

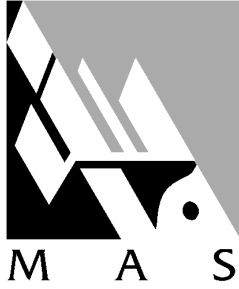


Palestine Economic Policy Research Institute (MAS)

A Legal Framework for Palestinian Development Planning

Nabeel Kassis

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The Palestine Economic Policy Research Institute (MAS)

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A Legal Framework for Palestinian Development Planning

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Foreword

When I agreed to conduct this study in the early summer of 2013, it did not occur to me that I shall be the one writing the foreword, presenting the study to interested readers, a task which usually befalls the Director General of the Institute. However, it so happened that in the early autumn of the same year, I was approached to take over the position of Director General of MAS as of 1st November, replacing Dr. Samir Abdullah, whose term in office would end then. And so, I find myself in this post, writing the foreword for a study that I conducted from a different position, and I take this opportunity to thank Dr. Abdullah for giving me the opportunity to wind up the series of three studies on issues of public administration and planning, which commenced in 2010 and which included in addition to this one two earlier studies that I authored: Building an Efficient and Effective Public Administration Structure despite Geographical Separation and Towards Rationalizing of Development Planning Efforts and Increasing Its Effectiveness in the Occupied Palestinian Territory. It is to be emphasized that MAS made sure that the terms of reference for each of these studies were prepared in coordination with the Ministry of Planning and Administrative Development (MOPAD), whose comments on the studies were carefully considered. Therefore, I take this opportunity to extend my gratitude, on behalf of MAS, to the two Ministers of Planning during that period, Dr. Ali Jarbawi and Eng. Mohammad Abu Ramadan, for supporting the idea of carrying out these studies and for their valuable comments.

My hope is that this third study will succeed, along with the preceding two, in giving an impetus for a serious debate in official circles on the issues raised, which concern administrative reform and economic development. I view the workshop held at MAS to launch this paper, which was attended by six ministers, including four former ministers of planning, and a number of officials from MOPAD, the Palestinian Legislative Council and other government institutions and civil society organizations, as an important indicator of officials' interest in the subject and as the start of the needed debate.

The Institute extends its deep gratitude to the Arab Fund for Economic and Social Development for its continued support of MAS's research program and for funding this study.

Nabeel Kassis, PhD
Director General

Executive Summary

The study starts with an introduction outlining the background and describing the current state of development planning in Palestine. It then briefly sets forth the rationale for enacting development planning legislations, whether to govern the institution charged with planning, or to regulate the process of drawing up development plans. The methodological and administrative problems associated with development are then outlined along with the practical considerations for dealing with these problems. The study then proceeds to examine the planning laws enacted by some countries, as case studies, and draws lessons from these experiences. It concludes that the planning approach needs to be legislated in order for it to serve as the foundation for an effective planning law governing both the planning institution and the process of preparing the development plan. The study then recommends a certain approach to development, namely that of decentralized regional planning, and reviews the experiences of several countries that adopted this approach. It then draws conclusions as to what would be the most appropriate way to apply this approach in Palestine, arguing for gradual decentralization and emphasizing the importance of having gradualism enshrined in the prospective legislation that is to govern planning. The study finally proposes an adequate framework for the planning law, dividing it into two parts: the first addresses the planning institution and its structure, while the second addresses the planning system and the roles of the various players involved in drawing up the development plan in detail.

