

Assessment of Compliance with the Preventive Measures of the UN Convention Against Corruption in Palestine

Anan Jab'iti

Under the supervision of
Dr. Azmi Shuaibi

Coalition for Accountability and Integrity

AMAN

March, 2016

Index

Introduction	5
Chapter 1	
- Preventive Anti-Corruption Policies And Practices	7
Chapter 2	
- Preventive Anti-Corruption Body Or Bodies	11
- The Anti-Corruption Commission	11
- State Audit And Administrative Control Bureau	12
- The National Anti-Money Laundering Committee	14
- Internal Control Units And Financial Audit And Inspection Departments	15
- The Public Accountant	18
Chapter 3	
- Recruitment, Hiring, Promotion And Retirement Of Civil Servants	20
- Mechanisms Of Recruitment	20
- Mechanisms Of Promotion	22
- Incentives And Bonuses	22
- Disciplinary Measures	23
- Retirement	23
Chapter 4	
- Candidature For And Election To Public Office	29
- Election Campaigns	30
- Funding The Candidature For And Election To Public Office And Funding Political Parties	32
- Financing Candidatures	32
- Penalties Against Violations Of Expenditure And Disclosure Provisions	33
Chapter 5	
- Conflicts Of Interest	36
Chapter 6	
- Code Of Conduct For Public Officials	39
- The Existing Codes Of Conduct In Palestine	40
- Codes Of Conduct For The Security Services	41

Chapter 7	
- Reporting Corruption	93
Chapter 8	
- Public Procurement	46
Chapter 9	
- Management Of Public Finances	52
Chapter 10	
- Transparency In Public Administration	56
- The Executive: The Council Of Ministers And The Presidency	56
- The Legislative Authority	57
- The Judiciary	58
- The E-Government	58
Chapter 11	
- Judiciary And Prosecution Services	60
- The Public Prosecution	65
- Shari'a Judiciary	67
- The Military Judiciary	69
Chapter 12	
- Prevention Of Corruption In The Private Sector	72
Chapter 13	
- Participation Of The Society	79
Chapter 14	
- Preventing Money Laundering	81
References	86

This study is an update of two studies AMAN had conducted to assess the compliance of Palestinian policies and legislations with the provisions of the UN Convention against Corruption (UNCAC). The first study was published in 2007 and assessed the Palestinian policies and legislations and their compliance with UNCAC obligations in general, and the second in 2010 which evaluated the compliance with UNCAC preventive measures. This study updates the developments in the policy and legislative frameworks in Palestine between 2010 and the date of releasing this study in 2015, and their compliance with the provisions of Chapter Two of UNCAC.

Introduction

Since corruption with its various forms and patterns has become a major obstacle and challenge that impedes the peoples' right to development and progress, the UN and the international community have sought to combat, eradicate and alleviate corruption and its devastating consequences on states and individuals and to develop a comprehensive and sustainable international strategy against corruption.

The UN efforts against corruption culminated in the General Assembly Resolution Number (4/58) adopted on 3 October 2003, which approved the draft international convention against corruption, and demanded that the international community and the regional economic integration organizations ratify the Convention against Corruption. UNCAC was ready for signature on 10 December in the city of Merida in Mexico and entered into force on 14 December 2005 as the first international convention that identifies the measures that the states and the international community must adopt to ensure combating and eradicating corruption.

As Palestine acceded to UNCAC in May 2014, and as part of its international obligations according to the international law, it must evaluate the level of compliance with the preventive measures to combat corruption provided in Chapter Two of UNCAC, through focusing on the legal and practical frameworks. The aim is to identify and enhance the areas that conform to the Convention, and identify the areas that do not conform and the deficiencies in the pertinent Palestinian legislations, policies and procedures, especially that Palestine is obliged to submit its first report on compliance with the requirements of the Convention in 2016.

This report is divided into fourteen topics covered in Articles 4-15 of UNCAC. The legal and practical levels for each topic in these articles are analyzed to identify the extent to which the Palestinian laws are compliant with UNCAC. To achieve this goal, this report adopts a descriptive approach, utilizing the relevant laws, online publications, AMAN reports, and annual reports of the relevant institutions in addition to some interviews with experts.

Chapter 1



Preventive Anti-Corruption Policies And Practices

Article 5 UNCAC identifies the anti-corruption policies and practices, indicating that policies and practices must be evidence-based and must stem from a risk analysis of corruption, in coordination with relevant institutions. They must promote the participation of the society, with the full and explicit support of the executives, and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. There should be sufficient information about corruption.

Several reform plans and policies were developed locally to combat corruption, starting with the 1996 report released by the General Audit Authority, the Legislative Council (PLC) declaration on 16 May 2002 on developing and reforming the Palestinian National Authority (PNA), the hundred-day reform plan of the Palestinian government, which came as a result of the late President Yasser Arafat's speech at the PLC, in which he had warned of mistakes that required correcting, in addition to the PLC declaration then and several other local initiatives, including the civil society organizations document about reform, and the document that the private sector released about reform, which expressed their vision on the reform of the Palestinian political and economic systems.

The initiatives that involved some coordination with the government included the draft general framework of a comprehensive national anti-corruption plan, developed by AMAN and other civil society organizations and presented to the government¹. The team completed the detailed plan and the national implementation strategy for the final approval of the government, and was designated to apply the UNCAC self-assessment questionnaire. However, the government did not follow up or implement it. Moreover, the National Anti-Corruption Plan, prepared by the national anti-corruption team was not officially implemented, but some anti-corruption activities were implemented in several fields. The Palestinian government issued the 2014-2016 National Development Plan which identified the tenets for national action to enhance integrity and transparency, and to develop legislations, regulations and measures that enhance accountability and alleviate corruption.

1. The Council of Ministers approved in its meeting on 18 August 2008 setting up a national team for preparing a national plan for enhancing and developing transparency and integrity in public office. The team consisted of several representatives of ministries and commissions, some private sector institutions as well as AMAN representing the civil society organizations.

The Anti-Corruption Commission (ACC) was established in 2010, with the mandate of coordinating the national efforts to develop the anti-corruption national strategy and public policy in cooperation with stakeholders and develop the necessary plans and programs for their implementation. The 2011-2014 Anti-Corruption National Strategy included six themes: prevention of corruption, law enforcement and legal prosecution, awareness, education and community participation, coordination of anti-corruption efforts, international cooperation and capacity-building for ACC.

To implement the 2011-2014 Anti-Corruption National Strategy, ACC conducted several awareness activities identified in its executive plan, in cooperation with several governmental and non-governmental organizations, particularly to introduce the Anti-Corruption Law and means of prevention. Such activities included:

- ACC followed up the collection of all financial status forms for several new groups or others who had not submitted their statements earlier, whereby it requested the NGO staff to fill such forms.
- ACC, in cooperation with Palestinian official institutions, prosecuted several corrupt fugitives and restored some embezzled moneys.
- The Ministry of Planning implemented some interventions in the area of transparency.
- AMAN participated in several interventions aimed at enhancing integrity and combating corruption, such as holding several official institutions accountable and promoting the concepts of transparency and integrity, in several official institutions such as the security services and the local authorities, as well as implementing several activities to raise public awareness towards the importance of combating and reporting corruption².

The 2014 National Integrity Index Report³ concluded that the challenge to develop a participatory national plan to promote integrity and combat corruption with the participation of various sectors persisted. Such a plan would be implemented in accordance with a set timetable and specific responsibilities assigned to different partners, who would implement them in accordance with the timetable, while a national committee would oversee implementation, and conduct periodic evaluation, rather than have dispersed and disorganized efforts.

2. See AMAN website: <http://www.aman-palestine.org>

3. The 2-14 The National Integrity Index, AMAN, 2015, p. 37-38.

On 8 April 2015, the 2015-2017 National Anti-Corruption Strategy was launched and included the following four themes: Prevention of corruption, law enforcement and legal prosecution, awareness, education training and community participation, coordination of anti-corruption efforts and international cooperation.

The official accession of the State of Palestine to UNCAC on 2 May 2014 constituted a turning point. The State of Palestine is bound to amend its policies and legislations in accordance with the requirements of the Convention. It is also a member in the Arab Convention against Money Laundering and Financing Terrorism and the Arab Anti-Corruption Convention.

Since the PNA announced its compliance with UNCAC in 2005, it has not conducted any meaningful self evaluation of the measures and legislations adopted to combat corruption in accordance with the requirements of Convention. In 2012, the Palestinian President issued a presidential decree to set up a committee for conducting the self-evaluation in accordance with UNCAC, Article 5, Paragraph 2: States shall endeavour to periodically evaluate relevant legal instruments and administrative measures and report on them with a view to determining their adequacy to prevent and fight corruption, and to collaborate with relevant international and regional organizations that fight corruption.

The committee reported on the current status to the competent authorities; the report was only made public in mid 2015.

Chapter 2



Preventive Anti-Corruption Body Or Bodies

Article 6 of UNCAC indicates that Each State Party shall ensure the existence of bodies that prevent corruption; those bodies shall enjoy independence, capacity and authority to investigate, implement anti-corruption policies and increase and disseminate knowledge about the prevention of corruption. Furthermore, Article 13/2 of UNCAC indicates that the States shall inform the public about those bodies.

Some institutions that fight some aspects of corruption have been established in accordance with The Basic Law and some applicable laws in Palestine such as the State Audit and Administrative Control Bureau (SAACB)⁴, the Anti-Money Laundering National Committee⁵, the internal control committees, the internal audit and inspection departments, the general accountant and ACC.

The Anti-Corruption Commission

The Decision by Law No. 7 of the Year 2010 was issued to amend the name of the “Illicit Gains Law No.1 of the Year 2005” to become the Anti-Corruption Law No. 1 of the Year 2005. This law also amended the name of the Illicit Gains Commission to become the Anti-Corruption Commission (ACC); it considered ACC a legal entity, granted it the administrative and financial independence and allocated to it a separate budget within the PNA general budget. Such a capacity enabled ACC to perform all the legal actions necessary to achieve its goals, sign contracts and litigate. The Public Prosecution seconded by ACC represented it at courts⁶. Hence, the anti-corruption prosecution⁷ seconded by ACC, prosecuted corruption cases in accordance with the Law for the first time. This ensured efficiency in investigations and measures as well as professionalism.

4. Article 96 of the Palestinian Basic Law amended in 2003 and Article 2 of the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004.

5. Article 19 of the Anti-Money Laundering Law No. 9 of the Year 2007.

6. Article 3 of the amended Anti-Corruption Law No. 1 of the Year 2005.

7. The Anti corruption prosecution unit at the Public Prosecution used to follow up these cases.

Moreover, in 2011 a corruption court was established and in 2012 a permanent bench of judges was dedicated for the corruption court. In 2014, the Decision by Law No. 13 of the Year 2014 was issued to amend the Anti Corruption Law No. 1 of the Year 2005. It stipulates that “upon the decision of the Higher Judicial Council and upon the request of the Chair of the Commission, a specialized court is set up to consider corruption crimes wherever they were committed. It shall be presided over by a judge with the grade of president of first instance court, or a judge appointed upon the decision of the Higher Judicial Council (HJC), or a judge seconded from the Appeals judges, and with the membership of two judges whose grade is no less than a first instance judge”.

The Anti-Corruption Law enabled ACC and the corruption prosecution to start investigating complaints about corruption crimes and suspects who are subject to the provisions of this Law. ACC keeps all the financial status forms, requests any relevant data or clarifications and examines the financial status of the persons subject to this law⁸. ACC functions in line with UNCAC; ACC independence enhances its ability to function effectively. Independence is strengthened by granting the chairperson immunity from dismissal except in accordance with the provisions of the Law, granting the Commission the power and wide authorities⁹ to combat corruption, including the ability to contact some Arab states to restore property from some persons who used such property in contravention with the law, in cooperation with the competent Palestinian authorities¹⁰.

State Audit And Administrative Control Bureau

Article 96 of the Amended Palestinian Basic Law of the Year 2003 provided for the establishment of this bureau. Accordingly, the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004 was issued. Article 23 stipulated that the aim for establishing the Bureau is to ensure the integrity of work and the financial and administrative stability of the PNA and its three powers: the Executive, Legislative and Judicial, in addition to unveiling aspects of financial and administrative deviation, including the abuse of public office and ensuring that the public performance conforms

8. Article 8 of the Amended Anti-Corruption Law No. 1 of the Year 2005.

9. Article 9 of the Amended Anti-Corruption Law No. 1 of the Year 2005.

10. The 2011 Annual Report on Integrity and Combating Corruption, AMAN, Ramallah, 2012, p.35.

to the applicable laws, regulations, decisions and instructions and that it is exercised in an optimal manner and with the least cost". The Law granted SAACB a certain degree of independence¹¹, particularly Article 2, which provided for some kind of administrative independence, and for having a special budget within the PNA general budget¹².

Consequently, this text relatively conforms to article 2/6 of UNCAC, in terms of the need for the administrative and financial independence of supreme audit bodies.

Regarding human resources, Article 4 of the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004 granted the chairperson of the Bureau the mandate to appoint sufficient number of employees for the Bureau to perform its functions¹³. Article 23/3 also granted the Bureau the mandate to develop training programs and courses to rehabilitate and train the Bureau's staff¹⁴. Regarding the mandate, and in addition to the general mandate of financial and administrative control over all the institutions subject to the Bureau's audit, the Law granted the Bureau full powers in some affairs including:

- The power to demand auditing accounts and documents, and requesting the information it deems necessary¹⁵;
- Access to all reports, documents and information¹⁶;
- Access to information, the power to keep documents and to summon¹⁷; and
- The members of the Bureau have the capacity of judicial police during the performance of their functions¹⁸.

The work of the Bureau has improved. There has been an increased interest in the capacity-building programs for the staff; it adopted a modern methodology in financial auditing, finalized procedural manuals, prepared INTOSAI compliant audit reports and adopted a code of conduct for the Bureau's staff in 2013. However, the Bureau faces

11. See Article 23 of the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004 for information about the Bureau's competencies, taking note that other competencies were mentioned in other articles too.

