



Report on:

# State Senior Officials Immunity: Impact on Political Integrity and Anticorruption Efforts



**AMAN**  
Transparency Palestine



The Coalition for Accountability and Integrity (AMAN)

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## ► Executive Summary:

While most countries provide immunity protections for their public officials, each jurisdiction varies in the range of officials covered, the scope of immunity and rules regulating the procedures for lifting immunities. International norms and standards have emerged in the last two decades sharing best practices and closing loopholes that may encourage corrupt behavior<sup>1</sup>. Most notably, Article 30 of the United Nations Convention against Corruption provides a legal framework for the reduction of immunity protections.

The report focuses mainly on the legal privileges granted to holders of senior and decision-making posts in Palestine and the possibility of investigating and suing them in case they commit an act of corruption. The report further assesses the difficulties to prosecute such officials, especially when their sensitive posts may affect the basic aspects of life in Palestine, including threatening civil peace and security or destabilizing the Palestinian society, or with regard to promoting citizens' trust in the ruling political power in general and the officials in power in particular (namely the President, Prime Minister, ministers, PLC members, judges, members of the Public Prosecutor's Office and senior security officers). The purpose is to draw the balance between the purpose of their jurisdictional protection on the one hand, and the promotion of anti-corruption efforts and governance integrity on the other.

The report adopted an analytical descriptive methodology, using descriptive methods to present and display the theoretical framework with a review of relevant Palestinian legislation and regulatory institutional structure. Then, it proceeds with an analysis of data to formulate conclusions and recommendations benefiting feedback from relevant stakeholders who viewed the draft report.

The report is divided into an introduction and three main parts in addition to the findings and recommendations. The first part addresses the regulatory framework of immunities in two sub-sections: the first focuses on the international framework of immunities and the second addresses the local context. The second part tackles the categories that enjoy these legal privileges in the Palestinian laws in all legislative, judicial, and executive powers. The third part assesses these immunities and their impact on anticorruption efforts, focusing on the judicial immunities and a general evaluation of the immunity system and the bases of achieving balance.

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<sup>1</sup> Jon Vrushi, Transparency International, immunity provisions for ministers and members of parliament

## **The key recommendations include:**

Based on the findings of the report, the following recommendations are made:

### **1. At the policy level:**

- Reiterate a genuine political will to hold senior state officials accountable and refer their cases to the Anti-Corruption Commission to proceed with the necessary investigations.
- Promote citizens' trust in public institutions and anti-corruption organizations via the enhancement of transparency and trust in the seriousness of proceedings against senior state officials to change public perception and reinforce confidence in the effectiveness of the prosecution of corruption offenses.

### **2. At the legislative level**

- Harmonize Palestinian laws with UNCAC to balance immunity with prevention against impunity by facilitating immunity-lifting procedures or amending them to set a statutory delay to respond to the request for immunity waiver in order to be able to sanction corruption.
- Review Palestinian laws in the light of UNCAC to reduce the number of categories enjoying immunity, similar to other experiences, in a manner that does not compromise their ability to perform their functions in accordance with the law.

### **3. At the institutional level**

- End PACC's consideration of the cases involving officials who enjoy immunity on the basis of administrative infringements heard by the President of the State because it is not within his mandate. These cases must be heard by competent authorities as per the law.

## ► Introduction:

The first registered cases of parliamentary and judicial immunity date as far back as the thirteenth century. Executive immunity is as old as Kings have been inviolable. In the pre-modern political systems, immunities were necessary to protect one power against abuse from another. However, in modern states, under the rule of law, this function has become more or less obsolete. International organizations, like the Council of Europe (CoE), the Organization for Economic Cooperation and Development (OECD), the Organization for Security and Cooperation in Europe (OSCE), and the United Nations are unanimous that immunities must be limited to allow effective prosecution of corruption offenses. Immunities are unnecessarily granted to too many categories and in a needlessly wide and general fashion which may be widely exploited by corrupt politicians. Indeed, there are very limited areas in which immunity is justifiable<sup>2</sup>.

For this purpose, the Group of States Against Corruption, the Council of Europe's anti-corruption body, evaluated the laws of its 47 member states and raised concerns over the too numerous categories of officials enjoying immunities<sup>3</sup>.

The international consensus in UNCAC is a solid basis to reinforce national efforts, especially considering the obligations of the member states to improve their anticorruption strategies and combat all forms of corruption. These efforts should include devising anti-corruption standards and mechanisms and prosecuting offenders benefiting from regional and international cooperation. Other elements include enforcement of the law and the subsequent substantial legislative changes.

Palestine is part and parcel of the international commitment following its adherence to UNCAC in 2014. It needs to exert more effort to develop its integrity and anticorruption framework and overcome the practical and legal obstacles<sup>4</sup>. This includes working at policy, institutional and legislative levels to fully enforce the convention and reach a balanced system of granting immunities and legal privileges to public officials of all ranks.

Palestine, similar to other countries in the world, has suffered from corruption, which raises many concerns considering its devastating effect on different aspects of life not to mention obstructing development and shaking the society's key values. Furthermore, corruption harms the Palestinian national project as it undermines the Palestinian legitimate claims to establish an independent state<sup>5</sup> and enjoy the right to self-determination not to mention that it impedes the establishment of the rule of law and state institutions.

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2 Tilman Hoppe, Public Corruption: Limiting Criminal Immunity of Legislative, Executive and Judicial Officials in Europe, vol 5, April 2011, p539.

3 Ibid, p539.

4 Abdallah Abdallah, Anticorruption Efforts: Appropriate Legislation and Enforcement Challenges and solutions, Part 1, Arab Center for Legal and Judicial Research, Beirut, 2022, p. 7

5 Saeed, Zeid, Yousef, Saja, Report on the Work of the Corruption Criminal Court and Its litigation Procedures, PACC – Ramallah, 2014, p 5



Anti-corruption has seized international attention which resulted in the ratification of the United Nations Convention Against Corruption (UNCAC) by a General Assembly Resolution No (4/58) of 31 October 2003. The Preamble states, “Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law; convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively”.

UNCAC<sup>6</sup> obliges the signatory parties to take all necessary measures to adjust their domestic laws to ensure the balance between immunities and prosecuting corruption. This principle is confirmed in Article 30.2, which states, “Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offenses established in accordance with this Convention.”

Since different states that ratified the Convention are committed to criminalizing and prosecuting all acts of corruption, the immunities accorded to political officials may obstruct or weaken the anticorruption efforts, henceforth directly compromising the integrity of governance. Therefore, these immunities must be scrutinized to assess their impact on anticorruption measures and to ensure reaching the balance required by UNCAC.

In Palestine, many senior state officials (the President, Prime Minister, ministers, PLC members, judges, senior security officers, and President of the State Administrative Audit and Control Bureau (SAACB) enjoy immunities that undermine accountability, including anticorruption measures. The regulatory basis of these privileges stems from the Basic Law and other domestic laws like the Law on the Duties and Rights of PLC members, Anti-corruption Law, and the Judiciary Act. Therefore, these immunities and privileges need to be assessed to understand their effect on anticorruption efforts and governance integrity in general.

