

Research papers

Author

Jeanne Perrier

Coordination

Stéphanie Leyronas

Palestinian water laws: Between centralization, decentralization, and rivalries

Agence française de développement

Papiers de recherche

Les *Papiers de Recherche de l'AFD* ont pour but de diffuser rapidement les résultats de travaux en cours. Ils s'adressent principalement aux chercheurs, aux étudiants et au monde académique. Ils couvrent l'ensemble des sujets de travail de l'AFD : analyse économique, théorie économique, analyse des politiques publiques, sciences de l'ingénieur, sociologie, géographie et anthropologie. Une publication dans les Papiers de Recherche de l'AFD n'en exclut aucune autre.

Les opinions exprimées dans ce papier sont celles de son (ses) auteur(s) et ne reflètent pas nécessairement celles de l'AFD. Ce document est publié sous l'entière responsabilité de son (ses) auteur(s).

AFD Research Papers

AFD Research Papers are intended to rapidly disseminate findings of ongoing work and mainly target researchers, students and the wider academic community. They cover the full range of AFD work, including: economic analysis, economic theory, policy analysis, engineering sciences, sociology, geography and anthropology. AFD Research Papers and other publications are not mutually exclusive.

The opinions expressed in this paper are those of the author(s) and do not necessarily reflect the position of AFD. It is therefore published under the sole responsibility of its author(s).

**Palestinian water laws:
Between centralization,
decentralization, and rivalries**

Jeanne Perrier

UMR Art-Dev, Université Paul-Valéry (Montpellier, France)

Abstract

This article explores the process of reforming Palestinian water laws, in particular the last water law enacted in 2014. These legislative reforms are part of an international context of modernization of water laws, as well as a national Palestinian context of water management reform, which began in 2008. They reflect the key ideas formulated in the Dublin Statement of 1992.

The purpose of this article is to deconstruct the process of Palestinian water management reforms to understand the real power struggles at play. To achieve this, we will analyze the political and discursive context of the production of the Palestinian water law of 2014, which aims to establish a more democratic management of water resources, notably through a process of decentralizing the Palestinian Water Authority in favor of new actors, such as regional suppliers or even water user associations. However, this has failed, and this article shows how it ignored local hydropolitical constellations and power struggles between the different actors implicated in this water management.

The power that the Palestinian Water Authority has remains limited. It faces the challenges of the reality of legal pluralism, which in practice translates to the management of Palestinian water. The Israeli occupation

exacerbates these challenges. However, legislative tools such as the 2014 water law and recent regulations are paving the way for the gradual advancement of the pawns involved in the centralization of water resource management. The analysis of legislative documents, coupled with Palestinian strategies and internal dynamics, reveals these dynamics of centralization that threaten local water management practices.

Keywords

water law, irrigation, Israeli-Palestinian conflict, water governance, legal pluralism

Résumé

Cet article explore les processus de réformes des lois palestiniennes de l'eau, en particulier la dernière loi de l'eau promulguée en 2014. Ces réformes législatives s'inscrivent dans un contexte international de modernisation des lois de l'eau, et dans un contexte national palestinien d'une réforme de la gestion de l'eau entamée en 2008. Celles-ci reprennent les idées clés formulées dans les Principes de Dublin en 1992.

L'objectif de cet article est de déconstruire le processus de réformes de la gestion de l'eau palestinienne pour comprendre les véritables enjeux de pouvoir. Pour y parvenir, nous analyserons le contexte politique et discursif de production de la loi de l'eau palestinienne de 2014. Celle-ci a pour objectif de mettre en place une gestion plus démocratique des ressources en eau, notamment à travers un processus de décentralisation de l'Autorité palestinienne de l'eau vers de nouveaux acteurs, tels que les fournisseurs régionaux ou encore les

associations d'usagers de l'eau. Cependant sa mise en œuvre s'avère un échec. Cet article montre comment elle a ignoré les constellations hydropolitiques locales et les enjeux de pouvoir entre les différents acteurs de cette gestion de l'eau.

Le pouvoir de l'Autorité palestinienne de l'eau reste limité. Il se heurte à la réalité du pluralisme juridique, en pratique dans la gestion de l'eau palestinienne. L'occupation israélienne accentue ces difficultés. Cependant, les outils législatifs, tels que la loi de l'eau de 2014 et les récentes réglementations, permettent d'avancer petit à petit les pions d'une centralisation de la gestion des ressources en eau. L'analyse des documents législatifs couplés aux stratégies palestiniennes et aux dynamiques internes nous permet de révéler ces dynamiques de centralisation qui menacent les pratiques locales de la gestion de l'eau.

Mots-clés

loi de l'eau, irrigation, conflit israélo-palestinien, gouvernance de l'eau, pluralisme juridique

Acknowledgments

The author would like to thank AFD for its financial support in the framework of the "Governing the Paracommons of Palestinian Water" project, under which this work takes place, and Julie Trottier, who supervised this work.

JEL classification

D71, H82, O12, O13, O19, O35, Q15, Q24, Q25, Q28

Original version

French

Accepted

August 2020

Introduction

On the occasion of World Water Week in Stockholm in 2017, the Stockholm International Water Institute (SIWI) affirmed the importance of governance issues in the water sector through the following slogan: “*the water crisis is a crisis of governance*”, picking up the injunction that had already been formulated back in 2000 by the Global Water Partnership at the World Water Forum. The issue of water governance¹ is at the heart of the concerns of States, international institutions, and donors, as they attempt to cope with a context of water resource scarcity. In the 1990’s, there was already talk of rethinking water governance at the international level through the implementation of neoliberal policies. These policies were intended to disengage States from some of their prerogatives by strengthening the participation of local private actors. Legislation has been an excellent means of reforming practices and forcing actors to respect this new normative governance framework. The Palestinian territories experienced a first cycle of water governance reforms in the late 1990’s, which led to the first water law of 2002, then a second cycle of reforms as of 2008, which led to the second water law of 2014². These laws have changed the institutional landscape of the water sector, as well as the power relations between the different actors in this sector. They are also part of a sociopolitical context that influences the reception and application of

these discourses and new modalities of governance. This article deconstructs the process of reforming Palestinian water management to understand the real power struggles.

First, we will analyze the attempts to (re)build state control over water resources in the Palestinian territories. To do this, we will explore the context of water governance discourse production, the basis of Palestinian water law reforms. We will analyze how the 2014 water law was constructed from international discourse that was rejected at the local level and how, despite its national scale, it differs little from the previous law of 2002.

We will then study the reasons for the failure of the 2014 water law. Just like that of 2002, its implementation faces a set of challenges. The first has to do with local, complex, and socially and politically anchored hydropolitical constellations. The second has to do with the Israeli occupation. Finally, any internal organizational change in the Palestinian Authority (PA) comes up against internal rivalries. In that sense, the 2014 water law, similarly to that of 2002, ignores the powerful dynamics at work and is valid only on paper. These legislative tools nevertheless make it possible, little by little, to advance the pawns involved in the centralization of water resource management.

¹ The concept of “governance” is of a polysemous nature. The World Bank and the Global Water Partnership have adopted a managerial definition of governance that is depoliticized and focused on strengthening institutional capacities as well as the participation of private actors. This article breaks away from these normative definitions and instead uses this concept as an analytical tool. We mobilize the FAO’s definition of governance as the sets of rules, organizations, and processes, formal or informal, through which different actors express their interests, prioritize issues, make decisions, and implement these decisions that tackle water resources (Hodgson, 2016, 50).

² We adopt the term “law”, used by the PA and donors, to define the 2014 text. However, the Palestinian water “law” of 2014 is in fact a presidential decree which has the power of law, according to Article 43 of the Palestinian Basic Law of 2003. There has never been a vote in the Palestinian Legislative Council to approve and enact this text. The latter, dominated by Hamas, has not met since July 5, 2007, allowing the PA President to issue decrees having the power of law so as not to constrain Palestinian legislative development.

I – An attempt to build state control over water resources

The Palestinian water law of 2002 constitutes a first attempt to build state control over water resources. After the failure of the first, the 2014 water law constitutes an attempt to rebuild PA control over resources, but largely repeats the content of the 2002 law, contrary to the reform rhetoric promoted by the Palestinian Water Authority (PWA) starting 2008–2009. The formulation of these two laws is part of a hegemonic vision of resource management promoted by the Dublin Statement. These texts, which are characterized as modern, confirm the vision of water as an economic good. In addition, neoliberal policies do not challenge the nationalization of the control of water resources, which are considered public property. Finally, the Israeli-Palestinian conflict encourages the construction of state control over water resources, mirroring Israeli management.

1.1. The establishment of neoliberal water resource management

In order to understand the formulation of the 2014 Palestinian water law, it is essential to review the conceptual framework that surrounds this legislative process. A law substantially reproduces the creation of a particular ontology. It reflects the hegemonic discourse by defining how water resources are to be perceived and managed. The Dublin Principles set out during the International Conference on Water and the Environment in 1992 constitute the pillars of modern water laws. Before analyzing them, it is important to examine the context that influenced their formulation.

The Dublin Principles are structured around four principles whose objective is the improved management of water resources to satisfy the criteria of sustainable development. Sustainable development can be defined as a development concept that brings together economic (resource use efficiency), social (quality of life), and environmental (pollution, protection of ecosystems) considerations. In order to achieve it, governments must engage in water resource management programs guided by the four principles of the Statement:

- 1) fresh water is a finite and vulnerable resource, essential to sustain life, development, and the environment;
- 2) water development and management should be based on a participatory approach, involving users, planners, and policy-makers at all levels;
- 3) women play a central part in the provision, management and safeguarding of water³;
- 4) water has an economic value in all its competing uses and should be recognized as an economic good.

³ At the time, the conference included an 11% participation of women, be they representatives of a government, an intergovernmental organization, a UN agency, or an NGO (56 out of 500 representatives). The President and the six Vice-Presidents of the Conference were men, and they were in charge of the various working groups. Only the rapporteur was a woman (the representative of Panama).

These four principles contribute to the advent of the neoliberal model of water resource management, which has been introduced gradually since the late 1970's.

The Dublin Conference report justifies the necessary upheavals in water resource management on the basis of water scarcity. Authors analyze how the political uses of the discourse on water scarcity (Postel, 1984; Trottier, 2008) thus make it possible to justify the commodification of water, which will be largely integrated into modern water laws.