12. Article 2 of the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004.

13. Article 4 of the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004.

14. Article 23/3 of the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004.

15. Article 24 of the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004.

16. Article 25 of the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004.

17. Article 29 of the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004.

18. Article 47 of the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004.

several issues and challenges, most notably violating its independence by removing the chairperson in contravention with the law, the continued dysfunction of the PLC, which deprives the Bureau from an important political control authority, and the fact that its annual, quarterly and special reports are not being published¹⁹.

The National Anti-Money Laundering Committee

The Anti-Money Laundering Decision By Law No. 9 of the Year 2007²⁰, Article 19 provides for establishing the National Anti-Money Laundering Committee, while Article 20 identifies the mandate of the Committee, which includes²¹ :

- Developing public policies to fight money laundering.
- Develop policies that direct the work of the unit (Financial Monitoring Unit) and ensure independence in its work.
- Coordinate with the competent authority to ensure the implementation of the necessary policies and measures for the smooth flow of information between, the unit and the competent authorities.
- Cooperate with the supervising authorities to ensure that the parties subject to its control implement the provisions of this Law.
- Keep abreast with international and regional anti money laundering developments.
- Represent PNA at the international anti money laundering events.
- Coordinate with the competent authorities to prepare periodic reports upon the Committee's instructions²².

It is worth noting that President Mahmoud Abbas issued Decision No. 174 of the Year 2008 that provides for establishing the National Anti Money Laundering Committee consisting of nine persons representing most ministries, the Chairperson of Palestinian Monetary Authority (PMA) and a number of financial, legal and economic experts²³.

19. For further details, see <http://www.aman-palestine.org/ar/reports-and-studies/2375.htm>

20. This Law was amended in the Decision By Law No. 6 of the Year 2013 which provides that the Palestinian Monetary Authority continues to finance the unit in accordance with the budgets approved by the Committee until a special budget is allocated within the General Budget.

21. Article 20 of the Anti-Money Laundering Law No. 9 of the Year 2009.

22. There are several other competencies for the Committee, and these competencies are just examples. See Article 20 of the Anti-Money Laundering Law No. 9 of the Year 2009.

23. The Decision No. 19 of the Year 2011 on re-establishing the National Anti-Money Laundering Committee.

The Financial Monitoring Unit was also established in accordance with the Anti-Money Laundering Law No. 9 of the Year 2009 as an independent unit based at PMA. The aim is to combat money laundering and protect the national economy from the negative consequences of this crime, raise the level of the anti-money laundering systems and measures in Palestine and activate frameworks of local cooperation with all the competent authorities. This unit operates under the supervision of the National Anti-Money Laundering Committee, which formulates policies that aim at fighting this crime and putting in place an effective system to combat it. This unit has several competencies according to Article 23 of the Law, including:

- Receive and request information related to the operations suspected of money laundering from the parties that are subject to this Law.
- Analyze information related to operations suspected of money laundering.
- Disseminate information and the results of information analysis about the yields of the crimes suspected of money laundering in accordance with the provisions of this Law.

Internal Control Units And Financial Audit And Inspection Departments

In 2010, the Council of Ministers (COM) issued a financial system for ministries and public institutions²⁴. COM issued Decision No. 130 of the Year 2006 that provided for setting up internal control units at ministries, whereby financial controllers would undertake the following tasks:

1. Control the expenditures of departments, whether financed from the General Budget or from grants, and irrespective of the source.
2. Verify the accuracy of the monthly expenditures and revenues reports prior to submitting them to the competent parties at the ministry.
3. Verify the accuracy of the revenue refunds prior to submitting them to the ministry.
4. Oversee the bank settlements of the revenues, expenditures and grants accounts.

24. It is worth noting that this system has not been published in the Gazette so far, and is implemented as instructions of the Minister of Finance.

5. Participate in evaluating grants and in-kind assistance for the purpose of entry into the custody.
6. Ensure the accuracy and integrity of the fixed custody records.
7. Conduct surprise inspections of the funds, the custody and the fixed assets at departments.
8. Participate in asset management committees.
9. Coordinate with the senior management to follow up the comments of the state audit bureau.
10. Provide the senior management with advice upon request.

The system also addressed the appointment of inspection committees, whereby the minister appoints in January of every year committees for inspection and inventory, and which perform the identified tasks which include inspection and making inventories of the funds, warehouses official stamps and documents that have a financial value. These committees report to the Minister of Finance with a copy sent to the competent minister within ten days from the date of designation, to analyze, evaluate and rectify any diversion²⁵.

In 2011, COM issued Decision No. 10 of the Year 2011 on the internal financial audit system. Article 2 of the Decision says that the system aims to:

1. Identify the tasks, measures and work mechanisms of internal financial audit and which seeks to report on the optimal use of resources to the minister and the competent minister.
2. Ensure the adequate and economic use of public resources.
3. Identify the general framework of internal financial audit.
4. Identify the goals of internal financial audit.
5. Identify the mandate and sources of internal financial audit.
6. Identify the importance of independence in the work of internal financial audit departments.
7. Identify the roles, responsibilities and scope of the work of the department.
8. Identify the tasks of internal financial auditors.

25. Article 140 of the 2010 Financial System.

This system also made it compulsory for government departments to set up internal financial audit departments that have the following mandate according to Article 8:

- Examine and evaluate the efficiency and effectiveness of the systems of financial, administrative and operational control, risk management and governance in managing risks that exist in governmental departments.
- Ensure compliance of the department with the policies, standards and plans set by the governmental department and identify the financial impact of non-compliance,
- Evaluate the adequacy, accuracy integrity and credibility of financial information, and other information, systems and methods used to identify, measure, classify and prepare reports about such information.
- Identify the integrity of the operations and systems put in place to achieve the goals of these control measures.
- Identify the extent to which the government department obtains and utilizes resources in an economic, efficient and effective way, holds proper accounts and protects them from any kind of loss.
- Identify the effectiveness of the activities and policies of the governmental department in achieving its set goals.
- Identify the existence, success and adequacy of the arrangements to prevent or detect cases of fraud and other errors.
- Identify the adequacy of the internal organization of the governmental department for performing its activities and providing services to the public in a transparent and sustainable manner.
- Evaluate the integrity of the operations and systems to ensure that the control measures accomplish their goals.

The central coordination unit of the internal audit at the Ministry of Finance (MOF) works with the internal audit units at various ministries and government institutions to develop an appropriate organizational framework for internal audit units in line with the Internal Audit System No. 11 of the Year 2011 and the professional standards of internal audit in the Palestinian governmental departments, since having a unified organizational framework contributes to the institutionalization of internal auditing in Palestine, improves professionalism in internal auditing of the Palestinian

governmental sector, supports the position of the Palestinian government with the internal and external parties that demand the reform and development of Palestinian governmental institutions and helps improve the efficiency and effectiveness of the use of public money²⁶.

The Public Accountant

The PNA, particularly the Ministry of Finance (MOF) introduced the position of Public Accountant through the Decision by Law No. 3 of the Year 2008 of the Law of the General Budget No. 7 of the Year 1998. Article 3 of the Decision by Law granted the Public Accountant certain powers, to be responsible at MOF for the following:

- Financial planning and projection of cash flow.
- Monetary management and organizing the banking arrangements for the PNA.
- Managing, organizing, controlling and verifying various sources of financing.
- Managing PNA bank accounts.
- Managing the PNA financial and fixed assets.
- Managing public debt.
- Managing grants and loans.
- Implementing PNA general budget.
- Accounting and releasing reports.

Article 139 of the PNA Financial System of the Year 2010 stipulated that “the public accountant shall appoint financial controllers in each department to be responsible for monitoring the implementation of the provisions of this system and the relevant laws and regulations”.

26. www.pnof.ps, website of the Ministry of Finance.

Chapter 3



Recruitment, Hiring, Promotion And Retirement Of Civil Servants

Article 7/1 of UNCAC indicates that each state shall regulate this matter, indicating that each state shall regulate the **recruitment, promotion and retirement in the** public sector, develop clear promotion rules, based on integrity, transparency and experience, with appropriate salary scales and adequate training and educational programs, in addition to the need for putting in place procedures for selecting and training civil servants.

The civil service is regulated by the Civil Service Law No. 4 of the Year 1998, the amending Law of the Civil Service Law No. 4 of the Year 2005 and the subsequent regulations, including the amended Regulations of the Civil Service Law No. 45 of the Year 2005, COM Decision, the amended Regulation No. 14 of the Year 2008, in addition to several other regulations that address allowances, promotions, recruitment and other matters related to the civil service and public office in the PNA.

The Civil Service Law identified the mechanisms and procedures of recruitment, through advertising in the local newspapers and written and oral competitions. The law also identified the mechanisms of promotions, grades, secondments, transfers, powers, disciplinary measures, salaries, incentives, leaves and others.

Mechanisms Of Recruitment

The Civil Service Law No. 4 of the Year 1998 and its amendments and subsequent regulations regulate the procedures for recruitments in the public sector. Article 14 stipulates that only those who meet the requirements of a public position would be recruited and that it is inadmissible to combine two positions²⁷. This report shall

27. Article 14 of the Civil Service Law No. 14 of the Year 1998. This report shall not address the terms of recruitment for each category separately; the recruitment of the head of the General Personnel Council is subject to a special mechanism, the recruitment of heads of independent government departments has special conditions and the recruitment of employees in Grade 1 and other grades has special conditions too.

highlight the mechanism used to recruit and apply for a vacancy; the steps are the following by law:

1. The government department announces the vacant position for which the recruitment is made upon the decision of the competent authority, in two weeks from the time it became vacant and in at least two local newspapers; the advertisement shall include the information about the position and the terms of employment; the General Personnel Council (GPC) shall be notified.
2. For the positions that require written and oral competitions, the written competitions are advertised first, and only successful candidates are invited for the oral competitions. The names of the successful candidates are announced according to their scores in the competitions.
3. Selection committees shall announce the names of the candidates who were admitted for the recruitment competitions in at least two local newspapers for two consecutive days, including the time and venue of the competition.
4. Recruitment is done according to the final scores of the competition. In case of a tie, the person with higher qualifications and better experience is recruited. If the two candidates are equal, then the older shall be recruited; the candidate loses the right for recruitment in one year from the date of announcing the results of the competition.
5. The process of recruitment starts in one month from the date of announcing the results.
6. Recruitment for advertised vacancies must be completed in a maximum of one year from the date of announcing the results of the competition²⁸.
7. Article 26 of the Civil Service Law provided for setting up the selection committees for the recruitment for vacant positions in government departments, consisting of representatives of each concerned department and GPC; regulations shall provide further details.

In this context, the Presidential Decree No. 8 of the Year 2005 provided the selection criteria for recruitment in ministries and government institutions and commissions,

28. Articles 19-22 of the Civil Service Law No. 4 of the Year 1998 and its amendments. These are the procedures for recruitment for a vacant position.

whereby Article 1 identified the following criteria:

1. The need of each ministry, commission or institution.
2. The organizational chart.
3. Each position must have MOF financial approval.
4. Each vacancy must be advertised prior to filling.
5. The principles of competition and transparency.

Mechanisms Of Promotion

The Civil Service Law addressed the promotions of civil servants in Article 43 and beyond. It indicated that promotions are only possible to a vacant grade in the approved budget, provided the employee meets the minimum legal requirement of years of service in the (lower) grade. The Law also stipulated that promotion to Grade 1 requires an evaluation of “very good”, while promotion to other categories requires an evaluation of “good” or above for three consecutive years of service. In the second and third categories, promotion is left to the discretion of the head of the relevant department, while promotion in other grades is according to years of service. The Law also provided the table of the minimum years of service²⁹, and details on promotions that cannot be addressed in this report³⁰. The topic of secondments and delegations was addressed in Articles 57 and beyond of the Law³¹.

Incentives And Bonuses

Article 56 of the Civil Service Law addressed incentives, indicating that GPC and the competent authority shall develop a financial and moral incentive system that ensures achieving the goals, improving performance and rationalizing expenditures. The system shall include categories and conditions of financial incentives. The competent authority

29. Article 43 of the Civil Service Law No. 4 of the Year 1998 and its amendments.

30. See details in the Civil Service Law No. 4 of the Year 1998 and its amendments and regulations.

31. For further details, see Article 57 and beyond of the Civil Service Law No. 4 of the Year 1998 and its amendments.

shall develop with GPC the conditions for financial incentives. The competent authority may disburse bonuses to employees who provide work or research that improves performance and rationalizes expenditures.

Disciplinary Measures

The Civil Service Law addressed penalties in several articles, including Article 68, which stipulates that one of the disciplinary measures identified in the Law shall be imposed on any employee whom it is proven to have violated the applicable laws, regulations, instructions and decisions in the civil service.

Retirement

Other laws related to the Civil Service Law are the Public Retirement Law No. 7 of the Year 2005, the Decision by Law No. 5 of the Year 2007 amending the General Retirement Law, and the Decision by Law No. 1 of the Year 2008 amending the Retirement Law and its subsequent regulations, and which address the entitlements of employees after retirement and the mechanisms of subscription, contributions and deductions³².

Major progress occurred in 2010 and later in the civil service and in regulating recruitments, promotions, preparation of administrative and organizational structures and placement. The most important developments were:

- The continued decrease of previous violations such as nepotism, favoritism and political and tribal considerations in recruitments. Many official parties are complying with the recruitment procedures provided by Law, such as advertising vacancies in the local newspapers and on the GPC and the concerned ministry's websites, conducting written competitions and interviews and adopting the principle of competition and equal opportunity.
- The COM Decision on 3 July 2012 gave priority in recruitment for the contracted employees according to the data of 2012³³.