### **What is the problem?**

The incumbents of senior public offices and decision-making positions enjoy immunity or judicial privileges, which hinder their prosecution in case they committed a crime of corruption. Such privileges enable them to enjoy impunity, especially considering the sensitive nature and importance of their posts in addition to the resulting loss of citizens' confidence in the state. Thus, it is paramount to redress the balance between the gains of immunity, on the one hand, and the potential abuse thereof to obstruct the efforts of the authorities responsible

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<sup>6</sup> The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem. The Convention covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. The Convention covers many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector. A highlight of the Convention is the inclusion of a specific chapter on asset recovery, aimed at returning assets to their rightful owners, including countries from which they had been taken illicitly. For more see: <https://www.unodc.org/romena/en/uncac.html>



for combatting corruption, on the other.

The negative effects of the privilege of immunities on the fight against corruption, when committed by the holders of such immunities, are aggravated by the fact that prosecution and follow-up proceedings against suspects are often hampered by law enforcement procedures and court decisions.

### **Why is this report important?**

This report is important at both the theoretical (academic) and practical (applied) levels because, Theoretically speaking, it provides an overview of the immunities granted according to the relevant Palestinian laws and regulations. It further reiterates the need to reach a balance between judicial privileges and prosecution of officers so that their immunities do not hamper anticorruption efforts in case any of these officials commit an act of corruption.

The Palestinian National Authority (PNA) ratified UNCAC of 2003 in April 2014. The Convention entered into effect on 2 May 2014, which entails an obligation on the State of Palestine, being a member state, to harmonize national legislation with the Convention.

### **What are the objectives of the report?**

The report aims to research and analyze the immunity of members of the Palestinian political power (President, Prime Minister, PLC members, judges, Prosecutor's Office members, and senior security officers) and how this immunity affects the local anticorruption efforts and prosecution of corrupt officials. It further highlights how to reach the balance between granting immunity on the one hand and effective anticorruption efforts and governance integrity on the other.

### **Questions of the report:**

The report attempts to answer the following questions:

1. What immunities are accorded to the political power members according to the Palestinian legislation?
2. Do these immunities obstruct formal accountability and oversight? Are there cases where the immunities of the officeholders hampered the investigation and subsequent procedures for suspicion of corruption?
3. Do the immunities of Palestinian political offices represent an obstacle to governance integrity promotion and impunity prevention? Do they shield holders of political offices against any legal procedures related to corruption outside the regulatory framework?
4. How do law enforcement and anticorruption agencies handle suspicion of corruption of holders of political offices that enjoy immunity?
5. What is required to achieve the balance between according to immunities and anticorruption and impunity prevention efforts to achieve the required integrity and fulfill the obligations under UNCAC?

### **Hypothesis:**

The report addresses a main hypothesis, namely the immunity privileges accorded to the Palestinian Authority political officials as an impediment to anticorruption and governance integrity promotion efforts.

## Terminology

- **Immunity in the language:** In the language, immunity is the ability of an organism to resist a particular infection or toxin by the action of specific antibodies or sensitized white blood cells<sup>7</sup>.
- **Immunity in law:** It is a legal status whereby certain people, assets, or cases cannot be held liable or subject to general rules in judicial and financial matters. In other words, such individuals are exempted from certain obligations or duties<sup>8</sup>. It is also the protection of certain individuals against judicial prosecution for the acts they commit in the performance of their official duty; it is prescribed to serve the public interest and not the personal interest of the individuals benefiting from this status<sup>9</sup>.
- **Political Immunity:** It is a type of legal immunity adopted by governments to ensure that diplomatic corps are not prosecuted or tried in accordance with the laws of their host countries in the event of a lawsuit against them. The diplomatic corps includes representatives of foreign states and recognized international organizations<sup>10</sup>.
- **Judicial Immunity:** It is a form of sovereign immunity, which protects judges and others employed by the judiciary from liability resulting from their judicial actions without the permission of competent authorities. The purpose is to safeguard the integrity and dignity of judges and reiterate the independence of the judiciary.
- **Parliamentary Immunity:** Also known as legislative immunity, is a system in which members of the parliaments or legislature are granted immunity from prosecution for their acts and statements during the performance of their work<sup>11</sup>.

## Methodology:

The report applies an analytical descriptive approach, which requires:

- Gather and review information from different sources and previous studies and literature on immunities in Palestinian legislation.
- Analyze and review the legislative framework including laws, regulations, and instructions.
- Analyze information, data, and indicators' results.
- Review case studies on the corruption of political officials who enjoy immunities.
- Organize field interviews with relevant organizations.
- Present the findings highlighting the challenges and problems identified.
- Formulate implementable recommendations and propose lobbying and advocacy mechanism.
- Prepare an initial draft for discussion with stakeholders to receive their feedback and improve the report.

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7 Ibn Manzour, Lisan Al-Arab, Beirut, Ed. 1. Part 13, p. 119

8 Abdelwahid, Karam, Glossary of Legal Terminology, Legal Books Publisher- Egypt, Al-Mahalal Al-Kubra, P. 127 (in Arabic)

9 Al-Ahmad, Hussam Al-Dien, Al-Halabi Legal Publication, Beirut, Ed. 1, 2020, p. 7 (in Arabic)

10 Al-Fatlawi, Hussein, Legal Immunity of Diplomatic Representatives in Iraqi Law, Baghdad University Publishing, 1980, p. 17 (in Arabic)

11 Abdelwahid, Karam, ibid, p. 161



## **Report Structure:**

The report comprises an introduction and three main parts in addition to the findings and recommendations. Part One, tackles the regulatory framework of immunities and is divided into two sections, the first presenting immunity at the international level and the second at the local level. The Second Part provides an assessment of the categories benefiting from immunity in Palestinian laws in all three powers, legislative, judicial, and executive. Part Three assesses anticorruption efforts with regard to judicial immunities and evaluates the overall immunity system ad bases of balance. For this purpose, the report is divided as follows:

- **Introduction.**
- **Part One:** Regulatory framework of judicial immunities that obstruct anticorruption proceedings.
- **Part Two:** Categories benefiting from immunities according to national laws.
- **Part Three:** Implementation of anticorruption procedures under political immunity.
- **Findings and recommendations**

## ► Part One: Regulatory Framework of Judicial Immunities Restricting Anticorruption Procedures

There are several forms of immunities and two special statuses. The first relates mostly to criminalization and punishment and involves a procedure related to parliamentary non-liability, which is the substantive side. The second is procedural and relates to the organizational aspects and rules applicable to the initiation of a lawsuit against any member of parliament. This is called procedural immunity.

Immunity in all forms and types, being a procedural impediment, grants the person or individual enjoying this right a number of actions and conducts that are not granted to other persons. Holders of immunity enjoy a broad room of avoidance of criminal responsibility for their acts. This appears in several laws and legislations as the legal basis of immunities. The sources of laws vary and range from customs to international conventions (international legal framework) to domestic laws (domestic legal framework).

States domestic laws and constitutions generally prescribe immunities of various extents that range from absolute immunity with no time limit to relative immunity that is time and context-bound. Generally, immunities are granted to all state powers, namely the judicial, legislative, and executive authorities and some of their administrative bodies<sup>12</sup>.

The following part compares immunity at the international and domestic levels by highlighting key relevant international conventions and domestic Palestinian laws, as follows:

### 1.1 International Legislative Framework

The United Nations and Arab Conventions Against Corruption<sup>13</sup> represent a comprehensive legal framework to prevent and combat corruption via comprehensive laws and measures of prevention and criminalization of corruption. It proposes intuitional strategies and frameworks in addition to a framework of cooperation among states to enforce the convention<sup>14</sup>.