The Dublin Statement also places participatory approaches at the heart of resource management through its principles 2 and 3. This positioning is intended to rectify the failures of the developmentalist state model. In its 1993 report, the World Bank criticizes the over-centralized management of water resources and analyzes the economic crisis of the 1980's as a sign of governmental institutional deficiencies (World Bank, 1993, 100). The proposed solution is therefore to integrate private sector actors, users and communities, who are supposed to ensure the efficient use of water resources because they are directly concerned with the economic benefits to be derived from these new practices. The concept of Integrated Water Resources Management (IWRM), which also became hegemonic in the 1990's, contributes to the expansion of the circle of actors beyond state institutions: *"Integrated water resources development and management therefore should be delegated to those lowest appropriate levels which would ensure the representation of those concerned or affected and integration of sectoral demands."* ("The Dublin Statement and Report of the Conference", 1992, 15). The 1990's thus witnessed the emergence of many calls for decentralized management, supported by donors, to meet the new objectives of water resource governance.

1.1.1. The homogenization of water laws following the Dublin Statement

Recourse to the law appears to be an effective means of achieving the objectives of decentralization and holistic governance. Ever since 1992, legislative frameworks reveal particular political water ontologies that are directly inspired by the four pillars set out in Dublin. These pillars have thus contributed to a certain homogenization of water laws (Burchi, 2012), the main characteristics of which we will examine.

Government representatives at the Dublin Statement agree on a "holistic"⁴ approach, as opposed to fragmented management. This model of water resource governance plans to take into account all water uses, human and environmental, as well as water quality. Such a holistic approach allows power to be transferred to decentralized institutions (basin agencies, water user associations) and to private actors, all while retaining a national governmental authority capable of overseeing this governance model. This centralization is justified through five mechanisms: 1) the ownership regime applied to water resources; 2)

⁴ Holistic is defined as: *"This includes not only the need to look at the whole water cycle (including the distribution of rainfall, the conservation of sources, the systems of supply and waste-water treatment, and the interaction with the natural environment and land use), but also the inter-sectoral needs. It must also include an ecological approach, respect existing ecosystems and consider issues across the whole of a river basin or a groundwater aquifer and also consider the interrelation with other natural resources."* ("The Dublin Statement and Report of the Conference", 1992, 13).

the consecration of IWRM; 3) the legitimization of fees on uses and levies; 4) the rhetoric around the protection of the environment; and 5) the very use of the law for the management of the resource.

The ownership regime for water resources defined by a country's law reveals how central power defines water and human-water interactions. Gupta and Dellapenna (2009) describe the different highlights in the evolution of water ownership regimes and demonstrate that there is no linear evolution but rather a back and forth between different ownership regimes. The first Mesopotamian civilizations established a common property regime that was governed by local laws. The first religions did not deviate very much from this conception of water. Gupta and Dellapenna (2009, 401) then note an appropriation of water resources by the different empires during periods of conquest and colonization. Afterwards, waves of nationalization participated in the state's stranglehold on water resources, before neoliberal reforms once again instituted common and private ownership of water resources (Gupta and Dellapenna, 2009, 401). Each period reveals a more or less total appropriation of water resources, facilitated by the different political and social contexts of each. In practice, there is a sedimentation of ownership regimes, a multitude of water ontologies. In theory, the dominant ontology is that of the state that owns water resources, rendering others invisible.

The consecration of IWRM, as a management model for example, is reflected in a particular institutional framework in contemporary legislation, combining the dynamics of both concentration and decentralization. This is an ideal governance model to manage the natural order established by IWRM. Although the naturalization of the basin-based approach is increasingly contested today (Venot et al., 2011; Trottier, 2012; Giordano and Shah, 2014), it remains anchored in legislation and in the aid policies of development banks. On one hand, the state asserts itself as general supervisor, and on the other hand, it relies on new decentralized institutions to manage resources at a local level and to contribute to a process of democratization. This multi-scale governance translates into two legal provisions in modern water laws: 1) the state owns the water resources; 2) the law provides for the formation of user groups or regulatory agencies at different levels. These provisions exist in the case of Palestine, but also in other developing and developed countries (Burchi, 2012, 614).

The principle that water must be recognized as an economic good is reflected in two legal provisions: 1) users must pay for the use of water; 2) water rights can be traded in a market. The first provision is based on the "user pays" principle and is found in most modern water laws. This does not only concern paying for domestic water supply, but also paying for the use of well water for commercial purposes. The 2014 Palestinian water law contains these two provisions in Articles 5 and 31. These fees are legitimized by the public ownership regime applied to water resources: *"Article 31: In accordance with the provisions of this law, taking into consideration the designation of water as a public property, the Authority shall prepare the following regulations and submit them to the Cabinet of Ministers for issuance : A- Fees per water quantity licensed for extraction from all wells or exploitation from springs."* (Palestinian Water Authority, 2014). These fee mechanisms must make it possible to achieve efficient allocation and use of water resources, thus echoing the argument developed in the Dublin Statement.

Modern laws increasingly incorporate provisions to protect the environment and combat the pollution of water resources. Burchi calls this phenomenon “*the greening of the legislation*” (Burchi, 2012, 617). Environmental concerns in water resource management appeared as early as the 1970’s, partly in response to the devastating consequences of large hydraulic projects on the environment, but also in response to the imperatives of sustainable development. Postel (1984) notes a difference between developed countries that are becoming increasingly attentive to the protection of the environment and the conservation of water resources on one hand, and developing countries in full growth on the other. The very title of the Dublin Conference in 1992, the *International Conference on Water and the Environment* (ICWE), shows the interest accorded to environmental conservation and links with water resources. The objective of this conference is to promote an integrated governance of water resources, defined as an “*integrated spectrum of human and environmental uses and needs*” (“The Dublin Statement and Report of the Conference”, 1992, 12). Burchi (2012) argues that the mechanisms for allocating and prioritizing the uses of water resources attest to the greening of water laws. Environmental protection discourses have made it possible to legitimize the implementation of these allocation criteria, thus strengthening the power of the state in the allocation, modification, or revocation of water rights and drilling permits.

Finally, the very use of formal law promotes a state vision. The law is often portrayed as a modernization tool for developing countries (Merry, 1988). Legal literature has long supported the ideology of legal centralism, assuming that the “*law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions.*” (Griffiths, 1986, 3). Griffiths is at the origin of reflections on legal pluralism, denouncing this legal centralism which makes other forms of law invisible. This doctrine of legal centralism posits the state as the sole legislator and recognizes only the legitimacy of state law. Trottier (2004) demonstrates that theories on water wars or water as an instrument of peace have helped to hegemonize the idea that control over water is a national interest. Moreover, this conception is reinforced by public international law which only considers the state perspective (Hodgson, 2004, 38-41).

1.1.2. The Israeli-Palestinian conflict: a context conducive to the development of state water

The links between control of water resources and nation-state building have been the subject of much research. Control over water resources allows a state to influence the management of certain key sectors of the economy, including agriculture. It also allows it to delegitimize certain local actors, under the pretext of economies of scale, transparency, and efficiency. Several authors have studied this water-state relationship and the importance of the water sector in state building processes (Alatout, 2009; Harris et al., 2010; Swyngedouw, 2004; Trottier, 1999). The Palestinian territories prove to be an ideal case study for this questioning: water is indeed a cornerstone of negotiations between the Israeli and Palestinian authorities.

Building a Palestinian state has been on the international agenda officially since the Oslo Accords and goes hand in hand with the building of peace in the region. However, the

construction of a Palestinian state requires, among other things, the control of these water resources. Harris and Alatout (2010) demonstrate that control over water is an important argument for nation-building processes in Turkey and Israel. In addition, the Israeli water law of 1959, set up as a model of modern law, allowed the nationalization of water resources. It was formulated in a particular political and social context, when a large part of the local Palestinian population had fled or been expelled from Mandatory Palestine in 1948, taking with it its water management customs (Trottier, 1999). This national conception of water legislation strongly influenced the shape of the water negotiations in the Oslo Accords of 1995.

Article 40 of Annex 3 of the 1995 Israeli-Palestinian Interim Agreement allocates additional quantities of water to meet the domestic water needs of Palestinians in the West Bank and details the Israeli and Palestinian commitments necessary to provide this additional amount of water. Annex 10 of this Article specifies the quantities allocated to each part, according to the aquifers. Table 1 summarizes this distribution.

Table 1. Distribution of water quantities (in millions of cubic meters) between Israel and the PA

	Palestinian Authority	Israel
Eastern Aquifer	54 (24 from wells and 30 from sources) + 78 to be developed	40
Western Aquifer	22 (2 of which come from sources near Nablus)	340
Northern Aquifer	42 (25 for the Jenin region and 17 for the East Nablus region)	103

Source: according to Annex 3, Article 40, Schedule 10 of the 1995 Israeli-Palestinian Interim Agreement

The division of the water “stock” into two parts contributes to the development of a nationalist vision of water resources (Brooks and Trottier, 2010). Such a perception of water places the PA as sovereign over these quantities of water, mirroring the Israeli situation.

1.2. The Palestinian water law: another attempt at devolution of powers

The new water law was enacted in 2014 and is part of a national program of institutional reform. Unlike the previous water law, donors had a rather limited role in even writing the new law. However, it reiterates the hegemonic discourse on the management of water resources promoted by development actors. Despite the reform rhetoric promoted by the PA, the PWA, and the donors, the arguments deployed in 2010 to justify a new water law largely echo those deployed in the 1990’s that led to the first reform of 2002.

1.2.1. The motivations for a new water law

The reform of the water sector is part of a larger national reform program put in place in 2007, the *Palestinian Reform and Development Plan*, and developed in 2009 under the name “Fayyad Plan”. The reform of the water sector began in 2008 and is funded by the Swedish International Development Agency (SIDA), the French Development Agency (AFD), and the World Bank (Fustec, 2014a, 167). A few authors have studied the neoliberal discourse underlying these reforms as well as its implications on the Palestinian economy and state-building processes (Khalidi and Samour, 2011; Salingue, 2013; Haddad, 2016). Others have analyzed how these reforms have translated into the water and environmental sector, in addition to analyzing the discourses relating to the new management of Palestinian water (Fustec, 2014b; Signoles, 2010b).