32. Article 27 of the Retirement Law No. 7 of the Year 2005 and its amendments

33. The 2012 Annual Report on Integrity and Combating Corruption, AMAN.

- Canceling the requirement of the security clearance: In its meeting held on 24 April 2012, COM decided to cancel the requirement of obtaining a security clearance from the Preventive Security and the General Intelligence before appointment in public office. This requirement was arbitrarily used in selecting applicants, obtaining work permits, dismissal or deprivation from recruitment. The Supreme Court ruled on 4 September 2012 that the requirement of the security clearance was illegal, and decided to cancel the decision of the Minister of Education to dismiss teachers because the security services did not approve their recruitment. The Court said that their recruitment had become immune with the end of the probation period, and the requirement of the security clearance was not among the requirements of recruitment in the civil service according to the relevant laws.
- COM approved the mechanisms for recruiting experts according to its decision on 24 July 2012³⁴, which requires the approval of the COM for contracts that exceed US\$4000, of the Prime Minister for contracts ranging between US\$1501-4000 and of the relevant minister for contracts up to US\$1500.
- Regarding policies and plans, GPC launched its 2013-2015 strategic plan, and started working on the "Excellence" project to upgrade the competencies of GPC and develop its human resources through re-examining the internal situation at GPC in accordance with the standards of leadership, merit, personnel, knowledge and finance. GPC also completed its procedural manuals, which cover the general administration for recruitment, training, employment planning, information technology, financial and administrative affairs and legal affairs. Moreover, the manual for human resource planning and recruitment projection was completed for all government departments, and which identifies the staff needs of each department, hence contributing to control and accountability.
- A performance evaluation department has been set up at the general administration for civil service affairs and the performance evaluation form was amended to include all employees, including senior employees.
- A training manual was issued in 2012, which provides employees with the opportunity for training and development. The incentives manual was also issued with the aim of encouraging employees on competition and excellence, and as a base for developing an incentives system.

34. COM Decision No. (03/10/14/ف.م.و.س.ف) of the Year 2012.

- COM set up a ministerial administrative committee for addressing senior appointments, which contributed to some extent to writing a manual for standards. However, the recruitment of heads of public institutions does not fall within the mandate of this committee, although the Civil Service Law treated this category as senior employees.
- COM issued Decision No. (10/19/14/ف.م.و.س.) of the Year 2012 about the work mechanism of the permanent ministerial administrative committee on the promotion of senior employees.
- COM issued Decision No. (9/19/14/ف.م.و.س.) of the Year 2012 about the basis for promotion of senior employees. For example, it linked promotion to A4 Director-General with having a university degree that is commensurate with the position. Another condition is receiving an evaluation of “very good” for three consecutive years. A director B or C must apply to the position of Director-General through the advertisements and the competition for this position.
- COM issued a decision³⁵ on internal transfers of senior employees within government departments.
- COM Decision No. (03/17/13/ف.م.و.س.) of the Year 2009 provided for establishing a technical committee for amending the Civil Service Law No. 4 of the Year 1998, and which worked and submitted a final draft to COM for approval. Approving this draft and its amendments shall strengthen the principles of control, transparency and accountability in the civil service. The proposed amendments in this draft include restrictions on leaves without pay and secondments. Another suggestion is establishing committees that include experts from civil society organizations and special investigation committees for disciplinary violations.
- GPC implemented a new mechanism for competition in 2014 to ensure enhancing integrity and transparency and provide equal opportunity in applying for vacancies in government institutions and departments through electronic application at the GPC portal. An exam was held for all applicants at the same time and place.
- COM issued a series of decisions during 2011-2014 on freezing recruitment in the civil service, which largely contributed to ending the inflation in employment of the previous years during which the number of civil servants exceeded 170,000, and whose salaries constituted the larger part of the budget.

35. COM Decision No. (9/23/17 ح.م.و.س.)

- The National School of Administration: GPC is currently establishing the National School of Administration, which constitutes a quality shift from managing human resources to investing in them; it aims to:
 1. Develop and enhance the necessary competencies (attitudes, conduct, skills and knowledge) for assuming leadership positions.
 2. Establish a culture of civil service in line with the best administrative practices.
 3. Improve the performance, effectiveness and efficiency of employees in various government institutions.
 4. Integrate new employees in the civil service sector.
 5. Develop the work environment of the civil service in a manner that leads to confidence, responsibility, cooperation and commitment.
 6. Enhance coordination and cooperation between the core parties of public administration (GPC, Ministry of Planning, MOF, SAACB, COM and other ministries).
 7. Build and develop cooperation in different aspects of public administration between the National School of Administration and Arab and international institutions.
 8. Localize training.
 9. COM issued a decision on 13 May 2014 to set up a ministerial committee to develop the concept of the national school of administration in line with modern international standards.
- COM approved on 8 April 2015 the employment projection chart developed by GPC in cooperation with MOF and other governmental institutions so that the process of recruitment becomes more professional, accurate and linked to the organizational charts and job descriptions, to ensure integrity, transparency and rationalization in spending public funds.
- GPC, in coordination with government institutions, completed 560 job description cards.

Generally, the Civil Service Law mostly conforms to the requirements of UNCAC, particularly Article 7/1.

Despite the development at the levels of integrity, accountability and transparency in the civil service, some things still need to be improved, particularly:

- Promotions of the special category: Continuing with promotions for the special category positions constitutes a clear violation of the principle of equality and equal opportunity in public office, especially in advertising and running competitions for certain vacancies. Some persons were also promoted in contravention with the conditions and procedures, especially those related to experience and academic degrees, giving extraordinary excuses and justifications (patriotic and political).
- The continued lack of written and approved procedures for recruiting and promoting the heads of some non-ministerial commissions and public institutions or the special category. Such appointments mostly stem from personal relations and political affiliations³⁶.
- The absence of a system with specific criteria and mechanism of selection for appointing senior staff (deputy ministers, persons with a minister grade and heads of non-ministerial public institutions).
- The lack of job description cards for the special category positions gave room for nepotism and politicization of public office, since the Civil Service Law does not identify their qualifications or even the mechanisms of competitions.
- The Civil Service Law is void of any provisions that require the political neutrality of civil servants.
- Although the law provides for submitting complaints, it does not have special provisions that protect employees who report corruption.

36. The 2012 Annual Report on Integrity and Combating Corruption, AMAN, Ramallah.

Chapter 4



Candidature For And Election To Public Office

Article 7/2 of UNCAC regulated this matter, indicating that each state party shall take the necessary legislative and administrative measures to set standards related to candidature for and election to public office.

The General Elections Law No. 1 of the Year 2007 and the amended Palestinian Basic Law of the Year 2003 constitute the general legal framework for candidature for and elections to public office. The Law No. 10 of the Year 2005, its amending Law No. 12 of the Year 2005 and the Decision by Law No. 8 of the Year 2012 regulate the elections of local councils. Hence, both the General Elections Law and the Local Elections Law address candidature and the special conditions for candidates, in line with Article 7/2 of UNCAC and in the following manner:

- **Identify the eligibility for candidature in the General Elections Law³⁷ and the Local Elections Law.**
 - a. The General Elections Law: The General Elections Law provided the conditions for running for presidency or PLC in the following manner:

1. Candidature for the presidency:

Article 36 of the Law indicated the conditions that must be met for candidature for the presidency, namely:

- » To be a Palestinian born to Palestinian parents.
- » To complete at least forty years of age on the elections day.
- » To be a permanent resident of the Palestinian Territories.
- » To be registered in the final voters register and meet the eligibility conditions for voting.
- » To commit to the Palestine Liberation Organization (PLO) as the sole and legitimate representative of the Palestinian people, to the Charter of Independence and the provisions of the Basic Law.

37. The Law means the Decision By Law No. 1 of the Year 2007 taken by PNA President. The General Elections Law is the Decision By Law No. 1 of the Year 2007 which annulled the Law No. 9 of the Year 2009 and is currently applicable.

2. Candidature for PLC

Article 48/2 of the General Elections Law provided the conditions for candidature for PLC and which include:

- » That the candidate is twenty eight years old or more on the elections day.
- » That the candidate is not convicted in any offense or misdemeanor against honor or honesty.

b. Eligibility for candidature in the Local Elections Law:

Article 18 of the Local Elections Law No. 10 of the Year 2005 stipulated the following conditions for candidates:

1. That the candidate is twenty five years old or more on the elections day.
2. That the candidate is not convicted in any offense or misdemeanor against honor.
3. That the candidate is not an employee (or worker) at the Ministry of Local Government, public security services, local councils or their lawyer, unless the candidate resigned and submitted with the candidature application documents that indicated the acceptance of the resignation.

Election Campaigns

The General Elections Law No. 1 of the Year 2007 and the Local Elections Law No. 10 of the Year 2005 regulated election campaigns, including:

- Defining the period, from the beginning until the end, of the election campaigns.
- Neutrality of the official media.
- Neutrality of the executive.

The Law also regulated media campaigns, giving equal access for all candidates to the media. It also imposed some restrictions on the campaign period, such as prohibiting libel, defamation or contempt, use of public spaces such as mosques, churches or areas close to hospitals, or buildings and premises of public institutions.

The Presidential, Legislative and Local elections were held as follows:

- The 1996 Presidential and Legislative elections were held according to Law No. 13 of the Year 1995 and lasted for ten years.
- The 2005 Presidential elections and 2006 Legislative elections were held according to the Law No. 9 of the Year 2005. The PLC term ended on 25 January 2010, but the internal division between the West Bank and Gaza Strip and the current political conflict froze the legislative, presidential and local elections scheduled in 2010.
- The Local elections took place in the West Bank on 20 October 2012 upon COM decision of 24 July 2012³⁸. The Palestinian President had issued a Decision by Law to amend the Local Elections Law No. 10 of the Year 2005 to include the possibility of holding the local elections in phases in accordance with a COM decision³⁹.

Complementary elections were held on 24 November 2012 for councils that did not have elections upon COM decision of 25 September 2012⁴⁰. The Palestinian voters elected their representatives in 93 local councils in the West Bank, while no elections were held in 180 local councils because only one list ran for elections in each council, hence they won by acclamation. COM issued a decree addressing prior voting of security services⁴¹ and the women quota⁴².

The COM issued Decision No. 181 of the Year 2004 on the elections of non-governmental organizations, in accordance with the Law on Charitable Associations and Non-Governmental Organizations No. 1 of the Year 2000 and its Regulation No. 9 of the Year 2003. Election campaigns are governed by clear and specific rules implemented on the ground without any violations of the General Elections Law. The Central Elections Commission (CEC) applied the standards identified in the then applicable laws.

During the 2005 and 2006 presidential and legislative elections, some breaches, but not substantial violations were committed and resolved at the electoral departments at the

38. COM Decision No. (06/10/14/ف.م.و.س.ف.) of 2012.

39. Decision by Law No. 8 of the Year 2012 amending the Local Elections Law No. 10 of the Year 2005 amended by Law No. 12 of the Year 2005. See the Central Elections Commission website:
http://www.elections.ps/Portals/30/pdf/2012_Amendment_Local_Council_Elections_Law_2005.pdf

40. COM Decision No. (01/19/14/ف.م.و.س.ف.) of the Year 2012.

41. COM Decision No. 124 of the Year 2010 about the election day for the police and security members in the local elections. The Palestinian Gazette (Al-Waqa'e). Issue 88, 2010.

42. COM Decision No. 3 of the Year 2011 about procedures on the local elections day. The Palestinian Gazette (Al-Waqa'e). Issue 91, 2011.

governorate level and no complaints were submitted to CEC, such as objections against the decisions of electoral departments. The executive management at CEC constitutes the second level for resolving complaints if the decision of the electoral department was incorrect, or if any candidate objected to its decision. In this case, CEC executive management prepares a full file about the complaint and submits it to CEC members for taking the decision. The third level is the Elections Court, which did not receive any complaints. The breaches were mild and did not require any penalties⁴³.

It is worth noting that the Presidential and Legislative elections were not held periodically every four years, which weakened the control function of the PLC.

Funding The Candidature For And Election To Public Office And Funding Political Parties

Article 7/3 of UNCAC addressed funding of candidature for and election to public office and funding political parties, indicating that each state shall adopt appropriate legislative and administrative measures to enhance transparency in funding candidatures for elected public office and funding political parties.

There is no law for political parties until now, for several national and political reasons, most notably the continued Israeli occupation, the lack of sovereignty and the fact that most parties are resistance factions, which makes it difficult to enact a law that regulates political parties under Israeli occupation.

Financing Candidatures

The General Elections Law No. 1 of the Year 2007 addressed the sources of funding of election campaigns in Article 68, which prohibited receiving any funds for election campaigns from any foreign or external non-Palestinian source, directly or indirectly. The same article also required any electoral list or candidate to submit a detailed statement about all sources of funding and expenditures during the electoral campaign.

43. The 2010 Evaluation Report about Compliance with the UNCAC Preventive Measures, AMAN.

The Law entitled CEC to request auditing these statements by an external auditor.

Article 69 of the Elections Law No. 1 of the Year 2007 identified a ceiling of US\$1 million⁴⁴ for expenditures at the presidential or legislative election campaigns.

The Local Elections Law also provided such restrictions, stipulating that candidates must provide CEC with detailed statements about the cost of the election campaign, sources of funding and expenditures; CEC may request auditing these statements by an external auditor.

Penalties Against Violations Of Expenditure And Disclosure Provisions

The General Elections Law involves several penalties against violations of expenditure and disclosure provisions. Article 111 of the Law No. 1 of the Year 2007 stipulated that “any person who violates the provisions of Articles 68 and 69 of this law shall be penalized by imprisonment for a maximum of six months or a fine no less than US\$6,000 or its equivalent in the circulated currency or with both penalties. The court may exclude the candidate’s name from the candidates’ list and expropriate his money”.

