



Palestinian Security Sector and Political Integrity





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Introduction

Creating an appropriate framework of governance integrity is a condition for the legitimacy of any pluralistic political system. The pillars of this framework include safeguarding basic public rights and freedoms to all citizens, peaceful rotation of power, rule of law, and subjecting all officials to judicial power. Usually, these principles are enshrined in the social contract adopted by democratic regimes in their constitutions.

Palestine has reiterated these principles in the Charter of Independence and Basic Law. At the political level, officials in charge of the governance of public centers and institutions are committed to making their decisions in the service of the public interest. This commitment is reiterated in the official oath made by senior officials (president and members of the government, legislative power, and judicial authority) before they assume office, as prescribed in the Basic Law.

Power is exercised on the basis of balanced distribution of mandates among the three authorities (legislative, executive, and judicial). No single authority can hegemonize power. For this purpose and to ensure the integrity of governance, access to and exercise of power is regulated by a set of controls and principles, which subject each of the three authorities to official and social oversight to prevent any authority from monopolizing the governance of state institutions and control the decision-making centers, mainly the legislative, executive and judicial powers.

The authoritarian political systems enable the ruling party to control the legislating power and governance of public funds and affairs (Executive Authority) as well as the key official oversight institutions, mainly the administrative justice and public prosecution. These systems restrict civil society's space and role in accountability. Most of these models failed in their democratization, development, or anti-corruption programs. They witness grave violations of human rights, coupled with discrimination, inequality, and unequal opportunities with poor rule of law and anti-corruption efforts. Most international indices showed that these systems are usually inhibited by corruption and failure in the said programs in most countries.

The Palestinian Basic Law holds officials in charge of public institutions and security forces accountable for their actions, which they must perform with transparency. Public officials and employees must comply with the values of integrity in the performance of their duties and are all subject to the oversight of independent administrative and financial control organizations.

The PNA constitution (as per the Basic Law) is theoretically based on the balanced separation of powers with mutual checks and balances to prevent any of the three authorities from enjoying absolute power. In other words, it prevents the monopoly of power by any party and compels all authorities, including civil and security institutions and agencies, to make their decisions to serve the public interests. The officials managing state institutions are subject to civil political authority because they are part of the executive authority. Article 69 of the Basic Law provides that they shall perform their duties in transparency and shall be subject to effective accountability via submission of reports on their activities to the political level. They must make their decisions to serve the public interest not private or party interests in order to maintain the political system's stability

and minimize administrative and financial corruption and chances of political corruption¹. A national preventive strategy must be adopted to combat political corruption and prevent the hegemony of power by any single authority to control state (legislative, executive, oversight, and judicial) authorities.

Purpose of the report

The report aims to discuss the political dimensions of the security agencies and their relationship to the ruling regime to examine the effect on the integrity of governance. It compares the current reality with the criteria that govern security agencies in democratic systems and diagnoses the key challenges to governance integrity in the Palestinian context. The report further formulates recommendations to promote governance of the security sector.

Report methodology:

The report adopts an analytical descriptive methodology based on monitoring information on the research area relating to “the Palestinian security sector and its role in promoting governance integrity” from credible sources. It further reviews the regulatory framework of the security agencies (laws, presidential decrees, regulations, and resolutions) and analyzes the collected information to diagnose the existing progress, challenges, and gaps.

¹ Administrative corruption (abuse of power), i.e., (violation of the law to serve a personal interest) while political corruption is when the officers in charge of the governance of the state abuse their power to issue legislation, adopt policies, or issue resolutions to serve the private rather than the public interest of citizens. This type of corruption is the type that is not prosecuted in many countries, including in Palestine since it does not infringe the law (Criminal offenses and penalties are determined only by law)

Preamble: Integrity of governance (political integrity) and political corruption

Political integrity is a necessary condition in most democratic countries to build a national system of integrity, anti-corruption, respect for basic rights and freedoms, and enforcement of the rule of law. Usually, these principles are defined in the social contract adopted by these democratic regimes in their constitutions. Governance integrity means that the officials in charge of the public governance and centers make their decision to serve the public interest rather than any other interest (of a particular group, party, or individuals).

Governance integrity means that the state and its institutions are managed based on the principle of the separation of powers (since absolute power is absolute corruption). The three powers apply the principles and values of integrity, transparency, and accountability in their decisions and acts. Public funds are managed with transparency to serve the public interests. They function under independent and effective oversight bodies that monitor all public servants and ensure that no official is immune to oversight and audit of his/her acts. To ensure governance integrity, civil society must be proactive and perform social accountability, supported by free and investigative media that discloses the cases of corruption and an official media that expresses the opinions of all parties to reflect social plurality.

The key principles of governance integrity focus on avoiding the abuse of power by any entity to enact legislation, adopt policies, or undertake measures that serve private interests. These principles forbid the abuse of power aiming to appoint supporters [of the ruling regime] in state positions regardless of their qualifications, mainly in oversight bodies. These rules constitute a code of conduct for the heads and members of these institutions so that they can be role models for others².

Weak political integrity is the main factor for the emergence of one of the most salient forms of corruption, namely political corruption. Indeed, political corruption is one of the main reasons for the failure of anti-corruption efforts to achieve the desired results. Political corruption is linked to the political system environment, which creates an opportunity for certain entities or groups within the system regardless of their political affiliation or position to ally to usurp the system to employ their power to serve private or factional interests. They create a circle of allied interests that do not align with the public interest, which the political system, the representative of the people, must fulfill³.

The security agencies are the most important arm that enables the political elites to gear the political system to serve their personal rather than the public interest, which is known as political corruption. The security forces have the tools of violence and control to be the tool to suppress any opposition against these elites and their plans. Without these forces, the political elites cannot hegemonize the political system or achieve their goals. These elites usually succeed in reshaping the security sector to establish strong forces that defend the elites and their supporters, considered the symbol of the state. In exchange, the heads of these forces receive certain guarantees and privileges and usually become the main partners in this network of the governance system.

2 13th Annual Report, Integrity and Anti-Corruption Assessment, Coalition for Integrity and Accountability (AMAN), 2020, P. 28.

3 Musleh, Ahmed, Political Corruption in the Arab World: a social contract to restore the abducted state, in Political Corruption: Redefinition, ibid.

To eliminate political corruption and restore political integrity, a preventive strategy must be adopted to minimize corruption in the three areas of governance, namely access to power, transparency of the governance, and effective accountability systems⁴.

Access to power: Controls to ensure a balanced separation of powers, and peaceful rotation of power via free and fair elections. To guarantee this, the following issues must be addressed: corruption of political financing and electoral campaigns, untransparent political funding, weak disclosure and oversight systems, abuse of elections management to purchase votes, abuse of state institutions and resources to serve certain political forces, influencing the votes of security agents, the ruling power hegemonizes the appointment of the elections' monitoring committees or challenges as well as the drafting of the electoral system or amendment to its provisions or setting the date of the elections or postponing them and controls the selection of state officials.

Exercise of power: Addressing the monopoly of decision-making, weak transparency, lack of openness, poor access to public information, and abuse of public resources to serve private interest at the expense of public interest. This means that policies and procedures must be adopted to compel officials to submit a periodic disclosure of any conflict of interest and adoption of effective measures and independent oversight institutions to monitor the accumulation of private wealth by senior officials.

Official oversight means preventing impunity for lack of integrity and corruption. The official oversight and accountability bodies must be guaranteed their independence, effectiveness, and comprehensiveness. The immunity granted to senior officials should not prevent holding them accountable. Authoritarian practices that undermine the role of civil society organizations and the freedom and independence of the media must be stopped. Public media must enjoy full independence and should not be used as a tool to promote the ruling regime.

Security agencies are important to achieve governance integrity and prevent political corruption. They must be immunized against corruption with enhanced integrity that guarantees the integrity of governance similar to democratic systems.

⁴ See/ Coalition for Integrity and Accountability (AMAN), Governance integrity versus political corruption, AMAN's annual conference: Integrity of governance and combatting political corruption: the Palestinian experience, Ramallah. 2021.

