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Public Service Accountability in Lebanon

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CONTENTS

	Preface	4
	Introduction	5
I.	Control Mechanisms within the Executive Branch	10
	Ministry of Finance	12
	Court of Accounts	22
	Civil Service Council	31
	Central Inspection	43
	General Disciplinary Council	55
	Concluding Remarks	66
II.	Legislative Oversight of the Public Service	70
	Political System in Independent Lebanon: 1943-1990	72
	The Constitutional Amendments of 1990	74
	Tools of Legislative Oversight	77
	Obstacles to Effective Legislative Oversight	83
	Improving Legislative Oversight	90
III.	Conclusions and Recommendations	95

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PREFACE

This study was conducted and prepared as part of the Joint Collaborative Program on Administrative Reform in the Public Sector of Lebanon between the American University of Beirut and the John F. Kennedy School of Government, Harvard University. It draws liberally on papers prepared during the past three years as part of this program.

Empirical work on Lebanon was conducted by faculty members of the American University of Beirut and Lebanese senior government officials. The comparative research and analysis was conducted by the Harvard participants in the program. Although this report is based on the background studies prepared by the A.U.B. and J.F. Kennedy School research teams and on extensive discussions in working sessions held in Cambridge, Massachusetts, the conclusions and recommendations presented here reflect mainly the views and opinions of the A.U.B. team which was responsible for field research conducted in Lebanon.

INTRODUCTION

With the conclusion of the Taif agreement in October 1989 and the election of a new president following 15 years of civil strife, Lebanon began its slow march towards peace and normalcy. The prolonged period of violence and destruction had inflicted devastating damage on all sectors of the Lebanese state and society including the public administration.

It must be pointed out that prior to the civil war the public administration was facing a number of important problems which were aggravated over the years as a result of the failure of the government to deal with them. Actually, since the Chehabi reform movement of 1959, the government had not made any significant attempt to reform the public service and adapt it to changing conditions. On the contrary, some of the changes adopted since 1959 were intended to reverse or dilute some of the reforms introduced during the Chehabi regime.

With the end of the civil war and the election of a new president in 1989, the efforts of the government were inevitably focused on the task of rebuilding the Lebanese state and society. It was obvious to all concerned that such a task could not possibly succeed without a revived and effective public administration. The revival of the public administration was not only necessary for restoring the basic role and services of the state, but more importantly for restoring public confidence in government and promoting greater political unity and stability in the country. All of these considerations in addition to the fact that the aftermath of any major crisis provides a good opportunity for introducing basic changes and improvements, which could not otherwise be possible, combined to make administrative reform one of the top priorities of the new regime.

But despite the urgent need to rebuild and revitalize the public administration, the new regime of president Elias Hrawi was not able to devote much attention to this problem until 1992 because it was preoccupied with a variety of overriding political problems such as ending the mutinous regime of General Aoun, amending the constitution to incorporate the changes adopted in the Taif agreement, consolidating the fragile peace among feuding political groups, re-asserting and extending the authority of the state, disbanding and disarming the various militias, unifying and strengthening the army and internal security forces, passing a new electoral law, and holding parliamentary elections.

Following the parliamentary elections during the summer of 1992 a new cabinet was appointed in November 1992 under the Premiership of Mr. Rafic Hariri and entrusted with the main task of dealing with the rapidly deteriorating economic and social conditions which were among the main causes of the resignation of the cabinet of Mr. Omar Karami in May 1992. By this time, the mounting and widespread complaints about the lamentable conditions in the public service had reached an unprecedented level. Mr. Hariri, who is a highly successful entrepreneur, was keenly aware of the key role that the public service is supposed to play in any program for rebuilding and developing the shattered economy in Lebanon. His cabinet also included a number of professionals from the private sector who were equally aware of the need to rebuild the public administration and improve its capabilities as a precondition for the successful implementation of any economic and social development project and for attracting badly needed foreign investments.

In addition, a number of regional and international aid agencies that were approached by Lebanon for financial assistance, especially the World Bank, were urging the government to devote greater attention to improving the capabilities of public sector agencies that were involved in the reconstruction and development process.

Since it was neither feasible or desirable, for a variety of reasons, to implement a broad and comprehensive reform program throughout the public service, the government decided on a more limited and selective approach that would focus on a number of issues that deserve priority attention. Foremost among these issues was the revitalization of central control agencies which include the Civil Service Council, Central Inspection, the Court of Accounts, the General Disciplinary Council and the Ministry of Finance which exercises a central role in financial control. The priority given to reforming these central control agencies was mainly based on the following considerations:

- The need to restore order and discipline within a public service which had been operating for years on its own practically outside the limits of state authority which was seriously weakened as a result of the civil war. There was an urgent need in Lebanon to re-assert the principle of civil service accountability which, to begin with, had never been strong and which had been seriously eroded during the war years.

- The urgent need to deal with the problem of the increasing and widespread corruption which is generally considered as the single most important problem within the public service. Actually the first reform project undertaken by the Hariri cabinet was the "purging" of approximately 500 corrupt government employees through a special procedure approved by parliament. Unfortunately the decision of the government to dismiss these employees was overturned by the Council of State, the highest administrative law court, for lack of sufficient evidence.

- The urging of some international aid agencies, notably the UNDP, the World Bank, the USAID, etc... which emphasized that the rehabilitation and reform of central control agencies is to a great extent a pre-requisite for the success of the whole reform effort. As an example, the first assistance provided by the

USAID for administrative reform purposes was earmarked for central control agencies and parliament.

- The pressures from many politicians, especially some of the pro-Chehabi ones who consider such control agencies as the Civil Service Council and Central Inspection as the cornerstones of the reform program of president Chehab in 1959. Actually, in a resolution approved by parliament during 1993, the government was urged to "strengthen central control agencies, protect them and respect their decisions and recommendations".

- Many of the proponents of reform in Lebanon believe that the revitalization of central control agencies could have a strong multiplier effect on the whole process of administrative reform because of their key role that touches upon so many aspects of the public service. As an example, reform of the personnel system cannot succeed without the reform of the Civil Service Council which exercises a central role in this whole area.

The following study was undertaken with the hope of providing a timely and useful input to the reform efforts of the Lebanese government in dealing with the important issue of control and accountability in the public service. Its main purpose is to examine the various instruments of compliance accountability in Lebanon, to identify their main problems and, whenever possible to suggest possible improvements.

The concept of compliance accountability could be briefly and broadly defined as the policy of ensuring adherence by public agencies and officials to accepted laws, standards and regulations with a view to minimizing the abuse of authority and

protecting the general interest of society. The main instruments of compliance accountability that will be covered in this study are the Ministry of Finance, the Court of Accounts, Central Inspection, the Civil Service Council, the General Disciplinary Council and Parliament.

CHAPTER I

CONTROL MECHANISMS WITHIN THE EXECUTIVE BRANCH

The system of public service control and accountability in Lebanon evolved in a gradual and pragmatic way over a long period of time -1926 to 1965- during which it underwent a number of changes and refinements in the light of previous lessons, experiences, and the expanding role and functions of the public administration. This system, which is to a great extent, patterned after French continental procedures and practices, relies on an elaborate and diversified network of financial and legal checks which aim at ensuring the legality of executive actions and their strict adherence to existing laws and regulations.

At present, the main instruments of compliance accountability in Lebanon are the Ministry of Finance, the Court of Accounts the Civil Service Council, Central Inspection, and the General Disciplinary Council, all of which are located within the executive branch of government. In addition to these central control agencies, a recently empowered and strengthened parliament is just beginning to assert its oversight role over the public service, adding a new and potentially important dimension to existing control mechanisms.

This chapter is an adapted summary of the background papers originally prepared by the AUB/Harvard Joint Research Program on Administrative Reform in the Public Sector of Lebanon with some conclusions and generalizations reached in the light of the findings of these papers. The chapter also draws on extensive discussions with the authors of the background papers. These papers are: Dr. Habib Abi-Sakr, The Ministry of Finance in Lebanon: Organization, Functions, Budget Preparation, Implementation and Control, 1993; Dr. Saad Andari, Lebanon's Court of Accounts, 1993; Dr. Adnan Iskandar, Legislative Oversight of the Public Service in Lebanon, 1994; Dr. Marun Kisirwani, Central Control Agencies in Lebanon: Central Inspection, 1993 and The General Disciplinary Council in Lebanon, 1994; Dr. Hassan Shalak, The Civil Service Council, 1993.

The main purpose of this chapter is to examine the various instruments of compliance accountability in Lebanon, to identify their main problems and shortcomings, and whenever possible, to suggest ways and means for their improvement.

It must be pointed out that in the cases of the more recent control agencies, which were established in the late fifties or sixties, it will be very difficult to evaluate their impact and achievements in a reliable and accurate way because of the relatively short period of their active life between the time of their establishment and the start of the civil war which lasted from 1975 until 1990.

MINISTRY OF FINANCE

The Ministry of Finance is one of the seven original ministries which were established following the adoption of the 1926 Constitution with the beginning of the French Mandate in Lebanon. Although the Ministry has undergone a variety of changes since then, its main role and functions have remained essentially the same since independence in 1943.

There is no doubt that the Ministry of Finance is one of the most important ministries in Lebanon in view of its key role in collecting revenues to finance public needs as well as its central role in the preparation of the budget and the monitoring of all public expenditures. All decrees by the Council of Ministers that involve financial obligations have to be countersigned by the Minister of Finance in addition to the signature of the President and the Prime Minister. As such, the Ministry of Finance, despite its status as one of the line agencies of the executive branch, constitutes an important staff and management tool for the Prime Minister in directing, coordinating, and checking the operations of all other government ministries and agencies. This is why the Ministry of Finance is one of the most coveted portfolios and is usually the subject of intense competition among different political groups in the process of forming a cabinet.

Since the sixties a number of Prime Ministers have insisted on assuming this portfolio which they consider as an indispensable tool for helping them to exercise the leadership role expected of them throughout the executive branch. This practice, however, has not taken final hold because during the Taif meetings in September 1989, it was informally agreed that this portfolio should be reserved for a member of the Shia' religious community in order to ensure greater participation in executive decisions for this sect, which is probably the largest in Lebanon today. Actually, since the end of the civil war in 1989, a Shiite has occupied the position of Minister

of Finance in three successive cabinets. In the fourth cabinet, which was formed in October 1992, the Prime Minister insisted on assuming this position himself although he later entrusted this responsibility to a Sunni Minister of State.

Role and Functions

The present functions and organizational structure of the Ministry of Finance, as well as those of other ministries, were defined as part of the general reform movement undertaken by President Fuad Chehab during 1958-59 and have continued until today with slight amendments.

The main role of the Ministry as defined in decree no. 2868 is to "manage and keep public funds and to be responsible for the budget, treasury, customs, real estate and cadastral affairs and national lottery, as well as any other matters that might be entrusted to it by existing laws and regulations". At present, the Ministry of Finance is organized into five main units whose heads report directly to the Minister:

- The Directorate General of Finance, which is the most important unit for the purpose of this study, is responsible for all the basic financial activities, including the preparation of the budget, the control of expenditures, the preparation of the personnel payroll for all existing and retired civil servants, the collection of direct and indirect taxes and fees, the maintenance of all public accounts and records, the disbursement of public funds and the monitoring of the public debt.

- The Directorate of Real Estate Affairs is responsible for all real estate transactions, cadastral services, and state properties.

- The Directorate of National Lottery is responsible for all administrative and financial matters related to the state lottery whose proceeds are earmarked for

social welfare activities of the government and some non-governmental voluntary organizations.

- Customs Administration is responsible for collecting fees on all imported goods, preventing the illegal imports of such goods and preparing proposed legislation relating to all aspects of customs.

- The Government Commissioner at the Bank of Lebanon exercises, on behalf of the Ministry, some oversight over the activities of the Lebanese Central Bank.

The following part will focus on the financial control mechanism of the Ministry of Finance.

Financial Control

The Ministry of Finance is clearly the most important tool of financial control in the public service. Its responsibility in this respect is not limited to ensuring compliance of all government expenditures with budget requirements, but it also includes ensuring the compliance of such expenditures with all existing laws and regulations from an administrative and legal point of view.

The control role of the Ministry is exercised during the budget implementation phase through an intricate network of *ex-ante* checks, which are intended to prevent illegal expenditures before they actually occur. The jurisdiction of the Ministry in this respect extends to all government ministries and agencies whose budget allocations are included in the general budget of the State but does not include autonomous agencies and municipalities. It is worthy of note that the total budget allocations of autonomous agencies are quite large in comparison to the general budget of the State, and the functions performed by some of them are more important than those performed by some of the regular ministries.

The process of financial control by the Ministry can be divided into four basic and sequential steps, each intended for a different purpose:

Request for Authorization of Expenditures

The first and most important step in the process of financial control is the request for authorization of expenditures which is submitted by any government ministry or agency that wants to undertake certain actions that involve a commitment to spend some funds that have already been appropriated in the budget. Examples of such actions are: the appointment of a new employee, the purchase of equipment or the paving of a road, which are all considered normal and routine activities of any government.

According to Lebanese financial laws and practices, which are fashioned after those of France, budget allocations do not constitute in themselves an automatic authorization to public agencies to spend these funds. Before doing so, these agencies have to go through a variety of *ex-ante* checks and audits to ensure the compliance of their actions with existing laws and regulations as well as the availability of needed funds.

According to the Public Accounting Law in Lebanon, the Minister is the person authorized to submit a request for Authorization of Expenditures. In certain cases senior officials in the Ministry can submit such requests if they involve limited amounts of money. All requests for authorization of expenditures are subject to *ex-ante* scrutiny and approval by the responsible accountant within each ministry, by the Ministry of Finance, and, in most instances, by the Court of Accounts. The role of the Court of Accounts in financial control will be discussed later in this chapter. The responsibility of the internal accountant within each ministry is to check and verify two main things: the compliance of the proposed expenditure with existing laws and regulations, and the availability of budgetary allocations.

Once this step has been completed, the request is submitted to a Controller of Expenditures, who is an official of the Ministry of Finance assigned to one or more ministries for the purpose of checking and approving all such requests. Until 1962 such requests had been centralized in the Ministry of Finance. But since then, this operation has been decentralized by the assignment of a special Controller of Expenditures to each ministry or in certain instances, a group of ministries. The responsibility of the Controller of Expenditures is to check the availability of authorized funds, the compliance of the request with existing laws and regulations, and the accuracy of cost estimates.

The first and most important stage in the process of financial control ends with the approval of the Controller of Expenditures. Without such approval, no expenditure request can be executed. In case of differences between an individual ministry and the Ministry of Finance, the matter is referred to the Council of Ministers for final settlement.

