases of more than €25 million per year. The Rector is effectively the Chief Executive of a large corporation. Running a university is a serious management business. If universities were not autonomous, and all effective decisions and their management were in the hands of the Government, that would be another matter. That is not the case, and it is extremely unsatisfactory to have this important role filled by people who owe their loyalty entirely to the academic electorate, whose management experience may be very limited and will often not be the basis of their appointment, and who know that they will return to join their former colleagues in the academic common room on expiry of their term of office.
13. This is not, of course, to deny that some Rectors are extremely effective, and provide outstanding

leadership – some are very impressive indeed. But many others – perhaps the majority – regard themselves primarily as academics, and managers only to a limited extent, as a secondary function. This is not the basis for strong leadership and management, where difficult decisions need to be taken by capable managers, nor for ensuring that universities are well-managed institutions.

For these reasons two important areas are the subject of reform: University governance is being brought up-to-date, and bodies created with the ultimate responsibility for governing universities that are independent of the state but also independent of any one group within the university. The other reform being considered is for Rectors to be made far more professional, and the best people appointed capable of managing complex institutions – in many cases these will not come from within the existing academic body of the appointing university.



Annex E

The Palestinian Higher Education

Law No. 11 of 1998 And Palestinian Labour
Law No.7 of 2000

Contents:

Introduction

Comparing the two Laws in view of the following themes:

- Applicability of the law
 - Councils and Committees
 - Regulations
-

Introduction:

The Palestinian Law No (11) for the year 1998 concerning Higher Education govern higher educations institution and defines the rope of the Ministry in respect of Licensing, accreditation, supervision, recognition, equation and scientific research.

The Palestinian Labour Law No. 7 of 2000 comprises (141) articles under 10 chapters. This Law replaces the Jordanian Labour law No.21 of 1960 and its amendments which was in force in the West Bank and the Labour Law No. 16 of 1964 and its amendments which was applied in Gaza Strip.

Applicability of the Labour Law and Higher Education Law:

1. Article (5) under the law of higher education deals with authorities and responsibilities of the Ministry which includes approving, licensing and supervision of the higher education institutions.
2. Article (3) of labour law stipulates that the law will be applicable to all employees and employers in Palestine excluding the civil servants, house servants and family members of the employer up to the first degree.
3. All Higher Education institutions public, private and governmental are governed by the law of Higher Education.
4. All employees and employers in public and private institutions are governed by labour Law.
5. Higher education institutions and vocational institutions:
6. The Ministry of Labour will establish vocational institutions, and all nongovernmental vocational institutions shall settle their situations in accordance with labour Law.

Councils and Committees:

The ministry of labour shall put forward policies and ways of implementing the vocational training in coordination with the other relevant ministries.

Regulations:

The Minister of Higher Education shall issue the necessary regulations and decisions for the implementation of the law.

The minister of labour will recommend to the council of ministers the regulations for the implementation of the Law.

Different regulations implementing the work of the ministry of labour were issued; nonetheless it will be beyond the scope of the report to cover all regulations.

It should be mentioned that the provisions under the Labour Law represent the minimum limit of the rights of workers which may not be waived. Several internal regulations at Palestinian higher education institutions were issued prior to the promulgation of the Labour Law and they need to be amended in order to be consistent with the provisions of this law.

In the following sections, we will highlight the following topics, especially regarding the labour contracts and collective agreements that govern the relation between the Public and Private Higher Education Institutions and the employees:

1. Labour Contract

Both public and private higher education employees are governed by the labour law.

The individual labour contract is a written or verbal agreement, explicit or implicit that is concluded between an employer and employee, for a limited or unlimited period of time.

The maximum duration of the labour contract of a limited period must not exceed two consecutive years, including the renewal cases.

2. Probationary Period

The labour contract may commence with a probationary period, the duration of which is three months, and it may not be repeated from more than once at the same employer.

Termination of labour contract:

The Labour contract shall terminate in any of the following conditions:

- » *Upon Agreement of both parties.*
- » *By the expiration of its duration in the casual, temporary or seasonal works.*
- » *Upon the wish of either party during the probationary period.*
- » *Upon the wish of the employee, provided that the employer is notified in writing prior to the leave:*
 - *By one month notice in case he or she used to earn his salary on a monthly basis.*
 - *By one week in case he or she used to earn their salary on a daily or weekly basis.*
 - *By the death of the employee, or his or her being infected with an illness or disability that disables him or her from work for a period of time exceeding six months based upon a medical report.*

3. Severance Pay

The employee who has completed a year at work shall be entitled to a salary of one month for each year he or she spent at work on the basis of the last salary without counting over-time extra hours.