I. Security bodies in a democratic system

1. Criteria governing security agencies in democratic systems and their relationship with the political level

Democratic systems address their public issues, mainly national security and the governance of security and defense agencies, via elected representatives who make the necessary decisions. For instance, national security cannot be let to the security and military institutions despite their technical expertise. These institutions are governed by basic norms that specify their mandates and relationship with the political system and elected civil government. These norms or principles related to the democratic oversight of security agencies may be summarized as follows :

- Civil control of the security and military sector is an essential principle of democratic systems because it guarantees that security and military institutions do not abuse the authorities vested in them to coerce or impose control. The security and national defense issues are debated with representatives of the society in parliaments and the judiciary. Decision-makers on these issues are accountable to the public.
- Subjecting the security and military institution in democracies to civil leaders is an important guarantee to sustain the basic principles of democracy, most importantly majority rule and assurances of the rights of minorities and maintaining public freedoms with a balanced separation of powers.
- Adoption of a specific regulatory framework (legal system) since the law defines how security forces exercise their mandate and perform their roles in times of peace and war. The law also prescribes the controls and restrictions applicable to these forces, which prevent them from violating the constitutionally protected rights of individuals and groups under any pretext such as protecting the high national interest or national or state security. These forces are not vested with any constitutional or legal mandate to interpret the constitution or enact legislation or decide on political appointments.
- Effective parliamentary oversight of security and military organizations to ensure they enjoy legitimacy and popular support. Often, parliaments form specialized committees to exercise this oversight like civil, security, and intelligence units. Parliaments also play a role in the appointment of senior security and military heads/leaders and enact the detailed security and military budget. They also review their financial statements and approve the national security policies submitted by the government. Parliaments also have the authority to declare war and ratify peace agreements.
- Military and security budget and planning are managed by the civil government; the role of security and military forces is to share their technical expertise with the civil authority.
- The purpose of security and military organizations in a democratic system is to protect the state and protect people's freedom against any threat. They cannot support any political faction, group, or party because these institutions must be loyal to the state, and they cannot be affiliated with any individual or any other entity or group.

- Notwithstanding the security and military institution's skills and capacities and their mandate to defend the state in a democratic system, they are not glorified or sanctified. Their role is not used as a ground to interfere in governance or attempt to control and hegemonize the public while suppressing their rights and freedoms. On the contrary, they are subject to an elected democratic government. Therefore, democratic systems do not risk military coup d'état or control of the political system, whether it be directly or via a civil government that acts like a façade similar to other non-democratic systems.
- Democratic governments usually consult with the military and security organizations and benefit from their experience before deciding on their national security policy. The civil government makes the decisions while security and military forces faithfully implement them.
- The rule of law is applied under all circumstances, including in exceptional situations (state of emergency) to prevent jeopardy to the public rights and freedoms by an abuse of the authorities vested by the executive power in the security forces.
- The law in democratic systems guarantees the right of security and military personnel to take part in public and political life like other citizens of the state. However, they participate as individual citizens and not as agents of the security or military organization. Members of these organizations may not hold a public position or interfere in political life so long as they are part of the security or military service or before the termination of their service.
- Security forces must exhibit high discipline, which is guaranteed via professional recruitment and performance based on a professional code of conduct. Recruitment must be based on specific terms and criteria, with a public announcement of enrolment procedures in these forces. It may not be based on political affiliation, religion, ethnicity, or factional membership to ensure that members of these organizations serve only the nation regardless of the ruling power.
- Security and defense organizations must adopt an open policy toward the public, like any other area of government policies. Actually, the need to be open to the public is more important when it comes to the security and defense sector because it requires certain sacrifices at the expense of other sectors like education, health, and social protection. Therefore, security-related policies must be informed by transparent and accurate information and reflected in detailed budgets that show all revenues and expenses.
- The security and defense sector also needs to be open to the media and civil society organizations to enable them to access information and investigate security and defense cases and policies and report on them as part of the public discussion on national security issues⁶.

Democratic governance of the security sector has become a key principle in democratic systems and was adopted by many international and regional organizations as a criterion of distinction between democratic and other authoritarian and suppressive political systems. The European Union considers the democratic governance of the security sector a prerequisite to joining the Union. The Organization for Security and Cooperation in Europe (OSCE) adopted a charter on Democratic Governance of the Security Sector, which focuses on clauses 7 and 8 on the key pillars of democratic control of the security forces system by prioritizing civil activities rather than military force. In this regard, the security forces are subject to the International Humanitarian Law, respect for human rights and prohibition of the use of force to restrict legal and peaceful action, prohibition

⁶ Civil oversight of security bodies: experiences and controls: <https://eipss-eg.org>

of discrimination on the basis of identity or nationality. Other examples include the 2002 Human Development Report, which summarizes the main rules and principles of the democratic governance of the security sector reiterating that the ultimate authority in security matters is vested in elected representatives. It adds that security agencies must abide by international and human rights laws. Furthermore, information on security planning and resources must be made publicly accessible by the government. Thus, security is managed according to a comprehensive and organized plan. The relationship between military and civil servants must be based on the hierarchy between civil authorities and defense forces and must be based on mutual respect for rights. The relationship with civil society must be based on transparency and respect for human rights. Civil authorities need to have political control of the security forces' operations while the civil society should have the capacity and tools to monitor these forces⁷.

2. Corruption risks and political integrity indices of the security sector in democratic systems

Defense is not immune to the scourge of corruption. This may come as a surprise given the high regard that the public generally has for the military around the world. In many countries, the military is perceived as less corrupt than the political parties, legislatures, business companies, and the media. The standing of the military, however, varies strongly across countries and regions. For example, in Western Europe and the United States of America, the military is broadly perceived as being free of corruption. Notwithstanding the high esteem of the military in most societies, Transparency International studies have rated defense among the most corrupt sectors entrusted with the management of public resources⁸. On another level, security pretexts play a major role in enabling the ruling elites to exploit procurement contracts to receive bribes and redirect these bribes to finance political campaigns. These elites may also lay hand on the government budget allocations to this sector⁹.

Many official and unofficial bodies develop statistical and non-statistical indicators and indices to assess the situation of prevention against corruption in general or an index to assess a certain sector like the security and defense sector. As part of its defense and security program, TI publishes an anti-corruption index of the defense sector since 2013. The index adopts 76 indicators to assess the risk of corruption and vulnerability of the Ministries of Defense and Armed Forces¹⁰.

The key indicators of the integrity index of the security and defense sector relating to political integrity (governance integrity) may be summarized as follows¹¹:

1. Availability of a constitutional or legal framework that subjects the security and defense organization to the city level in an elected democratic government.
2. Availability of effective parliamentary oversight of the security and defense sector, including:
 - Specialized parliamentary committees to control the security sector.
 - The parliament discusses and approves security policies.

7 Al-Sharouf, Habes, Role of security forces in building the Palestinian state, MA research, Al-Quds University, 2010, P. 34-36

8 The Geneva Center for Democratic Control of Armed Forces (D-CAF), Building Integrity and Reducing Corruption in Defense: A compendium of best practices, Geneva, 2010, p. 3.

9 Transparency International Defence and Security, The Fifth Column: Understanding the relationship between corruption and conflict, 2017, p. 17

10 Coalition for Integrity and Accountability (AMAN), 2021, Integrity Index of the Palestinian Security Sector 2020, p. 14.

11 Chapter of Transparency International on Security and Defense, UK, Anti-Corruption governance index of the security sector, 2013, p. 32. See also, TI, Combating Corruption and Promoting Integrity of the Defense, 2007, and Coalition for Integrity and Accountability (AMAN), Palestinian security sector Integrity Index, *ibid*.

- The parliament discusses and approves security laws.
 - The parliament discusses and approves the detailed budget for security and defense.
 - The parliament and its specialized committees receive periodic reports on the security sector and its spending and different programs.
 - The parliament questions the heads of security agencies and other security and defense officers and compels them to submit these documents.
 - Specialized control bodies submit their reports to the parliament to discuss them and follow up on the implementation of the recommendations.
 - The parliament ratifies the appointment of heads of the security organizations.
3. There is an accessible detailed and transparent budget of the security sector showing the key items of spending and purchases.
 4. There is a rigorous and independent appointment and promotion system of the security leadership with an independent commission to assess candidates' qualifications and their adequacy for the position.
 5. State's general control institutions audit the security sector to assess the spending and performance and publish the findings of their reports.
 6. There are guarantees to access information and documents on the security sector's policies and strategies.
 7. There is a regular public dialogue on security and defense issues with official and public participation.
 8. The information on security organizations' leaders' sources of income and financial assets are disclosed.
 9. There is a declared and applied policy to combat corruption in the security and defense sector with sufficient resources to take measures against the risks of corruption.