Liquidation of Expenditures

The second step in the process of financial control takes place after the financial obligation has been actually incurred in accordance with the terms of authorization for expenditure by the Ministry of Finance. If the request for the authorization of expenditure includes, as an example, the appointment of a new employee, the purchase of new equipment or the pavement of a road, the liquidation of expenditures is intended to check whether such actions actually took place and to determine the exact amount of money which the government owes as a result of such actions.

The liquidation of expenditures does not involve the Ministry of Finance and is performed by a special accountant within each ministry or agency.

Payment Order

The third step in the process of financial control is the issuing of a payment order for collection by the debtor concerned. In accordance with the existing Public Accounting Law the issuing of payment orders throughout the executive branch is the responsibility of the Head of Expenditures Service in the Ministry of Finance or a grade three employee within the service who has been officially delegated such an authority. Although the law permits the Head of Expenditures Service to delegate this authority to one of his employees who can represent him in other ministries and issue payment orders on their premises, this provision in the law has never been implemented. The centralization of this financial check in the Ministry of Finance is unusual, even in some European countries whose financial control systems are quite similar to those of Lebanon.

The issuing of payment orders is another important step in the financial control process which is to a great extent repetitive of the first step described above since it involves still another check on the legality of financial transactions and the availability of needed funds.

Payment of Expenses

The fourth and final step in the process of financial control is the payment of funds, which actually includes two operations, the approval of the payment order by the central accountant of the Ministry of Finance, who is the head of the Treasury Service, and the actual disbursement of funds by one of the cashiers of this service. In certain instances the head of the Treasury Service can, with the approval of the Director General, delegate the authority to approve the payment order to a lower level employee in his service.

Evaluation

A review of Lebanon's complex and lengthy procedure of financial control which is applied by the Ministry of Finance, and which is duplicated to a great extent by the pre-auditing functions of the Court of Accounts, raises a number of questions that deserve serious consideration.

The Lebanese system of a central pre-audit exercised by the Ministry of Finance over all budget expenditures is in sharp contrast to practices in some other countries, influenced by Anglo-Saxon practices, where the pre-audit on expenditures is exercised by the ministries or agencies concerned. The United States is a good example of the latter system. There is no compelling evidence that the former system is more effective in guarding against financial abuses, while there is strong evidence that the latter system helps in reducing bureaucratic delays and expediting government work. Many scholars and experts argue that the benefits to the public of reduced routine and red-tape far exceed the costs of tighter financial controls.

In Lebanon the government follows a policy of financial control in autonomous agencies, which is in clear contradiction with the policy applied in regular ministries. At present only three out of the 62 existing autonomous agencies are subject to the pre-audit of the Ministry of Finance. As an example, the Council for Development and Reconstruction, which is responsible for the execution of most of the important capital projects in Lebanon, is exempt from such a central pre-audit and conducts its internal financial pre-audit. This is true of other autonomous agencies which among themselves are in charge of the execution of the vast majority of capital and development projects of the government.

The question that arises is: why should not regular government ministries be freed from the cumbersome burden of a central pre-audit like the autonomous agencies? If such financial flexibility is necessary for expediting public works and services, it should be extended to all public agencies and departments.

Although it is very difficult to prove this point, there are many in Lebanon who argue that financial abuses in autonomous agencies, that are not subject to a central pre-audit, are not worse than in the ministries which are subject to such an audit. But this is certainly a subject that deserves further study and investigation.

Even if it is deemed essential and useful, the pre-audit of the Ministry of Finance is a cumbersome and complex operation and should be simplified to minimize unneccessary delays and frustration in government work.

It is quite clear that the process of financial pre-auditing includes a number of stages involving checks by different authorities which are highly repetitive and of marginal value. The requests for authorization of expenditures are checked by the accountant within each ministry, by the controller of expenditures of the Ministry of Finance and by the Court of Accounts. The liquidator of expenditures within each ministry in turn checks the approved authorization of expenditures which in turn is checked by an official of the Ministry of Finance who issues the payment order. The final stage of authorizing and disbursing the funds involves a limited material check which does not duplicate, to any significant extent, the checks conducted in previous stages.

In addition to the duplicate and repetitive checks described above, the pre-auditing process is highly centralized. Requests of authorization of expenditures are the responsibility of the Minister concerned or, in certain limited cases, the Director General. Regional offices of the ministry concerned have very limited powers in this respect which involve very small amounts of money. Although controllers of

expenditures of the Ministry of Finance have been assigned to conduct their checks of expenditure requests in individual ministries, there are no such controllers assigned to the regional offices of these ministries. As a result, all requests for authorization of expenditures by regional offices have to be conducted in the central headquarters of each ministry. In addition, the requests for authorization of expenditures have to be approved by the Court of Accounts on its own premises since the Court does not have any representatives in the various ministries. The next step, which involves the liquidation of expenditures, is also conducted by the ministry's accountant in its central headquarters. These accountants do not have representatives in the regional offices to perform this task.

The issuing of payment orders, which is the next operation in the pre-auditing process, is also the responsibility of a central department, the Service of Expenditures in the Ministry of Finance. Despite the fact that the law allows this department to assign some of its employees to perform this task in individual ministries and their regional offices, it has chosen not to do so. Finally, the actual disbursement of funds cannot be effected without the approval of the central accountant within the Ministry of Finance.

In light of the above it is evident that the pre-auditing process in Lebanon is a slow and complex one involving repetitive and duplicate checks by different agencies as well as a high degree centralization in individual ministries as well as in the Ministry of Finance and the Court of Accounts. The simplification of this process through the elimination of some unneccessary checks and the decentralization of others could significantly contribute to debureaucratizing government work and reducing unjustified and frustrating delays.

It is interesting to note that the tight and rigid system of financial control in Lebanon has not been of much help in dealing with the problem of abuses in the public service. The problem of flagrant and widespread corruption is probably the

single most important problem that the Lebanese Government faces today. This is an issue on which there is substantial agreement among all groups, including the government. Many Lebanese today believe that the relaxation of control mechanisms within the public service, financial and otherwise, could hardly result in a worse situation than the one we are presently facing.

COURT OF ACCOUNTS

Article 87 of the 1926 Lebanese Constitution at the beginning of the French mandate stipulated that "the final accounts of the government for each financial year must be submitted to Parliament and approved before issuing the budget of the following financial year. A special law shall be issued for the establishment of a Court of Accounts." Since this constitutional provision links the establishment of the Court of Accounts to the preparation of the final accounts of the Government, it was generally assumed at the time that the Court was primarily intended as a post-auditing agency, which did not later prove to be the case. Despite this provision in the constitution, the Court was not established until January 16, 1951, when the Public Accounting Law was enacted by Parliament. This law, with its amendments of 1959, 1983, 1985, and 1992 defines the present role and functions of the Court of Accounts[1].

Role and Functions

The Court of Accounts which was essentially patterned after the "French Cour des Comptes", was intended as an important watchdog of the financial operations of the Government. According to Article 1 of Decree Law no. 132, dated April 14, 1992, the Court of Accounts is an administrative court, with financial and judicial functions, responsible for watching over public funds and those deposited in the treasury. More specifically, the Court is responsible for checking the use of public funds and its compliance with existing laws and regulations and for prosecuting all government employees accused of violating laws and regulations governing the administration of public funds. The Court discharges its functions through three main activities: a pre-audit of government expenditures, a post-audit of government accounts, and the judicial prosecution of offending employees.

The pre-audit jurisdiction of the Court includes the regular civil service, the army and public and internal security forces, the larger municipalities, and three autonomous agencies[2]. The remaining autonomous agencies which include some of the more important ones and which administer substantial amounts of money are exempted from the pre-audit of the Court but not its post-audit. As an example, these include the Bank of Lebanon, the Council for Development and Reconstruction, the Council of the South, and the Fund for Displaced Persons. Because of repeated accusations of widespread waste and corruption in the latter three agencies, there has been a growing demand for subjecting them to the Court's pre-audit. Unfortunately, Parliament has not yet taken any action in this direction.

The subjection of autonomous agencies to the post-audit of the Court is almost meaningless since the Court has not been performing such an audit. This actually means that the vast majority of autonomous agencies, which are not subject to the pre-audit of the Ministry of Finance or the Court of Accounts, are free from any outside financial checks and controls.

When the Court was originally established, it was attached to the Ministry of Finance. But in 1959, and in an attempt to ensure greater independence and protection for the Court, it was transferred to the Office of the Prime Minister.

The Personnel of the Court are divided into three main categories: a) The judicial cadre, which includes the President of the Court, the Attorney General of the Court, and a number of judges distributed among six chambers who are responsible for the pre-audit control, and the prosecution of offending employees. All members of the judicial cadre are members of the judiciary and subject to laws governing judges in the regular courts of law. b) The professional cadre includes auditors and controllers who are responsible for conducting financial and legal checks and audits. c) The third includes administrative, clerical, and custodial employees.

According to existing laws and regulations the Court of Accounts enjoys a large degree of independence and immunity which, in theory, insulates it form political pressures. The President of the Court, the Attorney General and all judges are appointed by a decision of the Council of Ministers. After their appointment, however, it becomes extremely difficult to transfer or dismiss them. Transfer to another job is not possible without the approval of the Council of the Court which is composed of the President, the Prosecutor General and the three highest ranking judges. Dismissal is subject to trial and conviction by a special disciplinary council composed of some of the top judges. Since the establishment of the Court, this procedure has never been invoked.

The Pre-Audit

The legal and financial pre-audit performed by the Court is undoubtedly its most important function and includes the following transactions:

- All transactions related to purchase of equipment and supplies, and public works and services whose cost is in excess of LL. 75 Million (US Dollars 46,000).

- All tenders reached by mutual agreement, including rent contracts if the cost exceeds LL. 50 Million (US Dollars 30,000).

- All revenue transactions over LL. 5 Million (US Dollars 3,000).

The purpose of the pre-audit is to check the validity of these transactions and their compliance with budget allocations and existing laws and regulations. This check is quite similar to the one conducted by the Controllers of Expenditures of the Ministry of Finance described earlier and takes place after their approval of the Request for Authorization of Expenditures submitted by the various ministries. The

decisions of the Court in this respect are final unless the Minister of Finance or the minister concerned decides to refer the matter to the Council of Ministers, which can either endorse or overrule the decision of the Court. The Court may incorporate such incidents in its annual or special reports which are submitted to Parliament.

The Post-Audit

The post-audit responsibility of the Court of Accounts includes essentially three basic tasks:

- The first task involves an evaluation of all financial transactions and their general results from the time of their initiation until their final execution. On the basis of this audit, the Court submits a regular annual report as well as special reports which include proposals for improvement in all policies and procedures that have financial implications.

  As an example, in September 1994 the Court submitted a special report in which it criticized some of the decisions of the Council of Ministers that allowed certain ministries to grant public works contracts through mutual agreement rather than public bidding. The Court claimed that such a practice was resulting in substantial financial waste.

  The annual report of the Court is submitted to the President of the Republic with copies sent to Parliament for distribution to its members and copies to the Civil Service Council and Central Inspection. The special reports may be sent to the President of the Republic, the Parliament, the Prime Minister, or the interested government agencies depending on the subject of the report. These reports can be used by Parliament in exercising their oversight role over the

government and in enforcing political accountability of the Cabinet or individual ministers. Unfortunately, Parliament has not been making much use of this important tool.

- The second task involves a check on the accounts of the government and the accountants as well as other persons involved in the administration of public funds in order to determine the accuracy of these accounts and the legality of all actions taken in this regard.

- The third task involves the prosecution of any offending employee by the Court through a trial whose proceedings are similar to those in any regular court of law. The punishments that the Court can impose, however, are limited and vary from a minimum of LL. 150,000 (US Dollars 90) to a maximum of LL. 1,500,000 (US Dollars 900). In cases where the actions of the offending employee result in a financial loss to the government, the Court can impose a fine ranging from one month to a year salary. Sentences by the Court can be appealed to the Council of State, the highest administrative court in the country. In cases of more serious violations, the employee may be referred to Central Inspection or to the regular criminal courts.

It must be pointed out that the Court, on the whole, has not attached a high priority to its post-auditing function. Between 1976 and 1992 the Court did not conduct any post-audits, presumably because of the lack of auditors and the chaotic situation during the civil war years. During 1992, the Court conducted a post-audit of the accounts of six public agencies only.

Evaluation

The role of the Court of Accounts as a financial pre-audit agency has been the subject of a serious controversy over the years. Many believe that the intention of the

French Mandate, as expressed in article 87 of the 1926 Constitution, was the creation of a post-auditing agency which would be in charge of preparing and checking the yearly financial accounts of the government. Instead, the Court has become essentially a pre-auditing agency whose work duplicates, to a great extent, the work of the Ministry of Finance, and results in unnecessary delays in the transaction of official business. The benefit derived from the additional pre-audit conducted by the Court, and which resembles to a great extent the one performed by the Ministry of Finance, is marginal at best and does not in any way justify the additional costs and delays in government work. Actually, there are few examples in the world of central auditing agencies which engage in pre-auditing work.

Since the start of the civil war in 1976 the Court of Accounts has not been able to devote much time to its post-auditing function, presumably because of the lack of personnel. But the shortage of personnel, which was true of all government agencies during the war, did not prevent the Court from discharging its pre-auditing responsibilities. The truth of the matter is that over the years, the Court has been deliberately giving priority attention to pre-auditing work which ensures for it a more prestigious and influential role throughout the executive branch.

It is generally acknowledged that an effective system of financial control should rely on a preventive pre-audit that can preempt violations before they occur, as well as on a post-audit that can identify offending civil servants and ensure their prosecution. But in Lebanon the proper balance between pre- and post-audits is definitely tilted in favor of the former and should be corrected by entrusting the Court of Accounts with only post-auditing responsibilities while maintaining the role of the Ministry of Finance as the main pre-auditing agency. One oft he main maxims of a financial control system is that the post-audit check should be conducted by an agency different from the one that conducts pre-auditing checks. In Lebanon, the Court of Accounts is responsible for post-auditing financial transactions, which it has already approved in its pre-audit.

Another important questions that should be posed in connection with the Court of Accounts is the degree of independence that it has enjoyed in the performance of its work. Despite the reasonably high degree of independence and immunity accorded to the Court, it has witnessed periods of ebbs and flows in its relationships with the political leadership. An examination of these relationships reveals that some cabinets have consistently respected the independence of the Court and refrained from exercising pressures on it, while other cabinets have shown a tendency to pressure the Court, and even bypass it on many occasions[3]. As an example, the first cabinet during the present regime of President Elias Hrawi invariably sided with the Court in practically all cases involving differences between it and the various ministries. In sharp contrast to this practice, the present cabinet which has been in office since November, 1992 has consistently overruled the Court in favor of individual ministries in cases involving such differences. In fact, the present cabinet, has on certain occasions, approved certain public works contracts without the approval of the Court. Following the 1992 annual report of the Court which highlighted the problem of waste in the public service, the President of the Court was requested to hold a press conference to deny such claims, which he actually did.