4. Resignation

The employee (in case he or she resigns) shall be entitled to one third of the remuneration of the expiration of service within the first five years. And two third of the remuneration of the expiration of service within the following five years. And full remuneration of the expiration of service more than too years.

5. Strike

According to the provisions of the Law, strike shall be a save guarded right for employee in order to defend their interests according to the following conditions:-

- *A written notice on strike must be forwarded*
- *The notice must be forwarded to the other party and the ministry two weeks prior to the taking of the measure.*
- *The notice shall be forwarded by four weeks in advance at the public administration institutions.*
- *In the case of strike, the written notice shall be signed by at least 51% of the number of employees at the installation.*
- *Strike may not take place during the proceedings of the examination of the collective dispute.*

6. Working Hours and weekly Holiday

The actual working hours per week shall be forty five hours.

Daily working hours must include one or more periods, the total of which shall not exceed one hour for the repose of the employee.

The parties to labour contract may agree to over- time working hours that do not exceed twelve hours a week.

A remuneration of an hour and a half shall be paid to the employees for each over- time hour.

7. Weekly Holiday

Friday is the weekly holiday unless the interest of the work requires the allocation of another day on a regular basis.

8. Annual Leave

- *The employee shall be entitled to a paid annual leave, the duration of which is two weeks per year, and three weeks for the work in hazardous occupations or those damaging health as well as for those who spent five years at installation.*
- *The annual leaves may not be accumulated for over two years.*
- *The employee shall have the right to a paid leave on religious and official holidays, which are not to be counted from among the annual leaves.*

- *The Labour Law attempts to consolidate into one version the two laws relating to labour that were in force in the Gaza strip and the west Bank.*
- *Labour forces constitute a very essential asset and the laws pertaining to labour-management relations have been subject to a number of developments throughout the different periods of the history of the Palestinian territories.*
- *This is the first consolidated version.*
- *The policy objectives of the labour law are to give more rights to individual employees, while providing a degree of support for union organization and collective bargaining.*
- *In general, consolidation of labour Laws into one law is a positive achievement.*

Vocational Training and Guidance :

Vocational guidance shall mean the activities which aim to guide workers towards the available work and training opportunities that suit their skills, preferences and capabilities.

Vocational training are activities which aim to make available trained workers for the development needs as well as enable them to acquire the necessary skills and capabilities and develop them on permanent basis.

The ministry of labour shall put forward, follow up and implement the policies of the vocational training and guidance in a manner that accomplishes coordination and integration with the other relevant ministries and institutions and provide the needs for development programs, including technical and trained workers.

In cooperation with the relevant parties, the ministry shall be the sole authority which is competent of granting the license for the establishment of the vocational training institutions.

9. Salaries

The employee shall be entitled to a salary in case he or she is present at the work place even if he or she does not perform a work for reasons pertaining to the installation.

The payment of the salary of the employee may not be delayed for more than five days as of the maturity date. During the last couple of weeks Palestinian public and private higher education institutions witnessed a serious crisis and employees went on strike. The Higher Education Council and the Unions in public and private Higher Education Institutions agreed on a Collective Agreement and a scale for the university employees in the year 1999 prior to the promulgation of the Labour Law.

Since that time this agreement is still valid and Unions are asking for negotiating a new Collective Agreement, terms and conditions of employment. This process should result in a legally binding document and should not be unilaterally changed, unless the parties mutually agree to renegotiate the agreement.

In the following section we will explain the provisions under the Labour Law that govern this process:

Collective labour Agreement

The collective labour agreement shall be an agreement which is written in the Arabic language and concluded by the two parties to the collective negotiation.

It shall include provisions pertaining to the improvement of the work requirements and conditions and raising the productivity competence.

The labour law attempts to consolidate into one version the two laws relating to labour that were in force in the Gaza Strip and the West Bank.

Labour forces constitute a very essential asset and the laws pertaining to labour-management relations have been subject to a number of developments throughout the different periods of the history of the Palestinian territories.

According to Chapter II of the Labour Law, the collective agreement shall be binding as of the date defined thereon and the duration of the collective labour agreement shall be three years. The collective negotiation shall be conducted on the basis of the request of either party to the work at least 3 months prior to its expiration. The agreement shall be valid until a new agreement is reached.

In this respect, the Unions of Public and Private Higher Education institutions are asking, since one year to negotiate a new agreement, knowing that the last collective agreement was signed in the year 1999. It should be noted that during the last days the Unions and the HEC reached a temporary agreement and the deadline for reaching a final agreement was set till the end of October.

The End