II. Palestinian Security Sector: Governance Integrity

1. Reality of the Palestinian security sector and its establishment in the light of democratic standards.

The Palestinian security sector was established under unique conditions that are reflected in its shape, profile, and journey over the past years. It was created with the Palestinian shift from revolutionary legitimacy under the PLO leadership to constitutional legitimacy in the project of building a democratic state in a transitional period that turned into a quasi-permanent state. It enjoyed limited sovereign authority and remained vulnerable to ongoing regional and international interference and pressure combined with the prerequisites to build an independent democratic state while continuing the liberation struggle to end the occupation. It swings between those who support its role and those who doubt the legitimacy of its very existence and the role it plays. The Palestinian security sector was established under several limitations that make it difficult to judge it based on the same norms and standards governing security sectors in democratic systems. These limitations include:

- Following the signature of the Oslo Accords and subsequent agreements between the Palestinian and Israeli sides in 1993, the Palestinian security forces were established based on the specific roles and nature of the Palestinian Authority and its security forces and their relationship with the Israeli side and the territorial jurisdictions of both sides following the division of the Palestinian Territories into Areas (A, B, and C). The Washington Agreement of 1995 defined the structure and composition of the security apparatuses and set the number of staff and the armament of these forces. The annexed protocol to this agreement (Protocol on Redeployment and Security Arrangements) specified the duties of the Palestinian police to maintain internal security and public order, prevent crimes and protect public establishments in addition to combatting terrorism and violence and preventing incitement. Thus, the role vested in the Palestinian security organizations according to the aforementioned agreements does not come under normal circumstances or in an independent state in which the security and military forces are required by public will and the constitution to maintain the security and stability of citizens and to defend them against external threats. On the contrary, the sector was established based on an interim agreement with the Israeli side and with a very limited mandate.

- The peaceful settlements with Israel and signed agreements opened a room for external interference in the Palestinian security sector, mainly Israeli and American interventions since the USA sponsored the settlement. Any progress in the peaceful settlement was tied to Israeli and American conditions and demands. Under such a situation, it is not possible to speak of democratic norms in the security sector governance whether it relates to civil subjugation to a democratically elected government or the sector's regulatory framework, which defines its mandate and subjects it to parliamentary oversight and supervision. These conditions do not provide for the necessity to enjoy public legitimacy or even subjugate the planning and budgeting of the sector to civil oversight¹².

12 Shuaibi, Azmi, Reforming the security institution in the Arab political system, in Palestinian readings of the Arab political reforms initiatives, Palestinian Initiative for the Promotion of Global Dialogue and Democracy (Miftah), Coalition for Integrity and Accountability (AMAN), Ramallah, 2005, pp. 63065.

- The security forces' formation was influenced by the legacy of the PLO in the framework of its political and field leadership as an armed resistance militia. Leaders of this sector were part of the political leadership under the different factions within the PLO structure. This legacy was reflected in the structure of these forces in terms of their multiplicity and overlapping of political and security functions in the PNA institutions, including the security forces. On another level, a single political faction became the predominant of these forces, which were used to attract and absorb the activists from the First Intifada, former prisoners, and the militants wanted by the occupation authorities of the armed groups¹³. Consequently, the security forces were established without any consideration whatsoever of professional standards but rather on the basis of loyalties. The result was agencies with overlapping functions and competition among their leaders, who also interfered in political, economic, and social areas. This situation is totally against the democratic principles of separation between the political and civil spheres on the one hand and the security sphere on the other.

- When they were first established, the security agencies lacked any comprehensive standard regulatory and institutional framework to govern the multiple agencies. As a result, their policies and plans were inconsistent and lacked a standard security doctrine. Moreover, new security forces were unjustifiably created to the detriment of the political agency that matters to citizens, i.e., the police forces. The personal loyalty expressed by security agents toward their officers resulted in favored privileges and increased competition and disputes among the officers in charge of these agencies. This situation triggered a sense of insecurity among citizens and weakened compliance with human rights and public freedoms, delaying the enactment of a regulatory framework for security agencies till 2005 and afterward with the exception of the general provisions in the Basic Law that define the role of the security institution under the Chapter on the Executive Power (government and President). This situation contradicts the standards of the establishment of security and military agencies in democratic systems, which consider an effective legal framework to set the mandate of security and defense organizations in times of peace and war as a guarantee of control of these agencies and a safeguard of human rights.

- The Palestinian security forces were attacked by the Israeli occupation forces, mainly during the Second Intifada in 2002. Their premises were demolished, their arms were confiscated and there were attempts to dismantle them not to mention killing or arresting their staff. Consequently, security chaos erupted with local armed groups.

- The conflict over power between the presidency and prime ministry following Hamas's victory in the legislative elections in 2006 and its subsequent formation of the government was followed by inter-Palestinian fighting. The security forces and their leaders were not neutralized during this political dispute for power and Hamas's armed coup d'état in Gaza and subsequent seizure of the PA and security agencies' premises in mid-2007. As a result, the Palestinian security forces in the West Bank were established on new bases and criteria in terms of their number, recruitment of their staff, or completion of the regulatory framework that governs their responsibilities and duties¹⁴.

13 Abu Aram, Issa and Al-Masri, Ibrahim, *Diagnosis and Mandate of the Security Agencies: From A Reform Perspective*, Birzeit University, Abu Lughod Institute of International Studies, 2004, pp. 7-8

14 Neri Zilber, Ghaith al-Omari, *State With No Army, Army With No State: Evolution of the Palestinian Authority Security Forces, 1994-2018*, The Washington Institute

These factors, mainly the restrictions imposed on the security institution and the nature of the security role vested therein as per the agreements with Israel, coupled with the pressures on the Palestinian side to pursue the security cooperation with the Israeli side, resulted in a domestic Palestinian opposition of this role. The rejection intensified following the freezing of the Peace Process and escalation of occupation aggressions. Furthermore, in the absence of the Palestinian Legislative Council, as a tool of parliamentary control of the security forces, it became difficult to apply the criteria of democratic control of these forces, which compromised their legitimacy and public credibility¹⁵.

2. Reality of governance integrity index in the Palestinian security sector.

Many indicators may be measured to assess the political integrity of the Palestinian security sector. These indicators include: the extent of subjugation of the security sector to a civil political level partisan affiliations of the presidents and heads of the security forces clear transparent, and specific procedures to appoint the leaders of the security and military agencies, PLC's role in these appointments, a limited or open mandate of security forces leaders/ heads, subjugation of the heads of security agencies to PLC accountability, enactment of a law to regulate the security sector, legislations that compel the security organization to respect public rights and freedoms and apply the rule of law and protect the rights and freedoms, subjugating the security sector to public oversight bodies and their compliance with these bodies' recommendations, judicial oversight of the resolutions made by the security sector, immunities of the heads of security forces vis-à-vis the oversight bodies, presence of a declared transparent security budget that is subjugated to parliamentary control, impartiality of the security forces in the electoral process. Other indicators include transparency and accountability of the conduct of security forces' heads (codes of conduct, instructions to avoid conflict of interests, instructions on the acceptability of gifts, financial assets disclosures, and a complaints and appeal system.

Assessment of the Palestinian security sector against these indicators may be highlighted as follows:

● **Controls on the prevention of appointments for political purposes (affiliation, recruitment)**

Affiliation Indicator (The security sector is subjected to the civil political authority): The Basic Law prescribes in Article 69 that the Council of Ministers shall exercise the following powers: To devise and implement general policies; To be responsible for maintaining public order and internal security; To establish or dissolve agencies, institutions, authorities and similar administrative units provided that each shall be regulated by law; To appoint heads of these institutions and agencies and to supervise them in accordance with the law. Article 39 of the Basic Law prescribes that the President of the National Authority is the Commander-in-chief of the Palestinian Forces. Article 84 of the Basic Law provides that the Security Forces and the Police are regular forces and are the only armed forces in the country. Their functions are limited to defending the country, serving the people, protecting society, and maintaining public order, security, and public morals.

15 Shuaibi, Azmi, Reforming the security sector in the Arab political system, *ibid*, pp. 63-65.

They shall perform their duties within the limits prescribed by law, with complete respect for rights and freedoms. Articles (90) and (169) of the Law on Service in the Palestinian Security Forces No. 8 of 2005 prescribed a number of acts that military/security officers are prohibited from, including expressing political opinions and working in politics or affiliating with parties, entities, associations or organizations with political objectives and during their military service, the non-commissioned officer or member of personnel shall be prohibited from taking part in organizing partisan meetings or electoral campaigns.