The history of the Court of Accounts clearly indicates that the independence of the Court does not depend only on legal provisions and the immunities which they provide, but rather on the willingness of the political leadership to recognize the importance and benefits of an independent financial control agency and provide it with the needed support. The relationship of the political leadership with the Court of Accounts, as well as with other central control agencies in Lebanon, provides a clear example of the limits and constraints to public service reform within the existing political context and realities.

Another question that should be addressed with regard to the Court is its role as a prosecution agency for offending civil servants. The role of the Court in this respect conflicts with and duplicates the work of the Central Inspection and the

General Disciplinary Council. Central Inspection, which is the main investigative agency in the executive branch, has a special financial inspectorate which deals with all violations of a financial nature and imposes certain penalties of limited severity. More severe punishments are imposed by the General Disciplinary Council whose main responsibility is to try and punish offending government employees.

According to existing laws, the Court of Accounts can try and punish civil servants who commit violations of financial laws and regulations. As mentioned earlier, the penalties that it can impose are quite mild and are limited to a maximum of one year salary of the offending employee, which does not exceed an average of U.S. dollars 5,000. Such penalties do not constitute an effective deterrent to improper conduct. More importantly, there is no serious justification for the fragmentation of the disciplinary function in the civil service by scattering it among these three agencies, in addition to the milder penalties that can be imposed by supervisors within individual ministries.

In this connection it should be emphasized that the prosecutional powers of the Court do not extend to ministers who are sometimes the more serious offenders. As an example, the Court's report covering the year 1992 identifies 21 violations committed by ministers, including the illegal appointment of 472 employees in the Lebanese University made by the Minister of Education. It is unfortunate that Lebanon has not yet developed any mechanism for dealing with such offenses which are quite common.

Another problem that the Court faces is the serious personnel shortages both qualitative and quantitative. This is a common problem throughout the Lebanese administration where the number of vacancies is approximately 60% of existing positions. As of October 1994, the Court of Accounts had 118 vacancies out of a total of 189 positions[4]. The Court attributes its inability to exercise its post-audit function mainly to the lack of available personnel and the need to train existing ones. This

situation is not expected to improve soon since existing government salaries, especially for professional personnel, are significantly lower than those of private sector employees. This has prompted the Court to request permission from the Council of Ministers to use private auditing firms to help it in its post-audit work. This permission, however, has not been so far granted.

A final point that should be stressed is the fact that the pre-audit control of the Court is exercised by judges who man the six chambers assisted by the controllers and auditors. This is an odd arrangement to say the least since by background and training, they are not the most suitable persons for such a job. There is probably no other country which entrusts such a financial responsibility to judges.

CIVIL SERVICE COUNCIL

One of the main priorities of the administrative reform movement launched by President Fuad Chehab in 1959 was the improvement of the public personnel system through the introduction of a merit system to protect the civil service from political pressures and interventions and a government wide training program that would help improve the quality of public service employees. The attempt to introduce a merit system was to a great extent reminiscent of the civil service reform movements in the United States and Britain during the nineteenth century.

Until 1959, Lebanon had a departmentalized personnel system which did not provide for a centralized personnel agency to administer personnel policies and procedures on a government-wide basis, but instead entrusted this function to individual ministries which were often not well equipped for such a task. The inevitable result of such a system was lack of uniformity and duplication of efforts, in addition to flagrant favoritism in personnel practices that resulted from political and sectarian pressures - which often overlap - to which government ministries and departments were subjected. In a traditional society like that of Lebanon and in an emerging and highly imperfect parliamentary system, it was very difficult for ministers to resist political, religious, and family pressures for special favors, which often had to be satisfied in violation of existing rules and regulations.

The Lebanese government had made some unsuccessful attempts to improve and streamline its personnel system, notably in 1955, when a permanent Civil Service Council was created in the Prime Minister's Office. It was, however, a purely advisory council which was responsible for conducting special studies and submitting recommendations to the Council of Ministers. Although the role and achievements of this Council were quite limited, it has helped, however, to develop a greater awareness and recognition of the need for a more powerful central agency that will

be able to deal effectively with Lebanon's personnel problems.

This is what actually happened at the end of the Chehabi reform movement in December 1959, when a central Civil Service Council was established with extensive powers over practically all aspects of personnel administration in all ministries and autonomous agencies, with the exception of the army, security forces, and the judiciary.

Role and Functions

The role and functions of the Civil Service Council, as described in Decree Law 114 of June 12, 1959 and its subsequent amendments, entrusted it with the responsibility of monitoring the implementation of the new personnel law and actually exercising many personnel powers specifically assigned to it. The following list will help to give an idea about the main functions assigned to the Council:

- determining personnel needs for all government departments and helping in the preparation of the personnel budget
- conducting examinations and approving lists of eligibles for all civil service jobs
- supervising and approving promotions and transfers in the civil service
- maintaining personnel records and files for all civil servants
- designing and implementing a system of performance appraisal
- dismissing civil servants whose performance is considered unsatisfactory
- submitting recommendations for the improvement of personnel policies and regulations
- developing a system of position classification
- approving allowances for civil servants
- advising the government on the organizational structure of various departments and agencies

- pre and post entry training of all government employees

The Chairman of the Council is also the Chairman of an important group that includes all directors general in the civil service and is called the Council of Directors General. This Council is supposed to meet 4 times a year to discuss the various problems that face the civil service and to submit recommendations for dealing with them to the government.

The above list, which is not exhaustive indicates that the Council was intended to play a dominant role in protecting the public service from undue political interference and favoritism in personnel practices and in improving and modernizing these practices. In brief, it can be said that the Civil Service Council was conceived of as the main guardian of the personnel system and the main authority on personnel matters throughout the public service.

As far as we know, there are few central personnel agencies in other countries of the world which enjoy such extensive powers. One provision in the law, however, which later proved to be an important loophole in undermining the role and authority of the Civil Service Council, stipulated that differences between the Council and individual ministers should be referred to the Council of Ministers for final settlement. This provision was later abused by some cabinets by overruling the Civil Service Council in its attempts to apply and enforce personnel rules and regulations on recalcitrant ministers.

The Civil Service Council is composed of a President, who is the chief executive officer, and two members. The President enjoys the same administrative and financial powers normally enjoyed by a minister, with the exception of constitutional powers.

Under the Council, there are two main departments or divisions, the Personnel Department and the Preparation and Training Department. Each of these departments is headed by a member of the Civil Service Council. The Personnel Department is responsible for all matters relating to the application of all personnel rules and regulations, whereas the Training Department is responsible for supervising the National Institute of Administration and Development, which is in charge of the preparation of persons interested in joining the civil service as well as the in-service training of existing civil servants. There is hardly any training that takes place in the public service outside the framework of this institute.

Members of the Civil Service Council are appointed by the Council of Ministers and cannot be removed except for cause provided that the recommendation for dismissal is made by the Prime Minister and approved by a special high level committee composed of the First President of the Court of Cassation, the President of the Council of State, the President of the Court of Accounts, the Chief of the Central Inspection Board, and the highest ranking Director General in the civil service. It is quite obvious that this dismissal procedure is intended to provide the chairman and members of the Council with the necessary protection and security of tenure to enable them to operate independently of possible political pressures.

The law of 1959 originally stipulated that no member of the Council could be transferred without his written approval. It was believed at the time that this was an essential guarantee for a new agency which was established for the main purpose of minimizing political pressures on the civil service. However, it was subsequently abolished as we shall see later.

During the regimes of President Fuad Chehab, 1958-64, and his hand-picked successor President Charles Helou, 1964-1970, the Civil Service Council enjoyed practically unlimited political support in its attempt to assert its role and authority and to impose some order and uniformity in personnel practices throughout the public

: rvice. One can point to very few cases during this period which were resolved by the Council of Ministers, contrary to the recommendation of the Civil Service Council.

This situation, however, changed drastically during the regime of President Sulayman Franjieh, 1970-1976, whose election was, to a great extent, the result of political support by an anti-Chehab coalition. President Franjieh was intent on r versing many of the Chehabi reforms, especially those relating to the powers accorded to the central control agencies, notably the Civil Service Council and Central I pection, which he considered as an infringement on the constitutional rights of the ministers.

In 1972 President Franjieh held a special meeting of the Council of Ministers th t lasted for three days, and that has since become known as the Baabda Conclave, in which it was agreed to seriously curtail the powers of the Civil Service Council and Central Inspection. These decisions, however, were never implemented because of the intervening fighting between the Lebanese Government and the Palestinians in Lebanon which occurred in 1973 and which actually foreshadowed the civil war that bi ke out in 1975.

During Franjieh's regime, and in sharp contrast to the situation under President Chehab, the Civil Service Council enjoyed little support and sympathy from the gc ernment as evidenced by the fact that the Council was overruled by the Council of Ministers in practically all personnel cases referred to the latter for settlement.

President Franjieh went further and at one point sued the Civil Service Council in the Courts because the Council decided to postpone an announced civil service ex mination in accordance with the powers accorded to it in the law. Members of the Civil Service Council were subpoenaed by the courts and could have been arrested if it ıd not been for the intercession of the Prime Minister and the Minister of Justice.

In 1976, few months before leaving office, President Franjieh managed to issue a law which abolished the immunity of members of the Civil Service Council and Central Inspection against transfers by the Council of Ministers. This action has deprived these two agencies of a crucial guarantee that enabled them to exercise their functions objectively and independently without any fear of political reprisals. The possible adverse repercussions of such a move became ominously clear when in 1983, President Amin Gemayel arbitrarily removed the President and members of the Civil Service Council and placed them at the disposal of the Council of Ministers.

Following the end of the civil war in Lebanon and the beginning of the efforts to rehabilitate the public administration the worsening relationships of the Civil Service Council with the political leadership and the erosion of its powers continued, especially during the past 2-3 years. Despite repeated statements by the government about the need to re-activate and strengthen central control agencies in order to enable them to play an active role in rehabilitating and reforming the public administration, we have been witnessing during the past three years a disturbing trend to circumvent and weaken these control agencies, especially the Civil Service Council. Such a trend has been manifested in a variety of ways, notably the following:

- Failure to involve and consult the Civil Service Council in matters within its domain. As an example, the Council has not been consulted in the preparation of the personnel budget in the past three years. More recently, the Council was totally bypassed by the Council of Ministers in the promotion of some civil servants to the second category, despite the fact that the law requires the approval of the Civil Service Council for such actions[5].

- On more that one occasion the President of the Civil Service Council was specifically instructed by his political supervisors not to attend meetings of certain parliamentary committees to which he was invited and which were discussing pending legislation relating to personnel matters.

- The Minister of Finance has recently designed a system for performance appraisal without any consultation with the Civil Service Council which is officially entrusted with such a responsibility.

- The Civil Service Council has been overruled by the Council of Minsters in the vast majority of cases involving differences with individual ministries.

- Contrary to the provision of the personnel law, the Civil Service Council was never consulted about the organizational structure of newly established government departments, including eight new ministries.

- A new position classification plan and salary scale for the whole civil service has almost been completed without the involvement or consultation of the Civil Service Council.

- The Civil Service Council is only marginally involved in the on going administrative reform program under the aegis of a Minister of State in charge of public service reform.

The deteriorating relationships of the Civil Service Council with the political leadership and the continued marginalization of its role have prompted the President of the Council in his latest annual report dated April 15, 1995, to pose the question whether the Council should be continued or abolished.

Evaluation

There is no doubt that for a variety of reasons, the Civil Service Council has not been able to fulfil all the expectations that have accompanied its establishment, but it can nevertheless take credit for some important achievements:

- It is safe to say that the Council, especially during the early stages of its development, has been able to impose some badly needed uniformity and standardization in the personnel practices throughout the public service. It has also helped to minimize irregularities and deviations in these practices. This seems to be a typical trend in many central personnel agencies in the early years of their development. Unfortunately such an emphasis on the narrow legalistic and control aspects of the work of the Council has been at the expense of the more positive and developmental aspects of improving and modernizing personnel policies and procedures. Such an approach has also helped promote a feeling of resentment among operating departments who have come to view the Council essentially as a policing agency whose main priority is imposing personnel rules and regulations without regard to the special needs and conditions in these operating agencies and in a manner which often led to undue delays in their work.

- One of the main objectives of the Council was the establishment of a merit system through the elimination of political pressures in the process of recruiting and selecting civil servants. Since its creation, the Council has played a dominant role in this field by assuming full responsibility for conducting examinations and certifying successful candidates for appointment in vacancies throughout the civil service. It is worthy of note that the lists of eligible candidates prepared by the Council on the basis of the results of competitive examinations cannot be altered in any way by the ministries. Naturally, the lists of eligibles by the Council have to abide by the constitutional and legal requirements for the equitable representation of the various religious groups in Lebanon. During 1994 alone, the Civil Service Council conducted a number of tests for 3162 applicants of whom 1707 passed successfully. Of these, 928 were actually appointed[6].

Despite the weaknesses that sometimes characterized these tests, especially their theoretical orientation and the failure to emphasize personality traits and inter-personal skills of applicants, the role of the Council in developing a selection system based on merit rather than political favoritism constitutes one of its more important achievements.

As was expected in such a situation, the work of the Council in this area met with serious opposition and resistance from traditional politicians who saw in it a serious threat to their interests and naturally attempted to thwart it in a variety of ways. Since it was not feasible to abolish the merit system enacted in the personnel law, these politicians resorted to a clever and sly way, which over the years and especially during the civil war years, focused on expanding the number of government employees, known as unclassified casual workers, who were not subject to the provisions of the personnel law and who could be hired by individual ministers. This attempt has met with tremendous success in view of the fact that as of today the number of such casual workers is approximately 10,000 compared to approximately 23,000 classified positions covered by the merit system of which almost 7,000 are occupied at present.

Despite the fact that the regulations for the appointment of casual workers have recently been tightened, to limit the powers of ministers in this respect, this situation has seriously compromised the development of the merit system in Lebanon and requires more drastic solutions.