The Local Elections Law did not provide any penalties in case the candidates did not submit funding and expenditure statements to CEC. However, Article 67/2 which stipulates that “A person is considered as a perpetrator of an offense... if s/he did or omitted or refrained from or neglected any duty required by this Law, unless a special penalty is imposed”. Since the financial statement is required by Law, it is possible to impose the penalty provided in Article 67 despite the lack of an explicit provision.

The General Elections Law imposed some restrictions on election campaigns, prohibiting funding from foreign or external sources and exceeding the limit identified by Law for campaign expenditures. However, it did not put in place mechanisms that enable CEC to perform the necessary oversight to ensure the enforcement of the relevant provisions of the Law.

44. Article 69 of the Decision by Law of General Elections No. 1 of the Year 2007.

While the General Elections Law addressed sources of funding and required candidates to submit detailed relevant statements according to Article 68, the candidates submit the campaigns' detailed expenditures but not sources of funding, because of the lack of a clear system that entitles CEC to control the sources of funding, especially amid the absence of a law on political parties.

On the other hand, a review of the General Elections Law indicated that it is void of any provisions that compel CEC to publish the funding reports. Nevertheless, for transparency purposes, CEC has been publishing the reports on expenditure items of the winning candidates at its website.

Regarding penalties against violating the provisions of expenditures and disclosure, the election laws actually imposed penalties during the 2005 and 2006 Presidential and Legislative elections against four candidates who did not submit disclosure reports about expenditure items; CEC referred their files to the Attorney General for legal action. CEC also referred the case of one candidate who exceeded the expenditure ceiling to the Attorney General⁴⁵.

45. The 2010 Evaluation Report about Compliance with the UNCAC Preventive Measures, AMAN.

Chapter 5



Conflicts Of Interest

Article 7/4 of UNCAC regulated the issue of conflicts of interest, indicating that state parties shall “endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest, through providing disclosure mechanisms, recording cases of conflict and imposing appropriate penalties against violations of this principle”.

The Palestinian laws addressed the issue of conflicts of interest in a dispersed manner. The Basic Law addressed the conflicts of interest for the prime minister and ministers in Article 80, but no systems or instructions were put in place to clarify or help enforce it. Article 54/1 of the Basic Law also addressed the issue for PLC members stipulating that “A member of the Legislative Council may not exploit Council membership in any type of private business or in any manner whatsoever”. In the same context, the Law on the Duties and Rights of Members of the Legislative Council No. 10 of the Year 2004 provided that a member of the Legislative Council may not buy or rent any of the state assets or lease or sell any of it, or trade or contract it as a vendor, supplier or contractor⁴⁶.

The Civil Service Law No. 4 of the Year 1998 and its amendments also mentioned the conflicts of interest in Article 67, prohibiting employees from combining two employments or abuse positions for personal benefits or gains, or accepting gifts, rewards, grants or commissions in return for performing their work. However, the Law did not identify a department or institution responsible for recording cases of conflicts of interest or register gifts and rewards, or even reporting them. The personnel departments, which the Civil Service law requires setting up at ministries, are supposed to play such a role in coordination with GPC.

It is worth noting that the State Audit and Administrative Control Bureau Law No. 15 of the Year 2004 explicitly mentioned conflicts of interest for the chairperson, deputy chairperson and director-general, prohibiting them from taking up any other employment.

46. Article 4 of the Law on the Duties and Rights of Members of the Legislative Council No. 10 of the Year 2004. For further details see AMAN, Conflicts of Interest in the Palestinian National Authority, series, 12 2007, p. 8.

The Decision by Law No. 14 of the Year 2014 about water also included several provisions addressing conflicts of interest. Article 11 prohibited the Water Authority employees to be parties in any contracts with the Water Authority or to work at projects or works implemented by the Authority or make any direct or indirect profit or financial gains from them. Articles 22 and 28 prohibited the Chairperson of the Board of the Water Sector Regulation Council, its members and their relatives until the second degree, the Council's chief executive officer and any of the employees from being parties in any contracts with the Council, or work at projects or works and make any direct or indirect profits or financial gains, except for salaries and allowances they receive from their employment at the Council or in return for performing any of the tasks designated to them in accordance with the Law and the subsequent regulations.

Furthermore, other legislations addressed this issue, including the laws of The Monetary Authority, Investment Promotion, Banks, Capital Markets Authority, Charitable Associations, Public Procurements and the Auditing Profession.

These laws conformed to UNCAC and its call for incorporating in legislations provisions that address this phenomenon. Other laws, however, did not conform to this requirement, such as the Local Elections Law No. 1 of the Year 1997, the Public Procurements Law No. 9 of the Year 1998 and the Public Tenders Law No. 6 of the Year 1996.

While these laws addressed the conflicts of interest, no regulations were put in place for implementation or identifying control mechanisms for compliance of institutions and individuals. Moreover, there is no effective body that can verify conflicts of interest, record such conflicts when they emerge or impose penalties against breaches.

Chapter 6



Code Of Conduct For Public Officials

Article 8 paragraphs 1, 2 and 3 of UNCAC addressed the issue of codes of conduct of public officials, indicating that each State Party shall promote principles of integrity, honesty and responsibility among its public officials. States shall also inform their citizens of relevant initiatives of regional, interregional and multinational organizations, such as International Code of Conduct for Public Officials and shall take disciplinary or other measures against officials who violate the rules of these codes.

In general, the codes of conduct identify the core principles that the institutions adopt and which the employees implement during service, namely:

1. The value system related to honesty, faithfulness and loyalty (integrity).
2. The clarity of systems and procedures within the institutions (transparency).
3. Submitting periodic data and reports about the outcomes of the work of employees and their efficiency, ensuring that the performance is in line with laws, legislations and public interest (accountability).
4. Compliance with the local laws and international conventions.
5. Committing to report to the competent authorities, through legal channels, any person, irrespective of his/her position, who commits an illegal or unethical act, or any conduct that may be considered corrupt, or commits abuse or fraud or bribery or any breach of the law or code of conduct.
6. Behaving seriously and honestly upon discovering cases of illicit gains, so that available data and clarifications at the institutions are honestly submitted to the concerned parties without any deception or nepotism.
7. Refraining from accepting any gift, reward, grant or commission directly or through a proxy, from parties or persons, with the aim of providing facilities or information for personal, familial or partisan interests or for financial gains.
8. All employees in all sectors are prohibited from abusing internal information of their places of work for personal gains for themselves or for others and in violation of the law.
9. Adopting open recruitment and promotion procedures in all sectors and prohibiting political interference in the processes of recruitment and promotion.

10. Guaranteeing the citizens' right of access to information, commitment to providing information on financial affairs, the organizational structure, activities, personnel and partners lists, facilitating public access to this information and exerting all possible efforts to inform the public of the work of the institution, its resources and expenditures.
11. Adopting policies that ensure equal opportunity in delivering services to citizens, taking measures that ensure keeping records and information of citizens in an accessible form and maintaining their privacy and confidentiality in accordance with the law.
12. Receive and investigate citizens' complaints seriously and in accordance with the code of conduct.

The Existing Codes Of Conduct In Palestine

The code of conduct of the civil servants: COM issued a code of conduct for public officials in October 2012⁴⁷. This code aims to instil values of civil service that enhance the service recipients' trust in government institutions. After COM adopted the code of conduct in Decision No. 6 of the Year 2012, GPC, in coordination with governmental and non-governmental organizations that contributed to the preparation of the code, set up a higher national committee to oversee the implementation of the code. The committee held some training workshops for public officials about the code of conduct and the ethics of public office at the GPC headquarters and at some governmental institutions.

Code of conduct of local council employees: AMAN developed the code of conduct in 2006 and adapted it in cooperation with 22 local councils to ensure its adequacy for the councils and their specific structures and provided services.

47. COM Decision No. (04/ 23/14/ م.و.س.ف) issued on 23 October 2012

Codes Of Conduct For The Security Services

A code of conduct was developed in 2011 for the members of the General Intelligence. In 2012, a code of judicial conduct was developed for military judges and prosecutors⁴⁸. A code of conduct for the police was developed in 2013, and entered into force in 2014. It is worth noting that until the date of preparing this report, no code of conduct for ministers has been adopted.

48. The decision of the head of the military Judiciary No. 1 on the Code of Conduct of Military Judges and Prosecutors issued on 19 June 2012. See The Gazette (Al-Waq'a'e), Issue 97, p. 93-95.

Chapter 7



Reporting Corruption

Articles 8/4, 32 and 33 of UNCAC address reporting corruption, indicating that states shall establish measures and systems to facilitate the reporting by public officials of acts of corruption that occur during the performance of their functions, in addition to establishing procedures for protecting persons reporting acts of corruption .

The Anti-Corruption Law No. 1 of the Year 2005 included several provisions on protecting the persons reporting corruption, whereby Article 18/2 stipulated that “The Commission guarantees legal, functional and personal protection for witnesses, experts and persons reporting in good faith corruption crimes, and shall identify the protection measures and procedures in accordance with regulations the Commission shall prepare for the Council of Ministers to issue”. Article 19 of the same law stipulated that, “1- each public employee who is aware of a corruption crime must report it; 2- The report which the employee submits in accordance with Paragraph 1 above cannot be a reason for taking any disciplinary measure against him or any measure that may harm his employment status”. Finally, Article 22 of the Law asserted the confidentiality of the complaint which constitutes a form of protection for reporting persons, whereby this Article stipulates that, “the statement provided for in this Law and the measures taken for investigating and examining the submitted complaints are secrets that cannot be disclosed except with a decision of the competent court”.

Despite the forms of protection these articles provide, protecting the persons reporting corruption in Palestine continues to face several challenges at the legal, institutional and policy levels⁴⁹. **During the period that precedes reporting an act of corruption, the following problems are noted:**

- The negative cultural perspective of reporting corruption, as some citizens consider reporting corruption a form of snitching, and the aim behind some reporting is not public interest, but rather malicious, or for reprisal and reporting by the victim.

49. Report on the Assurances for Strengthening Reporting Corruption, AMAN, 2015

- Legal weakness and shortcoming, since the penalties imposed on employees who refrain from reporting are weak. The interpretation of some legal provisions contravenes with reporting corruption. Furthermore, there is a legislative deficiency in the legislations that regulate public service regarding explicitly providing for the duty of employees to report corruption and holding them accountable if they fail to do so, in addition to the absence of a law on the right of access to information until now.
- Weak motivation for reporting corruption, particularly financial rewards and moral incentives for employees such as integrity awards and performance evaluation.

During the period of reporting corruption, the following problems may be noted:

- ACC is the only competent party to receive reports, hence the role of other parties such as the heads of the institutions in which the act of corruption took place, SAACB and the Prosecution is ignored.
- The lack of clarity in reporting procedures, the forms and responses the reporting person must receive, and the timeframe and means of follow up with the reporting person.
- The lack of clarity in the competent party to define the reporting person, and distinguish between the reporting person, witness, victim and expert.

After reporting, the following problems may be noted:

- The absence of a special system to protect the corruption reporting persons.
- The lack of clarity of the concept of good faith regarding mistaken reporting.

Chapter 8



Public Procurement

Article 9/1 of UNCAC regulated public procurements, indicating that state parties shall take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective in preventing corruption. Such systems shall take into account some basic criteria such as procedures related to the public distribution of information on contracts and conditions of tender competitions, and establishing an effective system of domestic review.

The legal framework that regulates public procurements in Palestine is the Public Procurement Law No. 9 of the Year 1998, Instructions No. 1 of the Year 1999 on Public Supplies and the Law on Tenders for Governmental Works No. 6 of the Year 1996⁵⁰. The Central Tenders Department was established in accordance with these laws; according to Article 3 of the Law No. 6 of the Year 1999, this department is mandated with supervising, monitoring and classifying contractors, auditing and analyzing the tenders for governmental works and technical services and harmonizing contracting agreements and other authorities.

According to Article 6 of this law, three committees are formed:

- **The Central Tenders Committee:** Its mandate includes government buildings, water, irrigation, sewage and dams. It was established by COM Decision on 2 August 2002, re-established by COM Decision No. 57 of 2004, and re-established again by Decision No. 123/2005⁵¹.
- **The Department Tenders Committee:** Established in every ministry and has the competence of inviting for tenders whose value does not exceed US\$150,000.
- **The Governorate Tenders Committee:** Established in each governorate and has the competence of inviting for tenders whose value does not exceed US\$25,000.

Article 5 of Chapter Three of the Law on Tenders for Governmental Works No. 6 of the Year 1999 identified the rules for inviting for tenders, including advertising in daily newspapers, the principle of competition in awards and adhering to the best offers.

50. Government Tenders, AMAN, Ramallah, 2008, p.3

51. Palestinian Anti-Corruption Policies and Legislations, Analytical study, AMAN, Ramallah, 1st edition, 2008, p.62.

Article 5 of the same law directly provided for the need to duly disseminate the information to the public through advertising in the local daily newspaper. Some tenders are published on the official website of the competent ministries. Regarding criteria for participation and decision-making, the Law imposed conditions and restrictions on participation and provided clear mechanisms for decision-making. The Law does not mention reviews or complaints at the Central Tenders Department, hence depriving the participants from the most important right, although the Basic Law granted the right to object on administrative decisions.

The Law did not provide for establishing an independent party to regulate the special procurement procedures, but for a Central Tenders Department at the Ministry of Public Works that shall have its own staff and the necessary directorates that enable it to perform its functions⁵².

On the other hand, Article 17 of the same Law provided for contracting through offers or direct contracting in certain cases, although such tenders are restricted and only necessity.

The Law does not provide for disclosure of the financial status of the employees who work in tenders and contracts. It does not have clear provisions about complaints or grievances on awards or even on conditions to any party, or objecting to the committees' decisions, in contravention with Article 9/d of UNCAC which provides for establishing an effective system of review.

The Law does not clearly bind the employees to report acts of corruption in tenders, and is void of any provisions that protect them upon reporting⁵³.