The sources of international law are multiple. According to Article (38) of the Statute of the International Court of Justice<sup>15</sup>, these sources include international conventions, customs, and the general principles of law. The subsidiary sources include judicial opinions and court

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12 Othman Bin Al-Husin, *ibid.* p. 37

13 This agreement is located in 35 articles, the aim of which is to strengthen measures in preventing, combating and exposing corruption in all its forms and other related crimes and prosecuting its perpetrators. As well as strengthening Arab cooperation in preventing, combating, detecting and recovering assets, promoting integrity, transparency, accountability and the rule of law, and encouraging individuals and civil society to actively participate in preventing and combating corruption. This agreement was prepared within the framework of the Council of Arab Interior Ministers, based on the provisions of the International Convention against Corruption under the umbrella of the Arab League, and it was circulated to the Arab Ministries of Justice. 2003 AD by approving the fight against corruption, and by inviting the General Secretariat of the Council of Arab Ministers of Interior and Justice to conduct the necessary coordination to put in place the executive procedures for the agreement. It was issued in its final form on: 21/12/2010. The Arab agreement followed the approach of the two United Nations conventions on combating transnational organized crime and combating corruption.

14 Abdallah Abdallah, *Combatting Corruption: Assessment of Laws and Obstacles to their Enforcement*, Part 1, Arab Center For Legal and Judicial Research, Beirut, 2022, p. 6

15 The International Court of Justice is: the main judicial body of the United Nations, which adjudicates lawsuits and legal disputes that arise between states, in accordance with the provisions and rules of international law, in addition to that, this judicial body works to provide advisory opinions regarding legal issues referred to it by a party United Nations bodies as well as specialized agencies.

decisions<sup>16</sup>. In addition to these sources, highly qualified teachings of states and international organizations, commonly known as publicists (general public law experts) and individual teachings, as a new source added but not mentioned in Article (38). This source appeared through practice and application of the provisions and rules of international law.

Other legal sources that regulate immunity include the Vienna Convention on Diplomatic Relations of 1961<sup>17</sup>, which states in Article (31) that, 'A diplomatic agent shall enjoy immunity from criminal jurisdiction of the receiving state. He shall enjoy immunity from its civil and administrative jurisdiction.'

Additionally, the Vienna Convention on Consular Relations of 1963<sup>18</sup> prescribes immunity from jurisdiction granted to consular agents of the states. It stipulates in Article (43) that, 'Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.' In light of these conventions, the immunities granted in conformity with international customary and treaty laws cover Presidents of foreign states and diplomatic and consular immunity<sup>19</sup>.

UNCAC represents the legal framework of immunities, most notably in Article (3), which explicitly provides that states should maintain an adequate balance between the immunities they grant to their civil servants on the one hand and prosecution of criminal acts on the other<sup>20</sup>.

Regionally, the Arab Convention Against Corruption (ACAC) provides in Article (3/6) that, 'Each State Party shall take, in accordance with its domestic legislation and constitutional principles, the necessary measures to establish or maintain an appropriate balance between any immunity or privilege granted to public officials for the sake of performing their duties and the possibility of the undertaking, where necessary, effective investigation, prosecution and trial of acts punished under the present Convention<sup>21</sup>.' The provision is a verbatim copy of Article (3) of UNCAC.

## 1.2 Domestic legislative framework

The effective Palestinian law grants several immunities to the President, Prime Minister, Ministers, Members of the PLC, Judges, Members of the Public Prosecutor's Office, and special offices like senior security officers. The immunities are detailed in the following section.

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16 According to Article (38) of the Statute of the International Court of Justice, sources of international law are (1) International conventions, (b) international customary law, (c) General legal principles, (d) Judicial decisions like the resolutions of the International Court of Justice or arbitration awards.

17 The Vienna Convention on Diplomatic Relation is an international convention that outlines the rules of diplomatic law among states. It details the rights and duties of members of a foreign state diplomatic mission and sets several principles including diplomatic immunity.

18 The Vienna Convention on Consular Relations of 1963 represents the regulatory framework of consular relations among sovereign states. It codifies many consular practices to provide protection to the citizens of a consular agent's state who reside in the country to which he is assigned. It also aims to promote trade and economic relations among different states. It was ratified on 24 April 1963.

19 The present report does not aim to address all types of immunities prescribed in the Vienna Conventions on Diplomatic and Consular Relations.

20 UNODC, Legislative Guide on the Implementation of UNCAC, ed. 2, New York, 2013, p. 118

21 For further reading, see: <https://almeezan.qa/AgreementsPage.aspx?id=1719&language=ar>



It should be noted that the State of Palestine (Palestinian National Authority) has ratified the International Statutes of Immunity, which include as mentioned before the Vienna Convention on Diplomatic Relations of 1961 and the Convention on Consular Relations of 1963<sup>22</sup>.

Similar to other countries, it drafted national legislation to regulate the immunity of diplomatic agents of other states who reside on its Territories (diplomatic representatives), as well as consular representatives. According to the Penal Code No. (16) of 1960<sup>23</sup>, Article (11) covers the immunity of diplomatic agents and consuls stating that 'The provisions of this law do not apply to crimes committed by foreign service officials and consuls enjoying immunity conferred on them by public international law.'

This article confirms the immunity from the criminal jurisdiction of agents of the diplomatic corps, stating it an absolute immunity. Accordingly, the State, under any circumstance, may not try these agents or have them appear before the Palestinian Criminal Courts.

This type of immunity is part of the rules of public order, which are necessary to promote friendly relations among states. A diplomatic envoy may not revoke this immunity since it is prescribed for the interest of his state, not his interest. A diplomatic envoy's trial before a territorial court is prejudicial to the independence of the country he represents. If criminal proceedings are brought against a foreign diplomatic envoy accredited to its State, national courts must, on their own initiative, rule that they are not competent to consider the case when the identity of the diplomatic envoy is proven<sup>24</sup>.

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<sup>22</sup> The State of Palestine acceded to both conventions on 2 April 2014, and they became effective on 2 May 2014.

<sup>23</sup> The Jordanian Penal Code No. (16) of 1960 is the penal code effective in the West Bank to date. It was ratified by a decree of the President of the PNA No. (1) of 1994, which provides that all laws and regulations effective in the Palestinian Territories before 5 June 1967 shall remain in force until they are unified.

<sup>24</sup> Attari, Yousef, Legal Foundations of Diplomatic Immunities and Privileges, MA Thesis in Public Law, Middle East University, 2011, p. 74

## ► Part II: Categories with immunity according to national laws

The Amended Basic Law of 2003 and several Palestinian national laws stipulate a number of immunities and privileges to all three authorities (legislative, judiciary and executive) in the following manner:

### 1.1 President of the State

The Amended Basic Law does not cover the immunity of the President of the Palestinian National Authority nor does it prescribe its legal foundation. This may be seen as a legislative gap that needs to be revisited.