S. Attili, Minister of Water and Head of the PWA since 2008, commissions a review of the water sector from Norway and the World Bank. His objective is twofold: 1) to put pressure on Israel through the reports of international donors, and 2) to reform the institutional functioning of the PWA within the neoliberal framework imposed by the Fayyad Plan. He also aims to marginalize the role of donors in the development of the new water law⁵. The 2014 law is thus based on an internal process and is published in Arabic before being translated into English, contrary to the 2002 law. Nevertheless, it is largely supported and financed by donors and is part of a political framework strongly influenced by foreign actors (states, international organizations, donors) promoting the Dublin principles.

The reform process put in place has the clear objective of laying the foundations for an independent Palestinian state. The Fayyad Plan thus establishes the principle of “good governance” as both an objective and a tool:

« Achieving our national goals depends on the adoption of the basic principles and practices of good governance throughout the public sector, the private sector and civil society. In the light of the occupation regime’s continued measures that hamper the efficiency and effectiveness of our national institutions, the establishment and promotion of good governance in the occupied territory is elevated to the status of a national goal in and of itself. The basic aim is to meet the demand of our people for transparent, accountable institutions » (Palestinian Authority, 2009).

For Khalidi and Samour (2011, 9), these good governance practices consist of four interdependent elements: 1) the rule of law; 2) the establishment of responsible institutions; 3) the efficiency of service delivery; and 4) private sector development. In its 1999 report, the World Bank already singles out the PA for its mismanagement of public accounts, a fundamental criterion of “good governance”, and proposes an institutional rearrangement of the PWA to put an end to management fragmentation, which is considered to be the cause of poor water supply and distribution services (World Bank 1999, 18, 52). “Good governance” must put an end to the problems of corruption within the PA (Bouillon, 2004; Le

⁵ Interview conducted in Ramallah on November 9th 2016.

More, 2008; Salingue, 2013b), problems that are denounced by donors, in particular the World Bank: “*there is a need for more presence, more transparency, more empowering water dialogue*” (World Bank 2009, 58).

In its national strategy for 2012–2032, the PWA includes “good governance” as a strategic objective, the success indicators of which are: the promulgation and implementation of the new water law of 2014, the establishment and the development of new institutions provided for by law, and the implementation of IWRM practices (Palestinian Water Authority, 2013, 54). The Fayyad Plan, the World Bank (2009), and the PWA (2011) also agree on the importance of a capacity-building strategy to build strong institutions. The 2014 water law is above all a law on the governance of water institutions. The PWA posted this objective as far back as 2011: “*The reform covers the following elements : institutional, legal, legislative and administrative performance.*” (Palestinian Water Authority, 2011, 17).

The main criticisms against water institutions relate to the excessive fragmentation of Palestinian water governance and the multiplicity of actors intervening in water management: the PWA, Mekorot⁶, municipalities, Joint Service Councils (JSC)⁷, village councils, autonomous providers. The PWA and the World Bank consider this fragmentation to be a major obstacle to the “good governance” of water resources (World Bank, 2009, 59; Palestinian Water Authority, 2013, 103; Global Water Partnership, 2015, 14; World Bank, 2018, 7). The objective of the 2002 law was already to centralize water management in the hands of the PWA, not only through the nationalization of resources but also through the establishment of a National Water Council responsible for the development of the national water policy (Signoles, 2010b). This first wave of centralization was justified by the goal of state-building established by the Oslo Accords from which the PWA emerged. It was also supported by the World Bank, which considered state intervention necessary in the water sector, especially in the Palestinian case where political and economic instability does not encourage private sector participation (Signoles 2010b, 132–33). The 2002 law was nevertheless to counterbalance this dynamic of centralization by decentralizing supply and distribution services to the hands of regional suppliers and possible water user associations (WUA’s), whose status remained unclear. Decentralization was part of the management policies actively supported by the World Bank in order to relieve public finances and improve the efficiency of supply services through their privatization (World Bank, 1993). The institutional arrangements provided for by the law of 2002 to concretize this decentralization have never seen the light of day, with the exception of Decree 38, prior to the promulgation of the 2002 water law, which established the WUA of Ein Sultan and affiliated it to the PWA (Trottier, 1999). The reform started in 2010 uses this same argument: “*The PWA organigram suggests that the organization is spread too thinly, and is over-centralized.*” (World Bank, 2009, 57).

⁶ Mekorot is Israel’s national water company.

⁷ Joint Service Councils are one of the local institutions responsible for water supply, especially in rural areas, and each committee groups several villages together.

In a neoliberal logic, the 2010 reform of the water sector explicitly encourages the participation of the private sector in water management through public-private partnerships. Opening up to the private sector should make it possible to put an end to the financial difficulties of water suppliers and to improve the efficiency and performance of distribution systems (Palestinian Water Authority, 2013). The 2002 law provided for the establishment of regional suppliers, without explicitly mentioning the involvement of the private sector. However, the various regional suppliers created at the end of the 1990's (Gaza) and at the beginning of the 2000's (Hebron, Bethlehem) were born out of contracts concluded between public and private actors. Signoles (2010b, 133) describes the development of these new regional suppliers as the concretization of the water management privatization policies promoted by the World Bank and adopted by the PA. Unlike the 2002 water law, the new 2014 law makes it clear that it is the responsibility of the PWA to encourage private sector participation:

“[the Authority shall] Cooperate with the relevant authorities in creating a climate that is stable and conducive to investments with the aim of encouraging private sector investment in the water sector, and implement required institutional, regulatory and economic reforms to encourage partnership with the private sector in accordance with a regulation issued for that purpose.” (Article 8, paragraph 16, Water Law 2014)

The institutional organization dictated by the water law of 2014 must make it possible to establish a stable and efficient institutional environment in order to attract private sector investments, which will then guarantee the financial autonomy of regional water suppliers (Global Water Partnership, 2015; World Bank, 2018).

Finally, the reform of the water sector initiated in 2010 responds to a need identified by the World Bank (2009, 62) to establish better coordination between donors and the various departments of the PWA. The aim is to put an end to the proliferation of intervening parties between donors and the PWA and between donors and NGO's, due to institutional complexity. This lack of coordination is not only a technical problem but reveals local political issues that we will study in section 2.

1.2.2. Discursive and institutional changes on paper

The 2014 water law brings about discursive and institutional changes in water governance in the Palestinian territories. The discursive changes correspond to minor modifications but reposition the Palestinian water law within the international hegemonic water discourse.

First, the concept of IWRM appears in the text of the 2014 law itself. The 2002 law makes no mention of it. Article 1 of the 2014 Water Law, defining the various terms used in the rest of the text, includes at the beginning of the list the *“Integrated Water Resources Management”* concept. This is in fact a repeat of the definition given in 2002 under the *“Water Resources Management”* entry, to which was added that these resources must be managed in an integrated and sustainable manner. We find this addition in several other articles, where a simple reference to IWRM was added, compared to the formulation of 2002. Thus, Article 2 takes up the objectives set out in the law of 2002 (develop, manage resources, increase their

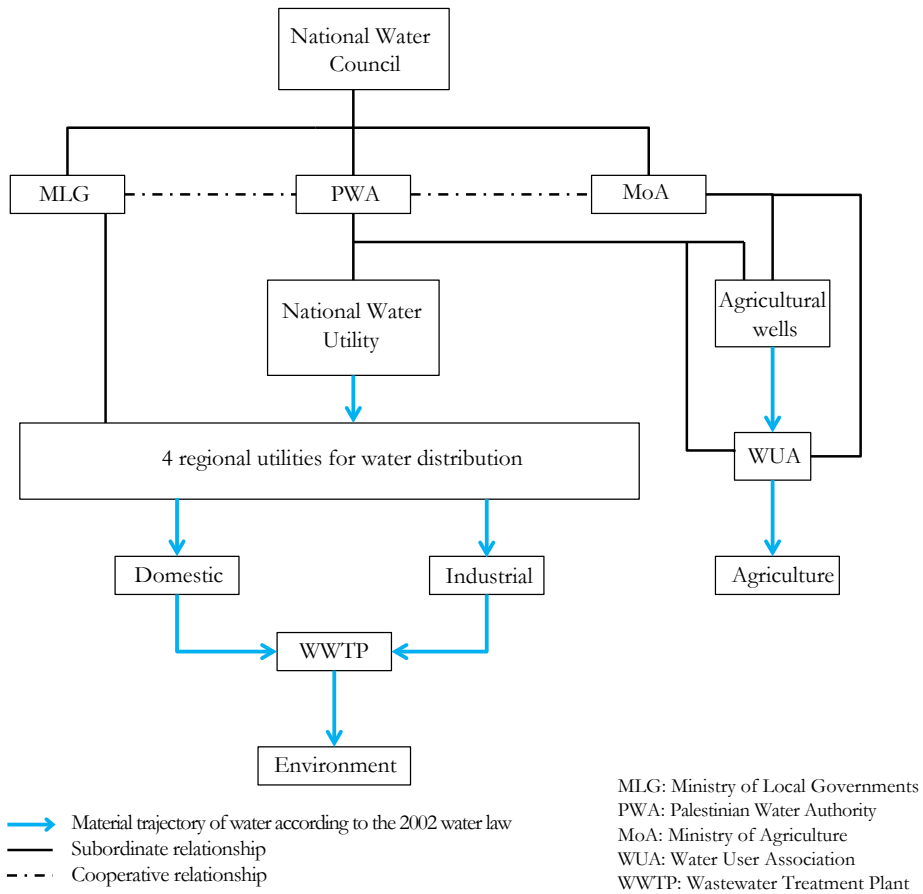
capacity, improve their quality, protect them from pollution and exhaustion) but adds that of improving the level of water services through the implementation of the principles of integrated and sustainable water resource management. Likewise, Article 8 concerning the responsibilities of the Authority, i.e. the PWA, specifies on three occasions that it must perform its functions within the framework of IWRM principles. It must manage water resources, prioritize uses and develop participation according to these principles. For each of these articles, the 2002 water law is used almost verbatim, but a reference to IWRM has been added. This confirms and strengthens the hegemony of the principles of IWRM in the management of water resources and the penetration of this concept into legislation (Gupta et Dellapenna, 2009; Burchi 2015).