- Another of the important contributions of the Council is the launching of pre- and post-entry training programs under the aegis of the National Institute of Administration and Development. The preparation of the pre-entry training programs of the Institute is closely patterned after that of the widely known and successful French National School of Administration. It aims at providing new university graduates, as well as some existing government employees, with

intensive training over a period of one year to prepare them for entry to the civil service. For existing civil servants, this program provides an important opportunity for promotion to the higher ranks of the civil service. The post-entry training program offers a variety of short training sessions in a variety of fields for civil servants in various levels of the civil service.

The training programs of the Institute which were interrupted during the period of the civil war were recently resumed at a faster pace. More importantly, the Institute has just reached an agreement with the French National School of Administration which will assist in the construction and equipment of a new building to house the Institute on a piece of land owned by the French government. The French school will also help in training trainers for the Institute as well as some of the more senior civil servants.

The institutionalization of training as an integral and continuous function within the Lebanese civil service and the recent cooperative agreement with the National School of Administration will undoubtedly enable the Civil Service Council to play an important development role in improving the quality of personnel in the Lebanese civil service.

- During the early sixties the Council, with the help of two Ford Foundation experts, completed a comprehensive position classification plan to replace the existing plan which is based on the rank concept rather than the position concept and which groups all civil service jobs in a small number of classes and grades that do not properly reflect differences in the level of responsibility of these jobs. Unfortunately, and for a number of reasons, mainly political, this classification plan was never implemented. The government is presently working on a new classification plan with the help of a Canadian expert as part of its broader administrative reform program.

- Since it establishment, the Civil Service Council has made a commendable headway in the development of central personnel records. Unfortunately many of the Lebanese government's records were destroyed during the civil war. Last year, through the assistance of the US Agency for International Development, the Council started work on a new project involving the establishment of a central personnel information system including the training of needed personnel to administer it.

Collegial Leadership

There are many who argue that the model of collegial leadership, which is resently applied in the Civil Service Council, is not the ideal vehicle for effective and speedy administration. There are many instances of differences among Council iembers which have created unnecessary friction and delays in its work.

Although the Commission or Council model has been abandoned by some ountries, notably the US and France, in favor of the single head model, this issue deserves further study and investigation before a change in this direction is made in ebanon.

elationships with the Political Leadership

The foregoing discussion clearly indicates that the most important problem nresently facing the Civil Service Council is its strained relationship with the political ..adership. Without clear and continuous political support from the Cabinet, the Council cannot possibly discharge its functions effectively. This problem can be partially resolved by ensuring greater independence and protection to the members of ie Council through restoring the immunity originally granted to them at the time of its establishment in 1959.

More importantly, the personnel law should be amended to grant the Council greater decision making powers in personnel matters. At present, many of the personnel decisions that should be finalized at the level of the Council are referred to the Council of Ministers for final settlement. It is not unusual in such a situation for political considerations to be given precedence over considerations relating to the requirements of sound and efficient administration.

Decentralizing Personnel Operations

The Civil Service Council has not given serious consideration to the possibility of decentralizing some of its personnel operations. The personnel law in Lebanon has established uniform policies and procedures throughout the civil service. The Civil Service Council should devote its main effort to checking and monitoring the proper application of these policies and procedures by different government departments rather than assuming a direct role in the application of these regulations. Such a step would help to simplify and expedite personnel operations and at the same time establish more harmonious and cooperative relationships between the Council and operating departments.

CENTRAL INSPECTION

In 1952 President Bishara El-Khoury, the first president of Lebanon after independence, was forced to resign as a result of a variety of factors, including general dissatisfaction with widespread corruption and inefficiency in the public service. His successor, President Camille Chamoun, proceeded to formulate plans for reforming the public administration in accordance with the promises of the opposition bloc, which was instrumental in ending the regime of President El-Khoury. Accordingly, the Council of Ministers requested and obtained from Parliament legislative decree powers in a number of broad policy areas, including personnel administration. The outcome of this reform undertaking was the issuing by the Council of Ministers in 1953 of 124 decree laws relating to a variety of policy issues. The most important of which were a new organizational structure for ministries, a new personnel law which laid the foundations of a merit system, a new auditing and accounting system, a revised local government law, and a new State Inspection Commission.

The establishment of the State Inspection Commission represented a compromise between advocates of a strong and independent central inspection agency and a decentralized inspection system that relied mainly on ministerial inspectors. The commission was attached to the office of the Prime Minister to ensure the necessary stature and independence, while inspectors were attached to individual ministers and worked under the authority and direction of the minister concerned. The Commission did not have any inspectors of its own and could not conduct investigations of its own. It was mainly an administrative tribunal which considered cases referred to it by ministerial inspectors. This arrangement proved to be highly ineffectual because inspectors did not have the necessary independence and clout to exercise proper control over fellow employees in the same ministry.

In addition to the State Inspection Commission, the Ministry of Finance was entrusted with the responsibility of conducting a central financial inspection over the whole public service. This was a new and separate control from the central financial pre-audit that the Ministry and the Court of Accounts were already authorized to perform.

Following the political crisis of 1958, which focused attention on some of the basic defects of the Lebanese political and administrative systems, the newly elected President Fuad Chehab launched the most ambitious and comprehensive administrative reform program in the history of independent Lebanon. One of the cornerstones of the Chehabi reform movement was the strengthening of control mechanisms throughout the public service in order to achieve greater honesty and efficiency. Decree of 193 of December 6, 1958, which defines the terms of reference of the newly created Central Committee for Administrative Reform responsible for overseeing and directing the whole reform effort, stated that one of its main purposes was "to establish and ensure continuous inspection and control over all phases of work execution, to impose stricter control over independent boards and agencies, and to strengthen inspection over all government departments".

One of the important outcomes of the Chehabi reform was the establishment of a new, and presumably, stronger inspection system which replaced the previous decentralized system of ministerial inspection as well as the financial inspection of the Ministry of Finance.

Role and Functions

Decree law 115 of June, 1959, provided for the creation of Central Inspection within the office of the Prime Minister and entrusted it with the responsibility of conducting inspections and investigations throughout the public service and imposing disciplinary punishments of a limited nature on offending employees.

Another important function of Central Inspection is that of advising various government departments on the improvement of their organizational structure, work methods and procedures, and the standardization of office space and equipment. This function is the responsibility of the Research and Guidance Department which exercises a purely advisory role and whose recommendations have been ignored more often than not.

The third main function of Central Inspection is to check and supervise public tenders for works commissioned by all public agencies, with the exception of the army and public and internal security forces. This function which is clearly unrelated to the main work of Central Inspection, is the responsibility of the Tenders Administration.

The inspection and disciplinary functions of Central Inspection are the responsibility of the Central Inspection Directorate and the Central Inspection Board, which is composed of the President of Central Inspection, the head of Research and Guidance Department and the highest ranking inspector general.

The jurisdiction of Central Inspection is quite extensive and includes the whole civil service, most autonomous agencies, and all municipal employees. The judiciary, the army, and public and internal security forces are subject only to financial control by Central Inspection.

On the basis of its inspections and investigations, Central Inspection can impose disciplinary penalties that include reprimands, salary deductions for a minimum period of 15 days, postponement of the salary step increase for a minimum period of 15 days, postponement of the salary step increase for a maximum period of 30 months, suspension without pay for a maximum period of 6 months, and a step demotion within the same grade. The more severe penalties of a grade demotion, removal and dismissal can only be imposed by the General Disciplinary Council. In addition, Central Inspection may refer offending employees to the Court of Accounts, the

General Disciplinary Council or the regular courts of law for further prosecution.

Disciplined employees may request a reconsideration of the decisions of Central Inspection in case of new evidence, or they may appeal the decision to the Council of State on the basis of procedural errors.

The President of Central Inspection and the inspectors general are appointed by the Council of Ministers and can be removed for cause through an elaborate disciplinary procedure which has not been used so far. According to the original law of 1959, they enjoyed an immunity against transfer to other jobs except with their explicit approval. This immunity, however, was removed in 1976 at the end of the regime of President Sulayman Franjieh, thus undermining the independence of Central Inspection and making it more susceptible to political pressures and interferences. Some attempts were recently made to restore this immunity but, unfortunately, failed.

The record of Central Inspection in enforcing compliance accountability in the Lebanese public service is a mixed one and can be divided into roughly three stages.

Since its establishment in 1959 and until 1970, Central Inspection had been successful in asserting and consolidating its role and in winning recognition and respect mainly as a result of the strong political support that it enjoyed during the regimes of President Fuad Chehab (1958-1964) and his protégé and successor President Charles Helou (1964-1970). The two presidents were able to ensure the necessary independence to Central Inspection and to protect it against political encroachments. An examination of the number of penalties imposed by Central Inspection during the period 1960-1974, for which figures are available, supports such a conclusion to a great extent. These figures indicate that, after what can be considered the formative or founding period of Central Inspection 1960-1962, the number of penalties increased sharply until 1967. Unfortunately, no such figures are available for 1968 and 1969 (Table I).

The second stage in the history of Central Inspection, which starts with the election of President Sulayman Franjieh and continues throughout the civil war years until 1990, is one of decline in its role and powers. The regime of President Franjieh, who was strongly opposed to the Chehabi reforms, launched an assault on most of the institutions which symbolized these reforms, in particular Central Inspection and the Civil Service Council. This assault culminated in the Baabda Conclave in 1972 which adopted a number of resolutions intended to curtail the powers of these central control agencies. Although these resolutions were never officially implemented, the prevailing atmosphere throughout the Franjieh regime was one of opposition and hostility to these agencies. The record of penalties imposed by Central Inspection during the period 1970-1074 reflects this development to a great extent. This trend continued throughout the war years due essentially to the near collapse of the state and its institutions and the resulting paralysis in the work of the public service as a whole.

Since 1990 the Lebanese government has been trying to revive and rehabilitate the public administration, especially the central control agencies. But this process is proceeding very slowly and it was not until 1992 and 1993 that the government was able to fill the top civil service positions, including those in Central Inspection.

The annual report of Central Inspection for the year 1993 clearly indicates that it has not yet recaptured its previous role as one of the leading control agencies in the public service. As an example, the report states that during 1993, only 6 punitive decisions were taken out of a total of 270 investigated cases. Equally startling is the fact that only 2 employees were referred to the General Disciplinary Council for further prosecution[7]. These figures are in sharp contrast to the figures of 1974, when 118 cases were referred to the General Disciplinary Council[8] (see Table II). In the light of the widespread complaints about the pervasive corruption which is

TABLE I

Number of Civil Servants Punished by Central Inspection

Number of Punished Civil Servants	Year
767	1960
782	1961
748	1962
1395	1963
1089	1964
1338	1965
1356	1966
1387	1967
N.A.	1968
N.A.	1969
880	1970
1186	1971
726	1972
576	1973
621	1974
6	1993

Source: Annual Reports of Central Inspection, 1960-67; 1970-1974; 1993.

TABLE II

Number of Civil Servants Referred by Central Inspection to the General Disciplinary Council

Number of Civil Servants	Year
42	1962
93	1963
14	1964
N.A.	1965
N.A.	1966
N.A.	1967
N.A.	1968
22	1969
65	1970
41	1971
57	1972
39	1973
118	1974
2	1973

Source: Annual Reports of Central Inspection, 1962, 1963, 1964, 1969, 1970, 1971, 1972, 1973, 1974 & 1993.

highlighted as one of the more serious problems of the Lebanese public service in the annual report of Central Inspection for 1993 and the annual report of the Civil Service Council for 1994, and in the light of the high priority that the present cabinet has given to dealing with this problem, as evidenced in its attempt to purge about 500 civil servants in 1993, the accomplishments of Central Inspection in 1993 seem quite modest indeed. One can conclude by saying that, except for a short period during the sixties, Central Inspection has not been able to fulfil the expectations that accompanied its establishment in 1959 as one of the main pillars of the Chehabi reform movement.

Evaluation

The annual report of Central Inspection for 1993 emphasizes the following problems which have hindered its work: personnel shortages, lack of proper facilities and equipment, weakness of hierarchial controls, widespread irregularities and violations, political and security conditions, the large backlog of undecided cases over a long period of time, and the inadequate statutory provisions. The following part will discuss the more important of these and other problems.

Lack of Political Support

In his annual report for 1993 The President of Central Inspection mentions security and political conditions as important causes for the limited number of sanctions imposed on offending employees[9]. It is becoming quite clear in Lebanon that the political factor is the single most important obstacle to the effective functioning of Central Inspection as well as other central control agencies. Even in cases where control agencies were guaranteed a high degree of immunity and independence to enable them to better resist political pressures, Lebanese politicians have managed in most instances to circumvent these guarantees and assert their dominant role in many areas of the civil service, which is still considered as an important source of support and power base for them.

Protecting civil servants from disciplinary action is an important aspect of the entrenched system of patron-client relationships in Lebanon. Politicians who depend on services and favors from civil servants that they can trade for votes cannot afford not to come to the rescue of their proteges when they need it. This explains to a great extent the relatively small number of mostly mild penalties imposed by various control and disciplinary agencies in Lebanon and the rare number of penalties involving senior civil servants. It is worthy of note that the recent purge undertaken by the government in 1993 and which included approximately 500 employees, was limited mostly to mid and lower level employees and did not include a single employee from the top grade of the civil service. The dismissal of these employees, however, was later overturned by a decision of the Council of State, the highest administrative court in the country.

A former Acting President of Central Inspection who also served as Director General of one of the important ministries states that the interferences and pressures that he encountered in Central Inspection exceeded by far those he experienced in the Ministry. In one case involving a middle level civil servant, he was approached by about 15 deputies who wanted to intercede on his behalf[10]. As mentioned later in this chapter a top civil servant reports that he was approached by 118 political figures with inquiries and requests for special services. There is not doubt that the lifting of the immunity enjoyed by senior officials of Central Inspection in 1976 has helped to weaken their ability to resist such pressures.

An interesting aspect of the problem of political influence in administrative matters is the fact that ministers can force any subordinate employee to implement their instructions even though they might be illegal or improper. Employees can protest and draw the attention of the minister in writing to the illegality or impropriety of their orders. However, if the minister insists on the execution of his instructions, the employee has no choice but to obey. In such cases employees will be absolved from any responsibility for violations, and the ministers are legally not subject to the jurisdiction of Central Inspection or other disciplinary agencies. In its latest report

Central Inspection complains that many violations go unpunished because of this procedure. This practice could lead to significant abuses if ministers act in collusion with civil servants, which they actually do on many occasions.

It is rather ironical that control agencies such as the Civil Service Council and Central Inspection, which were originally established as part of a reform attempt to protect the civil service against undue political encroachments, have themselves become the victims of such encroachments.