A review of Article 37.1.c of the Amended Basic Law shows the cases in which the PNA President's office is deemed vacant. A type of procedural immunity may be deduced for the legal acts and actions that he performs while being the PNA President. The Article states, "The Office of the President shall be considered vacant in any of the following cases: a. Death; b. Resignation submitted to the Palestinian Legislative Council, if accepted by two-thirds of its members; c. Loss of legal capacity, as per a ruling issued by the High Constitutional Court and subsequently approved by a majority of two-thirds of the members of the Legislative Council.'

This Article prescribes the procedures applicable to determine the loss of legal capacity of the PNA President and presents it as a case in which the office is considered vacant. Legal capacity in this Article is not limited to the capacity defined under the Civil Code; i.e., legal agency and legal standing but rather extends to any matter that may disqualify the President<sup>25</sup>. For example, without being limited to, this includes committing certain crimes, mainly corruption offences, which would cause him to lose that capacity<sup>26</sup>.

### 1.2 Prime Minister and Ministers

According to Article (75) of the Amended Palestinian Basic Law, "(1) The President of the National Authority shall have the right to refer the Prime Minister for investigation as a result of crimes attributed to the Prime Minister during, or due to, the performance of official duties, in accordance with the provisions of the law. (2) The Prime Minister shall have the right to refer any Minister for investigation based on any of the reasons mentioned in the above paragraph (1), in accordance with the provisions of the law."

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25 Jamous Ammar, Parliamentary Immunity and Special pardon: Impact on Anti-Corruption Efforts in Palestine – peer-reviewed study, the Palestinian Center for the Independence of Judiciary and Legal Profession "Musawah", December 2015, p. 12

26 Article (12) of the Amended Law on Anti-Corruption No (1) of 2005 prescribes the cases in which the PNA President may be tried, "1. In the event it appears to the head of the Anti-Corruption Commission or the Prosecutor General the existence of suspicions regarding an illegal gain conducted by the President of the Palestinian National Authority, he or she shall submit an initial application to the Legislative Council and the Constitutional Court in which he or she requests the verification of the legal capacity of the President of the Authority in accordance with the rules provided for under the Basic Law. 2. The President of the National Authority shall be suspended from exercising the duties of his position upon the leveling of the accusation. The Speaker of the Legislative Council shall assume the duties of the President of the National Authority temporarily until the settlement of the accusation. The Prosecutor General shall assume the procedures of investigation. The litigation of the President of the National Authority shall convene before a special court for which a law shall be enacted to regulate its formation and the litigation procedures therewith. In the event a definitive judgment is issued regarding his conviction, he shall be exempted from his position provided that the other penalties are not violated in pursuance of the Law.

Additionally, Article (10.1) of the Law on Anti-Corruption No. (1) of 2005 provides that 'in the event ACC has founded suspicions that any of the officials mentioned in paragraphs (1, 2, 3, 4) of the present law, with the exception of the PNA President, committed any of the crimes punishable by this Law, the ACC President shall refer the case to the PNA President of the suspected perpetrators include the Prime Minister and/or his advisors and to the President of the Council of Ministers in case of Ministers and the like and to the High Judicial Council for members of the Judiciary and Public Prosecutor's Office to initiate due proceedings pursuant to the Basic Law and other relevant laws.

According to the previous Article, the President of the Anti-Corruption Commission is mandated to refer the files of ministers suspected of having committed any of the crimes set forth in the Anti-Corruption Law to competent authorities according to a particular hierarchy. They are referred to the PNA President in case the suspect is the Prime Minister and to the Prime Minister in case it is a minister. Then the files in both cases are referred to the Public Prosecutor's Office to proceed with the investigation in accordance with effective laws. In light of this Article, the Public Prosecutor's Office receives cases of anticorruption when the suspect is the Prime Minister or a minister through the referral procedure mentioned above in accordance with the Anticorruption Law. Otherwise, the referral will be deemed procedurally void.

It should be noted here that there is no direct plaintiff or civil party in the channel of communication with the Public Prosecutor's Office regarding the lawsuit concerning the Prime Minister or any of the ministers. In all cases, the intervention of the Prosecution is restricted to the referral made by the President of the PNA or the Prime Minister as appropriate<sup>27</sup>.

### **1.3 PLC Members**

Parliaments or legislative councils are vested with the serious task of enacting laws and drawing domestic and international government policies. They also oversee government policies at all political, financial, economic, social, and cultural levels<sup>28</sup>.

Since the members of parliaments, in the performance of their duties, express their opinion on all matters related to the public affairs of their state, particularly in overseeing decision-makers and embezzlement of public funds, they are in direct confrontation with the holders of power and influence in the State. This exposes them to direct and indirect pressure with the purpose of leading them make decisions that sustain the ruling authority and its influential members in their offices. For this reason, most laws accord immunity to MPs to safeguard their independence and enable them to best perform their duties in a safe environment free of internal and external pressure. This immunity, commonly known as legislative immunity or privilege, provide a legal cover to enable MPs fully perform their duties.

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<sup>27</sup> Jamous Ammar, *Ibid*, p. 15

<sup>28</sup> Othman bin AlHassani, *ibid*, pp.-45-46

Arslan May defines legislative immunity as “a set of rights accorded to the House of Commons and House of Lords as a whole and to the individual members of both Houses, without which these houses cannot perform their tasks<sup>29</sup>.”

Legislative immunity is either functional<sup>30</sup> or procedural<sup>31</sup>. Functional immunity means that MPs who express their opinion and thoughts in the performance of their parliamentary duties may not be criminally or civilly prosecuted at any time. Procedural immunity means that criminal proceedings against members of parliament may not be instituted in cases other than *flagrante delicto* without the authorization of the Parliament (legislature) of their membership<sup>32</sup>. Immunity is conferred upon MPs to improve their performance and protect Parliament’s and parliamentarians’ independence against any internal or external influence and pressure that may, in one way or another, affect the fulfilment of their mandated tasks. The legal foundation of immunities in the Palestinian context is Article 53.1 of the Amended Basic Law, which provides that ‘Council Members may not be questioned in civil or criminal proceedings due to opinions they express, facts they mention, their voting in Council sessions or committee meetings, or because of any action they undertake outside the Council in the course of performing their parliamentary duties.’

Article (21) of the Law No. (10) of 2004 on the Duties and Rights of Members of the Legislative Council<sup>33</sup> stipulates, ‘Members of the Council may not be questioned in a civil or penal proceeding because of the opinions they express, facts they mention, or their voting in Council sessions or committee meetings or because of any action they undertake outside the Council in the course of performing their parliamentary duties.’

Similarly, Article (95) of the Standing Order of the Palestinian Legislative Council of 2000<sup>34</sup> stipulates that ‘A Member shall not be questioned, through either a civil or criminal procedure, because of his or her actions, opinions, or votes in the meetings of the Council and its Committees, whether open or secret, or because of any action outside the Council in the course of his or her function as a member, to enable them perform their parliamentary mission’.

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29 Ahmed Hussam Eddien Mohammad, *Functional and Procedural Legislative Immunity: a Criminal Perspective*, Dar Al-Nahda Al-Arabya – Cairo, second edition, 1995.