Article 3 of the Law on Service in the Palestinian Security Forces No. 8 of 2005 prescribes that the security forces shall be comprised of the National Security Forces and Palestinian National Liberation Army, the Internal Security Forces, and the General Intelligence. It also provided that any other force or forces which are existent or to be established shall be part of one of the above three forces.

Article 7 of the same law provides that the National Security Forces are a regular military body that performs its functions and commences its jurisdiction under the leadership of the Minister of National Security and under the command of the Commander-in-Chief, while Article 10 prescribed that the Internal Security Forces are a regular security body which performs its functions and commences its jurisdiction under the leadership of the Minister of the Interior and under the command of the Director-General of Internal Security. Article 13 prescribes that the General Intelligence is an independent regular security body, which is affiliated with the President, and which performs its functions and commences its jurisdiction under the leadership of its Head.

The laws clearly define the affiliation of the three bodies, subjecting them to civil political officials including two ministers in the government and the President.

The laws and decrees regulating these same security bodies prescribed their affiliations as follows:

- Law on General Intelligence No. (17) of 2005 affiliated the service to its president and to the authority and supervision of the President [of the PNA].
- Law on the Civil Defense No. (3) of 1998 considered that the Director of the Service is accountable to the Minister of Interior (Council of Ministers).
- Decree-Law on Preventive Security No. (11) of 2007 affiliated the Forces to the Minister of Interior (Council of Ministers).
- Decree-Law on the Customs Police No. (2) of 2016 prescribes that the administrative reference of the customs police shall be the Ministry of Interior and its technical and practical reference is the Ministry of Finance.
- Decree-Law Concerning the Police No. (23) of 2017 affiliated the police forces with the Minister of Interior.

In addition to these forces, the Military Intelligence Agency and the Director-General of Intelligence are affiliated with the Minister of Interior while the administrative reference of the Presidential Guards is the President.

In practice, there isn't a Minister of National Security and a Minister of Interior but rather a Minister of Interior and National Security while the President, being the Commander-in-Chief of the Palestinian forces, is responsible for the National Security Forces and the General Intelligence Agency. By this duty, he exercises a function similar to the role of a "Minister of Defense" and "president of the State" simultaneously. With this double function, he monopolizes the higher authority of the National Security Forces while the responsibility of the internal security remains under the Minister of Interior since the Police Forces, Preventive Security, and Civil Defense and their administrations have been subjected to the Ministry of Interior, as per Article (1) of the Presidential Decree No. 12 of 2002. These forces represent the internal security forces while the national security forces were not placed under the responsibility of the Minister of Interior¹⁶.

The Appointment Indicator (appointment with transparency on the basis of merits and equal opportunities): Appointment of the leaders of the security forces shall be made as follows: According to Article (8) of the Law on the Service I Security Forces, the Commander-in-Chief of the National Forces shall be appointed by a decision of the President for three (3) years, which may be extended for one (1) year only. Article (9) provides that appointment in the functions of heads of units and directors of directorates, commanders of military areas, and military attachés shall be pursuant to a decision of the Minister of National security and upon the nomination by the Commander-in-Chief, based upon the recommendation of the Committee of Officers. The Director-General of Internal Security shall be appointed by decision of the President and upon the nomination of the Council of Ministers (Article 11). According to Decree-Law No. 11 of 2007 concerning the Preventive Security Forces, the Director-General and his deputy are appointed by a decision of the President based on the recommendation of the competent minister and nomination of the Director-General of Internal Security and the recommendation of the Committees of Officers for a mandate of 4 years, extendable for an additional year only by decision of the President. The Law on General Intelligence prescribes that the Head of Intelligence shall be appointed by the President in the rank of a minister for a duration of three (3) years, extendable for one (1) year only. In conformity with the Decree-Law concerning the Customs Police, the Director-General of the Customs Police shall be appointed by a decision of the President upon the recommendation of the Council of Ministers. Moreover, Article (33) of the Law on Service in the Security Forces stipulates that the promotion to the rank of Colonel, Brigadier-General and Major-General shall be by selection from among the officers fulfilling the conditions of eligibility in the manner determined in the bylaw of the Law on Service in the Palestinian Security Forces and defines the years of seniority per rank. Article (34) of the same Law provides that promotion to the rank of Lieutenant-General shall be by absolute selection from among the Major-Generals who serve in the Security Forces.

Notwithstanding the legal provisions explained above, in reality, appointments of the heads of security forces and high-ranking officers are made based on partisan affiliation. Indeed, connection to the ruling party is a key criterium for the appointment of high-ranking officers like heads of security agencies. Favoritism is also visible in the appointments and promotions to sensitive leading posts in the security agencies¹⁷. Nonetheless, appointments to lower ranks are made on a professional basis, especially following the adoption of the officers' leadership skills development programs. In the General Intelligence and Preventive Security, leadership positions are assumed based on the approved organizational structure and the job descriptions that specify the required

16 Khalil, Assem, Regulatory Framework of the Relationship between the Palestinian Civil Sector and Security Forces, Institute of Law, Birzeit University, p. 10.

17 Transparency International, Anti-Corruption Governance Indicators in the Defense Sector: Report on the Middle East and North Africa, 2013, P. 22.

qualifications and educational attainment to hold these positions¹⁸. However, there isn't any entity or committee to review the adequacy of candidates for these security posts. Decisions to appoint leadership posts in the security forces are made without appropriate auditing of the eligibility of these appointees to these posts and without vetting their conduct¹⁹.

Furthermore, appointments and promotions in the security forces are ambiguous because the law referred many of the criteria of eligibility to the executive regulations (bylaws), which have not been enacted to date. Consequently, the integrity of these promotions and appointments is compromised²⁰.

Sources on the Integrity Index of Security Forces reveal that most of the officers' appointments are from among the graduates of Al-Istiklal University and external missions to military and police colleges. There is also a three-tier leadership courses program (initial, middle, and senior). Completion of the senior officers' courses is a condition of promotion to leadership positions in the security forces. There is a committee in every security agency that supervises promotions and transfers; it is headed by the Agency's commander but does not have objective and clear evaluation criteria since promotions depend mainly on the number of years in service²¹.

On another level, the relationship between the Director-General of Internal Security and the Director-General of the Police, and the Director-General of the Civil Defense, and the Director-General of the Preventive Security is not clear since the position of the Director-General of Internal Security has been recently created to unite and institutionalize the leadership of security forces. His mandate and relationship with the Directors-General of other agencies under his command are not specified²².

On another level, there is a flagrant violation of the applicable laws regarding the legal term of office of the heads of security forces. Many of them have long bypassed their legal mandate, as explained in the following table. This is a negative indicator of the governance integrity of the security sector.

18 Coalition for Integrity and Accountability (AMAN), Integrity Index of the Palestinian Security Sector; Second Report, 2021, P. 150.

19 Transparency International, Anti-corruption governance Index of the Defense Sector: Report on the Middle East and North Africa, *ibid*, P. 23.

20 Coalition for Integrity and Accountability (AMAN), Integrity and transparency in the appointment of senior posts in the PNA, 2011, P. 8.

21 Coalition for Integrity and Accountability (AMAN), Integrity Index of the Palestinian Security Sector: Second Report, 2021, p. 145.

22 Khalil, Assem, *idem*, P. 11.

The legal term of office in security leadership positions²³

Agency/ Force	Legal Term in Office	Maximum term in officer	Regulatory framework	Actual time in office
General Intelligence	Three years, extendable for one year only	4 years	Law on General Intelligence No. (17) of 2005	13
Preventive Security	4 years, extendable for an additional year only by a decision of the President	5 years	Decree-Law No. (11) of 2007	17
Police	Four years, extendable for a maximum of 3 additional years	7 years	Decree-Law No. (23) of 2017	13
National Security	Three years, extendable for an additional year only.	For years	Law on Security Forces No. (8) of 2005	11
Military Intelligence	The law has not defined a legal term in office	No legal term	Law on Security Forces No. (8) of 2005	7
Civil Defense	The law has not specified a legal term in office	No legal term	Law No. (3) of 1998	5
Presidential Guards	The law has not specified a legal term in office	No legal term	Law on Security Forces No. (8) of 2005	16
Customs Police	The law has not specified a legal term in office	No legal term		7

Accordingly, the security sector is subjected to political authority as per the Basic Law and other pertinent laws. The sector is mainly accountable to the government and PLC. However, in practice, the security sector is affiliated with the President, which is flagrant in the appointments made on the basis of loyalties to what is denominated as legitimacy but in fact reinforces the loyalties of these security agencies' leaders and the President's authority.