The 2014 water law incorporates the issues of reuse of treated wastewater, unlike that of 2002. The concept of reuse is added and defined by Article 1 of the 2014 law. It is then repeated only in paragraph 18 of Article 8 on the responsibilities of the PWA: “*develop principles and frameworks of water demand management with the aim of improving the efficiency of water supply, usage, conservation, recycling and reuse*”. The reuse of wastewater seems to be linked to water conservation and efficiency improvement concerns, rather than to environmental conservation concerns.

It does not further integrate issues related to environmental protection, since Chapter 9 of the 2014 law on the protection of aquatic environments reproduces almost verbatim Chapter 8 on protection of the environment of the 2002 law. The articles in these two chapters are more concerned with protecting aquatic environments than with protecting the environment as a whole. The only new elements directly concerning the protection of the environment are found in Article 6 relating to the uses of water, and in Article 58 on the penalties provided for offenses committed concerning water resources. Article 6 of the new law of 2014 states that water resources can be used for the conservation of hydro dependent ecosystems and aquatic habitats. This usage is the last on the list but replaced the vague formulation used in 2002: “*any other public or private uses*”. Section 58 of the 2014 law added the dumping of sewage without a license to the list of offenses.

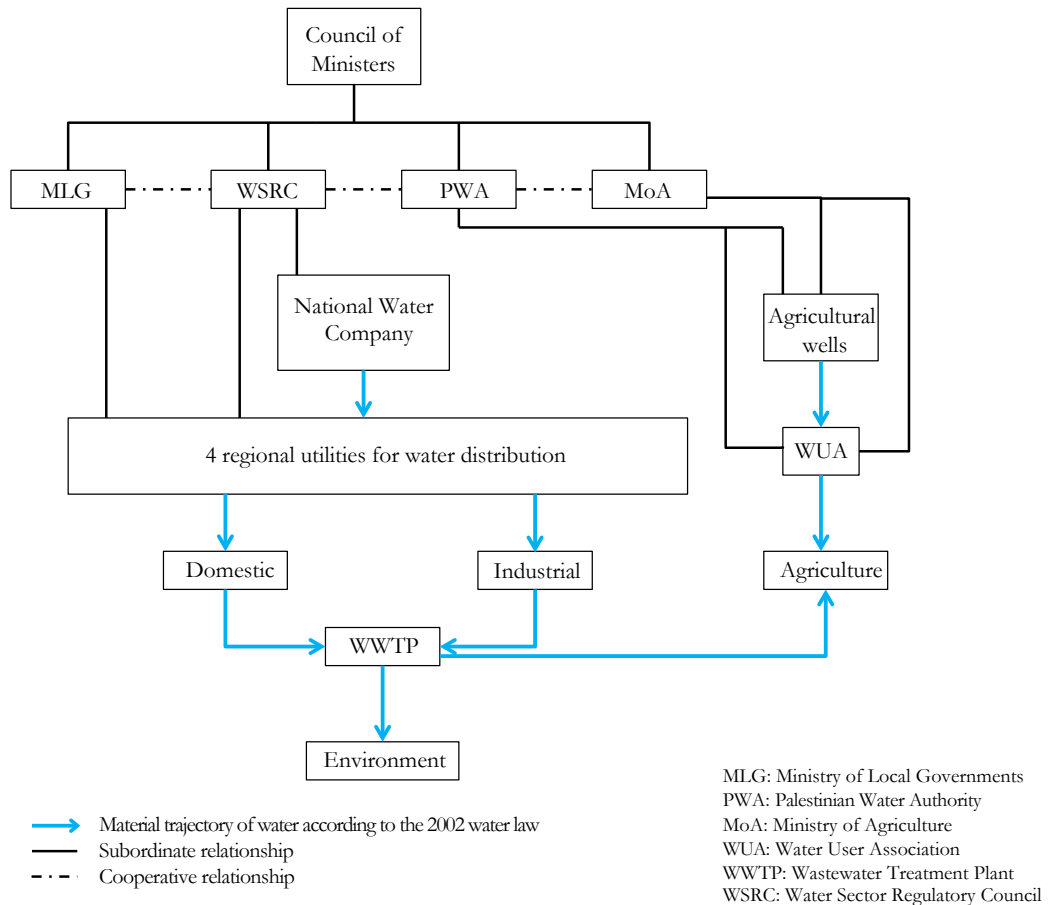
Some minor changes in the institutional organization appear between the water law of 2002 and that of 2014. Figures 1 and 2 illustrate these changes. First, between 2002 and 2014, the National Water Council disappeared. This body, created following the promulgation of the first law, was to bring together representatives of different ministries and institutions, but it was never effective (Signoles, 2010b; Global Water Partnership, 2015). It disappears completely in the 2014 law to make way for the Council of Ministers, already in place and effective, responsible for overseeing the various ministries, including the PWA. Second, the major change is the creation of the Water Sector Regulatory Council (WSRC), an independent regulator. Its role is to monitor all activities of service providers, including the production, transport, distribution, and management of wastewater (Palestinian Water Authority, 2014, Article 18). It is accountable to the Council of Ministers and not to the PWA.

Figure 1. Institutional organization provided for by the 2002 water law.



Source: Produced by Jeanne Perrier.

Figure 2. Institutional organization provided for by the 2014 water law.



Source: Produced by Jeanne Perrier.

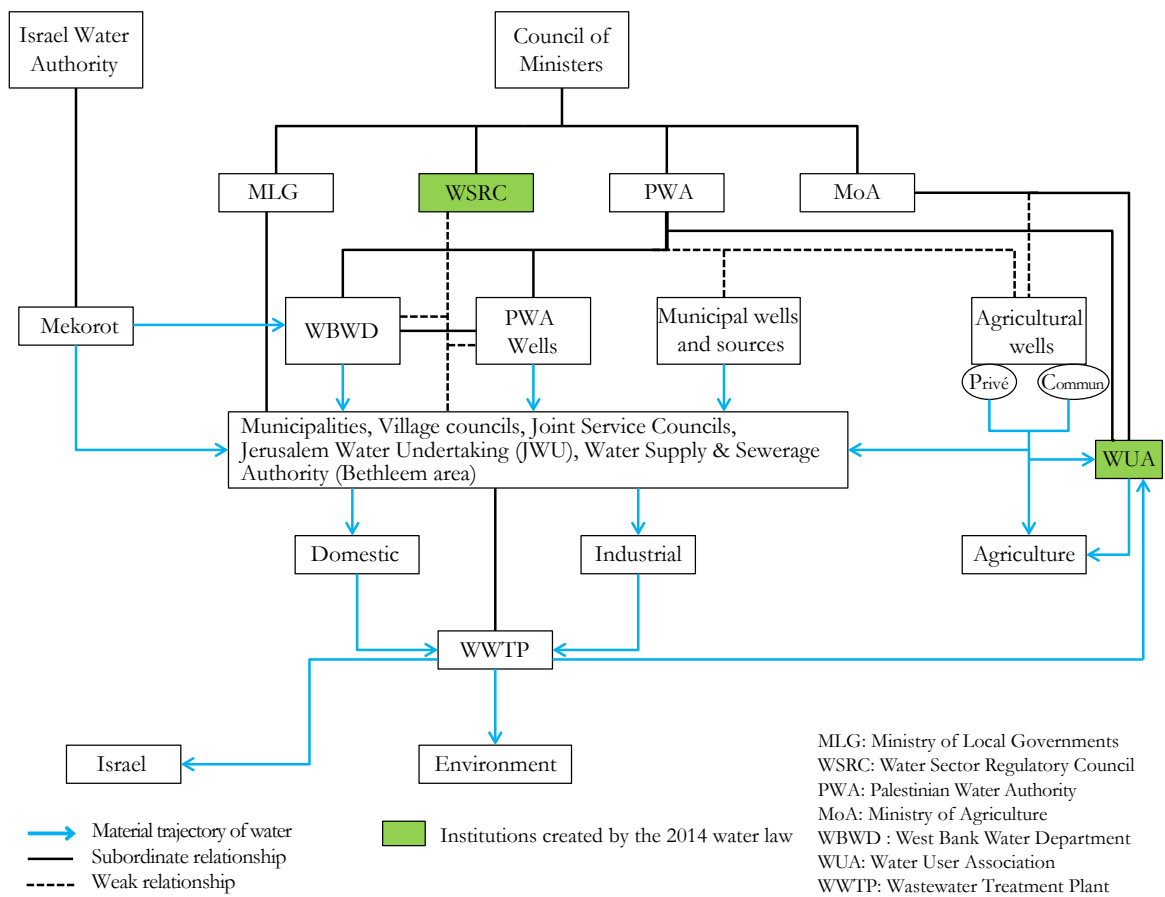
The other institutional actors provided for by the 2014 law, the National Water Company, regional suppliers, and water user associations, already appeared in the 2002 law. The National Water Company, the national supplier, replaces the National Water Utility provided for by the law of 2002. No difference appears between the two, except for the assigned name. Apart from the regional providers created in Gaza, Jerusalem, and Bethlehem even before the 2002 law, none of these institutions have actually seen the light of day.

The changes propose to turn the situation on the ground upside down. Figure 3 shows the current institutional organization of water resource management. This diagram illustrates the multiplicity of water stakeholders and the links between them. It illustrates the fragmentation of water supply services denounced by the World Bank (2018), which have never grouped together as regional suppliers. The two institutions in green were recently set up: the WSRC in 2014, and the regulation on WUA's in 2018. They are an integral part of the law of 2014, or even that of 2002 with regard to WUA's (Figures 1 and 2). The West Bank Water Department (WBWD)⁸ was to be replaced in the early 2000's by a national supplier, but it is

⁸ The WBWD is responsible for the extraction, quality control, and distribution of water to local suppliers. Signoles (2010b) recalls that the WBWD was created in Jordanian times before Israel took control in 1967. She also specifies

still active despite its high debt. Each year, the WBWD accumulates approximately \$70 million in debt to Mekorot, which Israel then withdraws from the PA customs revenues it controls (World Bank, 2018, 5, 12). Municipalities, villages, JSC's, and other service providers still source their supplies from different sources: Mekorot, PWA wells, WBWD, municipalities, and even agricultural wells. Unlike the other two diagrams, Figure 3 shows the Israeli institutional actors. In 2016, Israel's national water company Mekorot supplied 59% of the total amount of domestic water supplied to the West Bank (World Bank, 2018). However, neither of the law of 2002 nor that of 2014 mentions this problem.