Shortage of Qualified Personnel

According to the annual report of Central Inspection for 1993, the shortage of qualified personnel is considered as one of the main obstacles to its effective performance. In 1993, the percentage of vacancies in Central Inspection was almost 53%[11]. This situation is typical of practically all government agencies in Lebanon at present. Attempts for the recruitment of qualified personnel have met with little success, mainly as a result of low salaries and the negative image of the public service, especially after the civil war. There are many who assert that the government is not anxious to fill these vacancies because of the lack of financial resources.

Weakness of Hierarchical Controls

According to the personnel law, supervisors within ministries and other government agencies are empowered to impose disciplinary penalties on their subordinates that include reprimands, salary deductions for a maximum period of 15 days and postponement of the salary step increase for a maximum period of six months, depending on the rank of the supervisor.

Although no accurate records of such penalties are available, there are many indications that they are extremely rare. Supervisors are reluctant, for a variety of

reasons, to exercise this important control function and find it more convenient to refer such cases to Central Inspection. This practice is an outright example of passing the buck and naturally discourages Central Inspection from taking the initiative in imposing disciplinary sanctions when the ministry concerned is not willing to do so.

Public Complaints

One of the serious gaps in the inspection system in Lebanon is the lack of a clearly defined and effective system of follow-up on complaints from the public, although such complaints are permitted under the existing laws and regulations. Many citizens are not fully aware of this mechanism and how it actually works. Considering the existing conditions of the telephone system in Lebanon, it is extremely difficult for citizens to have easy telephone access to any government department. Central Inspection does not have a "hotline" as is the case, for example, in the U.S. General Accounting Office. But more importantly, even if it were possible to easily submit citizens' complaints to Central Inspection, the serious shortage of personnel precludes any serious follow-up. Priority in inspections and investigations is given to official requests within the public service.

An effective system of follow-up on public complaints could be extremely valuable in Lebanon in the long run since it will contribute to the weakening of the role of politicians as intermediaries between the citizen and the public service and ultimately reduce political interferences in the administrative matters. Lebanon should seriously consider limiting political interventions on behalf of constituents by channelling such interventions through Central Inspection. In the U.S. "Constituent complaints and inquiries in Congress are brought to the attention of oversight committees. Intervention of individual members of Congress in the affairs of administrative agencies (except for seeking information or making a routine inquiry) with a view to expediting or influencing agency decisions on behalf of constituents is considered improper"[12].

If citizens are encouraged to submit their complaints directly to Central Inspection and if politicians are required to channel their interventions in the public service through Central Inspection, this could greatly relieve the administration from a heavy burden in addition to encouraging more proper conduct by civil servants in dealing with citizens' transactions.

THE GENERAL DISCIPLINARY COUNCIL

The General Disciplinary Council is probably the most important tool for ensuring proper conduct by public officials through the prosecution and punishment of offending employees. Here again Lebanese laws and practices have been influenced by the French continental system which relies on compulsion and punishment to ensure adherence to statutory requirements of appropriate conduct. A tight and strict disciplinary system is especially important in countries like Lebanon where governments are liable for damages that might result from the acts of their employees.

The concept of disciplinary councils is essentially a French innovation based on the assumption that trial by an independent outside council composed of peers or fellow employees who have a good understanding of the workings of the public service provides an important guarantee of a fair and impartial trial to the accused employee. This is in contrast to Anglo-Saxon disciplinary practices which accord a greater role to supervisors within individual departments in imposing disciplinary sanctions.

The present disciplinary system in Lebanon, which was established in 1965, entrusts the responsibility of disciplining public officials to a central General Disciplinary Council. Prior to 1965 this responsibility was entrusted to three separate disciplinary councils with jurisdiction over three different categories of government employees. This arrangement proved to be seriously lacking, especially in terms of the requirements of uniformity and consistency. Since the disciplinary code in Lebanon does not clearly define the specific punishment that should be inflicted with each violation, and since disciplinary councils are not bound by precedent in prior cases, the decisions of these councils depend to a great extent on the individual discretion and judgement of their members. In actual practice, this means that on a number of occasions different councils may inflict different sanctions on employees who have committed similar violations. This represents a serious violation of the

elementary principles of fairness and justice in disciplinary trials.

The personnel law in Lebanon does not include an elaborate and detailed code of proper conduct which clearly and specifically defines what constitutes improper or unethical conduct. The law, however, in the section dealing with the duties of civil servants provides broad guidelines about how public officials should conduct themselves in the performance of their official duties.

The general guidelines for proper employee conduct stipulate that civil servants must apply existing rules and regulations and must be guided by the public interest in the performance of their duties. Civil servants, each within the area of his competence, must complete the transactions of citizens quickly, accurately and faithfully. Each employee must bear the responsibility for orders and instructions given to his subordinates. A civil servant must submit to his immediate supervisor and implement his orders and instructions. If such orders and instructions are in clear violation of the laws, the civil servant should inform his immediate supervisor accordingly in writing. If the supervisor insists on his order in writing, the civil servant must comply.

The personnel law explicitly prohibits employees from doing the following:

- Holding office in any political or religious party, association or council
- Joining professional or labor unions
- Going on strike or inciting others to do so
- Holding any paid job in any commercial, industrial, professional or other organizations, except for teaching in an institute of higher education or a secondary school
- Serving as a member of the board of directors in any company

- Having a financial interest, whether directly or indirectly, in any institution subject to his supervision or the supervision of the department to which he belongs
- Holding and elective office, in Parliament, municipalities or councils of elders
- Engaging in any paid work that is not compatible with the dignity of his government job
- Seeking or accepting any recommendation or seeking or accepting, directly or indirectly, and gift, grant or favor in connection with the job which he occupies
- Divulging any confidential information relating to his work, even after leaving his job, except if given written approval by his ministry
- Preparing or helping in the preparation of group petitions, regardless of the motives or reasons thereto.

The penalties that can be imposed on offending public officials are clearly spelled out in the personnel law of 1959. They are divided into two broad categories. The relatively mild penalties are included in category I and the more severe penalties, in category II. As was mentioned above, one of the important loopholes of this system is that it does not link specific penalties to specific violations committed by civil servants.

First category penalties:

- Reprimand
- Salary deduction for a maximum period of 15 days
- Delay of the salary step increase within the grade for a maximum period of six months.

Second category penalties:

- Delay of the salary step increase within the grade for a maximum period of 30 months
- Suspension without pay for a maximum period of 6 months
- Demotion of one or more steps within the grade
- Demotion of grade
- Dismissal (with pension benefits)
- Discharge (without pension benefits)

Role and Functions

The General Disciplinary Council is an independent semi-judicial body responsible for trying government employees accused of violating existing laws and regulations and imposing appropriate penalties on them. The Council cannot initiate trial proceedings on its own but can only consider cases referred to it by the appointing authority or by Central Inspection. The Council is empowered to impose any penalty it sees fit whether of the first or second degree mentioned above.

The jurisdiction of the Council extends to all employees in the public service, including autonomous agencies and municipalities. The judiciary, army, public and internal security forces, members of the Central Inspection Board, and Civil Service Council are not subject to its authority. A serious gap in the present law is that the large group of unclassified casual employees is also excluded from the jurisdiction of the Council. At present the number of such employees in the public service is approximately 10,000 and is actually larger than the number of regular civil servants.

The Council is composed of a president and two members who are appointed by the Council of Ministers. An inspector general form Central Inspection serves as the government prosecutor in the Council. Members of the Council enjoy security of

tenure since they have no fixed term of office and can be removed only for causes by the Council of Ministers upon the recommendation of the heads of the Council of State, the Civil Service Council and Central Inspection, which is extremely unlikely to happen.

The proceedings of the Council are quite similar to those in a regular court of law. When an accused employee is referred to the Council, the government prosecutor studies the case, collects all the necessary evidence and submits the file to the Council. which can conduct further investigation through the use of special experts whenever necessary and additional testimony by civil servants or outsiders.

The accused employee has the right to read all the documents in his file and take copies of the ones he needs for his defense. He is also entitled to submit any evidence or documents which he deems necessary and to request the testimony of witnesses that he chooses. More importantly, he is allowed to seek the help of an outside lawyer or a fellow employee of the same rank to assist him in his defense.

The deliberations of the Council are confidential and its meetings are not legal unless attended by all the members, although the verdict can be reached by a majority vote. The decisions of the Council are final and cannot be appealed to any higher court or authority. It is interesting to note that even the President of the Republic, who is allowed by law to pardon a convicted criminal, is not allowed this prerogative in cases of employees sentenced by the Council. It should be added that an employee who is prosecuted by the Council can also be liable for prosecution by the regular criminal courts if the offense which he committed represents a violation of the penal code. An odd twist of the Lebanese law is that prosecution by the criminal courts requires the prior approval of the superior of the employee.

Since its establishment in 1965, the record of the General Disciplinary Council is not much different from the record of its predecessors in terms of the number and

severity and penalties imposed or the rank of employees involved (see Tables III and IV). During the period 1962-1979 not a single employee of the first grade was punished and the percentage of employees in Grade 2 or 3 who were punished does not exceed 5%[13].

The total number of 46 penalties imposed in 1993 is relatively small compared to previous years, but for the first time it includes seven senior civil servants from the highest three grades, three of whom were dismissed from the service[14]. The small number of inflicted punishments is offset by their severity and unusually large number of senior employees affected.

One of the disturbing facts in the 1993 report of the Council is that only 6 cases were referred to it by other departments, including only two by Central Inspection[15]. This is an amazingly low figure, especially in view of the mounting criticism of the widespread corruption, which by all accounts has reached alarming proportions during the civil war and its aftermath. As mentioned earlier, the Council cannot take the initiative in disciplining civil servants who have not bee referred to it by either the appointing authority or Central Inspection. This is clearly one of the main weaknesses of the disciplinary system in Lebanon because the available figures indicate that since 1962 the number of such referrals with the exception of few years has been limited (see Table III).

The discrepancy in the figures shown in Tables II and III between the number of yearly referrals to the Council and the number of inflicted punishments is the result of a serious problem that has plagued the Council since its establishment, namely the large backlog of cases that await consideration.

TABLE III

Number of Civil Servants Punished by Central Disciplinary Council in 1968, 1971, 1973 & 1993

Number of Punished Civil Servants	Year
160	1968
113	1969
75	1971
82	1972
94	1973
46	1993

Source: Annual Reports of the General Disciplinary Council, 1968, 1969, 1971, 1972, 1973 & 1993.

According to available records, there is no single year in which the Council was able to dispose of all the cases before it. As an example, by the end of 1992, the present Council had a backlog of cases involving 163 employees which, by the end of 1993, was reduced to 52. This situation is the result of the slow proceedings of the Council for which there is no easy solution. The establishment of additional councils, or chambers of the same council, could expedite the disciplinary process at the expense of uniformity and equality in dealing with different employees.

Evaluation

One of the main criticisms that have been repeatedly expressed about the present disciplinary system in Lebanon is the denial of the right of appeal to convicted employees. This is considered by many as a violation of a basic and sacred individual right, especially in a democratic system. If compared to regular courts of law - which allow at least one or two levels of appeal - such a practice is considered as discriminatory against a large group of citizens in matters which are of crucial importance to them. The right of appeal, however, will inevitably result in further delays in an already slow process and will certainly weaken the effectiveness of the whole disciplinary system.

The experience of Lebanon clearly indicates that its disciplinary system is tilted in favor of the protection of government employees and their security of tenure. Even the disciplinary attempts using special or extraordinary powers to purge presumably corrupt elements proved unsuccessful to a great extent. The tradition of security of tenure and permanence of government employment, which is often compared to a catholic marriage in Lebanon, is deeply rooted and has not been seriously questioned so far.

One of the most complex problems of government administration is how to achieve a proper balance between protecting the security of employees against actions

by politicians and protecting the public interest by allowing the government greater freedom and flexibility in dealing with cases of improper conduct in the public service. The trend in some developed countries has recently been for less emphasis on the doctrine of the permanence of public service employment and more emphasis on the need for prompt and effective action in dealing with the problem of abuses and irregularities in the public administration.

In Lebanon, as well as other developing countries, the claim is made, often with good justification, that the prevailing traditional and underdeveloped political systems view the public administration as an instrument to promote their own selfish interests and actually exploit it in so many ways in furtherance of such interests. Allowing undue political interference in the public service is much more damaging to the public interest than ensuring greater protection for public officials, even at the risk of greater abuses by them.

It would be unfair to judge the success or failure of the General Disciplinary Council or other control agencies by the high incidence of abuse, irregularities and corruption in the Lebanese public service since this situation is the result of a variety of factors, notably the civil war as well as the lax control and disciplinary system. When the first Hariri cabinet assumed office in October 1992, it was forced, as a result of the intensity of public complaints and criticism, to give urgent priority to the issue of corruption in the public service. In its attempt to deal with this problem, the government decided to bypass the General Disciplinary Council, and create a special committee composed of the members of the Civil Service Council and the Central Inspection Board which was entrusted with the task of reviewing the cases of public employees referred to them by the Council of Ministers and recommending the dismissal of anyone of them without specifying the causes. But, despite this provision in the law creating this Special Committee, it was made abundantly clear in so many official statements that the main purpose of this whole operation was to "purge" corrupt employees as well as employees who were not attending to their duties. The

result of this purge movement, as it has become known, was the dismissal of about 500 employees, the vast majority of whom were of mid and lower ranks of the public service. Here again there was no single grade one employee among the purged ones and only a very small number of grade two or three employees.

Following the purge, a large number of the dismissed employees appealed to the Council of State, the highest administrative court, which annulled decisions of the Council of Ministers on the grounds of insufficient evidence. This whole operation proved to be one of the major fiascos of this cabinet.

It is worthy of mention that a similar "purge" undertaken in 1965-66 and using essentially the same mechanism succeeded in purging about 250 employees, including some ambassadors, top civil servants and high ranking judges. The law authorizing this purge, however, denied the employees any appeal to a higher authority.

CONCLUDING REMARKS

In the light of the above discussion of the control mechanisms within the executive branch in Lebanon, the following summary conclusions can be made:

1. Despite the reasonably large number of control agencies that exist in Lebanon and the reasonably wide powers vested in them, it can be safely said that the overall system of control and accountability in Lebanon has been less than effective in dealing with the extensive violations and irregularies within the public service. This failure is mainly manifested in the very small number of civil servants - mostly from the lower ranks - who were punished over the years and the relatively mild sanctions imposed on them as well as in the pervasive and unchecked corruption that presently afflicts the Lebanese public service.

2. Despite the relative immunity and independence enjoyed by most of the control agencies, political interference in their work is clearly one of the most important problems that significantly undermine their effectiveness.