²³ Coalition for Integrity and Accountability (AMAN). Report on the compliance with the legal term of office of the heads of civil and security public institutions and diplomatic corps and governors' posts, 2021, p. 36

● Impartiality of security organizations toward political competition to access power in the general elections

The General Election Law No. (1) of 2007 confirms in Article 61 that the Executive branch and its different bodies shall maintain an impartial position during all the phases of the electoral process and shall not perform any electoral or campaigning activity that might be constructed as favoring one candidate or electoral list over another.

Article (8) of the same law stipulates that security forces are among the categories of employees who may run as candidates provided that they resign. Amendments added to Article (6) of the Decree-Law No. (1) of 2021 reiterated that security, military and police officers who have not won the elections may not redeem their positions

Article (78) of the General Elections Law provides that the Central Elections Commission shall put forth a special regulation to enable Police and Security Forces to cast their votes within a maximum of 48 hours prior to the designated polling date, provided that their votes shall be counted alongside with the ballot boxes in the general elections, considering the electoral process as one indivisible.

In reference to the preemptive voting by security and police forces in accordance with Article (78) of the General Elections Law, the Ministry of Interior prepares lists of the voters among the police and security forces in the manner specified by the regulation. The Central Elections Commission manages and audits these data prior to the approval of the voters' lists. It prepares a special voters' registry of these forces and distributes it to the polling centers in accordance with their voting location. Casting and sorting the ballots in the preemptive voting stations are subject to the controls devised by CEC and ballot stations on the voting day. Sorting the preemptive voting boxes starts simultaneously with the sorting of all general voting centers and stations. Article (88) reiterated the role of the security organizations in securing the electoral process and provides that²⁴:

1. The chairperson of the polling center staff shall be responsible for preserving security and order within the premises of the polling center.
2. A number of Police Force personnel in official uniform shall be stationed outside and in the surrounding area of the polling center to ensure that the orders of the chairperson are followed. Police personnel shall not be admitted inside the polling center unless instructed by the chairperson and only for a time that is necessary for preserving security and order as deemed fit by the polling center staff.
3. Security forces shall preserve the safety and security of citizens and of the electoral process without affecting the integrity of elections, violating the elections law or impairing the rights of voters.
4. It is prohibited for any person other than Police personnel in official uniform to carry a firearm, weapon or any other tool that is subject to punishment by law either inside a polling center or at its entrance.
5. Police personnel may not access the polling center on polling day or during vote counting except upon request from the chairperson of the polling center staff as stated in paragraph (2).

24 Coalition for Integrity and Accountability (AMAN), Role of the Security and Police Forces in the elections: Assessment of the Palestinian situation against best practices, 2021, p. 20

6. Police personnel who are assigned to preserve election security shall work in full and direct coordination with the Commission, electoral area offices, and polling center staff members.

In practice, the legislative and presidential elections have not taken place since 2006. Only local elections are held in the West Bank while Hamas prevents holding these elections in the Gaza Strip.

Relating to the supervision of local elections and the role of security forces, the CEC organizes preemptive meetings with the Ministry of Interior to coordinate security procedures before and during the elections, mainly the need to secure the elections. CEC also publishes a “Code of Conduct of Security Forces” during the electoral process, which covers the rights and duties of security personnel during the election process.

Local Elections Observers Reports of 2017, published by the Independent Commission for Human Rights (ICHR) documented 52 violations as follows: (14) violations relating to threats and asking candidates to withdraw their candidacy from the lists, (15) violations relating to arrests of some candidates and (15) relating to summoning to interrogation citizens who expressed their intention to run in the elections or expressed their support to some candidates, (15) violations relating to attacks on candidates and (16) attacks relating to the prohibition of candidacy.

Some practices revealed political interference to pressure security personnel to vote for a specific list. The ICHR observers’ report of the local elections in 2017 revealed that some security personnel in a number of voting centers photographed the voting ballots, which is a flagrant violation of the principle of secrecy of ballots²⁵.

ICHR observers noticed during the first phase of the local elections in 2017 that instructions for the participation of security personnel in the electoral process were not respected. Some security agents who were not designated to protect the voting process were present in and in the vicinity of the voting centers. This was confirmed by other observers including the Human Rights and Democracy Media Center “Shams”, which mentioned in its report that security agents present in the voting centers exceeded the security needs and some agents moved from one center to another. On the other hand, the civil police were not present in all centers as they should have been. There were joint security forces or national security agents, all in civil attire²⁶.

25 Independent Commission For Human Rights, Observers’ Report on the Local Elections, phase 1, 2021 <https://www.ichr.ps/reports/2551.html>

26 Human Rights and Democracy Media Center “Shams”, Observers’ Report on the Local Elections, Phase 1, 2021 <https://www.shams-pal.org/wp-content/uploads/2021/reports/oversight-of-local-council-elections-for->

● PLC oversight of the security sector

Parliamentary oversight is a pillar of the control system of the executive branch, mainly the security forces. The Basic Law, as amended, and the Internal Bylaws of the PLC vested with the PLC multiple oversight tools to control the Palestinian security forces. There are clear provisions that enable the LC to hold these forces accountable. The Law on the Service in Security Forces explicitly affiliates the internal security forces with the Minister of Interior and the national security forces with the Minister of National Security, while both ministers are subject to the PLC motion of confidence and oversight. So, legally speaking, security forces are subject to PLC oversight via the political level since the PLC may question the Minister of Interior. However, following the political division in 2007 and Hamas's control of the authority and its agencies in the Gaza Strip, the PLC was paralyzed and could not perform its legislative and oversight roles. Consequently, accountability was not practiced, and the effective control of security forces and the performance of the executive branch were weakened. The Parliament could not discuss the security policies or discuss and approve the public budget, including the security budget. There isn't any independent committee to oversee the security forces' policies and administration while the PLC could not convene to issue the regulatory legislation of the security forces²⁷.

Although the PLC formed parliamentary working groups under the framework of the parliamentary blocs, including a security working group, the effectiveness of these groups was limited because of the absence of its overarching framework, i.e., the sessions of the PLC, which have the power to issue compulsory decisions at the legislative and control levels. All forms of parliamentary control of the executive branch and security forces totally ceased following the dissolution of the PLC by the end of 2018²⁸.

● Public Agencies' Oversight of the Security Sector

The security sector is subject to several vertical (internal) control entities and to horizontal control by the public control agencies. According to the Basic Law, the Law on Service in the Security Forces, and other laws, the Palestinian President, being the Commander-in-Chief of the Palestinian Forces, is vested with the appointment of the heads of security forces and part of the responsibility of control of the security forces. Moreover, the Council of Ministers has direct responsibility – and indirect responsibility via the Ministry of Interior – since it is mandated with maintaining public order and security. The Presidency and Council of Ministers may use many tools to exercise their control role. They may review the reports submitted by the heads of security agencies, hold meetings with these heads and review the periodic reports produced by other control bodies like the State Administrative Audit and Control Bureau (SAACB), the Independent Commission for Human Rights (ICHR) on the oversight of the security sectors, which they submit to the President and Council of Ministers. However, the Presidency does not have a unit that specializes in the control of security forces and review of oversight reports. Furthermore, questioning of the heads of security forces is not done via the Council of Ministers, but rather via the President²⁹.

27 Coalition for Integrity and Accountability (AMAN), Effectiveness of Control of Security Agencies in the West Bank and Gaza strip, 2018, and Integrity Index: Palestinian Security Sector: Second Report, *ibid*.

28 Coalition for Integrity and Accountability (AMAN), Effectiveness of Control of Security Agencies in the West Bank and Gaza strip, 2018, and Integrity Index: Palestinian Security Sector: Second Report, *ibid*.

29 Coalition for Integrity and Accountability (AMAN), Effectiveness of Control of Security Agencies in the West Bank and Gaza strip, 2018, p. 11.