Figure 3. Institutional organization observed in the field.



Source: Produced by Jeanne Perrier.

that since 2009, the PA has gained some control over this organization, but the hydraulic infrastructures have remained the property of Israel.

This first section of this article allowed us to analyze the international and local context in which the 2014 water law fits. It is in perfect harmony with the principles of IWRM, a hegemonic concept of water resource management resulting from the Dublin Statement. It is in fact a continuum of the institutional organization provided for by the law of 2002—one which has never been applied. In the following section, we focus on the power dynamics between these actors to explain the difficulties in implementing the 2014 law and to step outside of the technical and normative discourse of “bad governance” invoked by the reform actors.

II – Water legislation ignoring institutional and local power dynamics

It is impossible to reduce the management of water resources in the West Bank to the Oslo Accords and successive national water laws. The latter help to make local actors in the management of water resources invisible, and they also conceal their strategies and the power dynamics that bind them together. The complexity of the implementation of successive water laws is explained (1) by a social and political anchoring of local institutions fueling a water management legal pluralism that is effective but ignored, and (2) by power asymmetries with Israel and rivalries within the PA itself.

2.1. A complex local “hydropolitical constellation”, socially and politically anchored

To understand legal pluralism regarding water resources, it is necessary to understand the local political organization of the area in question. Why is water management so fragmented in the West Bank? How is it organized on a daily basis? Local political fragmentation is inherited from the relative autonomy of the Palestinian regions during the Ottoman period. External national movements, including the Palestine Liberation Organization (PLO), then internal movements, such as the PA, are part of an institutional landscape made up of several historically anchored social structures: family structures (tribes, clans, notable families) and local administrative structures (municipalities, village councils) which sometimes overlap. The creation of a national central power upsets the local political spectrum and produces new alliances between the various local centrifugal forces and the new central political apparatus (Picaudou, 1984; Brynen, 1995; Legrain, 1996; Trottier, 1999; Signoles, 2010b; Robinson, 1997; Salingue, 2013a). Analyzing the local hydropolitical constellation makes it possible to go beyond the vision of the elites, mostly urban, and examine the rural institutions of water management.

The state legislative framework overlaps with, and in some cases opposes, a hodgepodge of local customary norms and practices. Attempts to nationalize water resources threaten local management systems, especially with regard to agricultural practices. In the same way, the latter weaken the central authorities. Since the 1990's, several authors have been interested in legal pluralism regarding water (Benda-Beckmann, Benda-Beckmann et Spiertz, 1997; Guillet, 1998; Spiertz, 2000; Trottier, 2000; Boelens et Doornbos, 2001; Molle, 2004; Hodgson, 2006; Roth, Boelens et Zwarteveen, 2015). The recognition of local rights in modern water laws remains timid and clumsy, even non-existent, such as in the 2014 water law. To illustrate our point, we study the region of Nablus, often cited as an example of the independence of local authorities in the West Bank, a position inherited from the Ottoman period.

Municipalities retain an important role in the management of water resources, especially when it comes to domestic use. Large municipalities, such as that of Nablus, often even constitute a counter-power for surrounding villages vis-à-vis the PA and dominant powers. This position towards the central power and rural peripheries is inherited from the Ottoman period and explains the fragmentation of political power when it comes to water resource management in the Palestinian territories.

Abundant literature exists on the power relations between Palestinian local institutions and central power. Picaudou (1984) analyzes the emergence of new elites that were formed in exile as of the 1950's by political socialization movements that gradually led to the formation of the PLO. Brynen (1995) demonstrates the heterogeneity of the Palestinian elites and their cooptation or marginalization first by Jordan, then Israel. Legrain (1996), through the study of the 1996 elections, shows how the PA conducted a "policy of notables" in order to stabilize its power. Robinson (2009) confirms the importance of family structures in the Palestinian political spectrum and the instability of alliances between these institutions and central power, which threatens state-building. Signoles (2010a, 2010b) is interested in municipalities as a place of power contested by local actors (especially notable families) and national actors (successively Jordan, Israel, and the PA). Salingue (2013a) explains how the PA oscillates between strategies of "institutionalization of tribes" and "tribalization of institutions" in an attempt to preserve its central power. All agree on the importance of local social structures and the complexity of their evolutions. All of them deconstruct the classic PA/local authority and traditional elite/modern elite dichotomies. We are mobilizing this work to explore the entanglement of power strategies in the Nablus region with regard to water and agriculture⁹.

The city and region of Nablus, where commercial activity guarantees a degree of autonomy, have a long history of opposition to central power. Doumani (1995) explores the relationships between different actors in the Nablus region (peasants, traders, notable families), as well as relationships with the central Ottoman power. Through archive analysis, he demonstrates how Nablus developed its reputation as a region that is "hard to control"¹⁰. Different elements explain this difficulty: Palestine¹¹ serves as a buffer zone for the Ottoman Empire to contain Bedouin migrations from the south and therefore constitutes a peripheral territory; no Palestinian city has the commercial and demographic importance of Cairo or Damascus, which explains the relative disinterest of the Empire¹². In addition, the attempts at central power control via punitive expeditions in the mid-17th century had the opposite effect than what was expected: the expedition leaders sent by the central power ended up accumulating land in the Nablus region and building up their local power base there,

⁹ We continue the analysis of Palestinian hydropolitical constellations undertaken by Trottier (1999).

¹⁰ Doumani (1995) cites an excerpt from the account of John Mills, who resided in Nablus around 1860: "No district in Syria has been more turbulent and less manageable to the Turkish government, than that of Nablus and the surrounding villages."

¹¹ We use here the territorial name used by Doumani in his work, which corresponds to the territories of Palestine under British mandate. Indeed, Doumani specifies that there was no territory or administrative unit called Palestine at that time.

¹² Relative because Palestine is on the trade route between Egypt and the rest of the Ottoman Empire.

abandoning their military role with the Ottoman powers¹³. Thus, the region of Nablus takes advantage of this marginalization by refusing to pay the taxes of the Ottoman Empire, and by refusing to send soldiers to defend the Empire during the French invasion of 1799. The Nablus governors' enthusiasm for territorial expansion was stopped in spite of everything on two occasions: Acre besieged Nablus between 1771 and 1773, then the Egyptian army crushed the Nablusian revolt at the end of the 1830's and installed the rule of the Abd Al Hadi clan.

In his analysis of the Palestinian political and economic elites of the 1990's, Bouillon (2004) studies the tensions between the Nabulsi commercial elite and the PLO and then the PA. He describes Nablus as one of the centers of opposition to the PA (Bouillon 2004, 119). He explains that some large families in Nablus strongly opposed the PA for fear of losing their commercial power, while others (including the Al Masri family) integrated the economic institutions of the PA at the end of the 1990's. During the Oslo period, the PA chose to co-opt the most powerful clan structures and notable families in order to avoid the checks and balances of these centrifugal forces (Robinson, 2009; Salingue, 2013). We can thus observe a historical stability of an indirect mode of governance thanks to a co-optation of local elites by the central power.

The central Ottoman power had already adopted this strategy of co-opting the new Nabulsi elites in the mid-19th century, relying on the Nablus Advisory Council as a tool for centralizing power. This local institution was established by the Egyptian authorities during their occupation of Palestine between 1831 and 1840 to centralize power (Doumani, 1995). Before the Egyptian invasion, the Ottoman Empire relied on the rural elite, while after the Egyptian invasion, it marginalized them for the benefit of the urban elite by reserving for the latter the top posts of the regional administration (Doumani, 1995). The British and then Jordanian authorities also co-opted these local elites to govern and maintain regional fragmentation, a source of intra-Palestinian rivalries (Picaudou, 1984; Brynen, 1995).

Finally, the Israeli authorities pursued this cooptation strategy by appointing certain rural notables at the head of Palestinian municipalities to replace the "nationalist" mayors elected in the municipal elections of 1976 who had been dismissed from office by Israel¹⁴ (Signoles, 2005). Thus, the PA is reproducing methods of government similar to that adopted by the previous occupying powers, drawing on both the old local elites and the new nationalist elites. These dynamics are found in the management of water resources.

¹³ Doumani (1995) explains that the three main families of expedition leaders sent to northern Palestine in 1657, Nimr, Tuqan, and Jarrar, came from northern Damascus, northern Syria, and the eastern Jordan Valley respectively. The Nimr and Tuqan families will dispute control of the city of Nablus (and other cities including Jerusalem and Jaffa), while the Jarrar family will be content with positions of power in the administrative subdivisions of the Nablus and Jenin region.

¹⁴ The "nationalist" mayors correspond to those close to the PLO and are drawn from the new educated nationalist Palestinian notability (Signoles, 2005). They pose a threat to Israel, which prefers the older, less politicized elites.

The political autonomy of the municipality of Nablus is reflected in the management of water, especially domestic. Signoles (2010b) demonstrates how the water reform initiated in 2002, and in particular the establishment of delegation contracts to the private sector, failed in Nablus. She explains this failure by various factors: 1) the water distributed in northern municipalities comes mainly from local sources and even municipal wells, which makes them less dependent on Mekorot; 2) water is a financial resource for these municipalities which they do not wish to share; 3) the North is facing a political fragmentation inherited from the local family oppositions of the Ottoman period, making it more difficult to bring together regional water distribution. The majority of domestic water comes from five municipal wells located in different villages of the governorate: Odala, Sebastiya, Deir Sharaf, Al Badhan, Al Far'a. Part of the supply comes from sources inside the governorate. Some agricultural wells also provide water for domestic consumption to the municipality of Nablus and surrounding villages. This relative independence with regard to water resources constitutes a real lever of power for the municipality.

The peculiarity of Nablus lies in its historic position as a merchant city, financially quite independent, governed by social elites that are locally anchored and historically mistrustful of the central power. It remains nonetheless a city and a region demographically and economically important enough for the central power to take an interest in it. Beyond the rivalries between central power and municipalities, there are rivalries between urban elites and villages, as well as between families within villages, particularly with regard to domestic water supply and irrigation.

The legal pluralism present in the management of domestic and agricultural water (De Donato, 2018; McKee, 2019; Trottier, 1999, 2000, 2013) partly explains the difficulties of applying the water law, which ignored this pluralism. However, the difficulties do not only relate to the application of the law on the ground, but also to the establishment of the institutional framework that it envisages, which is undermined by rivalries for power.