The Central Tenders Department at the Ministry of Public Works, the central tenders committee and the department committees were established in accordance with the Law on Tenders for Governmental Works No. 6 of the Year 1999. However, the problem lies in the technical committees which the law provided for in Article 14, which stipulates

52. Article 2 of the Law on Tenders for Governmental Works No. 6 of the Year 1999

53. Governmental Tenders, AMAN, p.8.

that these committees shall be established at the Central Tenders Department and other departments. In practice, the Central Tenders Department participates in setting up these committees with the relevant ministry, because of the lack of competent human resources.

The relevant ministries are compliant with the conditions of tenders, in terms of advertising in local newspapers. Tenders go through several intertwined and consecutive stages, including the stage of preparing the tender documents with specifications and conditions. The problem lies in identifying specifications and the availability of Palestinian specifications used for local products, which is mainly the responsibility of the Palestine Standards Institution (PSI).

There is full compliance with the Law regarding the predetermined criteria⁵⁴ for decision-making in tenders, the conditions in the tender documents, the technical committees and all other stages.

The Law did not provide any procedures for grievances. However, in practice, the Central Tenders Department responds to grievances and provides opinion in any grievance on its own initiative. There is no clear grievances system with clear and specific procedures. According to the Law, each department shall establish a committee to receive supplies from providers. The problem lies in the lack of technical expertise among the receiving committees, and their inability to verify that the specifications of the supplies match those in the tender document.

SAACB is responsible for control on tenders, as it has the capacity of tenders' controller. SAACB actually attends these tenders. MOF also performs the function of internal financial control, whereby no transaction is disbursed except after auditing all its documents. However, there are some problems in this regard:

- The lack of competent human resources for setting, evaluating, supervising and monitoring technical conditions.
- The technical committees suffer from a clear lack of expertise, especially in high-tech.
- Lack of efficient control systems on tenders and unclear and ineffective role of the internal control units.

54. Criteria include the best price, quality, best offers and other criteria, implementation within a specific timeframe and other criteria and conditions.

Because of the numerous shortcomings in the two above-mentioned laws, the Decision by Law on Public Procurements No. 15 of the Year 2011⁵⁵ was issued. Consequently, COM issued Decision No. (03/19/14/م.و.س.ف) Of the Year 2012, which established the Higher Council for Public Procurement Policies. The necessary arrangements for enforcing this Decision by Law, such as issuing the regulations were not put in place. In 2014, the Decision by Law No. 8 of the Year 2014 was issued, annulling the previous Decision by Law and cancelling the public procurement commission established according to it.

The Decision by Law No. 8 of the Year 2014 aims at achieving the following:

- Procuring supplies, works and services at the best prices, contributing to rationalizing expenditures and maintaining quality.
- Promoting local industries and economic development in Palestine.
- Achieving capacity-building and sustainable development.
- Enhancing the principle of fair competition and encouraging the participation of qualified providers, contractors and consultants in the public procurement procedures.
- Providing equal opportunity without discrimination and fair and equal treatment.
- Ensuring transparency and integrity in the public procurement procedures and processes.

Article 8 of this Decision by Law identified the mandate of the Higher Council for Public Procurement Policies, including: formulating and developing the national policies for public procurement, preparing regulations and issuing the necessary instructions for enforcing this Decision by Law.

It also included developing procedures that aim at improving the public procurement system in cooperation with local and international institutions for public procurement, and representing the state. This Law covers all the procurement processes of all ministries, municipalities and state institutions that use public funds in the procurement of works, supplies and services and which are conducted through tenders and bids.

55. Published in the Palestinian Gazette (Al-Waqa'e), Issue 92.

After around eight months of issuing the Decision by Law on Public Procurement No. 8 of the Year 2014, the Decision by Law No. 21 of the Year 2014 was issued, amending the Decision By Law No. 8 of the Year 2014, and providing for re-implementing the Public Tenders and Public Supplies laws until the public procurement system is established and all the institutional arrangements provided in the Decision by Law No. 8 of the Year 2014 are completed, for one year since the date of issuing that amendment. Consequently, COM issued Decision No.(9/30//17/م.و.ر.ح) of the Year 2014 to establish a monitoring committee for completing all the institutional arrangements in accordance with Decision by Law No. 8 of the Year 2014.

Chapter 9



Management Of Public Finances

Article 9/2 of UNCAC regulated the management of public finances, indicating that state parties shall take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass adoption of the national budget, timely reporting on revenue and expenditure, a system of accounting and auditing standards and a system of risk management.

The Ministry of Finance (MOF) constitutes the major apparatus that addresses financial affairs related to in collecting taxes and direct and indirect fees, expenditures and accounting, preparing budgets and submitting them to the PLC for approval, and issuing statutes and instructions that regulate financial affairs.

The PNA enacted several laws that regulate public finances and their management, because of their importance in assessing expenditures and revenues and controlling all forms of spending operations; these laws include: The Basic Law, which addressed the preparation of the PNA General budget, The General Budget Law No. 7 of the Year 1998, The Law of the Annual General Budget of the Palestinian Authority, The Financial System of the Palestinian Authority institutions of the Year 2010 and the PLC Bylaws on the mechanism of approving the Budget.

According to The General Budget Law No. 7 of the Year 1998, COM shall submit the proposed general budget to PLC at least two months prior to the beginning of the financial year⁵⁶.

The PNA, particularly MOF, has established the position of Public Accountant in accordance with the Decision By Law No. 3 of the Year 2008 which amended the General Budget Law No. 7 of the Year 1998. The Public Accountant has the mandate of oversight over the unified accounting program, through which all operations linked to implementing the budget are carried out, starting with entering the budget and until issuing the closing accounts. This includes financial orders, cash projections, implementing transactions, disbursements, collection, accounting records and commitments. It also includes control procedures within and around the system,

56. According to the General Budget Law No. 7 of the Year 1998, the General Budget Department prepares the proposed annual budget for ministries and public institutions.

issuing all the required financial reports and statements, as well as recording assets. It aims at improving the management, control and transparency in public finances. This conforms to UNCAC, particularly Article 9/2, especially after updating the financial and accounting system to conform to the international accounting standards and achieve the optimal management of public treasury accounts, through implementing a monthly cash flow plan, in addition to the concept of the unified treasury account, and the zero balance accounts, which aim at monitoring the current and future status of the Treasury to provide duly the necessary liquidity as required by UNCAC, which in turn improves the efficiency of public debt. Moreover, there has been a shift from the conventional control to the comprehensive control based on the actual need for disbursing allocations and their relation with the targeted outcomes.

The Financial System for Ministries and Public Institutions of the Year 2010⁵⁷ is a financial manual that regulates the financial and accounting rules, competences and powers. It indicates the accounting documents, forms and records and the rules of keeping and saving financial records⁵⁸ which the ministries must implement, in line with UNCAC, particularly Article 9/2. It also identifies the procedures for preparing the General Budget and recording revenues and expenditures. It addresses revenue transfer and collection, keeping cash, rules of expenditures and disbursement, the types of expenditures and the rules of performing reconciliations, advances, cash asset management, closing the financial year and managing government debt. It also addresses appointing financial controllers at all departments that implement the Financial System and their functions⁵⁹.

Article 11 of the Public Debt Law No. 24 of the Year 2005, which regulates public debt, entitles the Minister of Finance to borrow on behalf of the government, and present the action to the COM for approval. The Law also imposes a ceiling on borrowing. Article 39 indicates the need to submit the foreign public debt agreements to the PLC for approval and to publish them in the Gazette, as asserted in Article 92 of the Basic Law⁶⁰ too.

57. This system was not published in the Gazette and is implemented as instructions issued by the Minister of Finance.

58. Article 11 of the Financial System indicates the mechanisms and methods of record keeping.

59. As explained earlier this system has not been published in the Gazette and is implemented as instructions issued by the Minister of Finance.

60. Palestinian Anti-Corruption Policies and Legislations, AMAN, p.62

Several decisions are also related to managing public finances, including a decision on the mechanism of contracting suppliers to ministries and public institutions, a decision to link the financial control and auditing departments at the ministries and public institutions with MOF and a decision to unify the Payroll Administration.

Within the framework of management of public finances, the role of the Palestinian Investment Fund (PIF) which constitutes a major part of the mechanisms of managing public finances at the PNA emerges. PIF started operations in 2003, with the transfer of several commercial and investment assets from PNA to PIF, which manages them solely and in a manner that contributes to economic development, and preserves them as a national and strategic reserve, ensuring appropriate returns to PNA Treasury. Today, PIF operates as a public shareholding company, owned by the Palestinian people. It enjoys financial and administrative independence with its own independent board and general assembly. PIF runs several investment portfolios and specialized subsidiary companies, which in turn invest in several important projects.

Between 2011 and 2013, progress occurred in the transparency of the General Budget, the citizens' budget and the cooperation of MOF in publishing all information about the Budget and the accountability sessions that AMAN held with the Minister of Finance. Nevertheless, a setback in the transparency of the General Budget occurred in 2014 because of the continued absence of official and constitutional control over the Budget and the continued dysfunction of the PLC. The President has been approving and adopting the general budgets for the years that followed the division in 2007 instead of the PLC, without even waiting for the comments of the Parliamentary Blocs. Furthermore, MOF has not submitted or published closing accounts for four years since 2011 and until 2015, which weakened the capacity and efficiency of SAACB audits.

Chapter 10



Transparency In Public Administration

Articles 10 and 13/1 of UNCAC addressed transparency in public administration, indicating that each state party shall take measures to enhance transparency and accountability in its public administrations, regarding public access to information on its organization, functioning and decision-making in its public administration, and simplify administrative procedures to facilitate public access to the decision-making authorities and publish relevant information. Each state party shall take measures within its means to promote the participation of civil society organizations in the prevention of corruption, through raising public awareness towards corruption and its various forms.

The availability of information and a database is essential for the success of any effort to fight corruption, as it provides prior information about the conduct of the management. The Palestinian Central Bureau of Statistics (PCBS), regulated by the General Statistics Law, provides an advanced database about the population, economy, media, culture labour, unemployment, development and various social topics. Such data informs the Palestinian society, strengthens the ability to diagnose, defines areas of development, strengths, weaknesses and deficiencies and supports the efforts that seek change and progress.

The specialized websites, computer networks among public institutions, radio and television stations, newspapers, magazines and other media and communication tools provide an extensive database that strengthens dialogue and interaction within the Palestinian society and provides the real opportunity for intervention and wider participation in decision-making.

The subject of public administration deserves further elaboration to cover all ministries, departments and public institutions. However, this report only addresses transparency in public administration and how some administrations addressed the issue.

The Executive: The Council Of Ministers And The Presidency

The Basic Law is the foundation that regulates the functions of both tiers of the executive branch: the Presidency and the Council of Ministers (COM). However,

there is no law that regulates COM work. The COM is regulated by the Bylaws that provide for mechanisms of decision-making, circulation of decisions, holding meeting etc. Furthermore, there is no law or regulation that regulates the work mechanisms at the Presidency, except the relevant provisions in the Basic Law. The laws that bind the Executive to submit periodic reports to any party are unclear, despite the existence of laws that bind most ministries to submit periodic reports to certain parties. In general, COM publishes all its decisions on its own website.

The review of administrative decisions taken by government departments constitutes a fundamental rule of constitutional accountability enshrined in the Basic Law. According to the Law, these decisions must be justified and based on an authority granted by law. Individuals and parties who are negatively affected by an administrative decision may complain against it at the Higher Justice Court. In this context, the official Gazette (Al-Waqá'e) plays a vital role in publishing some administrative decisions. Moreover, all decisions of the Executive branch are published on the relevant websites.

The Legislative Authority

The PLC Bylaws and the Law on the Rights and Duties of PLC members constitute the legal framework that regulates the PLC functions, in addition to the pertinent articles of the Basic Law. The Bylaws regulate PLC meetings, functions, functions and tasks of committees, voting and other issues. It also provides for publishing laws in the Gazette, the admissibility of publishing the minutes of confidential meetings through a PLC absolute majority vote, and the admissibility for citizens to submit any petitions or complaints to the PLC (Article 100 and beyond), recording petitions and complaints in a general ledger with serial numbers according to the date of reception with the name, place of residence, job of the applicant and a briefing on the issue. The PLC Speaker may order dismissing the petitions and complaints that do not meet all the required conditions, and notify applicants of the decisions. The PLC may demand clarifications from ministers about petitions. The PLC is not accountable to any other authority, and no law binds the PLC to report to any other authority or power.

During the functioning of the PLC, it did not issue periodic reports about its work to the public, and had no permanent bulletin, newsletter, and radio or television station. However, PLC sessions were open to the public, while committee meetings were confidential. Nevertheless, the PLC Speaker's office issued reports about the PLC achievements during the last term. The PLC also published its decisions, laws and draft laws on its website. With the Palestinian division in 2007, the PLC has become dysfunctional and no legislative power that represents the people and plays the legislative and control functions exist on the ground anymore.

The Judiciary

The Judicial Authority Law regulates the work of the judiciary, stipulating that the hearing sessions must be open and that judges must justify and explain their decisions. The Higher Justice Court is competent on reviewing administrative decisions, whereby the Basic Law prohibits granting administrative decisions immunity against review. The judicial authority submits its annual reports to the President; the public has access to these reports on the Higher Judicial Council's (HJC) website. Every citizen may obtain a copy of his/her own file. Some laws, such as the Civil and Commercial Procedures Law grant all citizens the right to obtain copies of decisions. The Judicial Authority also publishes all the Higher Justice Court's decisions on its own website; it is possible to contest court decisions through the legal channels, and at the Constitutional Court in cases of constitutional breaches.

The E-Government

Despite several initiatives aimed at automating some processes and procedures and establishing commissions that help disseminate information of interest to citizens, steps towards the E-government are still slow and fragmented.

It is worth noting that no law on access to information has been enacted until the date of preparing this report.