On the other hand, the Directorate General of Military Financial Control carries out financial control of the security sector to ensure that the funds are used for their designated purposes. It also audits the expenditure items; however, it does not publish any of its reports. The security agencies have also several controllers including the General Inspector of the Police, the Controller General and Financial Controller in the General Intelligence, Controller General of the Preventive Security, and the Control and Inspection Department of the National Security. These controllers inspect all directorates and centers to ensure that work is conducted in compliance with the laws and regulations, they monitor performance to verify the plans and ensure they achieve their purpose, they also receive and follow up on complaints and monitor expenses. The Military Intelligence Agency, which is part of the Palestinian Security Forces established by the Law on Service in the Security Sector, acts as the judicial police of the Palestinian security forces and investigates the crimes/offenses committed by the personnel of the Palestinian security forces³⁰.

In addition to the internal control units, there are public oversight bodies that have the authority to control security forces, including the State Audit and Administrative Control Bureau (SAACB), which audits most security agencies and their financial activity. It controls the financial statements of the security forces, except the General Intelligence Agency. The Financial Controller of the General Intelligence Agency submits its annual report directly to the President of the State.

In recent years, SAACB audited some Palestinian security forces, including the Directorate General of Civil Defense in 2017, Customs Police in 2019, Medical Referrals of the Directorate General of Military Medical Services in 2019, Military Medical Services in 2018, Military Central Financial Department in 2019, Directorate General of the Reform and Rehabilitation Centers in 2017, Military Judiciary Commission in 2016, Directorate General of Traffic Police in 2015, Military Intelligence Agency in 2018, Organization and Administration Commission in 2019, and Military Liaison Office in 2015.

Some Palestinian military agencies and administrations responded to SAACB recommendations, such as the Customs Police, Directorate General of Civil Defense, Directorate of Reform and Rehabilitation Centers, Military Judiciary Commission, and Traffic Police Department while compliance with SAACB recommendations by other agencies ranged from moderate to minimal, such as the Medical Services and Referrals Department. SAACB did not follow up on its recommendations to the other agencies³¹. Security forces' compliance with SAACB recommendations is moderate, around 50%³².

SAACB reports were clearly limited to some security agencies and bodies but did not cover other vital agencies like the National Security Forces, General Intelligence Agency, Preventive Security and Military Intelligence Agency. Moreover, the control focused on financial and administrative audits only. The other challenge facing SAACB is the absence of the PLC, the authority that exercises accountability based on SAACB reports³³.

30 Coalition for Integrity and Accountability (AMAN), Effectiveness of Control of Security Agencies in the West Bank and Gaza strip, 2018, *ibid* p. 12.

31 Coalition for Integrity and Accountability (AMAN), Assessment of Response to SAACB Reports, 2020.

32 Coalition for Integrity and Accountability (AMAN), Integrity Index of the Palestinian Security Sector: Second Report, *ibid*, p. 133.

33 Coalition for Integrity and Accountability (AMAN), Effectiveness of Control of Security Agencies in the West Bank and Gaza strip, 2018, *ibid*, p. 13.

The Independent Commission for Human Rights (ICHR) monitors and documents violations committed by security forces and addresses citizens' complaints relating to breaches of human rights and aggression against public freedoms within the PNA-controlled areas. It also conducts visits to the detention centers and forms fact-finding missions on the violations in addition to issuing specialized periodic reports on public rights and freedoms in Palestine.

- **Judicial oversight of the security sector's decisions/ resolutions**

The formal judicial system is a form of oversight exercised by the judicial authority of the administrative resolutions made by the security forces, and of the acts of law enforcement officers as per their legal mandate. This includes arrest procedures enforced by security agencies against citizens. Moreover, security forces' refusal to enforce court decisions relating to the release of detainees represents a key challenge facing the judiciary in the exercise of its control of security forces. The Military Justice Commission is also a control tool of security forces since it specializes in the enforcement of the law against perpetrators of crimes and the violations of the law by security personnel. The Commission is composed of military courts and military prosecution³⁴.

Article 7 of the Law on the Military Justice Commission stipulates that the judgments shall be rendered in public but there isn't any official policy applied by the security sector to enable public access to the outcome of trials. Still, only a little information on the outcome of these trials is made public relating to charges, hearings, or other key details. Access may be denied to such information while there isn't any information published on some cases that are deemed sensitive³⁵.

- **Immunity of the heads of security agencies vis-à-vis public oversight bodies**

The Palestinian laws do not grant immunity to security forces' heads and subject them to public oversight bodies. All Palestinian public institutions, including the security agencies, are subjected to SAACB control without exception. Security forces and their heads are also subjugated to the Anti-corruption Law. Furthermore, all Palestinians, without exception are equal before the law and the judiciary according to the Palestinian Basic Law and other judicial laws.

However, in practice, the heads of Palestinian security forces have not been questioned or held accountable in recent years. There isn't any case of corruption submitted to the Anti-Corruption Commission against them and not of them has been tried before courts.

- **Security forces' compliance with the rule of law and respect of public rights and freedoms**

Article (10) of the Basic Law provides that basic human rights and liberties shall be protected and respected while Article (32) stipulates that any violation of any personal freedom, of the sanctity of the private life of human beings, or any of the rights and liberties that have been granted by law or by the Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitation. The National Authority shall guarantee a fair remedy to those who suffer from such damage.

34 Coalition for Integrity and Accountability (AMAN), Effectiveness of Control of Security Agencies in the West Bank and Gaza strip, 2018, *ibid* p. 17

35 Coalition for Integrity and Accountability (AMAN), Integrity Index of the Palestinian Security Sector: Second Report, *ibid*, p. 149

On security forces' respect for human rights, Article (84) of the Basic Law prescribes that the Security Forces and Police are regular forces. They are the armed forces in the country. Their functions are limited to defending the country, serving the people, and maintaining public order, security, and morals. They shall perform their duties within the limits prescribed by law, and with complete respect for rights and freedoms. Article 111 provides that it is not allowed to impose restrictions on fundamental rights and freedoms when declaring a state of emergency except to the extent necessary to fulfill the purpose stated in the decree declaring the state of emergency.

On the other hand, the Ministry of Interior, which is mandated to supervise internal security, showed special interest in public rights and liberties and has a dedicated unit for this purpose in its organizational structure. The Democracy and Human Rights Unit (DHRU) is mandated with the enforcement of the law and promotion of the principles of democracy and human rights. It coordinates the relationship between the law enforcement agencies of the Ministry and security forces and Palestinian citizens directly or via civil society organizations to safeguard freedoms and follow up on human rights violations, in addition to raising the Ministry's and security forces' personnel awareness and training them on the concepts and applications of human rights³⁶.

DHRU also organizes training for security personnel on general rights and freedoms and law enforcement mechanisms in cooperation with the Ministry of Interior, ICHR, and civil society organizations.

Notwithstanding these efforts, there are grave violations by security forces of public rights and freedoms. ICHR annual reports monitored tens of infringements on the rule of law and public rights and freedoms by security personnel, especially since the Palestinian political split and Hamas's control of the Gaza Strip in mid-2007. The transgressions include torture and maltreatment during detention or interrogation (204 complaints in 2018, 176 in 2019), arbitrary arrest or arrest on the ground of exercising the freedom of expression (281 complaints in 2019), continuing illegal detention and arrest without judicial order by competent judicial authorities (155 claims in 2019), keeping in detention in spite of a judicial order of release (47 cases in 2019), and tens of violations of the right to freedom of opinion and expression, and the freedom of peaceful assembly by attacks and detention of the participants in such assemblies.

A group of civil society organizations published a position paper on the deterioration of the situation of public rights and liberties, which included accusations of a green light given to security forces to exercise arbitrary arrest on political or freedom of expression backgrounds. These violations peaked with the assassination of political activist Nizar Banat by security personnel during his arrest and subsequent attacks on the protests condemning the assassination. This is a grave violation of the Basic Law, Palestinian Laws, and International Human Rights Agreements³⁷.

36 <https://www.moi.pna.ps/Departments/democracy-unit>

37 <https://www.addameer.org/ar/news/4474>

Amnesty International reported escalated suppression of the opposition including suppression of the freedom of expression and assembly, assaults on journalists, detention of opponents, use of excessive force in law enforcement operations, torture and other forms of maltreatment of detainees with impunity of perpetrators, and large-scale use of administrative detention without a charge or trial³⁸.

Furthermore, the Economist Investigation Unit's Global Democracy Index ranked Palestine and 17 other Arab states under the table of authoritarian states, where Palestine ranked third in the Arab region and 109th globally³⁹.