30 Immunity *ratione materiae* (functional) means that a Council member may not be questioned in penal or civil proceedings at any time due to the expression of his opinion and thoughts while performing his parliamentary duties. Parliamentary duties include speeches, votes, and proposals of laws, questions, requests for referral, interrogations, or suggestions. The privilege of freedom of speech has been rooted in the Bill of Rights of 1989, which stipulates in Clause Nine that ‘freedom of speech, discussions or procedures may not be challenged or subject to accusation or accountability in any court or place outside the parliament’ For more information see: Othman Bin AlHassani, *Legal dilemmas arising from immunities and their impact on criminal liability*, Master’s Thesis, Al-Marqab University (Libya), 2009, p. 50

31 Procedural immunity means that criminal proceedings against members of parliament may not be instituted in cases other than *flagrante delicto* without the authorization of the Council. This type of immunity is considered to be narrow in scope and is only limited to non-detention in criminal cases without affecting civil proceedings. i.e., when a member of parliament commits a crime, he may be arrested like any other citizen after receiving authorization from the Council. If convicted, the council must be notified. In Britain, this is called the privilege of freedom from arrest. For more information, see Othman Bin Al-Hassani, *ibid*, p. 46

32 Al-Afifi Mustapha, *Brief explanation of the principles of constitutional law and compared political systems*, Dar Al-Nahda Al-Arabya, Cairo, second edition, 1984, p. 348

33 The Law was enacted on 20/9/2004 and published in the Palestinian Official Gazette in issue (52) on 18/01/2005.

34 The Law was enacted on 7/6.2000 and published in the Official Gazette, issue 69, on 16/8/2000.

Based on the previous provisions regulating legislative immunity, it appears that this immunity is large in scope and is not limited to the opinions or facts presented by the Council members or to any particular type of thoughts, voting or other acts. It is rather extensive and includes all opinions and facts presented by a Council member in the performance of his parliamentary duties, including public and secret voting<sup>35</sup>.

Furthermore, the legal framework provides that a Council member may not be questioned in a civil or criminal proceeding. In other words, neither the Public Prosecutor's Office nor the harmed victim may initiate a civil action for compensation for the harm endured due to the opinions expressed by the Council member in the performance of his duties. It should also be noted that this immunity is permanent and does not end with the elapse of the deputy's term in the council<sup>36</sup>.

In light of the above indicators, the Palestinian regulatory framework of legislative immunity is consistent with the objective for which this immunity is granted, including ensuring effective and independent performance of the Council and its members in addition to promoting the separation of powers. This immunity was conferred for a functional reason and is therefore limited to the opinions and positions related to the previous parliamentary duties of a Council member.

Procedural legislative immunity in Palestinian laws is governed by the following provisions:

- Article 53.4 of the Amended Basic Law<sup>37</sup>.
- Articles 95.4 and 96 of the Standing Order of the Palestinian Legislative Council<sup>38</sup>.
- Article (24) of the Law on the Duties and Rights of PLC Members<sup>39</sup>.
- Article 2.3 of the Palestinian Anti-Corruption Law<sup>40</sup>.

## 1.4 Judges and Prosecutors

The judiciary is the guarantor of individual rights and freedoms being the main pillar of enforcement of the law. Without this Authority, the law becomes mere ink on paper and a useless theoretical framework. It is not an exaggeration to say that the Judiciary is the security valve of security, stability and maintaining of public order in any state.

Immunity is conferred upon judges so long as they are in office; it is an absolute immunity and is limited to certain acts with the objective of safeguarding rights and freedoms and achieve justice for all members of society.

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35 Murad, Mohammad, Legislative Immunity in Palestinian Laws: Comparative, Analytical, and descriptive Study, MA theses in Public Law, Faculty of Graduate Studies – Islamic University, Gaza, 2015, p. 24

36 Murad, Mohammad, *ibid*, pp. 24 and 25.

37 This Article provides that "Except in cases of flagrante delicto, it is not permissible to take any punitive measures against any member of the Palestinian Legislative Council, provided that the Legislative Council is immediately notified of the measures taken against the member, so that the Council takes whatever it deems appropriate, and the Bureau undertakes this task if the Council is not in session."

38 This Article stipulates that the Committee shall examine the request and submit its report to the Council, which shall decide to deprive a Member of immunity temporarily by an absolute majority after listening to the opinions of two members in favor of lifting the immunity and two other members opposing this measure.

39 Article 95 provides that Members shall possess such immunity during the term of the Council. No penalty measures shall be taken against any member unless apprehended in a criminal act. However, the Council shall be notified immediately about the measures taken against the member, so that the Council shall take proper action in this regard. The Office of the Council shall assume this responsibility if the Council is not convened.

40 The above provision states that 3- PLC Speaker and members shall be subject to the provisions of this law.

The term judge in the official theory of judging is a technical term that applies to the person holding this office and to his personal and objective attributes<sup>41</sup>. It is a term derived from the function itself. Judges enjoy immunity so long as they hold this capacity. However, loss of the capacity leads automatically to lifting the immunity and the judge is treated like an ordinary citizen.

One of the most important guarantees in most constitutions is the principle of independence of the judiciary and non-removability of judges without a law, commonly known as the immunity of judges against removal. Moreover, legislatures enact laws to preserve the dignity and prestige of judges and empower them to perform their duties in peace and security. For this reason, judges enjoy immunity against civil proceedings, which means that they are absolved of civil liability for their professional errors in the decisions and rulings they issue provided that such errors are not grave and cannot be redeemed. Judges and members of the Public Prosecutor's office enjoy immunity against penal proceedings except for cases of flagrante delicto<sup>42</sup>.

Local Palestinian laws provides such guarantees; Article (56) of the Judicial Authority Law No. (1) of 2002 is titled "Arrest and Detention of Judges" and provides '1. Apart from a case where a judge is apprehended in the immediate commission of a crime, a judge may not be arrested or detained without the special permission of the High Judicial Council. 2. If a judge is apprehended in the immediate commission of a crime, the Attorney General shall, upon the arrest or detention of the judge, present the matter to the High Judicial Council within the next twenty-four (24) hours. The High Judicial council shall decide, upon hearing the statement of the judge, either to release him on bail to detain him without bail, or to continue detention for a period to be determined by the High Judicial Council. The High Judicial Council shall have the right to extend such period. 3. The judge shall be detained and punishment entailing deprivation of liberty shall be implemented in a location that is separate from those assigned to other prisoners.

Article (59) of the same law provides that 'A criminal case shall not be filed against a judge without the permission of the High Judicial Council. The High Judicial Council may designate a court to hear the case irrespective of the circuit of jurisdiction determined by the law.'

The same rules apply to members of the Public Prosecutor's Office as Article (72) of the same law states, 'The provisions of PART IV, CHAPTER IV, of this law, entitled 'Disciplinary Inquiry of Judges,' shall apply to members of the Public Prosecution. Disciplinary action shall be instituted against them by the Attorney-General either himself or upon the request of the Minister of Justice.'

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41 Al-Shaabani Buthaina, Judges Penal Liability, Memoire to obtain a certificate of propound higher studies in law, Faculty of Law and Political Science in Tunis, the Academic year 20012002-, p. 3

42 Jamous, Ammar, *ibid.* p. 15

In the same context, Article 10.1 of the Anti-Corruption Law designates the agency responsible for corruption files of judges and members of the Public Prosecutor's Office suspected of committing a corruption offence. The Article stipulates, 'In the event of suspicions regarding an act of corruption committed by the categories mentioned in paragraph 4 and Article 5 of this law, which include members and employees of the judiciary and Public Prosecutor's Office, the President of the Anti-Corruption Commission shall refer the matter to the High Judicial Council if the suspects are member of the judiciary or the Public Prosecutor's Office to apply due proceeding in accordance with the Basic Law and relevant legislation.