3. The control system in Lebanon, mainly as a result of the heavy influence of French patterns and practices, in inherently biased in favor of protecting the civil servant and his security of tenure at the expense of maintaining proper and ethical standards of conduct.

4. The slow, complex and cumbersome system of control in Lebanon, especially the financial pre-audits, imposes serious limits on initiative and flexibility in the public service and result in unnecessary delays in its work without providing an effective deterrent to irregularities and violations.

5. The system of control in Lebanon places final responsibility for punitive action in the hands of external tribunals or boards rather than the individual department heads or supervisors who are thus denied the authority needed to discharge their responsibilities properly. But it is only fair to point out that department heads and supervisors have generally been reluctant for a variety of reasons to use the mild disciplinary sanctions at their disposal and have instead been inclined to shift this burden to an outside board or tribunal.

6. In Lebanon, disciplinary procedures applied by semi-judicial tribunals in the Court of Accounts, Central Inspection and the General Disciplinary Council have been very slow indeed, thus diluting the impact of disciplinary sanctions taken many months after the violations have been committed. Without prompt and certain sanctions, the effectiveness of any control system is bound to suffer.

7. The system of control in Lebanon is undoubtedly negative and authoritarian in nature and relies primarily on compulsion and punishment to ensure strict adherence to the letter of the law without giving due consideration to the variety of political, social, economic and cultural considerations that have an important bearing on employee conduct.

8. The control system in Lebanon is highly fragmented with disciplinary powers dispersed among the Court of Accounts, Central Inspection, the General Disciplinary Council and department heads and supervisors. This situation results in duplication, conflict, and lack of proper coordination which contributes to the weakening of the whole system.

9. The system of financial control in Lebanon has been tilted in favor of the pre-audit with little attention to post-audit control. A proper balance between the pre- and post-audit is essential for the success of any financial control mechanism.

10. The system of financial control suffers from a notorious duplication in the financial pre-audit by the Ministry of Finance and the Court of Accounts which is completely unjustified and is the cause of serious delays in government work.

11. The pre-audit exercised by the Ministry of Finance is highly centralized and unnecessarily complicated and causes undue delays in government work.

12. There is a large group of important autonomous agencies whose budgets are quite large and who are not subject to the financial pre-audit of either the Ministry of Finance or the Court of Accounts.

13. The transfer of the Court of Accounts from the Executive Branch to Parliament could significantly enhance the capabilities of the latter in exercising its oversight role of the public service.

14. The reform of the existing system of public service accountability in Lebanon does not depend on the creation of new control mechanisms but rather on the strengthening and improvement of existing ones.

15. The work of central control agencies has been mainly confined to the exercise of their control functions with little attention given to their broader role in the over-all management and central direction of the executive branch of government.

16. The system of control applied in Lebanon is highly legalistic and formalistic and places undue emphasis on strict compliance with the letter of the law rather than the overall considerations of facilitating and expediting government work.

Such a system unavoidably sacrifices the requirements of efficiency for the sake of strict compliance with existing rules and regulations and subjects the public administration to undue restrictions and controls which inhibit its effective and speedy functioning.

CHAPTER II

LEGISLATIVE OVERSIGHT OF THE PUBLIC SERVICE

The doctrine of the public responsibility and accountability of government to elected representatives of the people is one of the central features of democratic systems. Its main purpose is to protect the public interest by preventing or minimizing the abuse of the wide authorities entrusted to the executive branch of government. One of the important means for ensuring such accountability is through a variety of checks and controls exercised by legislative bodies over the executive and the public administration. In discussing the role of the British parliament during the 19th century, John Stuart Mill stated that "the proper office of a representative assembly is to watch and control the government: to throw the light of publicity on its acts, to complete a full exposition and justification of all of them which anyone considers questionable; to censure them if found condemnable..."[16]

Today, the role of legislative bodies in checking and monitoring the work of government is recognized by all democratic systems as almost of equal importance to their basic role of policy formulation through legislation. It is interesting to note that the concept of legislative oversight of government, which was originally associated with parliamentary systems of government, has been more rigorously and effectively applied in the United States which has adopted a presidential system based on the principle of separation of powers. It seems that the rise of mass and disciplined political parties and their role in parliamentary systems today has inhibited the role of the legislature in exercising proper control over the cabinet which is justifiably considered an extension of the majority party in parliament.

It is unfortunate that the literature on the topic of legislative oversight of government activities, in developed and to a greater extent developing countries, is

very scarce indeed. But with the continuous and vast expansion in the role, functions and powers of modern government, and the increasing impact of governmental activities on practically all aspects of the daily lives of most citizens, this subject is assuming greater importance and urgency. Also the problem of widespread corruption and abuses of authority in the public service, especially in developing countries, in addition to the failure of internal tools of control and accountability have highlighted the need for identifying better ways and means for more effective accountability in the executive branch. In many countries of the world, improving government accountability has become a primary condition for restoring the trust of the people in government and dispelling the growing myth that effective and accountable government is not compatible with a free and democratic system of government.

The purpose of this chapter is to examine the various checks and controls exercised by Parliament over the public administration in Lebanon, to identify existing problems and obstacles, and to recommend ways and means for improving the effectiveness of such checks and controls. The discussion will focus on the period since 1990 following the adoption of the National Conciliation Pact (NCP) in Taif, which marked the end of the civil war and resulted in some important constitutional amendments that changed, among other things, the nature of executive-legislative relationships and enhanced the prestige and influence of Parliament in a manner that enables it to play a more effective role in checking and monitoring the work of government.

The problem of legislative oversight of government activities, however, cannot be properly understood except in the wider context of the Lebanese political system, and in particular executive-legislative relationships, both before and after the 1990 constitutional amendments. In the following paragraphs we will attempt to briefly describe the main features of the Lebanese political system since independence in so far as they relate to the issue of legislative oversight of government.

Political System in Independent Lebanon: 1943-1990

The formal governmental system that was inherited from the French Mandate was in theory a parliamentary system, but in actual practice proved to be an odd combination of both the parliamentary and presidential systems.

Executive authority was vested in the President of the Republic assisted by a cabinet. The President was clearly the main locus of power and enjoyed extensive powers to appoint and dismiss the Prime Minister and members of the Cabinet and to dissolve Parliament. The Cabinet, although appointed by the President, was in theory, responsible to Parliament and needed its confidence to continue in office. In practice, however, the tenure of cabinet members depended primarily on the support of the President. Since 1943 there is no single case of a cabinet or a minister who was forced to resign as a result of a parliamentary vote of no confidence. But despite the seemingly formidable powers of the President, he was in practice constrained by a number of social, political and religious considerations that constituted serious limits to the full exercise of the powers officially entrusted to him.

In a country like Lebanon, plagued by sharp religious and communal divisions, the role and powers of the President, who was supposed to be the main integrative force in Lebanese society, could go only as far as the political consensus allows. Actually, the unchecked and unilateral use - and on some occasions abuse - of executive authority by some presidents has led over the years to a serious outcry by many political and religious groups about the lack of participation in the political process, and was undoubtedly one of the causes of the Lebanese civil war. The demand for greater participation was the most important problem addressed by the meeting in Taif and was resolved by strengthening the role of Parliament and transferring executive authority from the President to the Council of Ministers since all religious and political groups are equitably represented in these two bodies.

An examination of executive legislative-relationships during the period 1943-1990 reveals that the balance of power was clearly tilted in favor of the President. Since 1943 different presidents have dominated, controlled, and often bypassed parliaments in the governing process. Parliaments have also displayed a notorious readiness to submit to the will of the executive thus enabling presidents to virtually decree any legislation they deemed necessary. This has prompted some politicians to refer to Parliament as an addendum to the executive branch, while others have complained of the fusion of executive and legislative powers.

There are many examples to illustrate the dominant role of the executive vis-a-vis parliament. The most important is the practice of delegated legislation whereby Parliament delegates to the executive the power to legislate through executive decree-laws. On several occasions the executive was given such powers in a number of important areas. It is not an exaggeration to say that some of the most important policies were enacted through decree laws by the executive rather than through legislative acts of Parliament.

Another important example is the power exercised by the President, subject to the approval of the Cabinet, in promulgating as law any bill which has been submitted to Parliament as urgent and which has not been acted upon during a period of 40 days. As an example, during the period 1959-1981, 557 such bills, some of which relate to basic policy issues, were promulgated in such a manner[17].

A third example is the right of the President to request the reconsideration of any law passed by Parliament. When he exercises this right, he will not be required to promulgate this law until it has been reconsidered and approved by an absolute majority of the total membership of Parliament, which is not easy to secure.

A fourth example, is the power of the President to dissolve Parliament, subject to the approval of the Cabinet. The power of dissolution although exercised twice

since 1943 was an important threat that helped intimidate Parliament and keep it in tow.

The Lebanese experience during the period 19943-1990 clearly indicates that the Lebanese parliament played a marginal and ineffective role both in law making as well as in exercising oversight of government activities. "The proposition set forth in this paper is that the legislature is an essential element in the Lebanese political system, although it makes only a minimal contribution to the policy-formulation and rule making functions and is not effective as a check on the executive and bureaucracy"[18].

Such a parliament which was not able to discharge its basic function of legislation because it was often usurped by the executive could hardly be expected to exercise effective oversight over government activities.

The Constitutional Amendments of 1990

The constitutional amendments, which were approved by the Lebanese Parliament in September 1990, were mainly based on the provisions of the National Conciliation Pact as well as on the spirit of the Taif discussions. The following paragraphs will briefly highlight the amendments which relate to executive-legislative relationships, and in particular the enhanced role of Parliament.

The main change relating to the executive is the transfer of most of the powers of the President to the Council of Ministers, thus creating a collegial leadership that ensures participation by all ministers in the decision-making process within the executive branch. Although the President was allowed to retain some of the less important powers that he previously enjoyed, it can be safely said that executive authority under the new constitution is primarily vested in the Council of Ministers.

The main changes relating to Parliament were intended to strengthen its powers vis-a-vis the executive and to create a more equitable balance of power between the two branches. Actually a new provision in the preamble of the constitution states that the political system is based on the principle of separation of powers and balance and cooperation among the branches of government. Also, a new provision explicitly states that Lebanon is a democratic, parliamentary republic. The term of the Speaker was extended from one to four years to coincide with the term of the Chamber of Deputies. The selection of the Prime Minister, which was a prerogative of the President, was made subject to binding consultations conducted by the President with the Speaker and members of Parliament.

Another important change is the significant weakening of the power of the executive to dissolve Parliament to the point of making it almost meaningless[19].

The power of the executive to promulgate as law urgent bills not acted upon by Parliament within a period of 40 days was curtailed by specifying that this period starts from the time a bill is formally submitted to a general session of Parliament rather than the time of its referral. Since 1990 no urgent bill has been promulgated as law by the executive despite the fact that a reasonably large number of such bills were submitted to Parliament which must be given credit for having behaved responsibly by making it a point to act on urgent bills within the forty-day limit.

The practice of delegated legislative powers that enabled the executive in the past to actually legislate through decree laws was discussed and strongly criticized during the Taif meetings. But it was decided that no constitutional change was needed in this regard since existing provisions in the constitution stipulate that no law can be promulgated without the approval of Parliament. It was agreed that a strict enforcement of this provision would guard against possible encroachments by the executive.

This practice has almost been completely discontinued since none of the four cabinets that assumed power after 1990 was granted legislative powers. Despite the repeated pleas of the present cabinet, which came to power in 1992, for special legislative powers in the field of administrative reform, Parliament has firmly refused to grant them.

There is no doubt that the above changes have helped to redress the balance of power between the executive and legislative branches in Lebanon. An examination of the record of the present Chamber of Deputies, which was elected during the summer of 1992, clearly shows that it has been able to assert its relative independence from the executive and to play a more active and vigorous role in the governmental process.

Since its election in October 1992, the present Chamber has, until early October 1994, held 47 sessions during which it has enacted 307 laws which is a record compared to any previous Chamber. Approximately fourteen percent of these laws were initiated by members of Parliament rather than the Cabinet, which is a high ratio compared to other more advanced parliamentary systems[20]. More importantly, the Chamber has introduced some important changes in many of the bills referred to it by the Council of Ministers. In one instance it has passed a law cancelling a decision by the Council of Ministers which had prohibited all radio and television stations - with the exception of the official government radio and television stations - from broadcasting political and economic news bulletins. This particular incident has resulted in some accusations of legislative encroachment on executive powers.

In addition, Parliament has activated a hitherto neglected provision in its internal regulations, which requires it to hold a special meeting after every four regular meetings to be devoted to questions, interpellations or general debate. Since 1992 six general debate meetings were held[21] some of which were quite critical of the executive.

These developments clearly indicate that since acquiring its new powers following the constitutional changes of 1990, Parliament has insisted on exercising them in full. This has created some backlash from a number of politicians including the Prime Minister, who claim that the balance of power has actually shifted in favor of Parliament. In order to correct this imbalance, some of these politicians are asking for strengthening the power of the executive to dissolve Parliament or limiting the legislative powers of the latter to certain fundamental areas, as is the case in France now.

Tools of Legislative Oversight

Despite the strengthened role and powers of parliament, Lebanon has not yet witnessed any noticeable improvement in legislative oversight of government activities. Members of Parliament in Lebanon see their main role as passing laws and exercising political and policy oversight of government. Oversight of the activities of the bureaucracy has so far received little attention from Parliament in Lebanon, even after the 1990 amendments.

The Lebanese constitution is silent on the issue of parliamentary control or oversight of the public administration despite the fact that the Taif National Conciliation Pact included a provision that "The Chamber of Deputies is the legislative authority and exercises comprehensive supervision over the policies of the government and its activities". The constitutional amendment of 1990, however, have changed this provision to read as follows: "Legislative authority shall be vested in a single body, the Chamber of Deputies:"[22]. It is not clear why Parliament has voted to dilute its own powers in this respect. But as things stand now there is no constitutional mandate to Parliament in Lebanon like the mandate granted to Congress in the U.S. by the Legislative Reorganization Act of 1946 to exercise oversight over the activities of the public service.

In parliamentary systems, however, this function is considered an integral part of the concept of cabinet responsibility to Parliament, both collectively and individually, where individual ministers can be held accountable for the proper functioning of their ministries. In Lebanon this interpretation is generally accepted and was recently asserted in strong and explicit terms by the Speaker in a meeting of the Chamber on October 18, 1994, in which he rendered an account of the accomplishments of Parliament since its election in 1992. The Speaker emphasized that parliamentary oversight (the term in Arabic is closer to supervision or control) of the activities of the executive is of the essence of a democratic parliamentary system and is complementary to the task of legislation. He added that the authority of government to execute laws is not an absolute one without any control or accountability but is conditional on the confidence of Parliament which should ensure that such execution is for the people and not at their expense[23].