2.2. Power rivalries at the national level in water management

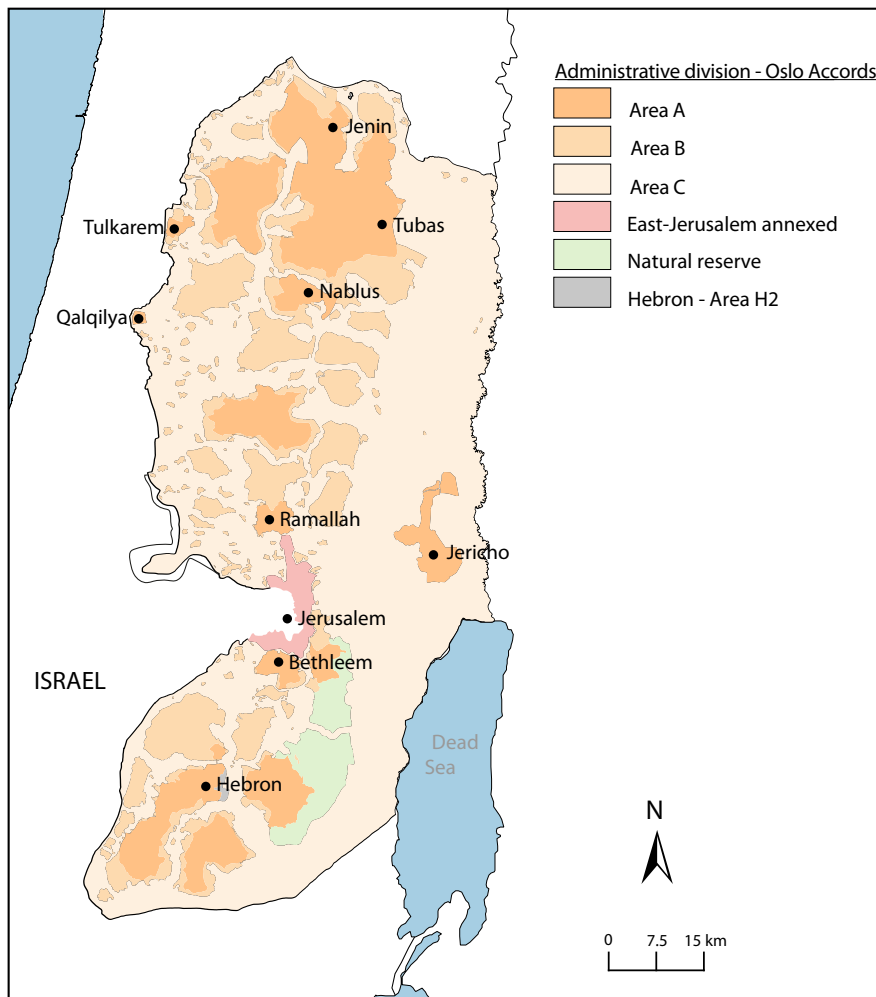
There are two major levels of rivalry, and they make it difficult to implement the 2014 water law effectively. The first has to do with Israel's positioning as an occupying power and major supplier of domestic water to the West Bank. The second is linked to rivalries within the PWA itself and between the different ministries of the PWA.

2.2.1. The constraints posed by the Oslo Accords and the Israeli occupation

The 1993 Oslo Accords contributed to the institutionalization of the PA's dependence, and a fortiori that of the PWA, with the authorities of the Israeli occupation. Many authors have already analyzed the weight the Oslo Accords carried in the development of the PA and water resources in the Palestinian territories (Trottier, 1999; Selby, 2003; Zeitoun, 2008; Fustec, 2014b). The Oslo Accords were supposed to be transitional but still govern relations between Israel and the PA to this day. We return here to the main characteristics of these accords.

The Oslo Accords created the PA with limited and fragmented territorial jurisdiction. Article IV of the 1993 Declaration of Principles states that the West Bank and the Gaza Strip form “a *single territorial unit*”. However, the Agreed Minutes of the declaration specify in Article IV (1) that this territorial jurisdiction excludes Jerusalem, settlements, Israeli military zones, and the Israelis. This exception is confirmed in the agreements signed in 1994 and 1995. Article V of the Gaza-Jericho Agreement of May 4, 1994 again excludes Israeli settlements and military zones from the PA’s territorial jurisdiction. In addition, the PA’s jurisdictional powers do not apply to Israelis, settlement public order, or external security. The 1995 Interim Agreement (Oslo II) confirms the territorial division into three areas: Area A, where the PA has civil and police control; Area B where the PA has civilian control and Israel military control; and Area C entirely under Israeli control (Map 1).

Map 1. Map of the West Bank according to the territorial division of the Oslo II Accords (1995).



Source: Produced by Jeanne Perrier.

Area A represents 18% of the West Bank and includes the main urban centers: Ramallah, Qalqilya, Tulkarem, Nablus, Jenin, Jericho, Bethlehem, and Hebron¹⁵. Area B represents 22% of the West Bank and includes the majority of Palestinian villages outside of urban centers. Finally, Area C represents 60% of the territory and includes the Israeli settlements as well as the majority of arable land. This fragmentation of territories complicates the centralization of power in the hands of the PA.

The Oslo Accords lay the foundations for the sharing of water resources and for Palestinian management of these resources. The 1993 Declaration of Principles, Article VII, provides for the creation of an “administrative” water authority, as well as various other authorities to promote the economic development of the territories. However, Oslo II, Annex III, Article 40, creates the Joint Water Committee (JWC) which severely limits the powers of the PWA. The JWC is made up of an equal number of Israelis and Palestinians. It deals with water and sanitation issues. A consensus of the participants is necessary to authorize any hydraulic development. In practice, the JWC largely favors Israel, which has a de facto right of veto against any Palestinian hydraulic development project¹⁶. The World Bank (2009) denounces the institutional slowness of the JWC, the asymmetry of power within the committee, and the low rate of authorized Palestinian projects: over the 1996–2008 period, 57% of Palestinian projects were approved, and only 64 % of authorized projects have been completed. For projects in Area C, the JWC’s agreement must be backed up by an agreement from the Israeli Civil Administration.

The Oslo Accords institutionalize the PWA’s dependence on Israel for agricultural projects and domestic water supply. Mandatory passage through the JWC and/or the Israeli Civil Administration discourages any water development project in Areas C, where dual authorization is required (World Bank, 2009). However, Areas C have a strong potential for hydraulic development since they host the majority of agricultural land and have the space necessary for the development of wastewater treatment plants (Selby, 2013). Since 2010, donors have sought to invest in these territories as part of building a Palestinian state throughout the West Bank, and as part of the territorial extension of the powers of the PA (Fustec, 2017).

The dependence of the West Bank on Israel is not only institutional, but indeed vital: in 2016, 59% of domestic water supplied to Palestinian homes was supplied by the Israeli operator Mekorot (World Bank, 2018). The quantities of domestic water purchased by the PA in Mekorot continue to increase: the PA plans to import 120 million m³ from Mekorot by 2032 (Palestinian Water Authority, 2013). Also, the PA is counting on an additional 32 million m³ via the proposed pipeline between the Red Sea and the Dead Sea (Palestinian Water Authority, 2013; World Bank, 2018). However, aware of the dangers of this politically risky dependence, the PA also plans to import water from other countries, even though the Oslo Accords prohibit the PA from breaking water and electricity supply contracts concluded with Israel (Signoles, 2010b).

¹⁵ Hebron has a special status since Israel has divided the city into two zones: H1, about 80% of the city controlled by the PA, and H2, about 20% controlled by Israel and where a thousand Israeli settlers live.

¹⁶ For a more in-depth review of the JWC, see Trottier (1999, 2007), Selby (2003, 2013), and Zeitoun (2008).

Finally, the construction of the separation wall, which began in the early 2000's, reinforced this asymmetry of power and access to water resources, particularly for irrigation. Trottier (2007) shows that the construction of the wall mainly affected water resources and agriculture in Palestinian villages. Habla, on the outskirts of Qalqilya, is a village surrounded by the wall. The presence of this wall has strongly impacted agricultural development in the village, and the use of agricultural wells. Some farmers have lost their land on which the wall was built, others have reduced access to their land, constraining their crop choices. The wall, coupled with increasing Palestinian urbanization, has forced farmers to work land further away from homes, and requiring large investments (what we call pioneer fronts here). Wells located close to homes have seen their pumping reduced, while those located close to new pioneer fronts are now overexploited (Trottier and Perrier, 2017). The construction of the wall thus reinforces the fragmentation of the Palestinian territory, hindering the penetration of the PA's power into the Palestinian villages and the application of national laws.

2.2.2. Difficult succession within the PWA

Water sector reform is very often associated with Shaddad Attili, former Head of the PWA from 2008 to 2014. It is interesting to briefly review his background in relation to the institutional reforms he has undertaken. S. Attili was born abroad, educated in Jordan and obtained his doctorate in France. From 1993 to 1995, he was the political advisor on water and environment issues at the PLO's economic department in Tunisia. In 1999, he joined the PLO offices in the West Bank to establish a negotiating strategy on water. In 2008, he was appointed Head of the PWA. S. Attili has the ideal profile for donors: educated abroad, he is familiar and receptive to neoliberal reform rhetoric promoted by international organizations and to their democratic expectations. In July 2013, France awarded the Legion of Honor to S. Attili who, according to the Consul, "*Here [in the West Bank] embodies the founding values of the French Republic (...): strengthening the capacities of the State, projects carried out in the service of the population*" (Desagneaux, 2013).

In 2014, Mazen Ghoneim, engineer, succeeded S. Attili as Minister of Water. Mr. Ghoneim was already part of the PA, as deputy minister at the Ministry of Local Governments (MLG). Unlike S. Attili, M. Ghoneim is fully inserted into the Palestinian political scene. His father, Mohammed Ghoneim, is considered the second most powerful figure in the ruling political party Fatah. He helped found the PLO, lived in exile in Tunis until 2008, before returning to the West Bank. Mazen Ghoneim first entered the water sector by being appointed to the newly formed WSRC board. As the committee should bring together members from different ministries (energy, environment, agriculture, local governments), M. Ghoneim represented the MLG in this new organization before being promoted to Minister of Water. The appointment of Mazen Ghoneim as head of the PWA complicates the implementation of the water sector reform supported by his predecessor and places power games at the center of inter-ministerial and institutional relations. To date, the PWA has not yet resolved the conflicts of interest related to its multiple functions of execution, regulator, supplier, and project manager.