Thus, transgressing public rights and liberties and the rule of law by the security forces is a flagrant violation of the Basic Law, other relevant Palestinian laws, and international human rights agreements. This dangerously undermines the role of the Palestinian security sector in promoting governance integrity and slides the country's political system toward political corruption and despotism.

● **Integrity, transparency, and accountability of the heads of security agencies**

To assess the integrity, accountability, and transparency of the activities of the heads of security agencies, a set of criteria and indicators need to be reviewed, including the availability and level of compliance with the codes of conduct, issuance of instructions to prevent conflict of interest and monitor compliance with these instructions, instructions on the acceptance of gifts and overseeing their implementation, submission, examination, and publication on public sites of financial disclosure statements, availability and effectiveness of a complaints and appeals system. In the next session, these criteria are examined to assess compliance therewith by the heads of security forces.

Almost all Palestinian security forces have a code of conduct. A code of conduct for the Police Department was adopted in 2012 and published in 2014. The General Intelligence Code of Conduct was adopted in 2010 and amended in 2015 while the National Security Forces have had a code of conduct since 2013, and the Civil Defense since 2015. The code of conduct of the military intelligence became effective in 2017. The Palestinian security agencies are elaborating their respective codes of conduct. Some forces published their codes on their web pages, others distributed copies of the code to their personnel with a declaration of compliance (the General Intelligence Code). Security forces also organized training on the codes of conduct for their staff either directly or in cooperation with outsourced organizations. Notwithstanding these efforts, the security forces have not adopted codes of conduct for their heads although some of these codes prescribe that they apply to all personnel including agents and officers. On the other hand, there aren't any records or information on holding the violators of these codes accountable unless the violation is coupled with another offense, in which case, punishment is inflicted⁴⁰.

38 <https://www.amnesty.org/ar/location/middle-east-and-north-africa/palestine-state-of/report-palestine-state-o>

39 https://www.eiu.com/n/campaigns/democracy-index-2021/?utm_source=economist&utm_medium=daily_chart&utm_campaign=democracy-in-dex-2021#mktoForm_ancho

40 Effectiveness of Compliance with the Palestinian Security Forces Codes of Conduct, Coalition for Integrity and Accountability (AMAN), 2018.

Regarding the prevention of conflict of interest, the Council of Ministers issued Decision No. 1 of 2020 on a regulation on the disclosure of conflict of interest. The regulation aims to prevent conflict of interest and spot the cases of conflict of interest in official institutions. According to Article (2) of this regulation, subject to the regulation are the heads of security forces and other personnel covered by the Law on Service in the Palestinian Security Forces. Article (4) prohibits those subjected to the regulation from exercising any act that may lead to a direct or indirect conflict of interest relating to personal or duty-related interests. It provides that in such cases, the concerned person must immediately step down from participating in any procedure or decision with a potential rise of conflict of interest and must disclose such cases.

Notwithstanding the clear indication of the prohibition of conflict of interest in other laws, the regulation on the disclosure of conflict of interest, which is intended to cover this issue more comprehensively, has only recently been issued noting that it does not cover all cases of conflict of interest. Furthermore, it is not clear to what extent it is applied or being complied with. Oversight bodies, including SAACB, do not cover this area in their reports when it comes to the heads of security agencies.

Moreover, regulation No. 10 of 2019 on gifts aims to regulate the acceptance of gifts in official institutions. According to Article (3), the regulation applies to ministers and civil and military public servants. Article (4) prohibits public servants from accepting material gifts under any denomination and excludes symbolic gifts that may not be rejected but must be reported and filed in a special report within the concerned government agency. The said regulation does not address the heads of security forces in the same manner it addresses ministers, and it is not clear if the heads of security agencies are subjected to public oversight bodies in this regard.

As for the submission of financial disclosures, according to Article (16) of the Anti-Corruption Law, security agencies personnel and servants with a rank of lieutenant-colonel and higher are required to submit periodic financial disclosures every five years. The accumulated number of disclosures submitted by the Palestinian security agents required to submit these disclosures reached (17,917) disclosures by end of 2020. Still, the problem lies in the examination, follow-up, and publication of these disclosures for certain ranks. They are confidential and inaccessible mainly for high-ranked personnel without a decision of the higher court, where they are filed. Since the creation of ACC, 11 of these classified disclosures have been examined while 145 out of 58,761 disclosures submitted to ACC have been examined following complaints, reporting or a call for an internal investigation, or a report submitted by other entities⁴¹. This situation undermines the effectiveness of the system and its role in combatting corruption.

Complaints and appeals in the security forces are subject to Complaints Regulation No. 8 of 2016, issued by the Council of Ministers. Security forces have complaints units or departments, affiliated directly with the head of the agency or indirectly via the internal control units that are affiliated with the head of the agency. Security agencies submit their reports on the complaints to the Directorate General of Complaints at the Prime Ministry. However, the complaints units face certain barriers including the lack of a unified e-platform to file the complaints and the different manners of submission. This situation undermines citizens' trust in the filing of complaints and leads to weak responses or remedies, especially for the complaints relating to violations of human rights. Consequently, accountability and genuine follow-up are weak, and – if any – only in the form of disciplinary measures. Some cases are referred to the military prosecution and justice but without holding the heads of security forces accountable. Moreover, the procedures applied are not disclosed⁴².

42 Effectiveness of security agencies' complaints system, Coalition for Integrity and Accountability (AMAN), 2018

Conclusions

The security and defense sector in democratic systems play a vital role in promoting governance integrity because it complies with a set of criteria that guarantee democratic control of the sector. But, when the leadership of the sector is part of or partners with the political elite, which attempts to hegemonize the state and its institutions, this sector can slide toward political corruption. In which case, it will be using the powers vested therein to serve the interests of the ruling elite and sustain its hegemony of power.

Compliance of security and defense organizations with the criteria that promote governance integrity is a guarantee of stability of democratic systems. These criteria focus mainly on subjecting the security sector to the civil political level, that is a democratically elected government and the sector's accountability before an elected parliament. The sector's regulatory framework is issued by the parliament to define its mandate clearly in times of peace and war. Furthermore, the sector is subjected to the oversight and approval of the parliament in all matters related to its activities whether via the ratification of policies, legislation, budgets, and appointment of senior officers, or the ratification of the codes of conduct of the heads of its agencies, or the respect for and defense of the rule of law and public rights and freedoms as well as the sector's impartiality in the competition between different parties to access state's political, economic, social, or representative positions.

Based on the present report on the role of the Palestinian security sector in light of the democratic oversight criteria and governance integrity indicators, as well as political integrity and its rule in promoting integrity in general, the following conclusions are made:

1. The unique situation in Palestine when the revolutionary legitimacy, the PLO reference, became the constitutional reference of administration of the project of building a democratic state in a transitional period that ended up quasi-permanent, resulted in a lack of transparency in the role and status of the leaders of the security sector in the new political regime (the Palestinian National Authority – PNA).
2. The conditions in which the Palestinian security sector was established under the Oslo Accords and its restrictions on the PNA, which specified its mandate and functions, including those of the security sector and the tasks required therefrom. The same framework imposed the manner of recruitment of the sector's personnel, which was composed essentially of PLO agents who returned to Palestine and activists, or militants wanted by the occupation authorities of the First Intifada, and some released prisoners. Because of the exceptional conditions of the establishment of the sector, its basic law and regulatory framework were not adopted based on professional criteria in a sovereign independent state. It is not possible to evaluate the creation of the sector in a transitional period that was supposed to elapse in 1999 via an explicit application of the criteria of democratic control of security and defense organizations, similar to democratic systems.

3. The subordination of the leadership of the Palestinian security agencies to the civil political level is still ambiguous although the law affiliates the internal security with the Minister of Interior and national security with the Minister of National Security. However, since these ministries were not created, some of these agencies remained affiliated with the Ministry of Interior while the majority remained under the authority of the President, being the Commander-in-Chief of the Palestinian Forces although the Council of Ministers, as per the Basic Law, is the entity in charge of maintaining public order and security. Indeed, the subordination of the Palestinian security forces raised disputes between the government and the presidency following the creation of the prime minister's position. The role of the government's control of the security sector remained weak while the heads of security agencies' heads continued with the President.