Background

This study is the third in a series of development planning and public administration studies that the Palestine Economic Policy Research Institute (MAS) has conducted since 2010. The first study addressed building an efficient and effective public administration despite geographic separation between the West Bank and the Gaza Strip. The second was concerned with rationalizing development planning efforts at the sectoral and spatial levels with a view to increase their effectiveness. It explored the relationship between the planning approach and the model of public administration; highlighted the need for compatibility between governance and planning; and recommended decentralization as a basis for creating harmony between them. These two studies revealed the gap between goal and practice and concluded that this gap cannot be bridged without due commitment of the official circles to the proposed structure of public

administration and the recommended planning model. Indeed, such ideas need to be thoroughly discussed by decision-makers so as to gain an insight into a particular strategy that functions beyond the present practice (which still focuses on the center and neglects the peripheries) toward achieving a more balanced development. Since decision-makers do not yet seem to be convinced of the priority of such a debate (largely because they are very busy with instituting the mainstays of a future Palestinian state, or because of apprehension of the change and its political cost), the tools needed for building the political will that places these issues on the government's agenda have yet to materialize.

This study is a third attempt to stir the debate on decentralization as a system of public administration and a framework for planning. The aim is to involve the citizens in the process of decision making in national development issues and to enhance accountability and transparency, using legislation as a point of departure. The study cautions against illusions that decentralization can be achieved overnight stressing that the desired change can take place only gradually over a period of time that is long enough to bring about the necessary changes and to allow for preparing the ground for that. With these considerations in mind, this study sets out to develop an appropriate framework for a planning law – a framework that can be used by the legislature in drafting the needed regulations.

The current situation and the need for legislation

In elaborating the current state of Palestinian development planning, the study argues that the absence of serious and substantive debate on decentralization led to disregarding a basic prerequisite for rationalizing planning, namely reforming the public administration structure- the context in which rationalization is supposed to take place. Furthermore, the role of the institution entrusted with planning and implementing the rationalization program, i.e. the Ministry of Planning (and Administrative Development) (MOPAD), remained confused. This confusion is a consequence of the absence of laws and regulations that explicitly define MOPAD's role, remove ambiguities and conflicts in its responsibilities with other ministries, and enable it to properly implement development plans. Accordingly, the study emphasizes the value of having the planning approach stipulated by legislation. Specifically, it opts for the decentralized regional development planning model, which is also the model of choice in developing countries. Such legislation would also govern the planning institution in charge of implementing the approach, and would provide it with real powers and define its responsibilities and lines of reporting. The planning institution could thus exercise its role from

a position of authority within the Palestinian Public Administration, provide leadership, exercise follow-up, and hold all parties involved in the planning process (institutions and practitioners) accountable. The study contends that drafting a long-term development plan that builds on the learning approach rather than on ready-made procedures, needs a framework that is not currently available. This necessitates enacting binding legislations through which the sizeable and complex undertaking, that will generate medium-term, plans can be regulated.

As case studies, few countries that are comparable to Palestine in terms of the development level (lower middle income) were examined with a view to incorporate their experience in the formulation of a framework for a planning law. This exercise was also helpful in elucidating the role of decentralized public administration as a basis for decentralized regional planning. Reference was made to a number of studies that addressed this issue. Some models from nearby countries, such as Syria, Iraq and Jordan, and from countries farther away such as Ghana, India and others were reviewed. The types of problems that these countries encountered were identified and requisites for effective decentralized regional planning were discerned and utilized in addressing the Palestinian case.

Methodological and administrative problems in development

To yield the desired framework, the study perceives the goal of development in developing countries to be achieving sustainable improvement in the quality of life in the country as a whole and in its individual regions. The achievement of this goal entails providing all citizens with the means of self-realization and decent living conditions in an atmosphere of equal opportunities and social justice. Regional development, in this sense, provides balanced and equitable development for all regions in a country. This goal can be furthered through centralized regional plans or, as in many developing countries, through decentralized plans where each region plans for itself. In either case, the central planning institution endeavors to assure that the different regions benefit equally from the development plan, which requires careful alignment of the goals of different regions.

Often, national development flies in the face of regional development. The former prioritizes development at the national level, placing development of individual regions in a secondary position. In preparing the national development plan, regional considerations are taken care of only inasmuch as they serve the development of the economy of the country as a whole, assuming that the national development will augur well for individual

regions through a trickle down of benefits. This approach, however, might marginalize certain regions; lead to internal migration; and exacerbate the social, economic, cultural and environmental problems. Still, this approach is the fastest one that yields results at the national level.