The oversight role of Parliament is also subsumed in its by-laws (articles 147-151) which allow it to create special committees to conduct special investigations into any problem. These committees can be accorded judicial powers to subpoena witnesses for questioning.

But despite the fact that the oversight role of Parliament is taken for granted, the legislature in Lebanon has not so far displayed any serious interest in exercising this role. The following pages will briefly discuss the various tools that Parliament can use, if it chooses, to exercise its oversight role.

Votes of no Confidence

Article 66 of the Lebanese constitution stipulates that ministers are entrusted with administering the services of the state and applying the laws and regulations, each within his jurisdictional domain. The same article also stipulates that ministers are collectively responsible to Parliament for the general policy of the government, and

individually responsible for their personal actions. Article 37 of the constitution states that each deputy has the "absolute" right to ask for a vote of no confidence at any time during a regular or special session of parliament, without specifying the causes for such action.

But as was mentioned earlier, the Lebanese Parliament has failed to exercise this prerogative throughout the independence period, mainly because of its subservient role vis-a-vis the executive. Even after the constitutional amendments of 1990 which made Parliament a more equal, partner in the political process, the legislature has not withdrawn confidence form any cabinet or individual minister, despite the fact that on many occasions deputies had expressed their strong criticisms of the work of the Cabinet or some of its members. It must be stressed that the decision to withdraw confidence from an individual minister is not a matter to be taken lightly since it could upset the political and religious balance within the cabinet and lead to a political crisis.

It would be misleading to discuss the Lebanese political process, especially executive legislative relationships, without mentioning the increasingly important role of Syria in the internal affairs of Lebanon. According to a leading Lebanese columnist, a former prime minister, whose name was not divulged for obvious reasons, has said that since cabinets and individual ministers are prevented from resigning of their own free will, and since Parliament is prevented from withdrawing confidence from the government, the legislative branch has lost its ability to hold the former accountable for its activities and actions. As a result, the government is not any more afraid of Parliament or answerable to it to the extent that corrupt ministers who have committed offenses do not care about the attacks and criticisms of deputies since they are protected and supported from outside and their tenure in office guaranteed against the will of those inside[24].

Impeachment

The Lebanese Constitution of 1926 stipulated that the Chamber of Deputies can impeach ministers for high treason or for failure to perform their duties properly. In case of impeachment, ministers will be tried by the Supreme Council. The constitutional amendments of 1990 extended the impeachment power to include the Prime Minister.

Obviously, impeachment is the tool of last resort in all democratic systems for enforcing accountability of the executive but is very rarely used, if at all. In Lebanon, however, impeachment was, for all practical purposes, a meaningless threat since the Supreme Council, which was provided for in the 1926 Constitution, was not actually established until August 1990, and has not yet become operational.

But even with the establishment of the Supreme Council, the impeachment of the Prime Minister or any minister is extremely difficult because its initiation requires 1/5 of the total membership of the Chamber and its approval two thirds of the total membership. Conviction in the Supreme Council is by two thirds majority of the total membership. Decisions of the Supreme Council are not subject to any kind of appeal to a higher authority, although they are subject to a request for a re-trial in accordance with the Lebanese criminal code.

Since 1943 there has been no attempt by Parliament to impeach any prime minister or minister. This is not surprising since, during the same period, Parliament has not seen fit to impose the milder penalty of withdrawing confidence from any cabinet or minister. The failure of Parliament to take such action is definitely not the result of the lack of cases deserving of impeachment, but rather of the fear of deputies to set a precedent that could be applied to them should they become ministers in the future.

Parliamentary Committees

The present Parliament has thirteen standing committees whose jurisdiction corresponds closely to the functional jurisdiction of the existing ministries. The main functions of these committees is to review all bills submitted to Parliament, to hold hearings, not investigations, with the ministers and civil servants concerned as well as with interested outside groups, and to submit their recommendations to Parliament. During the period October 1992 to October 1995 parliamentary committees held approximately 726 meetings[25] to review pending bills. In many instances, important changes were recommended by the committees and approved by Parliament as a whole.

The work of these committees, however, has so far been limited to a review of proposed legislation and has not included a review of the activities of the various ministries. It is not feasible for standing committees, in view of their extremely limited resources, to exercise on a continuous basis and at the same time their legislative and oversight functions. Also, without investigative powers, the work of these committees cannot possibly lead to any significant results. Although the bylaws of Parliament allow for the creation of special investigative committees with judicial powers, this prerogative has rarely been used since 1943.

General Debate Meetings

The bylaws of Parliament provide that after every four general meetings, a special meeting should be devoted for questions, interpellations or general debate. Prior to 1990 this requirement was somewhat ignored, since Parliament was not in a position to challenge the executive or even to question or criticize its activities. Since 1990, however, this article in the bylaws has been activated and applied to a limited extent. During the period October 1992 to October 1995, Parliament held six debate

meetings in which deputies questioned and criticized the government on a variety of issues[26].

These meetings, which sometime stretch over a few days, clearly reflect the vigorous and aggressive role which Parliament has been playing since 1990. However, they usually focus primarily on the policies of the executive rather than the activities of the various ministries. On some occasions these meetings have witnessed strong criticisms of the activities of the executive, although they never led to any votes of confidence. It is interesting to note that during the three years period 1992 - 1995 deputies have submitted 127 questions of which the government chose to answer only 82 and ignored the remaining 45 ones. During this same period only 5 interpellations were made by deputies none of which led to a vote of confidence[27]. The fact that the discussions in some of these meetings are carried live by television has certainly encouraged livelier debate and criticism as well as a good deal of posturing by deputies. But they have also helped to raise the level of consciousness among the public about the problems and shortcomings of the government.

It is difficult to evaluate the impact and effectiveness of these meetings as an oversight tool since everybody recognizes that, for all practical purposes, votes of no confidence are not permissible without Syrian approval. The futility of such debates was well expressed by former Prime Minister Mr. Omar Karami, who said, "We can brandish the weapon of a confidence vote but we cannot use it". But there is no doubt that the general debate meetings have provided an important forum for deputies for the public airing of their concerns and criticisms of government work and have heightened their sense of responsibility for checking and controlling the work of government. In the long run this development will certainly contribute to healthier and more democratic practices in the Lebanese political system.

A somewhat recent, and potentially important development, is the increasing

use by some deputies and chairmen of standing committees of the press conference as a means to publicly air their criticisms of certain government actions. A good example of such a practice is a recent press conference held in early August, 1994, by the chairman of the Administration and Justice committee in which he strongly criticized the lamentable services provided by some ministries, especially in the area of the environment., telecommunications and public works and bluntly accused the Ministry of Public Works, of being under the control of some Mafia groups. In view of the immunity enjoyed by members of Parliament, they are at liberty to raise many delicate issues and mention names, something which the media is reluctant to do for fear of libel suits. Although such use of the media helps to focus attention on certain important problems and mobilize public opinion in support of these issues, it is sometimes intended as a means for self promotion by legislators.

Obstacles to Effective Legislative Oversight

It is quite clear that the oversight role of Parliament in Lebanon has, so far, been a limited and restrained one. This is the result of a variety of mitigating forces and factors. The most important of which will be discussed below.

Lack of Adequate Information

Legislative oversight of government depends to a great extent on the availability of adequate information about the programs and activities of the executive branch and the bureaucracy. As James Heaphy has observed, "Legislatures need their own independent sources of information because information gathered in government agencies is often not usable by the legislature", either because of "data pollution" or agency data bias to narrowly established missions"[28]. In many instances the lack of information is the result of deliberate withholding by the government. In other instances, governments might intentionally provide misleading information to influence

the decisions of legislative bodies.

In the case of Lebanon, the lack of accurate, relevant and timely information is clearly one of the important constraints on the oversight role of Parliament. For over a year now a serious controversy has been going on in Lebanon, both within and outside Parliament, about the exact figures relating to such fundamental issues as the gross domestic product, national debt and interest on it, the budget deficit, and even the total number of government employees. As an example, when Parliament was discussing the possible cost and impact of a salary increase for government employees in 1994, it was supplied with widely varying figures by the Ministry of Finance and the Civil Service Council. An equally embarrassing incident occurred recently when a World Bank mission was informed by the Civil Service Council that the total number of government employees was 110,000 while the Minister of Finance insisted that the number was 150,000. In many important instances, members of Parliament cannot decide which figures to use as a basis for legislative actions. As one deputy recently put it, Lebanon is a state without statistics.

Another glaring example of the information gap is the failure of the Council of Ministers to communicate some of its official decisions to Parliament. Normally, only decrees issued by the Council of Ministers are published in the Official Gazette and are available to the public while some decisions are kept secret, although members of Parliament ultimately learn of them either informally or through leaks to the media. This has led the former Speaker of Parliament in May, 1995, to propose a law requiring the government to publish all decrees and decisions of the Council of Ministers in the Official Gazette within a period of 10 days. The proposed law emphasized that in the absence of needed information the principle of responsibility cannot be applied.

The lack of adequate information is the result of a variety of factors, in

particular the destruction of the data base of the Central Administration of Statistics during the war, the lack of openness and transparency in the Lebanese government due, in great part, to the deep rooted tradition of secrecy inherited from the French and Ottoman rule, and the natural reluctance of the government to provide information that could prove embarrassing to it. As Max Weber has noted, "In facing a parliament, the bureaucracy, out of a sure power instinct, fights every attempt of the parliament to gain knowledge by means of its own experts, or from interest groups. The so-called right of parliamentary investigation is one of the means by which parliament seeks such knowledge. Bureaucracy naturally welcomes a poorly informed and hence powerless parliament - at least in so far as ignorance somehow agrees with the bureaucracy's interests"[29]. In view of the unchecked and rampant corruption among politicians and civil servants in Lebanon, the bureaucracy is naturally more determined not to provide any information that might expose such violations and irregularities.

Lack of Staff Resources

The lack of adequate information at the disposal of members of Parliament is compounded by the almost total lack of staff resources that can help deputies in conducting research and special studies which are an indispensable requisite for enlightened legislative and oversight work. With the increasing specialization and complexity of government work, it is extremely difficult for an individual deputy to properly comprehend the technical aspects and implications of the various bills under consideration. Deputies do not have the necessary knowledge or time to gather meaningful data about the activities of the government. Such kind of work requires the services of specialized full-time staff assistants, which very few deputies have.

At present, deputies in Lebanon are not allocated any offices or staff assistants. Parliament does not even have a library in its present premises. A new annex to the Parliament building, which is presently under construction, will provide for such a

library and for limited office space for each deputy. Some of the wealthier deputies have offices and some staff of their own, but in most instances these staff assistants devote most of their time to dealing with complaints and requests from constituents, which normally take precedence over the other duties and responsibilities of deputies.

In 1985 a new Directorate General of Research and Studies was established in Parliament "to provide advice in all matters submitted to it by the Speaker, standing committees, deputies and other departments in Parliament, and to undertake research, studies and the collection of information and statistics needed by deputies in the performance of their duties..." Unfortunately, this unit has not become operational because of its failure to recruit properly qualified staff, presumably because of unattractive salaries. Its main contribution so far has been the publication of a useful quarterly journal entitled Parliamentary Life.

Relationships Between Deputies and the Executive

One of the main obstacles to effective parliamentary oversight in Lebanon is the special mutual-interest relationships that exist between deputies and the executive, including the bureaucracy. The Lebanese political system is still basically a traditional one with a limited role for modern organized political parties and where election to Parliament is dependent to a great extend on special favors and services that a candidate can ensure for his constituents. This in turn is dependent on the cooperation and assistance of the bureaucracy in providing such favors and services. The steady expansion in the functions and powers of the bureaucracy has inevitably led to a greater dependence by ministers and deputies on these special favors and services to maintain their political influence and ensure re-election.

As a result of such a situation, ministers and deputies have become brokers or middlemen between the bureaucracy and the citizens trading favors for votes. One of the top civil servants who maintains a daily record of the intercessions of politicians

on behalf of their constituents has told the author that during the month of September 1994, he was subjected to a total of 118 such intercessions or requests. In return for special services and favors provided by ministers and civil servants, deputies reciprocate by ensuring political support and protection to them.

Under such circumstances it becomes extremely unlikely for a deputy to exercise checks and controls over his benefactors in government. Actually this peculiar relationship of clientalism and mutual-interest between the government and members of Parliament creates a vicious circle, which is difficult to penetrate, and encourages the perpetuation of the political status quo. The present Prime Minister, who attributes the failure of his attempt to purge corrupt civil servants in great part to political intercessions has, declared on more than one occasion that it is not possible to implement significant reforms in the public administration within the prevailing political conditions and realities.

It must be pointed out, however, that the role of deputies as brokers between the bureaucracy and their constituents has a positive side to it. In many instances, deputies intercede on behalf of their constituents to help expedite their legitimate transactions that might be neglected or unduly delayed by civil servants for a variety of reasons. With a highly routinized and unresponsive bureaucracy, such intervention by deputies represents a highly valued service to ordinary and helpless citizens who have no other effective means of appeal in such matters.

Lack of Political Accountability

The almost total lack of accountability in Lebanese politics is probably the single most important obstacle to the enforcement of bureaucratic accountability. If politicians are not willing to apply norms of proper conduct to themselves, they cannot convincingly demand their application to civil servants.

There are many indications that effective political accountability is a characteristic of reasonably advanced democratic systems, although the recent developments in some European countries suggest that even such countries have not been able to establish adequate checks and controls on the conduct of political leaders. In an emerging democracy like Lebanon, the concept of accountability is not part of the political culture and tradition. Despite the fact that the Lebanese constitution provides for the impeachment of ministers and their trial before a Supreme Council in case of improper or negligent conduct, no such case has occurred so far.

In 1953 the Lebanese government issued a decree law dealing with the problem of the illicit wealth of civil servants, deputies, ministers, prime ministers and presidents. It empowered a special committee composed of three judges and accorded full judicial power to investigate all cases involving such illegal wealth. Unfortunately, this law has never been applied. In 1954 a law was enacted requiring all officials entrusted with performing a public service to file reports about the amount and sources of their incomes. Here again, this law has never been applied. As of now, Lebanon does not have an official code of conduct for politicians, similar to the one for civil servants, which defines what constitutes illegal or unethical activities. Since 1943 no single deputy has been prosecuted for improper conduct in office except for few cases that involved criminal offenses.