4. Notwithstanding the legal provisions that regulate the appointment and promotion of the heads of security agencies, all these decisions are made by the President, which clearly shows that are centered in a single political stream. The non-enactment to date of an executive regulation of the Law on Service in the Security Forces, which governs the recruitment and promotion in the security forces, and the absence of an independent commission to assess the adequacy of the recruitments made to senior security ranks have compromised the integrity of these recruitments and subsequent promotions. The resulting reality cannot be ignored since most of the recruited personnel belong to a single political party that supports the ruling elite.

5. The top of the PNA hierarchy provides a political cover to maintain senior security officers in their posts, which is a flagrant violation of the laws that define their terms in office. These terms are limited by law to four or five years maximum, but most heads of security forces remain in office for periods that may exceed 17 years. This is a clear undermining of governance integrity and the role of the security sector in promoting integrity. The loyalty of these officers remains captured by the ruling political body, which grants them this exception.

6. Many security agencies did not act with impartiality toward the competing political parties. Some of these security agents are noticed to be part of the parties or factions' structures, mainly the ruling parties although the law strictly forbids so. It is necessary to prohibit the interference of security agencies in the electoral process, except for their impartial laws prescribed by law. Although general elections have not been held since the Palestinian split in 2007 and only local elections were held, reports of Palestinian institutions that observed the elections, showed several forms of intervention by the security forces in the process to attempt to influence its outcome. This has a negative effect on the role of security agencies in ensuring governance integrity since they indirectly supported a political party to the detriment of other competing parties.

7. The paralysis of the Palestinian Legislative Council and its specialized committees because of the internal Palestinian split in 2007 and later dissolution in 2018, abolished parliamentary oversight of the security sector, including discussing and ratifying security policies, plans, legislation, budgets, and recruitments as well as PLC and its committees' control of the performance of security organizations and follow-up on oversight reports on their activity. Consequently, a major integrity governance indicator of the security sector and political system, in general, is compromised.

8. The Palestinian security sector is subjected to multiple internal and external control, including SAACB, being the financial, administrative, and performance control arm through the reports it submits to the President, government, PLC, and ICHR. However, oversight by SAACB is problematic since it focuses on financial and administrative control and does not cover all major security agencies. Furthermore, there is a weak response to the recommendations of these reports, especially in the absence of the PLC, which is responsible for the follow-up of oversight reports and subsequent accountability. This also undermines the security sector's role in promoting governance integrity.

9. Although the law compels security forces to respect and defend public rights and liberties, many incidents monitored by local and international human rights organizations noted grave violations of these rights ranging from torture to maltreatment to arbitrary arrest and detention against the background of expression of opinion or exercise of the right to peaceful assembly. On the other hand, the recommendations of the official investigation committees formed to investigate the attacks on public rights and freedoms with political cover to the perpetrators is a violation of the laws and relevant international conventions. This seriously compromises the role of the security sector in promoting governance integrity.

10. Palestinian security forces have codes of conduct and some of them exerted efforts to disseminate them and monitor compliance there-with but there aren't codes of conduct for the heads of security agencies. There is no evidence of accountability or prosecution of security agents who violate these codes.

11. Although the Regulation on Conflict of Interest issued by the Council of Ministers applies to the heads and agents of the security forces, it is not clear if the heads of these agencies actually comply with the regulation since it has recently been enacted (in 2020). There aren't oversight reports on this matter following or before the enactment of the regulation. The same applies to the compliance with the Regulation on Acceptance of Gifts, which does not refer to its application to the heads of security agencies, in the manner it applies to ministers although it mentions civil and military public servants.

12. The leaders and personnel of security agencies submit their financial disclosures, but they remain confidential and inaccessible to the public. They are not examined by the Anti-Corruption Commission unless there is a complaint or a request of investigation. This hinders the effectiveness of anticorruption efforts.

13. The complaints and challenges filed with the Palestinian security agencies are subject to the Complaints system issued by the Council of Ministers. Some security forces have their own complaints units and departments but the entire system faces several challenges, including the lack of a unified e-system to receive complaints and weak public trust, in addition to weak Responses and remedies or accountability in case of proof of the violations mentioned in the complaint.

Recommendations:

The organization of general elections and reactivation of the role of the PLC is a prerequisite to achieving governance integrity of the Palestinian political system in general and the security sector in particular. The sector should be subjected to the control of the PLC and its specialized committees. Furthermore, it is important to build the security sector on a professional basis with a clear definition of its affiliation with a democratically elected government as a basis to apply the criteria of democratic control of the sector and to promote its role in enhancing governance integrity. For this purpose, the following recommendations are made:

1. The affiliation of the security organization with the political level must be clarified whereby internal security will be affiliated with the Council of Ministers and accountable to the PLC for the maintaining of security and order.
2. Comply with the legal provisions that regulate the recruitment and promotion of heads and leaders of security agencies and institutionalize the procedures with a control mechanism. It is, therefore, necessary to issue the executive regulations of the Law on Service in the Security Forces and specify the criteria and terms of recruitment and promotion.
3. Create an independent commission to review the conformity of recruitment of the heads of security agencies with the defined terms and criteria.
4. The law must be applied regarding the legal term in office of the leaders of security agencies to avoid any loyalties that do not serve the public interest but rather aim to preserve the position.
5. Apply the law regarding the prohibition of intervention of the security agencies in the electoral process in roles other than those prescribed by the law and inflict applicable sanctions in the event of a violation of these provisions.
6. SAACB reports must cover all security agencies and evaluate their performance at all levels while the political level (the President and Council of Ministers) must follow up on these reports and hold the respective agencies accountable thereto.
7. Security forces must implement the court judgments and enforce the punishments imposed by the law on public servants who impede the enforcement of these judgments.
8. Put an end to the violation of human rights and public liberties and implement the recommendations of the official investigation committees in this regard in order to apply the law and relevant international conventions considering that these offenses do not fall by prescription in the Palestinian law.
9. Adopt a code of conduct applicable to the heads of security agencies with guarantees to impose punishments in case of violations of these codes.

10. Apply strict oversight of compliance with the systems relating to conflict of interest and acceptance of gifts by security agencies' leaders and personnel.

11. Imposed a periodic check by ACC of the financial disclosures of political appointees and leaders of the security agencies and amend the law to allow for their public publication, similar to democratic systems.

12. Enforce complaints and appeals system within the security agencies and address the challenges facing the system to prosecute the proven offenses and render justice to victims and affected persons.

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The Civil Forum to Promote Good Governance in the Security Sector seeks to strengthen good governance in the Palestinian security sector, and to promote a culture of community accountability over its work, thereby contributing towards fortifying security establishments against all forms of corruption, and to enhance a partnership and coordination based efficiency of security agencies. The aim is to achieve a Palestinian security sector that abides by the rule of law and respects basic rights and civil liberties, where officials and staff adhere to the integrity and anti-corruption system and democratic principles, and embrace community accountability, and operate under a national security strategy and doctrine agreed upon by all parties.

The idea to establish the forum was started by a group of activists at civil society institutions relevant to governance in the Palestinian security sector in 2013. The decision to establish the forum was based on the notion of the importance of collective work by all official and grass-roots institutions to formulate public policies and principles relevant to the requirements of public order stability, and building governance in the Palestinian security sector. The establishment of the forum was undertaken by several civil society institutions operating in the fields of rule of law enhancement, respect for human rights, democracy, enhancement of integrity and anti-corruption and the dedication of the policy of community accountability in all areas of work of the Palestinian State.

The Civil Forum to Promote Good Governance in the Security Sector includes the following institutions: The Palestinian Initiative for the Promotion of Global Dialogue and Democracy (MIFTAH), Al-Haq Organization, the Treatment and Rehabilitation Centre for Victims of Torture (TRC), the Palestinian Center for Research and Strategic Studies, Institute of Law at the University of Birzeit, the Jerusalem Legal Aid and Human Rights Center (JLAC), the Centre for Defense of Liberties and Civil Rights (Hurayat), the Women's Center for Legal Aid and Counseling, the Palestinian Centre for Peace and Democracy (PCPD), QADER for Community Development, the Palestinian Center for Development and Media Freedoms (MADA), the Civil Commission for the independence of Judiciary and Rule of Law (ISTIQLAL), Filastiniyat Organization, Human Rights and Democracy Media Center SHAMS (forum's coordinator), The Coalition for Accountability and Integrity – AMAN (forum's executive secretary), The Independent Commission for Human Rights – ICHR (observer member).