2.2.3. Power rivalries between Palestinian institutional actors

Inter-ministerial rivalries in the field of water management are not new but persist with the 2014 law. Water management is a cross-cutting issue that involves different ministries: the PWA, the Ministry of Agriculture (MoA), the Ministry of Local Governments (MLG), the Ministry of Health, and the Ministry of Environmental Affairs (EQA). Several authors have already reported conflicts between the PWA and the Ministry of Planning and International Cooperation (Selby, 2003), between the PWA and the MoA (Trottier, 1999; Zeitoun, 2008), between the PWA and the EQA (Fustec, 2014b), or between the PWA and the MLG (Trottier, 1999).

With the objective of “good governance”, the 2014 law was intended to better define the roles of each of these institutional actors. The 2013 National Water Strategy for Palestine mentions poor inter-ministerial coordination as one of the factors of poor water management (Palestinian Water Authority, 2013, 100). The solution then lies in strengthening institutions and better defining their roles. In order to better understand the institutional inertia of the water sector despite the promulgation of the 2014 water law, we focus in this section on three institutions: the MLG, the MoA, and the WSRC. Analysis of the relationship between the PWA and each of these three institutional bodies reveals political and social issues. These allow us to better understand the challenges of this reform.

The legislative imbroglio with the MLG concerns domestic water supply services, one of the 27 areas of competence of municipalities and village councils according to the law on local life of 1997. Article 15 of the law of 1997 stipulates: “3. *Provide water to inhabitants for domestic use or for any other use; determine the necessary equipment, such as meters and pipes, as well as the organization of water distribution and price; change subscriptions; prohibit the pollution of sources, canals, basins and wells*”¹⁷. However, the laws of 2002 and 2014 threaten this local institutional organization by dispossessing the municipalities of this competence and by concentrating the water supply in the hands of regional suppliers.

Trottier (1999) illustrates the resistance of the MLG to the PWA by the refusal of the municipality of Jericho to transfer the control of the Ein Sultan source to the farmers, who effectively controlled it, despite decree 38 which required such a transfer. This resistance is also illustrated by the Hebron municipality’s desire to drill its own well to supply its distribution network, while a parallel PWA project is underway. For the World Bank (2018), the solution to this imbroglio lies in resorting to new legislation ultimately establishing regional suppliers. This technical solution ignores the local power dynamics at the origin of this rivalry that we have explored above.

¹⁷ Translation from Arabic to English by the author.

Not only does the 2014 law threaten the power of municipalities, but it also threatens their financial resources. One of the main financial resources of Palestinian municipalities is income from water supply (Signoles, 2010a; World Bank, 2018). The municipalities are appropriating these financial resources, at the expense of the WBWD in particular, which finds it impossible to pay Mekorot, thus triggering the levy by Israel on customs revenues intended for the PA. The PA thus pays the price for the financial practices of municipalities. The reluctance of municipalities to return water fees collected to suppliers is rooted in the first Intifada in which the PLO ordered municipalities not to pay local taxes as a sign of resistance to the Israeli occupation (Signoles, 2010a). These non-payment practices are still a power issue between service providers, local governments, and the PA to this day.

The Ministry of Agriculture (MoA) could also be in a position of rivalry with the PWA since irrigation is the biggest water-consuming activity. However, its role is marginal in legislation and in the implementation of irrigation projects. The 2003 Agricultural Law contains only two articles (out of 85) on agricultural water. Article 54 states that the MoA shall work in cooperation with the PWA and relevant authorities in the development of policies and strategies concerning the agricultural sector. Article 55 regulates the use of treated wastewater for irrigation. The rest of the articles legislate on farmland, seeds, fruit trees, plant protection, and livestock and poultry. In these articles, water is mentioned only in relation to the promotion of water harvesting techniques. The MoA does not manage the procedures for obtaining permits for the extraction or use of water resources, which are the responsibility of the PWA. In fact, all irrigation development projects go through the PWA, not the MoA. The WUA regulation nonetheless revives rivalries between the MoA and the PWA over the sharing of responsibilities for agricultural water management.

Now that it is accustomed to inter-ministerial rivalries, the PWA must face a new rival with the 2014 law: the Water Sector Regulatory Council (WSRC), a new regulatory institution. The independence of the WSRC explains its rapid establishment but also its sidelining by the PWA. As described above, the PWA loses its regulatory prerogatives to the benefit of the WSRC with the 2014 law. The WSRC is independent from the PWA, allowing for the separation of regulatory functions from ministerial functions as required by sector reform. The WSRC was thus established by decision of the Cabinet of Ministers alone in 2014, as provided for by article 17 of the law of 2014. Unlike the appointment procedures of other institutions provided for by law, the Cabinet of Ministers does not act on the recommendation of the PWA in the case of the WSRC. This specificity justifies why the WSRC was established as soon as the law was enacted in 2014, when no other institution has yet emerged. For example, the Cabinet of Ministers cannot create the national supplier (National Water Company) on its own. It must wait for a recommendation from the PWA, which may block the process. In addition, Article 20 states that the WSRC undertakes to provide semi-annual reports to the Cabinet of Ministers on the performance of the service providers they control and on its own activities.

This independence crystallizes the tensions between the WSRC and the PWA. The WSRC's 2017 annual report describes competition between the two institutions, accusing the PWA of overstepping its functions under the new water law, thus preventing the WSRC from fully carrying out its missions: *"In contradiction with the Water Law 2014 and the reform objectives, WSRC is hindered from carrying out its full mandate as stated in the Law as PWA is still insisting on overstepping its mandate that lead to difficulties in cooperation between both key stakeholders in the water sector"* (WSRC, 2017, 72). These tensions even affect the sharing of data between the two institutions. The WSRC has not had access to any data from the WBWD since 2015 (WSRC, 2018). In its 2017 annual report, the WSRC directly accuses the PWA of restricting data sharing and therefore of acting against the 2014 water law: *"The council was unable, for the second year, to get the West Bank Water Department data due to restrictions by PWA. Although this act is against the water law, several attempts to get the data were unsuccessful."* (WSRC, 2017, 72).

The WSRC is entirely dependent on financial support from donors. The licensing bylaw is awaiting approval by the PWA. This regulation provides for the granting of a license contract to the various service providers in order to subordinate them to the WSRC and thus ensure payment of the license fees. The latter constitute one of the main modes of financing of the WSRC provided for by the 2014 water law¹⁸. In the WSRC's 2017 annual report, funding is a major concern in order to ensure the WSRC's business continuity and autonomy. However, the WSRC also recognizes its full institutional dependence on the PWA for the promulgation of the regulations in question. The first draft of the licensing agreement regulations, finalized in 2015, have been sent to the PWA for submission to the Cabinet of Ministers for possible revisions prior to official publication.

The difficulties in applying and enforcing the 2014 water law can therefore be explained by a historical fragmentation of water resource management coupled with a particular political context. The fragmentation of water management is a reflection of historical institutional and local power dynamics, characterized by mistrust of a central power, be it the Ottoman Empire or more recently the PA. Understanding these dynamics and this local organization makes it possible to make visible the legal pluralism that exists in the management of water resources. In addition, the political context of occupation further weakens the power of the PA and the PWA through the fragmentation of Palestinian territories and dependence on the Israeli national water company Mekorot. Finally, beyond the practical difficulties of implementing the law, power rivalries within the PA over water are blocking the institutional reorganization of the Palestinian water sector.

¹⁸ "Article 25: 1. *The Financial resources of the Council shall consist of: A. Fees for licenses and services granted by the Council in accordance with the provisions of this law, B. Grants, aids and any other resources approved by the Cabinet of Ministers.*" (Palestinian Water Authority, 2014).

Conclusion

Through this article, we have analyzed the production context of the international discourse on water resource management that has influenced the formulation of Palestinian water laws. We have shown that the 2014 water law is not as important a turning point as announced compared to the 2002 law. Like that of 2002, the law of 2014 aims to put in place a so-called “efficient” management of water resources, in particular through a process of decentralization of the PWA towards new actors, such as regional suppliers or even the WUA’s. However, the implementation of these successive water laws is in this sense a failure. This is explained in particular by the strong state control of the water law, ignoring the powerful local power and institutional dynamics and ignoring the legal pluralism framing the management of water resources for several centuries. This ignorance is not unconscious. It is built to allow the transfer of power from local actors to the central authority, which is the PWA in the water sector. Thus, the decentralization rhetoric promoted by donors and taken up by the PWA to justify the water reforms hides a dynamic of vertical integration in water resources management. The analysis of legislative documents coupled with Palestinian strategies and internal dynamics has allowed us to reveal these dynamics of centralization which threaten local practices of water management.

Bibliography

Alatout, S. (2009),

“Bringing Abundance into Environmental Politics: Constructing a Zionist Network of Water Abundance, Immigration, and Colonization” *Social Studies of Science* 39 (3): 363–394.

Benda-Beckmann, F. von, K. von Benda-Beckmann, and J. Spiertz (1997),

“Local law and customary practices in the study of water rights” in *Water rights, conflict and policy*, edited by R. Pradhan, F. von Benda-Beckmann, K. von Benda-Beckmann, H.L.J. Spiertz, Shantam S. Khadka, and K. Azharul Haq, Colombo: IIMI.

Boelens, R. and B. Doornbos (2001),

“The Battlefield of Water Rights: Rule Making Amidst Conflicting Normative Frameworks in the Ecuadorian Highlands” *Human Organization* 60 (4): 343–355.

Bouillon, M.E. (2004),

The peace business: money and power in the Palestinian-Israeli conflict. London: IB Tauris.

Brooks, D. and J. Trottier (2010),

“Confronting Water in an Israeli-Palestinian Peace Agreement” *Journal of Hydrology* 382 (1-4): 103–114.

Brynen, R. (1995),

“The Dynamics of Palestinian Elite Formation” *Journal of Palestine Studies* 24 (3): 31–43.

Burchi, S. (2012),

“A Comparative Review of Contemporary Water Resources Legislation: Trends, Developments and an Agenda for Reform” *Water International* 37 (6): 613–27.

Burchi, S. (2015),

“2012–2014 year-end review” *Journal of Water Law* 25 (5): 224–242.