Chapter 1



Judiciary And Prosecution Services

Article 11 of UNCAC regulated the Judiciary and prosecution services, indicating that state parties shall take measures to prevent opportunities for corruption among members of the judiciary, including all court workers, and take measures that ensure the independence of the Judicial authority, transparent measures on recruitments to the Judicial authority, a code of conduct for judges, sufficient training of the judicial police officers, appropriate court procedures, opening courts to the public and binding judges to justify their decisions and lucrative salaries.

The legal framework for the Judiciary and prosecution services lies in the Amended Basic Law of the Year 2003, which laid the foundation for the Palestinian judicial system, guaranteeing its independence with a constitutional provision; Article 97 stipulated that “the Judicial authority is independent, and is in the hands of courts of different types and levels; The Law shall identify its formation and competences; it issues its decisions in accordance with the Law and announces and enforces the decisions in the name of the Arab Palestinian people”. Articles 98 and 99 of the Basic Law also asserted the above. Article 100 confirmed establishing the Higher Judicial Council, “A higher judicial council shall be established and the law shall identify its composition, competences and rules of procedure. Its opinion is taken in draft laws that regulate any of the judicial authority affairs, including the prosecution”. The Basic Law also addressed some general principles such as the public nature of hearing sessions and the enforcement of judicial decisions.

Regarding the Prosecution, the Basic Law (Article 107) provided for the appointment of the Attorney General, indicating that the Attorney-General is appointed by the PNA President. Article 108 of the Basic Law indicated that the law shall identify the Prosecution’s composition, the conditions for appointing members and its competences. Consequently, the Judicial Authority Law No. 1 of the Year 2002 was issued to regulate all the judicial affairs, including the Prosecution, related to recruitment, promotion and secondment. It identified the types of courts and other matters. Articles 1 and 2 of the Law asserted independence. To implement this, Article 3 of the Judicial Authority Law provided for financial independence. It also indicated that HJC shall prepare the draft budget and submit it to the Minister of Justice for approval in accordance with the provisions of the Budget Organization Law; HJC shall oversee its implementation⁶¹.

61. Article 3 of the Judicial Authority Law No. 1 of the Year 2002.

Regarding justifying sentences, The Judicial Authority Law addressed this matter in Article 5 which stipulated that, “sentences are issued and enforced in the name of the Arab Palestinian people and sentences must include the reasons on which they were built”.

The Judicial Authority Law addressed the conditions for recruitment and promotion in Chapter Three, but did not identify the procedures and mechanisms for recruitment. It identified some principles of promotion, but it needs further details. To overcome this shortcoming, HJC issued some decisions on recruitment, such as advertising in newspapers and conducting competitions and interviews. It also issued some decisions about years of service for judges, including Decision No. 5 of the Year 2006, which bridged the gap in the Judicial Authority Law about promotions and performance evaluation, as well as recruitment conditions and measures.

According to Article 32 of the Judicial Authority Law, The salaries and allowances of judges of all grades are identified in accordance with the two tables annexed to the Judicial Authority Law⁶².

Regarding the judges’ conduct, HJC established a department of judicial inspection that has the mandate of conducting regular and surprise inspections of the judges’ work at all regular courts of all levels, except the Higher Court, as well as inspecting all the departments at regular courts. The Judicial Inspection Department monitors compliance with the Code of Judicial Conduct which HJC issued based on Decision No. 3 of the Year 2006. The Code of Judicial Conduct includes provisions that promote judicial independence, avoiding conflicts of interest, guarantees of litigation and judicial conduct, competence and capacity. The Judicial Inspection Department monitors the judges’ compliance with the provisions of the Code of Conduct.

It also established a disciplinary council for judges who commit breaches that harm the profession. HJC also developed a code of conduct for judges and the Judiciary in accordance with the HJC Decision No. 3 of the Year 2006 about the judicial code

62. Higher Judicial Council. Third Annual Report, 2007, p.21

of conduct. This code was released by the Chief Justice and included several themes including “judicial independence, guarantees for litigation and judicial conduct”.

To complement the judicial system, several other laws accompanied the Judicial Authority Law, including the Regular Court Formation Law, The Civil and Commercial Procedures Law No. 2 of the Year 2001 and The Criminal Procedures Law No. 3 of the Year 2001. These laws identify the procedures at courts in civil and criminal cases.

The Judicial Authority Law also identified the mechanisms of recruiting prosecution members and the prosecution composition. The Attorney-General issued Decision No. 4 of the Year 2006, which identifies the conditions and procedures for recruiting the Prosecution members, through establishing a selection committee consisting of the Head of Inspections Department, an assistant to the Attorney-General and the Head of the Technical Office, in an attempt to improve and bridge the gaps in the Law on recruitment conditions and procedures. It would have been more appropriate for COM to issue relevant regulations, as these would be more binding, and introduce the necessary amendments to the Law to bridge the existing gaps.

To promote transparency in the Judicial Authority, the Law stipulated that hearing sessions must be open to the public, and each adversary is entitled to obtain a copy of his/her file. The Civil Procedures Law granted all citizens the right to obtain a copy of the final sentence. HJC issued instructions that allow journalists to attend and film trials with certain constraints. Establishing the media and public relations department⁶³ in 2008 constituted a major development.

The major developments in the judiciary in Palestine include:

1. The Chief justice, President of the Higher Court, issued in 2014 instructions to the Appeals and Cassation courts to give priority to corruption cases and expedite their procedures, since delaying cases may adversely affect the interests of the society, the accused and the Judiciary.
2. Set up the complaints department at HJC General Secretariat in 2012 and develop a complaints system.

63. Higher Judicial Council, The Fourth Annual Conference, Palestine, May 2009, p. 41.

3. Issue the unified procedures manuals in the following manner⁶⁴:
 - The unified procedures manual for Notary Public departments in 2012, which contains the procedures followed to regulate the judicial transactions and documents.
 - The unified procedures manual for enforcement departments that includes all the legal and administrative procedures at the enforcement departments.
 - The unified procedures manual for the notification departments that includes the internal work mechanisms at the notification departments.
 - The unified procedures manual for court registrars that details the procedures adopted at court registrars.
4. HJC took several decisions to improve the shift system and maintain work at courts and all judicial departments, following the strikes that took place in most ministries and government departments in 2012. This shift system aimed at ensuring that employees are at their workplace and provide services to the public without delay or postponement⁶⁵. In this regard, HJC also issued in 2015 a decision that regulated the work of magistrates during vacations and official holidays. The decision involved identifying a judge on duty and to rotate magistrates to decide on cases of detention, extension or end of investigation submitted by the Prosecution, and identify an employee on duty to register applications and write records. The decision clarified the mechanism to regulate work between each court and the relevant prosecution, whereby each court regularly informs the prosecution of the names of the judges on duty and the dates of hearing sessions.
5. In 2012, all regular court judges and prosecution members committed to submit financial status statements as a requirement for recruitment. Each candidate should fill the relevant form before assuming positions. The financial status statements were updated for all regular court judges and were kept with the Chief Justice.
6. The Head of Court Administration issued on 20 May 2014 a circular to presidents and judges of regular courts about paying the traffic tickets at all Palestinian courts regardless of the date they were issued and paying the traffic tickets electronically through MIZAN software.

64. The HJC website: <http://www.courts.gov.ps>

65. Palestine Official Gazette No. 40 ,18/5/2002

7. Launch the electronic services to court clients towards the end of 2014, in an effort to develop services to the public, and spare them the time, money and effort. The services launched through HJC website include the following:
 - **Litigants' services and traffic tickets:** The clients of the magistrate and first instance courts including traffic tickets may follow up their cases, records, annexes and session dates through their personal accounts at HJC website. It has also become possible to pay traffic tickets at any court in the country without the need to travel to the city at which the ticket was issued.
 - **The Enforcement department customer services:** Due payments (alimonies, commercial documents, and financial payments resulting from judicial decisions etc...), whereby the Enforcement Department clients can follow up their cases by logging into their own accounts at HJC website and applying electronically without the need to come to the court. The account provides all details including due payments and the availability of cheques.
 - **Lawyers' services:** In addition to the previous services provided to lawyers and their ability to follow up their cases and the dates of hearing sessions through the website, HJC provided the following four additional services:
 - Lawyers may apply electronically from their offices for recovering personal belongings and setting dates for reviews.
 - MIZAN 2 software was updated so that the judge can identify the bench or the court where the lawyer is, upon pressing on the name of the lawyer representing the case at hand.
 - In cooperation with lawyers, MIZAN 2 was updated so that no case may be deleted by the bench before 12 noon.
 - MIZAN 2 was updated within the framework of efforts that aim at solving the problem of accumulated notifications, so that an e-mail is sent to the lawyer through the software that indicates the number of notifications that belong to the lawyer and for which cases, and that s/he must visit the Notifications Department in 3 days, otherwise MIZAN shall be suspended until s/he receives the notifications. This application has been postponed until end of January.

Regarding the Judiciary, we have the following observations:

- HJC and the Judicial Authority faced some problems following the division between the two sides of the homeland, just like other public institutions, with the establishment of a higher justice council in Gaza vis-à-vis HJC in the West Bank, and the problems that arise from having two frames of reference and the fact that some judges in Gaza refrained from working.
- The interference of the Executive in the work of the Judiciary sometimes. The most prominent example was that the President appointed the Chief Justice in 2014 without the recommendation of the HJC as the Law provides.
- There are no clear and detailed mechanisms that ensure HJC internal and external accountability. The Higher Court judges are not subject to judicial inspection, but to the monitoring of the President of the Higher Court, amid the absence of written regulations that identify the control and oversight mechanisms over the work of the Higher Court judges.
- The Judicial Authority Law provided that recruitment and promotion of judges is upon the decision of PNA President with the recommendation of HJC. Neither the Law, nor the regulations identified specific rules or deadlines for issuing the recruitment decision, which grants the Executive the ability to interfere in judicial affairs, through issuing recruitment decisions, rejecting or “vetoing” them, or stalling them without providing justifications.
- The recommendations of the Judicial Inspection Department are not binding for HJC, which may adopt or ignore them⁶⁶.
- HJC is not bound to publish all its reports or summaries of decisions taken at meetings. However, some decisions are usually published on HJC website, especially those related to the promotion or transfer of judges or court formation.

The Public Prosecution

The public prosecution constitutes a pillar of the justice system, as it represents the society and the public in litigation. It also represents the state in cases for and against it and supervises the judicial police and the rehabilitation and reform centers. Article 60 of the Judicial Authority Law stipulated that the Public Prosecution consists of the Attorney-General, one or more assistants to the Attorney-General, and chief prosecutors

66. The 2014 Annual Report on Integrity and Combating Corruption, AMAN, Ramallah, p. 44.

and deputies. However, the law did not provide job descriptions and functions for each level of the prosecution, but rather identified in general the functions of the public prosecution and the Attorney-General.

Despite the significant progress in the accountability of the public prosecution, three prosecutors were investigated and suspended from work, while five others were referred to the disciplinary council. Upon the request of the Attorney-General, HJC extended the work of the Judicial Inspection to include the Public Prosecution. However, the regulations of the Judicial Inspection have not been amended accordingly until the date of preparing this report.

The Attorney-General took the Decision No. 28/2006 to establish the Economic Crimes Prosecution and the subsequent Decision no. 1/2012, which identified the competences of this prosecution as follows:

1. Fighting money-laundering crimes.
2. Fighting tax and customs evasion
3. Fighting economic crimes related to consumer protection, pricing, fraud, hygiene and health cases and cases of a commercial nature such as breaches of trademarks and counterfeit products.

The internal administrative work and documentation also witnessed some progress, as MIZAN was introduced and on-going efforts aim at introducing the more advanced MIZAN 2. The Public prosecution also launched on 22 March 2015 a new service at its website called “citizens’ services”, which enables citizens to inquire about their cases online, without the need to go to the Public Prosecution offices.

A code of conduct was adopted for the members of the Public Prosecution (developed in cooperation with AMAN). It was approved by the Attorney-General and circulated to the Prosecution members. It constitutes part of the basic training of Prosecution members and is taken into consideration during the inspection of the Prosecution members. The administrative employees are subject to the code of conduct for public officials approved by COM and issued in 2012. Moreover, the judicial instructions manual of the Attorney-General of the Year 2009 included a chapter on things that the Prosecution members are prohibited to do. However, the Prosecution does not have a special register to record gifts that the prosecutors may receive during performing their work.

Despite these developments, we have the following observations:

1. The dependence of the Prosecution and its legal frame of reference has not been resolved yet, amid contradictory legal provisions, of which some consider the prosecution part of the Judicial Authority, while others place it under the supervision of the Ministry of Justice.
2. No professional qualifications, requirements or competitions are identified for recruiting the Attorney-General despite the importance of this position. Identifying and publicizing the necessary qualifications, requirements and term for the position of Attorney-General and opening the position for competition continue to be unclear and inapplicable so far.
3. The Judicial Inspection Department has not started inspecting the prosecution members, pending the amendment of the Judicial Inspection Regulations.

Shari'a Judiciary

The Shari'a (Islamic) Judiciary constitutes an integral part of the Judiciary in general. The Shari'a Judiciary has the competence of resolving personal status conflicts and regulating personal status issues in accordance with the provisions of the Islamic Shari'a, particularly marriage, divorce, guardianship, custody, inheritance and other personal status matters. Hence, many conditions and requirements of the regular judiciary, such as independence, neutrality, integrity and competence, fully apply on the Shari'a Judiciary as well.

Several legislations regulate the Shari'a judiciary in Palestine, including laws, presidential decrees, and COM decisions. Article 101 of the Amended Basic Law of the Year 2003 provided that, "Shari'a and personal status affairs are undertaken by the Shari'a and religious courts in accordance with the Law", while Article 6 of the Judicial Authority Law No. 1 of the Year 2002⁶⁷ provided that, "religious and Shari'a courts are regulated by a law". At the inception of the PNA, the Shari'a Judiciary was generally regulated by inherited laws, in accordance with the Presidential Decision No. 1 of the Year 1994⁶⁸ on continuing the enforcement of the laws, regulations and orders that had been applicable prior to the date of 5 June 1967.