Decentralization: pros and cons

Though decentralization can reduce the economic and social disparities between different regions in developing countries, it still has some caveats; it is not a recipe that is devoid of problems. Indeed, shifting to decentralization is not something that is done in one single step; rather, it is a long term process that entails a change in culture and building capacity in fields where individual regions in developing countries lack experience. In the Palestinian case, as an earlier study showed, the geographic separation between the West Bank and the Gaza Strip makes a strong case for adopting decentralization in spite of the small area and the relatively small population of the country. However, converting the central public administration system to one of regional decentralization requires a period of time that is long enough to allow for building the needed capacities and for instituting a new administrative culture at the national and regional levels. This period- a decade at least - is also fortuitously needed to substantially raise the human development indicators; develop the infrastructure; eliminate distortions that afflict the Palestinian economic and social fabric; and catch up with the progress occurring globally. Hence, applying decentralization has to be a gradual process over a relatively long period during which the necessary conditions for its success become available, and when there is an operative regulatory framework that establishes a genuine, sustainable impetus that is indispensable for change.

The most appropriate approach to planning in the Palestinian case

Having evaluated the models, opportunities and challenges, the study concludes that, currently, the most feasible development plans, which enable the achievement of the developmental goals, will necessarily be centrally drafted as modifications of national medium-term plans. The modifications should take into account the particularities of the individual regions; address the needs of the disadvantaged regions; and mitigate the socio-economic and cultural disparities between regions. Such modified national plans entail planning for the regions, making sure each region is involved in the planning process. The plans should further be implemented in parallel with a long-term plan, within a reasonable time frame, that aims to establish the foundations of decentralized regional development and the context within which it can be realized, i.e. decentralized public

administration. It is decentralized regional planning that makes it possible to focus on regional peculiarities and enables raising the standards of living for all citizens and providing them with the means of decent living with their participation.

The study makes two important notes. First, economically developed countries do not have ministries or councils for development planning (except for spatial planning). These countries do not develop comprehensive development plans, leaving the job for market mechanisms that control the course of economic growth and the path of development. However, annual program budgeting applied in some developed countries is a form of planning that links spending to the achievement of specific objectives. Second, developing countries that design medium and long-term development plans and issue them as laws do not necessarily enact binding legislations that map the processes of drafting, approving and implementing a plan. This approach works in particular in countries that have a well-established culture of citizenship and democratic governance, and where discipline and compliance with the law prevail. By contrast, the Palestinian development plan is drafted and then endorsed by the Council of Ministers without being referred to the Legislative Council (especially in the last few years) or issued as a law, e.g. as in the case with the general budget. The study argues that the absence of the legal framework makes it difficult to formulate and implement development plans. Though enacting a planning law does not, *per se*, guarantee implementation of the plan, as we noticed in some of the reviewed case-studies, such a law still provides a useful and necessary tool and a roadmap that lend greater credibility to the process of crafting and implementing development plans. Though having recourse to such a legislation in central planning is debatable, it should be less controversial when we consider decentralized regional planning where multiple players are involved in the production and implementation of the plan and where there might be overlap of powers and responsibilities.

Lessons learned

The study examined models from four countries with laws governing planning and found that all these countries have a system of two bodies of planning: a supervisory body and an executive body. In the Palestinian case, by contrast, there is only one body (the Ministry of Planning) with no regulatory framework that defines supervisory and executive roles. It is noteworthy here to draw the reader's attention to the fact that the cabinet cannot act as a supervisory body (that should always involve broad national representation, including the private sector, the civil sector and