As a result of this situation, politicians at all levels of government have felt free to indulge in all kinds of improper and corrupt practices without fear of punishment. The seriousness of the issue of political corruption in Lebanon came to light following a wave of accusations triggered by the arrest in October 1994 of a deputy for drug related offenses. In a statement made in Parliament, prior to his arrest, this deputy accused some ministers, deputies and the children of four persons in positions of high responsibility of drug related offenses. The annual report of the International Drug Bureau of the U.S. State Department which was released in February 1995 refers to the continued involvement of Lebanese officials in the drug trade.

In December 1994 the President of the Republic, in an unprecedented move, publicly accused a number of leading politicians of corrupt practices, including the former Speaker of Parliament, the current Deputy Speaker, a former Prime Minster and a prominent deputy. In subsequent accusations one of the deputies publicly accused the Prime Minister, the Minister of Finance, and a number of deputies, that he did not name, of corrupt practices. Another deputy publicly accused the Minister if the Environment of collusion in one of the worst scandals that involved the import and burial of large amounts of toxic waste in some parts of Lebanon. More recently, a former prime Minister has accused the President of the Republic of the illegal acquisition of wealth while in office.

This is by no means an exhaustive list of cases involving corrupt practices by politicians holding public office, but rather a sample that indicates the alarming proportions of political corruption in present day Lebanon. The most shocking thing about it is that despite such public accusations by responsible authorities no action has so far been taken to deal with this problem. This situation has prompted 55 of the leading intellectuals in Lebanon to issue a public statement on December 10, 1994 deploring the deterioration in the level of conduct and morality in the political process and strongly urging the government to take the necessary measures to deal with this issue.

Under such circumstances it becomes extremely difficult to establish and enforce a system of compliance accountability in the public service. Actually, many Lebanese question the wisdom and usefulness of entrusting such politicians with the responsibility of checking and monitoring the activities of the public administration.

IMPROVING LEGISLATIVE OVERSIGHT

It is clear from the above discussion that Parliament in Lebanon, despite its nhanced role and powers, has not been able to play a meaningful role in checking and ior oring the activities of an increasingly corrupt and negligent bureaucracy. This an important challenge that deserves greater attention and priority in any lm iistrative reform effort in Lebanon. This might be an opportune time for an creasingly confident and independent Parliament to address this issue and introduce m changes that can strengthen its oversight role of government. The following ggested reforms can probably be implemented if Parliament shows the necessary will d termination:

onstitutional or Statutory Mandate

As was mentioned earlier, the newly amended constitution does not include any pli t provision about the authority of Parliament to check and monitor the activities government. The authority of Parliament to check and supervise government ivi es is implicit in Articles 37 and 68 of the constitution, which give deputies the ht to withdraw confidence from any minister and force him out of office although y do not mention anything about the causes that might justify such action. The plications here, as in other parliamentary systems, is that the Minister can be held poi ible for the proper management of his ministry and for nay errors or abuses civil servants within it.

The right and duty of Parliament to exercise oversight over the public inistration, however, should be explicitly and officially incorporated in existing ues Since it would be somewhat difficult to amend the constitution to broaden the nition of the functions of Parliament to include such oversight or monitoring ctic , it might be more practical to include such a new definition in the bylaws of

the Parliament which can be changed by a simple parliamentary vote. The recent statement by the Speaker about the oversight role of Parliament referred to earlier is an important first step in this direction.

The inclusion of such a provision in the constitution or the internal regulations of the Chamber is not necessarily a guarantee of a more active and vigorous role of Parliament in this respect, but will certainly heighten the awareness of deputies of the important responsibility entrusted to them and help them assert their rightful role in enforcing bureaucratic accountability.

New Role for Parliamentary Committees

If Parliament is to be officially entrusted with the function of checking and monitoring the activities of the public service, it must be provided with the necessary instruments that will enable it to effectively exercise this role. Foremost among these instruments is expanding the role of parliamentary standing committees to include hearings and investigations relating to the management of all public service departments. Although the bylaws governing the work of these committees do not explicitly exclude the possibility of such hearings and investigations, they also do not explicitly accord such powers to standing committees. However, Article 147 of the bylaws of the Chamber, which stipulates that it can form special committees to investigate a particular issue or case, clearly implies that such investigations cannot be normally undertaken by standing committees. This has actually been the practice in the Lebanese Parliament where standing committees have refrained from investigative work which has so far been restricted to special committees created especially for this purpose on very rare occasions.

If it is not feasible to grant investigative powers to all existing standing committees in Parliament, it might be more realistic to create one or two permanent investigatory committees within the legislative branch which would be responsible for

looking into all cases involving violations and abuses of authority in the public administration.

However, any move to expand the role of parliamentary standing committees to include investigations or to create new investigating committees must be accompanied by the appointment of full time specialized personnel who can assist these committees in effectively exercising this new role. Without such staff, investigating committees cannot be possibly expected to discharge such a responsibility in a satisfactory manner. At present, the almost total lack of such personnel, seriously inhibits the basic work of standing committees in scrutinizing proposed legislation and recommending appropriate changes.

It might be somewhat unrealistic under the existing financial constraints in Lebanon to expect the adequate staffing of all standing committees with the needed expert personnel. However, a reasonable first step in this direction would be the creation of a small pool of qualified staff within the Directorate General of Research and Studies for utilization by various committees as the need arises. This pool can be gradually increased over the years to properly meet the needs of standing committees in their legislative and investigative work.

The Court of Accounts as an Arm of Parliament

One important change which might significantly enhance the oversight role and capabilities of Parliament is the transfer of the Court of Accounts from its present location within the office of the Prime Minister to the Chamber of Deputies. The Court of Accounts, together with the Ministry of Finance constitute the main financial watchdogs of the government.

Since the control for the purse strings and public expenditures is the ultimate esponsibility of legislative bodies, and since there is no lack of internal control

agencies within the executive branch in Lebanon, we believe that the Court of Accounts can play a more effective role as an arm of Parliament. It would significantly enhance the oversight capabilities of Parliament by providing it with an important tool for conducting financial audits and investigations to identify abuses and violations. Such a move assumes greater urgency in view of the desperate need of Parliament for properly qualified staff to help it in its oversight work. This pattern of external control has been adopted by many countries, including Australia, Britain, Egypt and the U.S.

If such a move is ever contemplated by Parliament, the responsibility for supervising and directing the work of the Court of Accounts should preferably be entrusted to a specially elected parliamentary committee that could ensure for it the needed independence, neutrality and protection from undue political interferences.

Here again, it should be pointed out that such a move is bound to meet with vigorous resistance from the executive and the bureaucracy, especially at a time when the problem of the proper balance between executive and legislative powers in Lebanon is assuming greater importance.

Barring Deputies from Cabinet Posts

The question of whether members of Parliament should be barred from cabinet posts is a controversial one and has been extensively debated in Lebanon. The advocates of such a policy, which is followed in the U.S. as well as in some countries with parliamentary systems such as France, Norway and Switzerland, could help in weakening the mutual-interest relationships between ministers and the bureaucracy. Cabinet ministers who are recruited from outside Parliament are less likely to exploit the bureaucracy for special services and favors to constituents since they are not normally candidates for parliamentary seats.

Many argue that such a policy serves as an important tool in Lebanon's search to replace its traditional political leadership with new and modern elites, which is a key requirement for modernizing the whole political system.

Such an arrangement, however, could result in the selection of ministers who are political novices and who lack the political experience and professionalism of elective office which is essential in a cabinet post. More importantly, such a policy will exclude from the Cabinet prominent and popularly elected politicians whose absence could undermine the stability of the political system. Since the President and Prime Minister are not elected by the people, such a policy would deprive the executive in Lebanon from the legitimacy of popular election.

Other argue that in a parliamentary system duly elected representatives are naturally expected to assume executive office in accordance with the wishes of the electorate. This might be a fair assumption in reasonably advanced democracies where members of the legislature are elected on the basis of organized political parties with clearly articulated programs. This is certainly not the case in Lebanon where political parties in the modern sense of the word are seriously lacking and play a marginal role in the political process.

It must be added that the experience of Lebanon has shown that many, if not most of the ministers recruited from outside Parliament, quickly develop political ambitions and aspirations of serving in Parliament and ultimately resort to cultivating special relationship with the bureaucracy and the voters. In any case the advantages and disadvantages of such a change should be carefully studied and weighed before its adoption. A possible compromise would be to apply this policy on a trial basis and for a limited period of time that will enable us to assess its actual implications before resorting to any formal constitutional amendments.

CHAPTER III

CONCLUSIONS AND RECOMMENDATIONS

ie main purpose of this concluding chapter is to highlight, on the basis of the
of i is study, some of the important issues of public service accountability in
and to recommend some possible improvements.

itical Pressures and Interferences

s study clearly reveals that political pressures and interferences constitute
of the most important problems that impede and undermine the work of
ral control agencies in Lebanon. Various governments have on many
sions resorted to bypassing, pressuring, overruling and even intimidating
ral control agencies. Although the Council of Ministers is legally
owered to overrule decisions of some central control agencies in certain
nce , it has on many occasions attempted to influence their decisions or
to bypass them completely. It must be pointed out that there is no
rm pattern in this respect since some governments have shown a much
er inclination respect the integrity and independence of these control
ies.

f the main objectives of the Chehabi reform of 1959 was to insulate the
st vice, as much as possible, from such political pressures by
shing some central and independent agencies such as the Civil Service
l a d Central Inspection and entrusting them with important powers
; to personnel and disciplinary matters which they were supposed to
e i lependently of any political considerations. But the experience of
n in the past few years clearly indicates that some governments reject

the basic assumptions underlying the Chehabi reform and believe that ultimate authority for decisions relating to administrative matters belongs to the political leadership.

The problem of ensuring the necessary independence and immunity of central control agencies against political infringements is a very difficult and complex issue since it is, to a great extent, a function of the political system that exists in Lebanon. But some improvements are nevertheless possible and desirable within the existing political context and could be summarized as follows:

a. The authority of the Council of Ministers to overrule decisions of the Civil Service Council and the Court of Accounts should be abolished. The decisions of the Council of Ministers are often motivated by political considerations which undermine the principle of merit in the civil service.

b. The immunity against possible arbitrary transfers originally accorded to the members of the Civil Service Council and the Central Inspection Board and which was abolished in 1976 should be restored. This will ensure the necessary independence for these two agencies without which they cannot effectively discharge their functions.

c. The heads of central control agencies should have a limited term of office rather than an indefinite one, as is the case now. A term of five or six years would be a reasonable one.

d. The authority of ministers to force their subordinates to implement improper or illegal orders and which has often been abused, should be abolished. In some countries even the military forbids its soldiers to follow illegal orders.

Court of Accounts

The financial pre-audit conducted by the Court of Accounts is totally unjustified since it duplicates to a great extent the pre-audit of the Ministry of Finance and results in cumbersome and unnecessary delays in government work. We also believe that the dispersion of the disciplinary function among three different agencies, the Court of Accounts, Central Inspection and the General Disciplinary Council is unjustified and contributes to a weakening of the whole disciplinary process. In the light of these findings it is recommended that:

a. The financial pre-audit of the Court of Accounts should be abolished as soon as possible.

b. The disciplinary role of the Court of Accounts in financial matters should be abolished and entrusted to Central Inspection.

c. The Court of Accounts should focus its attention on the post-audit of all government accounts and its jurisdiction in this respect should be extended to include all public and autonomous agencies.

Ministry of Finance

The financial pre-audit of the Ministry of Finance is a slow and complex process which involves a number of repetitive and duplicate steps and a high degree of centralization. The simplification of this process could have a noticeable effect on expediting government transactions. It is recommended that:

a. The pre-audit of the Ministry of Finance should be simplified and streamlined by eliminating some of the duplicate and repetitive checks

and by decentralizing the pre-audit both in terms of operating ministries and the regions.

4. Criminal Prosecution of Civil Servants

Lebanese law stipulates that civil servants whose acts on the job constitute a violation of the criminal code are liable for criminal prosecution in addition to administrative disciplinary sanctions. But the law provides that criminal prosecution in such cases is dependent on the prior approval of the superiors of the offending civil servant. This is an odd provision, to say the least, since it violates the principle of equal treatment of all citizens before the law, and has been used in many instances to prevent the justifiable prosecution of some offending civil servants. As a result it is recommended that:

a. The legal provision that the criminal prosecution of offending civil servants is subject to the prior approval of his superiors should be abolished as soon as possible.

5. Parliamentary Oversight of the Public Service

The present system of public service accountability in Lebanon relies primarily on a number of central control agencies which are located within the executive branch and whose effectiveness has often been inhibited by the undue influence that the Council of Ministers can exercise over their work. The Lebanese Parliament, for a variety of reasons discussed earlier, has not been able so far to play a significant role in holding the public service accountable for its actions.

With the recent strengthening of Parliament following the Taif Agreement and its increasing awareness of its important oversight role of the public service

every effort should be made to encourage parliament to exercise this role and to become a key player in the area of public service accountability. The oversight role of parliament could be enhanced through the following possible changes:

a. The Court of Accounts should be transferred from the executive branch to parliament, and should become the main instrument of the latter in checking the use of public funds throughout the public service.

b. The investigative powers of parliamentary committees should be extended to enable them to conduct investigations of improper activities in the executive branch. If the existing parliamentary committees are too pre-occupied with legislative work, some special select committees should be established and entrusted with investigative work.

c. There is an urgent need to significantly increase the professional staff of parliament to enable it to effectively discharge its legislative and oversight functions.

d. There is an equally urgent need to provide parliament with adequate and timely information about the activities of the executive branch. This could be done through regular periodic reports submitted to parliament by all ministries and government agencies about their activities.

6. Accountability of Ministers and Members of Parliament

One of the most serious gaps in the system of accountability in the Lebanese government is the almost total lack of responsibility of Ministers and members of parliament for misconduct and violations of existing laws and regulations. As was mentioned earlier the Supreme Council for the prosecution of offending

esi' ents and ministers which was provided for in the 1926 constitution is not operative. The 1953 law relating to the illicit wealth of public officials, luc ng ministers and deputies, has never been applied.

qu te obvious that Ministers and members of parliament cannot be expected iold civil servants responsible for misconduct and abuses unless they are nse ves held responsible of these same issues. A system of public service ountability cannot be taken seriously if it is applied only to civil servants does not include their overseers, the ministers and members of parliament. re ult the following immediate measures are recommended to help rectify situation:

A comprehensive code of conduct that regulates the behavior and actions c ministers and members of parliament should be formulated and put into effect as soon as possible.

The Supreme Council for prosecuting presidents and Ministers should be activated as soon as possible.

The existing law on the illicit wealth of public officials should be up ated and applied as soon as possible.

A pecial parliamentary committee on the ethical conduct of deputies should be established as soon as possible.

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