67. The Palestinian Gazette (Al-Waqa'e), Issue no.40, 18 May 2002.

68. The Palestinian Gazette (Al-Waqa'e), Issue no. 1, 20 November 1994.

Among the most important legislations that regulate the Shari's Judiciary in Palestine and which are applicable in both the West Bank and Gaza Strip are:

- **First: The laws**

- The Jordanian Personal Status Law No. 61 of the Year 1976 and its amendments, applicable in the West Bank.
- The Jordanian Shari'a Court Formation Law No. 19 of the Year 1972 and its amendments, applicable in the West Bank.
- The Jordanian Shari'a Procedures Law No. 31 of the Year 1959 and its amendments, applicable in the West Bank.
- Order No. 303 on the Family Rights Law, which is the personal status law applicable in Gaza Strip and issued by the Egyptian administrative governor.
- The Shari'a Procedures Law No. 12 of the Year 1965, applicable in Gaza Strip.
- The Law on Managing and Developing the Orphans Funds No.14 of the Year 2005, applicable in the West Bank and Gaza Strip.
- The Alimony Fund Law No. 6 of the Year 2005, applicable in the West Bank and Gaza.
- The Jordanian Orphans Law No. 69 of the year 1953 and its Amendments: This Law provides for releasing and freezing the inheritance and is applicable in a manner that does not contravene with other laws in the West Bank.
- The Jordanian Law of Shari's Lawyers No. 12 of the Year 1952.
- The Law on the Competence of Regular and Religious Courts issued in March 1925 in a manner that does not contravene with other laws in the West Bank and Gaza.
- The Law on registering marriages and divorces of 23 September 1919.
- The Law No. 13 of the Year 1962 on the Wasiya Wajiba

- **Second: the Presidential Decrees**

- The Presidential Decree on the Higher Judicial Shari'a Council No. 16 of the Year 2003⁶⁹ which established the Higher Judicial Shari'a Council and the High Shari'a Court.

69. The Palestinian Gazette (Al-waqa'e) Issue No. 47, 30 October 2003.

- Third: Decisions by Law

- Decision by Law No. 3 of the Year 2012 about the Shari's Judiciary, which established the Higher Judicial Shari'a Council to replace the Shari'a Judicial Council provided for in Article 14 of the Shari'a Court Formation Law No. 19 of the Year 1972 and its Amendments.

The Shari's judiciary faces several challenges, most notably⁷⁰:

1. The Palestinian Government has no policy towards the future of the Shari'a Judiciary, because of the absence of a clear and officially adopted national vision towards the justice sector and its components.
2. The absence of clear instructions that preclude cases of conflicts of interest and the existence of such cases in this Judiciary, in addition to the lack of code of conduct for the Shari'a Judiciary.
3. No periodic reports are released, citizens do not have access to information and there are no procedural manuals that facilitate transactions with the Shari'a Judiciary for citizens.
4. No periodic reports are submitted to COM and the competent parties; there is no specific system for the functioning of the Shari'a Judicial Inspection; the complaints unit is new and has no complaints system or clear forms, and the internal control unit is not active despite its existence on the organizational chart.

The Military Judiciary

The military Judiciary is competent for judging the military personnel who commit offenses against the Law. The military Prosecution belongs to the military Judiciary, which is headed by the Military Judicial Commission. The military Prosecution and the military courts apply the Revolutionary Procedures Law of the Year 1979 in the litigation procedures. Following the division, The Palestinian President issued the Decision by Law No. 28 of the Year 2007 on the competence of the military Judiciary in cases of emergency, which expanded the competences of the military Judiciary in cases of emergency to include any person (civilian or military) who commits offenses against the security services and their members, offenses against PNA officials and employees and offenses against public safety and internal public security.

70. Report on the Shari'a Judiciary in Palestine: Prospects and Challenges, AMAN, 2013

The main developments in the military judiciary are⁷¹:

- **Adopting the code of conduct of the military Judiciary and Public Prosecution:** The chairperson of the Military Judicial Commission issued the code of conduct of the military Judiciary and Public Prosecution⁷². The code includes general provisions that are binding for military judges and prosecutors, and their violation invokes disciplinary action. The code is a good start, but general and requires improvement and the addition of some provisions.
- **Several training courses were conducted for the military judges and prosecutors** on specialized legal topics, and implemented by civil judges through the Judicial Training Institute that belongs to the Ministry of Justice and HJC.
- **Opening the military courts to the public:** The military courts are now open like civil courts. However, there is a lack of appropriate space for public hearings attended by a large number of citizens.
- **Developing records and linking them with judicial records:** A mechanism was put in place to keep records of the military Judiciary, with a record for incoming cases, a record for the military Prosecution and a record for resolved cases.
- **Setting up a technical office and judicial inspection at the military Judiciary:** A technical office and a judicial inspection department were established, similar to the regular judiciary, as part of the procedures introduced to develop the military Judiciary.
- **Adopting the legal assistance system and abolishing the defense bench system:** The Military Judicial Commission decided to abolish the previous defense system, in which military lawyers were appointed to defend the accused, who could not appoint civilian lawyers. The legal assistance system has been adopted instead, whereby the Bar Association is required to assign regular lawyers to defend the accused who cannot afford appointing their own lawyer.

Regarding the military Judiciary, we have the following observations:

- The poor cooperation of some security services with the military Judiciary.
- The legislative system of the military Judiciary is outdated and some provisions explicitly contravene with the international human rights standards. Consequently, it requires a comprehensive review, which is currently going on.
- The absence of the PLC and its impact on the rule of law, the protection of public rights and freedoms and the independence and mandate of the Judiciary.

71. The Annual Report on Integrity and Combating Corruption, AMAN, 2013.

72. Published in the Palestinian Gazette (Al-Waqae') Issue No. 97, 7 October 2012, p. 93.

Chapter 12



Prevention Of Corruption In The Private Sector

Article 12 of UNCAC regulated the prevention of corruption in the private sector, indicating that state parties shall take measures to enhance accounting and auditing standards, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures, promote standards and measures of integrity, such as codes of conduct, promote standards of transparency among private entities (such as the identity of legal and natural persons), prevent the misuse of procedures regulating private entities, and prohibit deduction of bribes as expenditures from tax.

It is worth noting that the laws that regulate the work of the private sector in Palestine are the applicable companies laws, namely the Companies Law No. 12 of the Year 1964 applicable in the West Bank, amended by the Decision by Law No. 3 of the Year 2006, Decision by Law No. 6 of the Year 2008 about amending the companies law, and the applicable laws in Gaza No. 18 of the Year 1929 and 19 of the Year 1930. The laws are old, and do not provide sufficient and effective protection from corruption. Moreover, one should not overlook the role of other relevant laws in the work of the private sector, such as the Capital Market Authority Law, the Monetary Authority Law, the Banking Law, the Securities Law, and the Decision by Law No. 6. Of the Year 2014 on Leasing, the Auditing Profession Law and other laws. The applicable companies' laws in Palestine bound companies to appoint certified auditors, without disclosing any information to them, and stipulated that the auditor must not be a partner with any of the board members, to avoid conflicts of interest. The Auditing Profession Law imposed restrictions on the practice of this profession, which constituted protection and prevention of corruption in the private sector.

The Capital Market Authority (PCMA) is responsible for regulating, controlling and developing the capital market and the companies subject to its mandate. It issued instructions about the rules of conduct in the financial markets, disclosure, and listing. According the companies laws and PMA instructions, companies and banks must disclose their budgets and activities to enable public access to such information.

It is worth noting that the rules of corporate governance play a role in alleviating corruption. The Palestinian laws that regulate the business environment, such as the companies, Insurance, Monetary Authority, Capital Market Authority, Auditing

Profession, Securities, Banking and other laws, contain a set of principles and rules that constitute part of the principles of governance, which if applied, strengthen transparency and the rule of law.

Despite the weak legislations against corruption, especially in the private sector, as bribery in the private sector is not criminalized except if one of the partners is from the public sector. Even the mandate of ACC does not include the private sector. Consequently, such an absence of control and impunity contributes to an enabling environment for corruption. Nevertheless, there has been progress regarding companies, a major part of the private sector, because of PCMA role in their control and regulation. It is worth noting that the companies' laws and some other special laws regulate the work of the private sector. PCMA launched its 2012-2014 strategy which included the following goals⁷³:

1. Complete issuing and revising the secondary legislations in the financial markets, insurance, mortgage finance and leasing sectors and develop them in a manner that establishes principles of transparency, justice and integrity in accordance with the best international practices.
2. Assert the compliance of the parties subject to PCMA control with the laws, regulations and instructions on the capital market.
3. Provide data and information about the capital market through developing databases and revising and developing the quality of disclosure.
4. Complete the necessary infrastructure for enhancing corporate governance through developing tools for measuring the level of corporate compliance, raising awareness and promoting the culture of governance.
5. Implement awareness programs that target specific groups and other general programs that enhance the national strategy for financial education.

Regarding awareness, education and information dissemination, PCMA recently launched the E-governance website, developed as a communication channel and a main source of information about corporate governance in Palestine⁷⁴. It is worth noting that a code of conduct for corporate governance has been developed by the

73. A decision of CMA Board extended the 2012-2014 strategy to cover 2015.

74. See the Hawkama (governance) website: <http://www.hawkama.ps/SitePages/Hawkama.aspx>

National Committee for Governance towards the end of 2009. According to this code of conduct, PCMA is responsible for implementing these rules and their scope covers public shareholding companies and the companies subject to PCMA control. Hence, Palestine is among the first countries in the region to issue a code of conduct for corporate governance.

Within the framework of strengthening oversight on compliance with the code and ensuring enhancing the best corporate practices, PCMA, in cooperation with the International Finance Corporation (IFC), and with the support of AMAN, developed the corporate governance scorecards, implemented on several companies as a pilot phase in 2014.

Some public shareholding companies started implementing the corporate governance code of conduct in Palestine, whereby some companies pledged to include in their annual reports the values of bonuses and expenses of board members. Some companies started with disclosure at the PCMA and stock exchange of some important information that may affect the public shareholding companies' activities or shareholders' rights, and published them on PCMA and stock exchange websites. To apply its policy of public access to information, PCMA regularly publishes its annual reports on its website with all the information on the legal status, management, parties subject to PCMA control, PCMA administrative organization and organizational structure, training and capacity building, main achievements and activities and the status of the sectors under PCMA oversight⁷⁵.

In this regard, several achievements related to the private sector regulation were made. PMA⁷⁶:

1. Developed in 2009 the manual on the best practices for corporate governance of banks in Palestine, which includes a set of major principles that improve and develop the banks' performance, improve the awareness of board members, since they have the larger responsibility towards managing banks, and regulate their relations with the banks' executive managements, shareholders and other stakeholders.
2. Issue in 2010 instructions on disclosure, work ethics and complaints.

75. See 2011 CMA Annual Report on : http://www.pcma.ps/Rsearches/Reports_Docs/PCMAAnnulReport2011ArabiEnglish.pdf

76. PMA website: <http://www.pma.ps>

3. Adopt in 2014 the code of conduct of PMA employees.
4. Set up a work ethics office at PMA, which addresses cases related to work ethics. This office is independent and reports directly to PMA Governor. It is in charge of ensuring the implementation of the adopted work ethics policies and providing ethical orientation for PMA staff if any behavior that may harm PMA reputation and have an adverse impact on the concerned PMA staff occurred.

PCMA did the following:

1. Developed the instructions of licensing the issuing officer based on the provisions of Article 75 of the Securities Law No. 12 of the Year 2004. Article 4 of these instructions addressed conflicts of interest as follows:
 - The issuing officer is prohibited from having any commercial or financial interests in the issuance, including underwriting debt bonds, or disposing of mortgaged debt bonds to his/her favor except in accordance with the provisions of Article 7 of the functions of the issuing officer or in accordance with the provisions of the agreement between the issuing officer and the issuing company.
 - The issuing officer is prohibited from being a guarantor for the repayment of due amounts on debt bonds.
 - The issuing officer is prohibited from receiving payments of the nominal value, the value of restored bonds and interests from the issuing company to pay them to the bond owners.
 - It is prohibited to combine the functions of the issuing officer with those of the custodian and the director of issuance for the same issuance category.
1. Issuing Instructions No. 2 of the Year 2008 on disclosure and the amended instructions No. 1 of the Year 2013. These instructions are related to the salaries, bonuses and allowances of board members and the statements that indicate the amounts that the executive staff received during the financial year, in addition to the annual reports and others⁷⁷.
2. Prepare a manual about the application of the corporate governance scorecards and assisting companies in meeting their requirements during 2013.
3. Adopting the code of conduct of CMA board members and staff during 2013.

77. See the Palestinian Gazette (Al-Waqae'), Issues 78 and 102.

4. Issuing a decision in 2013 about the transparency of trading securities, which prohibits any informed person to trade the company's shares during the ten days that precede the board meeting in which substantial information is discussed, and which directly influence the price of the security. It also identified the groups of informed persons for the purpose of disclosure and prevention from trading. This decision came in application of the principles of disclosure and transparency in financial transactions and to protect the investors' interests.
5. Launching the governance website in 2013.
6. Issue Instructions No. 1 of the Year 2014 on the professional code of conduct of insurance companies amending the Professional Code of Conduct of Insurance Companies No. 4 of the Year 2007.
7. Issue a circular that binds the insurance companies to commit to submit the report of the actuarial expert appointed by the company, together with the closing accounts and bind the companies to refrain from distributing any profits on shareholders unless the expert report indicates the presence of a surplus during inspection and with CMA's approval.
8. Present the overall results of the pilot phase to apply the corporate governance scorecard model in April 2015. This model aims at measuring the compliance of public shareholding companies with corporate governance rules in a quantitative, objective, scientific, systematic, transparent and clear manner, and in accordance with the best relevant international practices. This model constituted a substantial improvement to corporate governance in Palestine, since it constitutes an important tool that enables several parties, most importantly the public shareholding companies, and their boards and senior management in particular, to measure the progress achieved in corporate governance and promote the best practices. The results of this tool may also be used by investors and financial analysts to assess the current status of the company and take the appropriate investment decision. The model also enables PCMA to measure the progress made in implementing and enforcing the rules of the corporate governance code of conduct and formulate future policies and plans regarding corporate governance based on accurate objective and scientific basis. This is in line with PCMA strategy to strengthen the necessary tools that ensure the compliance with the rules of governance and show the companies how they benefit from improving and strengthening internal control tools, transparency and disclosure with shareholders, partners and stakeholders, which in turn improves corporate governance in Palestine.