De Donato, A. (2018),

Spring Water: the Lifeblood of the Village of Wadi Fukin (West Bank). Université de Milan-Bicocca, Université Paris 8.

Declaration of Principles on Interim Self-Government Arrangements (Oslo I). 1993.

Desagneaux, F. (2013),

« Discours de M. le Consul Général de France à Jérusalem ».

Doumani, B. B. (1995),

Rediscovering Palestine. Merchants and Peasants in Jabal Nablus, 1700–1900. Berkeley: University of California Press.

El - Eini, R.I.M. (1996),

“The Implementation of British Agricultural Policy in Palestine in the 1930s” *Middle Eastern Studies* 32 (4): 211–250.

Fustec, K. (2014a),

« L’Autorité palestinienne et le changement climatique comme problème public émergent » *Critique internationale* 62 (1) : 109.

Fustec, K. (2014b),

Processus multi-échelles, enjeux environnementaux et construction étatique. Le cas de l’Autorité palestinienne, des politiques de gestion de l’eau et du changement climatique. Université Montpellier 3.

Fustec, K. (2017),

“From Domestic Water to Agricultural Water: How Do Donors Contribute to the Water Crises in the Occupied Palestinian Territories?” *La Houille Blanche*, 1: 44–50.

Giordano, M. and T. Shah (2014),

“From IWRM Back to Integrated Water Resources Management” *International Journal of Water Resources Development* 30 (3): 364–376.

Global Water Partnership (2015),

Water Governance in Palestine: Sector Reform to Include Private Sector Participation.

Griffiths, J. (1986),

“What is legal pluralism?” *Journal of Legal Pluralism* 24: 1–50.

Guillet, D. (1998),

“Rethinking Legal Pluralism: Local Law and State Law in the Evolution of Water Property Rights in Northwestern Spain” *Comparative Studies in Society and History* 40 (1): 42–70.

Gupta, J. and J. W. Dellapenna (2009),
“The Challenges for the Twenty-First Century: A Critical Approach” in *The Evolution of Law and Politics of Water*, edited by J. W. Dellapenna et J. Gupta, Springer.

Harris, L. M. and S. Alatout (2010),
“Negotiating Hydro-Scales, Forging States: Comparison of the Upper Tigris/Euphrates and Jordan River Basins” *Political Geography* 29 (3): 148-156.

Hodgson, S. (2004),
Land and Water – the Rights Interface. FAO Legislative Study 84. Rome: FAO.

Hodgson, S. (2006),
Modern Water Rights: Theory and Practice. FAO Legislative Study 92. Rome: FAO.

Hodgson, S. (2016),
Exploring the Concept of Water Tenure. FAO Land and Water Discussion Paper 10. Rome: FAO.

Khalidi, R. and S. Samour (2011),
“Neoliberalism as Liberation: The Statehood Program and the Remaking of the Palestinian National Movement” *Journal of Palestine Studies* 40 (2): 6-25.

Le More, A. (2008),
International Assistance to the Palestinians after Oslo: Political guilt, wasted money. London: Routledge.

Legrain, J. (1996),
« Autonomie palestinienne : la politique des néo-notables » *Revue du monde musulman et de la Méditerranée* 81 (1) : 153-206.

Merry, S. E. (1988),
“Legal pluralism” *Law and Society Review* 22 (4): 869-896.

Molle, F. (2004),
“Defining Water Rights: By Prescription or Negotiation?” *Water Policy* 6 (3): 207-227.

Palestinian Authority (2009),
“Ending the occupation, establishing the State”, *Program of the Thirteenth Government*. Ramallah.

Palestinian Water Authority (2011),
Brief report on the Palestinian Water Sector Reform program, Ramallah.

Palestinian Water Authority (2013),
National Water and Wastewater Strategy for Palestine. Ramallah.

Palestinian Water Authority (2014),
Decree No 14 for the year 2014 relating to the Water Law. Ramallah.

Picaudou, N. (1984),
« Genèse des élites politiques palestiniennes, 1948-1982 » *Revue française de science politique* 34 (2): 324-351.

Postel, S. (1984),
“Water: Rethinking Management in an Age of Scarcity”. *Worldwatch Paper* 62. Washington, D.C: Worldwatch Institute.

Robinson, G. E. (1997),
Building a Palestinian State: The Incomplete Revolution. Bloomington: Indiana University Press.

Robinson, G. E. (2009),
“Palestinian tribes, clans, and notable families” *Center for Contemporary Conflict*, 1-15.

Roth, D., R. Boelens and M. Zwarteveen (2015),
“Property, Legal Pluralism, and Water Rights: The Critical Analysis of Water Governance and the Politics of Recognizing “Local” Rights” *The Journal of Legal Pluralism and Unofficial Law* 47 (3): 456-475.

Salingue, J. (2013a),
L’Autorité Palestinienne: les avatars d’une construction proto-étatique arabe dans un contexte de déni de souveraineté. Université Paris 8 Vincennes-Saint-Denis.

Salingue, J. (2013b),
« Le « développement économique » palestinien : miracle ou mirage ? » *Confluences Méditerranée* 86 (3): 71-88.

Selby, J. (2003),
Water, power and politics in the Middle East: the other Israeli-Palestinian conflict. London: IB Tauris.

Selby, J. (2013),
“Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee” *Water Alternatives* 6 (1): 1-24.

Signoles, A. (2005),
« V. Municipalités et pouvoir local dans les Territoires palestiniens. Entre domination israélienne et État en formation (1993-2004) » *Annuaire des collectivités locales* 25 (1) : 619-625.

Signoles, A. (2010a),

« Le système de gouvernement local en Palestine ». *Focales AFD*, 9–65.

Signoles, A. (2010b),

« Quand le lieu compte ». La réforme de la gestion de l'eau en Palestine : des configurations locales multiples » *Géocarrefour* 2 : 129–140.

Singer, A. (1994),

Palestinian peasants and Ottoman officials: Rural administration around sixteenth-century Jerusalem. New York: Cambridge University Press.

Spiertz, H.L.J. (2000),

“Water Rights and Legal Pluralism: Some Basics of a Legal Anthropological Approach” in *Negotiating Water Rights*, edited by B. R. Bruns and R. S. Meinzen-Dick. Rugby, Warwickshire, United Kingdom: Practical Action Publishing.

Swyngedouw, E. (2004),

“Globalisation or ‘Glocalisation’? Networks, Territories and Rescaling” *Cambridge Review of International Affairs* 17 (1): 25–48.

“The Dublin Statement and Report of the Conference” (1992),

Dublin, Ireland: International Conference on Water and the Environment.

Trottier, J. (1999),

Hydropolitics in the West Bank and Gaza strip. Jerusalem: PASSIA.

Trottier, J. (2000),

“Water and the Challenge of Palestinian Institution Building” *Journal of Palestine Studies* 29 (2): 35–50.

Trottier, J. (2004),

“Water and Conflicts, Hobbes v. Ibn Khaldun: The Real Clash of Civilizations?” in *Managing Water Resources: Past and Present*, edited by J. Trottier and P. Slack, The Linacre Lectures 2002, Oxford; New York: Oxford University Press.

Trottier, J. (2007),

“A wall, water and power: the Israeli ‘separation fence’” *Review of International Studies* 33 (01): 105–127.

Trottier, J. (2008),

“Water Crises: Political Construction or Physical Reality?” *Contemporary Politics* 14 (2): 197–214.

Trottier, J. (2012),

« L'avènement de la gestion intégrée des ressources en eau » in *Gestion de l'eau. Approche territoriale et institutionnelle*, edited by A. Brun and F. Lasserre, Québec: PUQ, 179–198.

Trottier, J. (2013),

“The social construction of water management at the intersection of international conflict: The case of Al Auja” *Euroorient* 44: 161–181.

Trottier, J. (2015),

« Le rapport à l'eau et à la terre dans la construction de territoires multisitués: le cas palestinien » *L'Espace géographique* 44 (2): 103–114.

Trottier, J. and J. Perrier (2017),

“Challenging the Coproduction of Virtual Water and Palestinian Agriculture” *Geoforum* 87: 85–94.

Trottier, J. and J. Perrier (2018),

“Water driven Palestinian agricultural frontiers: the global ramifications of transforming local irrigation” *Journal of Political Ecology* 25 (1): 292–311.

Venot, J-P., L. Bharati, M.

Giordano and F. Molle (2011),

“Beyond Water, beyond Boundaries: Spaces of Water Management in the Krishna River Basin, South India: Beyond Water, beyond Boundaries: Spaces of Water Management in the Krishna River Basin, South India” *The Geographical Journal* 177 (2): 160–170.

World Bank (1993),

“Water Resources Management” *World Bank Policy Paper*. Washington, D.C: World Bank.

World Bank (1999),

“West Bank and Gaza – Strengthening Public Sector Management” Washington, D.C: World Bank.

World Bank (2009),

“Assessment of restrictions on Palestinian water sector development” Washington, D.C: World Bank.

World Bank (2018),

“Securing Water for Development in West Bank and Gaza” Washington, D.C: World Bank.

WSRC (2017),

2017 WSRC Annual Report. Ramallah: WSRC.

WSRC (2018),

The Performance of Water and Wastewater Service Providers in Palestine: Summary 2016–2017. Ramallah: WSRC.

Zeitoun, M. (2008),

Power and Water in the Middle East: The Hidden Politics of the Palestinian-Israeli Water Conflict. London ; New York: I.B. Tauris.

What is AFD ?

The Agence Française de Développement (AFD) Group is a public entity which finances, supports and expedites transitions toward a more just and sustainable world. As a French overseas aid platform for sustainable development and investment, we and our partners create shared solutions, with and for the people of the global South.

Active in more than 4,000 projects in the French overseas departments and some 115 countries, our teams strive to promote health, education and gender equality, and are working to protect our common resources – peace, education, health, biodiversity and a stable climate.

It's our way of honoring the commitment France and the French people have made to fulfill the Sustainable Development Goals.

Towards a world in common.

Publication Director Rémy Rioux

Editor-in-Chief Thomas Melonio

Legal deposit 4th quarter 2020

ISSN 2492 - 2846 © AFD

Graphic design MeMo, Juliegilles, D. Cazeils

Layout AFD

Printed by the AFD reprography service

To browse our publication:

<https://www.afd.fr/en/ressources-accueil>