In light of the previously mentioned articles, based on the immunity granted to judges and members of the Public Prosecutor's Office, it is not possible to initiate investigation or trial proceedings against them without the permission of the High Judicial Council to the competent authorities. Without this HJC permission, any measures or proceedings shall be deemed void with the exception of cases of flagrante delicto. Furthermore, some state officials and heads of public institutions enjoy immunity<sup>43</sup>.

### **1.5 Senior Security Officers and Members of Military Tribunals**

A review of the legislation regulating Palestinian Security Forces, notably: Law on the Service in Palestinian Security Forces No. (8) of 2008, Revolutionary Penal Code of the PLO of 1979, Revolutionary Penal Procedures Code of 1979, Law by Decree No. (2) of 2018 on the Security Forces Justice Commissions, Law by Decree on Preventive Security No. 11 of 2007, Law by Decree on Police Service No 23 of 2017 shows that Palestinian security forces agents of all ranks and positions do not enjoy immunity except the provision in the General Intelligence Law No. (17) of 2005, which provides in Article (32), 'In cases other than flagrante delicto, the competent authorities may not detain a member or interrogate him except following notification of the Head of the Intelligence. A member here according to Article 1 of the same law means "Any officer, no commissioned officer, or member of personnel appointed in the Intelligence.' The other limitation is found in Article (33) of the same law on questioning the Head of Intelligence via specialized PLC committees. Furthermore, the Law on Military Forces Justice Commissions No. (2) of 2018 stipulates in Article (45) explicit judicial immunity to military judges and members of the Prosecution as well as to the Head of the Prosecution and Chief Justice. It stipulates the provisions on the arrest of members of the Justice Commission:

1. In cases other than flagrante delicto, the military judge or member of the Military Prosecution may not be arrested or confined except after a permission is obtained from the Chairman of the Commission.

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<sup>43</sup> For example, the President of the Palestinian Anti-Corruption Commission enjoys similar immunity. Article 10.2 of the Anti-Corruption Law states that "In the event of strong suspicion that the President of the Commission has committed any of the crimes punished under this law, the President of the PNA shall refer the matter to the PLC immediately to proceed with the inquiry and investigation. If the majority of PLC members decide that such suspicions warrant referral to the court, the immunity of the ACC President is removed and he is suspended from work. The matter is then referred to a competent court for follow-up and consideration. Moreover, the President, and Director General, and employees of the State Administrative Audit and Control Bureau enjoy immunity for the actions they undertake in the performance of their duties. Accordingly, Article 11 of SACCB Law No. 15 of 2004 provides that 'Consistent with the provisions of this law the President, Vice-President, Director, and employees of the Bureau shall enjoy immunity for the actions they undertake in the performance of their duties.

2. In the cases where the military judge or member of the Military Prosecution is caught in flagrante delicto, the Chief Military Prosecutor must refer the matter to the Chairman of the Commission within twenty-four hours.
3. Upon a permission from the Chairman of the Commission, the Chief Military Prosecutor shall be entitled to decide, after hearing the statements of the arrested, to release or continue to detain him for the period determined by the Military Penal Procedure Law in force.
4. The military judge or member of the Military Prosecution shall be detained and the penalty imposed on him a place that is separate from the places designated for other sentenced persons.
5. Any procedure of arrest and penal and disciplinary accountability may only be initiated against the Chairman of the Commission and Chief Military Prosecutor by a written decision from the Commander-in-Chief and upon the establishment of a special committee by him to submit the investigation results and its recommendations regarding referral to the competent court.

This is a good step due to the sensitivity of the position of security officers and the importance of their role in maintaining peace and stability of the public order in a given society or state. To prevent arbitrary use of power, Palestinian legislature has not granted immunity to all Palestinian security forces agents of all ranks and positions, but also took into consideration the immunity of Intelligence officers by prescribing the necessity to have a permission to arrest them or initiate an interrogation. Furthermore, questioning of the Head of Intelligence is through the PLC committees, which may be composed of a certain political stream.

### **1.6 President and Employees of Quasi-Ministerial Institutions**

Several laws referred to the immunity of heads and employees of quasi-ministerial institutions, notable:

**1. Immunity of President and employees of SAACB:** Article (11) of SAACB Law No. 15 of 2004, as amended provides that 'according to the provisions of this law, the SAACB President, his Deputy and the Director General and employees shall enjoy immunity for the actions they undertake in the performance of their duties.

**2. Immunity of President and staff of ACC:** Article (10) of the Anti-Corruption Law by Decree No. (7) of 2010 provides that Article (17) of the original law shall be amended as follows:

- 1) In the event it appears to the Commission in respect of the categories outlined in paragraphs (1, 2, 3 and 4) of Article (5) of this Law with the exception of the President of the National Authority that there exists strong suspicions of the commission of any crime contained in this Law, the Head of the Commission shall refer the matter to the President of the National Authority in respect of the Prime Minister and his advisors, and to the Prime Minister in respect of ministers and those at their level, and to the High Judicial Council in respect of members of the Judicial Authority and the Public Prosecution for initiating the necessary legal action according to the Basic Law and the pertinent legislations.



2) In the event it appears that the Head of the Commission has committed any of the crimes outlined in this Law, the President of the National Authority shall refer the matter to the Legislative Council to initiate the investigation. If the Council decides by absolute majority that those suspicions necessitate referring the matter to court, it shall decide to lift the immunity from the Head of the Commission, suspend him from service and refer the matter to the competent court to review the matter.

Article (2) of the Law by Decree No. (9) of 2019 amending the Law on Anti-Corruption No. (1) of 2005, as amended prescribes that 'The chair of the Commission shall be appointed by a decision from the President of the State based upon the recommendation of the Council of Ministers. The Chair of the Commission shall earn a salary that is equal to the salary earmarked to the Ministers and shall enjoy the privileges granted to them.' Article 14/e of the Council of Ministers Resolution No. (7) of 2011 on the statute of the Anticorruption Commission Staff provides that "the privileges and immunities conferred upon ACC staff shall not in any way absolve them of the requirement of observing their personal obligations and effective national laws.

## ► Part III: Implementation of anticorruption procedures under political immunity

This part examines the actual efforts of anticorruption bodies under the immunities granted to public officials in the performance of their mandates. It assesses ACC's work mechanisms and reviews the activity of the Corruption Criminal Court. It then shows the impact of these privileges on anticorruption efforts and provides a general evaluation of immunities to propose solutions to establish the balance mentioned in UNCAC. This part addresses the following topics as follows:

### 3.1 Impact of immunity privileges on local anticorruption efforts

Immunities and judicial privileges ensure a certain category of persons protection against civil or criminal proceedings, which is not granted to all citizens. These laws were enacted to protect the public service against obstacles, targeted prosecution, or political oppression. Nonetheless, these immunities may be abused by some officials who use them as a shield to cover their criminal activity, including corruption. Good immunity regimes succeeded in granting public officials the independence they need while applying appropriate accountability mechanisms to ensure the corruption is effectively punished and prevented<sup>44</sup>. Although most countries grant immunity to their public servants, they differ in the jurisdiction of the officials included in the regime and in the scope of immunity, and the procedures to lift immunities<sup>45</sup>.