Regarding fighting corruption in the private sector, we have the following observations⁷⁸:

1. The applicable legislations do not criminalize bribery and embezzlement in the private sector. This gap must be bridged in line with UNCAC provisions which criminalize bribery in the private sector, because of its impact on fighting corruption. However, it should be noted that several legislations suffer from gaps that adversely affect the environment of integrity, transparency and accountability in the private business, such as the Competition Promotion and Anti-Trust Law, the Public Concessions Law, the Debt Settlement Law and the Amended Companies Law.
2. Some public shareholding companies increased their public disclosure of information, such as the names of major shareholders and the size of their shares as well as those of their spouses and sons in the company. Some companies also published the bonuses of their board members, while others published the total without providing details. Moreover, some companies published information about their social responsibility activities.
3. Many companies do not publish their bylaws on their websites and do not publish the concession agreements they reached with PNA.
4. Some companies continue to combine between the position of general manager and board chairperson or member.
5. Some listed companies have no websites, or have inactive websites that have not been updated for a while.
6. Boards of several public shareholding companies that manage public utilities do not have a binding system for disclosing conflicts of interest of their board members when they exist.

78. The 2013 Annual Report on Integrity and Combating Corruption, AMAN Ramallah.

Chapter 13



Participation Of The Society

Article 13 of UNCAC addressed the topic of the participation of the society, indicating that state parties shall take measures to raise public awareness regarding the existence, causes and gravity of the threat posed by corruption, the existence of a commission/s against corruption, the active participation of civil society organizations in monitoring and reviewing national and international policies and conventions against corruption , and public access to documents related to fighting corruption such as policies, presentations and evaluations.

The legal framework that regulates the work of civil society organization (CSOs) or non-governmental organizations (NGOs) is the Associations Law No. 1 of the Year 2000. NGOs are essential in any society. The number of registered NGOs reached 2778 in the West Bank and Gaza Strip until 2014. They are active in various aspects of life. The institutions that specialize in fighting corruption are still limited in number and are mostly active in enhancing integrity and transparency. A number of NGOS formed coalitions to collaborate efforts, most notably the Non-Governmental Coalition for the Transparency of the General Budget, and the institutionalization of the civil forum for promoting good governance in the security sector. The Non-Governmental Organizations Development Centre (NDC) and AMAN contributed to building the capacity of several NGOS in administrative and financial matters to help improve their internal governance and strengthen their mechanisms of internal accountability.

Chapter 14



Preventing Money Laundering

Article 14 of UNCAC addresses money laundering, indicating that state parties shall take measures to use best international practices, including the client and beneficial owner identification, record-keeping and the reporting of suspicious transactions. The competent authorities must enjoy the necessary powers to cooperate and exchange information at the national and international levels, set up a financial intelligence unit, take measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, and provide meaningful information on the originator in electronic money transfers; place money transfers that do not have full information about the originator under thorough scrutiny, and develop global, regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities to combat money-laundering.

The Anti Money Laundering Decision By Law No. 9 of the Year 2007 and the Amending Decision By Law No. 6 of the Year 2013 constitute the legal framework against money laundering in Palestine. They provide for establishing the National Anti-Money Laundering Committee and the Financial Monitoring Unit based at PMA. The mandate of the committee includes formulating the public policies to fight money laundering and the policies that direct the work of the unit etc... The Law identified the scope of the offense of money laundering in line with UNCAC. Regarding the client and beneficial owner, the Anti Money Laundering Law stipulated that banks must identify their clients (natural or legal persons) and the beneficial owner and verify their identities through the necessary documents or data⁷⁹. The companies' laws and the Banking Law No. 2 of the Year 2002 (Article 40) bind the banks operating in Palestine to keep records of accounts, operations and financial status. They shall also prepare towards the end of each financial year their financial statements and closing accounts that accurately reflect the results of their operations during that year, in accordance with the accounting standards and procedures. The Law also stressed reporting, as Article 14 provided that "financial institutions and non-financial businesses and institutions must duly report to the Unit, and in accordance with the relevant instructions that the Unit issues, cases that they suspect, or have reasonable doubt to suspect that the moneys constitute the yields of a crime, or if they are aware of an incident or activity that may indicate a money laundering crime".

79. Article 6 of the Anti Money Laundering Law No. 9 of the Year 2007.

Regarding exchange of information, Article 45 of the same Law stipulated that the “Financial Monitoring Unit shall exchange information with its counterpart units in accordance with the Law and without contravention with the relevant agreements signed by the PLO or the applicable laws in PNA territories”.

Regarding the Financial Intelligence Unit, the Law provides for establishing a financial monitoring, rather a financial intelligence unit; the aim of the financial monitoring unit is to receive and follow up financial reports from the competent parties about suspected activities.

Regarding the measures to discover and detect the movement of money and negotiable instruments across borders, the Law imposed several requirements on financial institutions regarding cross-border relations with corresponding banks, including identifying and verifying the receiving institutions with whom they have banking relations, gather information about their activities and other obligations . It is worth noting that PNA has no control over its borders because of the continued Israeli occupation and control over the borders and all border-crossings to the Palestinian Territories.

Regarding liability, the Law placed a fine against all legal persons that commit the money laundering crime, in addition to penalizing the responsible person. It also bound financial institutions to refrain from completing a transaction upon suspicion. It also provided for the possibility for the Financial Monitoring Unit to request information from the counterpart units with whom PLO had signed bilateral agreements.

In conclusion, many provisions are in line with UNCAC. The Law even went further as it adopted all the optional provisions⁸⁰.

At the practical level, the National Anti Money Laundering Committee was established based o the Presidential Decision No. 174 of the Year 2008, and consists of nine persons representing most ministries, in addition to PMA Governor and several financial, legal and economic experts. The Committee meets four times annually at the Financial

80. A critical review of the Anti Money Laundering Decision by Law No. 9 of the Year 2007, AMAN, 2009.

Monitoring Unit at the PMA. The Financial Monitoring Unit was also established at the PMA. It is currently performing its functions as an independent unit in its work and management, and no interference in its work is allowed.

The Committee also issued several instructions on fighting corruption to the banks, PCMA, insurance, mortgage finance and financial market companies. Article 6 of the Anti Money Laundering Decision By Law No 9 of the Year 2007 referred to client identification, which is applied. The Committee elaborated on that in its instructions to the banks.

Regarding establishing a financial intelligence unit, a financial monitoring unit has been established, with the competence of receiving, analyzing and disseminating reports. It does not have the competence to control daily operations and currently performs its functions at the PMA.

The continued Israeli occupation and the PNA lack of control on the borders and border-crossings constitute a problem in terms of the measures to detect the movement of money.

Despite the grave difficulties to identify the scale of the money laundering problem and its impact because of the limited experience of PNA, based on other data it may be concluded that money laundering crimes in PNA territories are linked with similar crimes in Israel, and are almost totally restricted to trading with Israeli businessmen (and settlers living over Palestinian land in the West Bank) expired or spoilt goods and weapons, smuggling goods such as electronics to the Palestinian market and sometimes smuggling corrupt money from abroad through banks to individuals, institutions or companies set up for that purpose⁸¹.

To alleviate this kind of crimes, several institutions, such as PMA, local banks and PCMA took precautionary measures to fight money laundering and confront and report suspicious operations. Based on the Monetary Authority Law No. 2 of the Year 1997, PMA took several measures and decisions that aim at maintaining the stability of the banking sector and protecting the Palestinian economy from abuse and misuse, through:

81. Report on the Palestinian Experience in Combating Money Laundering, AMAN, 2008, p.13.

1. Establishing the Financial Monitoring Unit and implementing a plan against money laundering, through gathering and analyzing information about suspicious operations and submitting them to the Judiciary.
2. Issuing circulars to the Palestinian banking sector that clarify the role of banks in combating money laundering, and that bind them to report suspicious operations. Consequently, the banks committed to:
 - a. Appoint compliance controllers in accordance with Basel recommendations, to accomplish the monitoring functions, verify banks' compliance with laws, regulations and PMA instructions, through monitoring banking and financial operations to maintain the good reputation of the banking sector and avoid risks and abuse.
 - b. Duly provide the Financial Monitoring Unit with the necessary information about suspicious operations.
 - c. Update clients' data and obtain sufficient information about them, the nature of their work and the purpose of opening accounts⁸².
3. This Committee issued several instructions, including:
 - The Anti-Money Laundering Instructions for the Banks Operating in Palestine No. (1/2009).
 - The Anti-Money Laundering Instructions for Money Exchangers No. (2/2009).
 - The Anti-Money Laundering Instructions for the Parties Subject to PCMA Control No.(3/2009).
 - The Instructions on Disclosing Cash Amounts upon Entry to PNA Territories Through Border-Crossings No. (4/2009).
 - Instructions No.1 of the Year 2014 about the Persons Politically at Risk, which identify the persons politically at risk as those persons who work in the following positions, local or foreign, and their families and relatives: The persons who work in senior public and political positions, the President of the state and his advisers, the chairpersons of the institutions that belong to the Presidency, the Prime Minister, ministers, deputy ministers and their equivalent, directors and general directors in public office and their equivalent, directors and heads of public institutions and their equivalent, PLC speaker and members, Chief Justice and members of HJC, different levels of court judges, members of the Public Prosecution, directors and commanders of security

82. The 2008 Annual Corruption Report, Ramallah, p.14

services at the headquarters and at governorates, directors, commanders and officers of the Palestinian National Security, directors of the National Security administrations and sections at the headquarters and the governorates, leaders and senior officials in the political parties and factions, heads, deputy heads, directors and board members of local and foreign charitable associations and NGOs, ambassadors, consuls and members of the diplomatic corps, chiefs, deputy chiefs and directors of international agencies and senior executive officers of state-owned companies.

- PMA issued in 2014 an anti money laundering manual for money exchangers which includes an explanation of the concept of money laundering, its parties, stages and negative impact on the money exchanger and the economy in general. It also identified some practices that may place the money exchanger at the risk of being accused of money laundering, the indications for suspecting money laundering operations and means of prevention.

PCMA constitutes the control body over the capital market and the institutions that operate it. PCMA establishes and prepares the necessary means to ensure the compliance of the financial institutions subject to PCMA control with the legal rules and regulations, which include the procedures that these institutions must take to ensure their compliance. To avoid money laundering, and in line with the Anti Money Laundering Law, PCMA adopted several measures, including:

- Applying the principle of “know your client”: This principle prohibits financial mediation companies from accepting or disbursing cash; all financial transactions must be implemented through bank accounts, so that banks can know the clients. This is also in line with the Monetary Authority Law No. 2 of the Year 1997.
- It adopted the principle of disclosure, whereby all the staff at the institutions subject to PCMA control, especially senior staff such as general directors and board members, must disclose all their financial transactions, as well as those of their first degree relatives, and that such transactions shall be subject to control and auditing⁸³.
- Issue a PCMA Circular no (3/2009) on 20 September 2012 about combating money laundering, which asserts the need for compliance with anti money laundering instructions for the parties subject to PCMA control and to protect the integrity of the insurance sector from the risk of money laundering.

83. The 2008 Annual Report on Integrity and Combating Corruption, AMAN, p. 14.

References

- A Critical Review of the Anti Money Laundering Decision By Law No. 9 of the Year 2007, AMAN 2008.
- Report on the Palestinian Experience in Combating Money Laundering, AMAN, 2008.
- The National Integrity System, AMAN, Ramallah, 2009.
- The Palestinian Policies and Legislations against Corruption, an analytical study, AMAN, Ramallah, 2008.
- Government Tenders, AMAN, 2008.
- The 2008 Annual Report on Integrity and Combating Corruption, AMAN.
- The 2010 Evaluation Report about Compliance with the UNCAC Preventive Measures, AMAN.
- The 2011 Annual Report on Integrity and Combating Corruption, AMAN, 2012.
- The 2012 Annual Report on Integrity and Combating Corruption, AMAN, 2013.
- The 2013 Annual Report on Integrity and Combating Corruption, AMAN. 2014.
- The 2014 Annual Report on Integrity and Combating Corruption, AMAN, 2015.
- The National Integrity Index 2014, AMAN, 2015.
- Government Tenders, AMAN, 2008.
- The Integrity of Administrative Contracts in Light of the Law on Tenders for Government Works and the Law on Public Supplies, AMAN, 2009.
- The Shari'a Judiciary in Palestine: Prospects and Challenges, AMAN, 2013.
- The Guarantees of Promoting Reporting Corruption in Palestine, AMAN, 2015.

Websites:

- **The Higher Judicial Council**
<http://www.courts.gov.ps>
- **The Anti Corruption Commission**
<http://www.pacc.pna.ps>
- **The Public Prosecution**
<http://www.pgp.ps>
- **The General Personnel Council**
<http://www.gpc.gov.ps>
- **The State Audit and Administrative Control Bureau**
<http://www.saacb.ps>
- **Ministry of Finance**
www.pmf.ps
- **The monetary Authority**
<http://www.pma.ps>
- **The Capital Market Authority**
<http://www.pcma.ps>
- **Coalition for Accountability and Integrity**
AMAN <http://www.aman-palestine.org>