representatives of the different regions). In examining the best approach that constitutes the basis for the formulation of a law that governs the planning process, the study found that the most widespread approach is the decentralized regional development planning approach. From among many countries that adopted this model, the study reviewed only twelve countries. While the study recommends embracing this most promising approach and shows the opportunities it provides, it however cautions against its complexity and the risk of applying it without adequate preparation. Thus, the legal framework for planning in Palestine should involve mechanisms that can be sustained until the situation becomes ripe for applying decentralized regional planning. This must be accompanied with the necessary political will, which is not generated simply through the issuance of a law, but through a sober assessment of the country's needs and a determination to achieve its developmental goals. This, again, should be associated with a comprehensive educational process that produces a community with lofty aspirations; one that is capable of self-organization (through active and effective civil society organizations), and that aligns its performance with the supreme national interest without hesitating to tackle change where needed. The transition from the current national central development planning approach to the decentralized regional development planning approach should be gradual, going through two intermediate stages of centralized national/regional planning, and centralized regional planning, depending in the transitional period on temporary *ad hoc* agencies.

The legal framework

The envisioned legal framework proposes extending the powers of the planning institution to enable it to assume its essential role of leading the process of drawing up the development plan and supervising its national and local implementation by the various ministries and agencies. For this purpose, the planning institution must enjoy powers beyond those of the ministries and ministers. It should also have the power to intervene in the preparation of the development budget and the allocation of financial resources. Therefore, the executive arm of the planning institution should not be a ministry, but a commission that is directly supervised by a state institution, e.g. National Council for Development Planning, that provides it with the necessary political, moral and financial support. The planning institution is to be entrusted with adequate, though not excessive, powers that ensure the successful preparation of the development plan. It should not interfere in the work of the ministries and other agencies, however, it should have the authority to ensure that these public institutions carry their charges as required and in accordance with the set timeframe. The

framework for the law that governs the planning institution incorporates the majority of the elements necessary for drafting the law, such as its goal and objectives; the principles governing the planning institution; the powers and responsibilities of the supervising body (the National Council for Development Planning) and the executive body (the Commission); the tasks entrusted to the head of the executive body; and the structure of the executive body.

The framework for the law that governs the planning system, on the other hand, encompasses the goal and the objectives of the law; its scope; the development planning approach recommended by this study; the principles that govern development planning; the progression towards decentralization; suggestions for the make-up of the proposed regional development councils and their tasks; the procedure for adopting regional plans; the national framework for development planning and how it is adopted; and some regulations and by-laws that need to be issued under the law.

Conclusion

The legal framework proposed by this study is a general guideline that can inform the process of formulating the law by legal drafting experts, and it should be read in conjunction with the rest of the sections of this study, particularly the summaries of the case studies, as well as the previous studies conducted by MAS aimed at rationalizing public administration and planning. Few countries have developed legislations for planning, while several countries have tried to apply the decentralized regional development planning approach. There is plenty in those experiences that can be drawn upon and utilized when drafting the Palestinian planning law and the regulations issued pursuant thereto. Hence, our suggestion to shift from central national planning to central national/regional planning (i.e. national planning with a particular focus on the regions) to central regional planning (where the government plans for the individual regions) to decentralized regional planning (where the individual regions play a central role in planning their development, and ultimately the overall development of the nation) is a gradual model especially designed for Palestine and is governed by the special circumstances of the country. Since Palestine is currently under occupation, we still need some central guidance, even after the withdrawal of the occupation, in order to consolidate governance.

There is also the peculiarity of two regions (West Bank and Gaza Strip) being geographically separated. This requires a certain degree of

decentralization which must be approached with utmost care so as not to divide the country politically. It is particularly for this purpose that the study suggests dividing the country into four developmental regions (eventually becoming administrative regions, but not under the Israeli occupation) that receive equitable development initiatives. Finally, the stepwise model proposed by this study is a real challenge when it comes to implementation: its most demanding aspect being the allocation of financial resources and the delegation of financial powers. This challenge can, however, be overcome if we have the conviction to carry on with this undertaking, benefiting from the cited models that have been successfully applied in different countries worldwide