From a legal point of view, the Anti-Corruption Law No. (1) of 2005, as amended, particularly Article (9) thereof grants ACC the mandate to receive, review and follow up reports and complaints related to corruption offenses and vested in some of ACC staff the authority of judicial police, which enables them to initiate investigations, evidence and information gathering on corruption offenses ACC also receives reports from SAACB and any other agency or institution as well as from ministerial investigation and disciplinary committees if any of these bodies discovers suspicions of a corruption crime. Furthermore, the same Law, in Article 9.6 mandates ACC to initiate the necessary investigations and fact-finding to follow up on corruption cases. To perform this role, ACC established a monitoring department as part of its organizational structure to monitor all information shared on the Internet, social media, audiovisual and written media and other sources and to initiate investigation on any suspicion of corruption. As for Article 22.1 of the Penal Procedural Code No. (1) of 2011, as amended, it mandates ACC to act as a judicial police officer<sup>46</sup>.

In practice, within the Palestinian legal system, corruption cases are controversial while citizens perceive high prevalence of corruption in the public sector. AMAN Coalition's annual report of 2021<sup>47</sup> showed that while ACC data indicated that corruption reports against senior officials represented only 13% of the total number of complaints, citizens had a different opinion regarding the map of corruption as 77% of respondents to the survey on the

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44 Jon Vrushi, *supra* note, P1.

45 *Ibid*, p1.

46 ACC, Annual Report 2021, January 2022, p. 34

47 Coalition for Accountability and Integrity (AMAN), Fourteenth Annual Report, Integrity and Anticorruption Efforts in Palestine: 2021 Assessment, Ramallah, Palestine, 2021, p. 68, for more details, see ACC Annual Report 2021, p. 35.

perception of corruption believed that corruption is centered in the upper management, compared to 20% who perceived it in the lower management. Apparently, one of the reasons behind this perception is the lack of citizens' trust in Palestinian officials and that citizens do not see serious prosecution of senior officials. They also believe that ordinary citizens and low-rank employees fear reporting senior officials<sup>48</sup>.

Immunities and privileges granted by the law represent a double-edged weapon for in the one hand, they facilitate the task of the beneficiaries and protect them in a manner that ensures their full independence. However, on the other hand, the same privileges may be abused to achieve personal gains or enjoy impunity.

In Palestine, as explained earlier, some laws grant certain categories immunities linked to the nature of their mandates. However, some factors impeded the establishment of the balance required between the enjoyment of immunity and the prevention of its abuse for personal benefits or impunity. The most important factor could be the internal political split and its adverse impacts on the situation in the Territories. It is used as a pretext by many officials to justify their actions and impunity under several denominations like "interest of the land", "higher interest", "maintenance of political stability", "preservation of the state's integrity), and other terms used to justify acts of occupation under several forms.

The internal political division and its subsequent disruption and later constitutional court ruling of dissolution of the Legislative Council undermined effective oversight, mainly parliamentary one. Furthermore, the exception legislative power granted to the President consistent with Article (430 of the Basic Law became the rule. There are two parallel governments in the West Bank and Gaza Strip that do not even apply the same regulations. This situation compromises anticorruption efforts and renders nil the possibility of prosecuting corrupt senior officers albeit a few cases of interrogation and prosecution.

The Palestinian internal division also led to a broad legal debate on the extent of the power that the President has to lift the immunity of PLC members or any other categories under this disruption of the PLC that hinders any due procedure for this purpose. In practice, the President of the State of Palestine lifted the PLC members' immunity via a Law by Decree, which generated a ferocious debate on the President's power to lift the immunity by law by decree on the one hand, and raised fears on the potential use of lifting immunity as a weapon to eliminate political rivals<sup>49</sup>.

With regard to the classification of reporting and complaints received according to the rank of the defendant, the complaints submitted against staff in the special category (appointed as heads of government departments but with the rank of a minister<sup>50</sup>), diplomatic corps, and ambassadors totaled 24 out of 886 cases, disaggregated into two against special rank staff and two against diplomatic corps or ambassadors. Figure (2) shows the distributions<sup>51</sup>.

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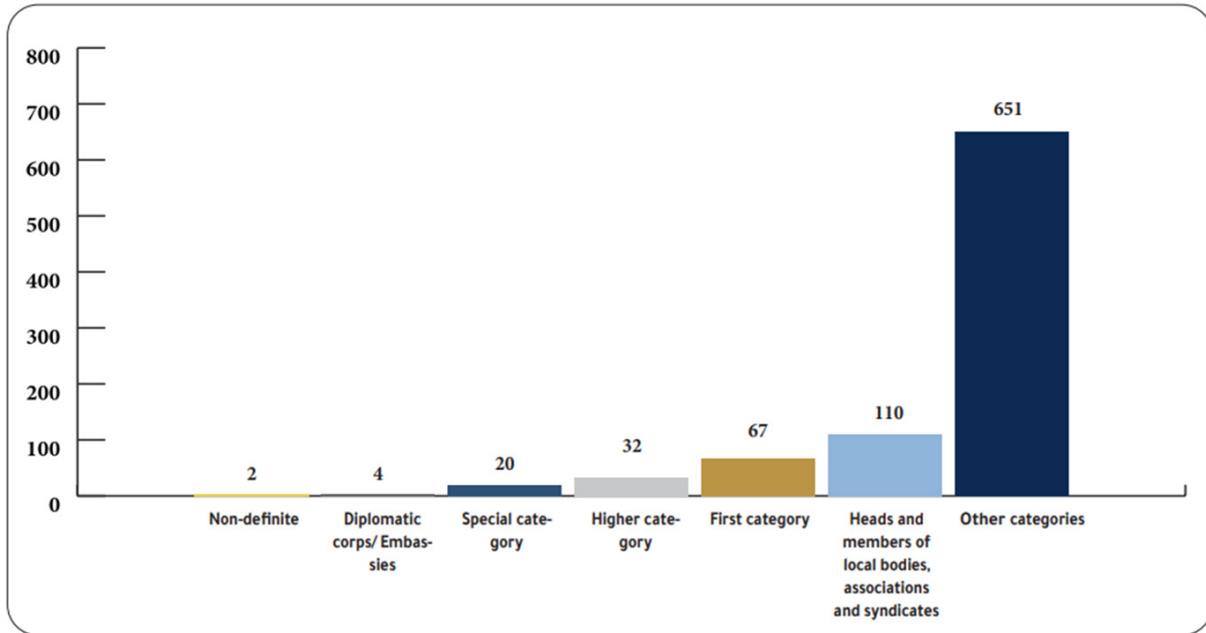
48 Idem, p. 68

49 Example: lifting the immunity of MP Mohammad Dahlan and MP Najat Abu Baker among other PLC members.

50 According to Article (9) of Law No. (4) of 1998 on Civil Service

51 For more information, see ACC, Annual report 2021, p. 38

Received Complaints and Reports According to the Functional Grade of the Body the Complaint/Report was against:



According to the above figure and ACC 2021 annual report, the Commission received 119 complaints against minister-rank staff, diplomatic corps/ ambassadors, judges and heads of tribunals and prosecutors, which represent 13% of the total number of complaints (886)<sup>52</sup>.

To comprehend the cases with litigants who enjoy a form of judicial immunity or privilege as per relevant laws, several meetings with ACC were organized<sup>53</sup>. ACC underscored that all suspects of acts of corruption, who enjoy immunities as per relevant laws whether at the level of the legislative, executive, or judicial authorities, are treated according to the same procedures applicable to all suspects of corruption. They are not subject to any other special procedures in reason of their immunity. As soon as a suspicion of corruption arises regarding a servant who enjoys judicial immunity, the procedures are applied in two phases as follows<sup>54</sup>:

### 1. Investigation and evidence gathering:

During this phase, any immunity or privilege is completely disregarded, and no permits are needed since it is mainly a process of information and evidence gathering undertaken by ACC upon receipt of a complaint against any person.

### 2. First investigation:

During this phase, if ACC and its staff find a cause of action<sup>55</sup> regarding the complaint, the commission starts by identifying the stakeholders in case there is a need to lift the immunity or obtain any permissions prescribed by law. In this case, two procedures apply as follows:

<sup>52</sup> Coalition for Accountability and Integrity (AMAN), Fourteenth Annual Report, Integrity and Anti-Corruption in Palestine: 2021 Assessment, Ramallah, Palestine, 2021, p. 68

<sup>53</sup> Interview with Mr. Raed Radwan, President of ACC, on 19/9/2022 at ACC premises.

<sup>54</sup> Interview with Mr. Jamal Qash, Vice-President of ACC, on 19/9/2022 at ACC premises.

<sup>55</sup> ACC receives an average of 300-400 complaints via conventional and online means.

1. Invite the concerned employee to ACC after contacting the relevant authorities without initiating any measures to lift the immunity. The employee in question comes to ACC voluntarily.
2. The procedures to lift the immunity begin in accordance with pertinent laws. In this stage communication starts with competent authorities to lift the immunity and issue the necessary permissions to proceed with the case.

The affidavit of the employee is heard. In case a suspicion of corruption arises, the file is transferred to the Anti-Corruption Prosecution to continue the investigation and other legal and penal proceedings.

As for the extent to which the immunities enjoyed by public officials, if it represents an obstacle to commencing the investigations or to the anticorruption proceedings, ACC responded that they did not. Even when some officials would not appear voluntarily before ACC to make their statements before lifting their immunity, 80% of the holders of immunity expressed their readiness to appear before ACC without even initiating the procedures to lift their immunity or acquire special permissions. Decision-making levels did not represent a barrier to undertaking initial investigations without proceeding with lifting the immunity<sup>56</sup>. Furthermore, there is strong political support to enforce the anticorruption procedures, including in suits against public servants with immunity.

#### **Public Opinion Case Exchange of Appointments in Ministries**

- Heated debates arose in Palestine regarding the exchange of appointments in the ministries between the Minister of Local Government and the Minister of Public Works. According to the information, each one of these two ministers appointed the son of the other minister in his ministry.
- After receiving information via various media, ACC started to investigate the case and requested all relevant documentation. It found that the appointment actually took place and started to further investigate the procedures to determine whether there is a suspicion of corruption. One of the ministers delivered a statement in this regard.
- The appointments were repealed by the Prime Minister, but ACC proceedings continued since the Commission is examining the entire file prior to undertaking the necessary measures in case of suspicion of corruption<sup>57</sup>.

On the ground, some senior political officials accused of charges of corruption have been through due proceedings and the punishments prescribed in the Anti-Corruption and other relevant laws have been applied. However, these proceedings and the names of the concerned suspects are not shared via the media to avoid compromising the national project. Still, these officials are subject to the same legal proceedings. Sensitive cases are addressed by a special

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<sup>56</sup> Interview with Mr. Jamal Qash, Vice-President of ACC, on 19/9/2022 at ACC premises.

<sup>57</sup> Interview with Mr. Raed Radwan, President of ACC, on 19/9/2022 at ACC premises

unit at ACC in order to avoid any disclosure of information due to the impact of this disclosure on the political and family level and because the accused could be innocent and acquitted once the proceedings are complete. The purpose is to safeguard the right of the accused during the proceedings<sup>58</sup>. During the preparation of this report, we received information that ACC is considering cases against two ministers<sup>59</sup>.

With regard to cases, if any, that are not handled according to the legal anticorruption proceedings, ACC President noted that some cases have been addressed in this manner since they are not within ACC's mandate. Some of these cases concern certain categories of politicians enjoying immunity, in particular ministers, but they do not arise to suspicions of corruption. They are mainly administrative irregularities that ACC has considered following complaints or when they turned into a public opinion issue. The Commission prepared reports on these incidents and heard the testimony of the persons involved in addition to gathering information and evidence. It concluded that they were administrative violations but did not arise to an act of corruption. Still, these cases may affect public perception of the prevalence of corruption<sup>60</sup>. The PNA President was contacted after solving these cases<sup>61</sup> to issue the necessary resolutions<sup>62</sup>.

#### **Cases (Administrative Irregularities) Resolved Before the PNA President.**

- According to ACC, some cases did not represent a suspicion of corruption but were rather administrative irregularities. They concern some political categories with immunity, mainly special categories like ministers. They were investigated following a complaint or when they became a public opinion case. Reports were prepared and concluded that they were only administrative violations but not corruption crimes. These cases may have affected public perception of the prevalence of corruption since they were referred to the PNA President to adjudicate on them.
- It should however be noted that the competent authority to consider these cases is either the Council of Ministers or the head of the relevant institution.

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58 Interview with Mr. Jamal Qash, Vice-President of ACC, on 19/9/2022 at ACC premises..

59 Idem.

60 Interview with Mr. Raed Radwan, President of ACC, on 19/9/2022 at ACC premises

61 One example is the criteria and conditions for licensing Fiber services. A complaint was lodged by small communication companies and a decision was made to prevent monopoly and reset the suppliers' criteria to enable smaller companies to have a share of the market. The criteria initially applied to one specific company but a recommendation was made to prescribe fairer terms to facilitate competition and prevent monopoly. Additionally, the file of car meters was closed by abolishing the decision regarding mandator meters by the Council of Ministers. Since the agreement with the maintenance company expired in 2018 which used to charge NIS 250 without performing any test of maintenance (a mere formality). The Council of Ministers closed the file.

62 Interview with Mr. Raed Radwan, President of ACC, on 19/9/2022 at ACC premises.

Regarding the correlation between immunity lifting and prosecution on the one hand and the political background of the suspect (whether a proponent or an opponent of the political regime<sup>63</sup>), ACC President mentioned that the proceedings of the Commission do not depend on the political affiliation but rather on the regulations applicable to the suspicions of corruption and the official complaints filed with ACC. He also confirmed that ACC investigates the cases that become public opinion issues without waiting for a complaint<sup>64</sup>.

ACC President also explained that some suits were initiated in 2005 against senior public servants and investigation continued until the formation of the Anti-Corruption Court in 2010. The cases did not stem from political reasons. The case of Mohammad Dahlan<sup>65</sup> was not a political animosity but one of 7-10 cases that were considered at that time against influential persons<sup>66</sup>.

**With regard to the Anti-Corruption Court and its proceedings**, an interview with the Secretary General of the High Judicial Council<sup>67</sup> showed that the Court received 18 cases in 2018 and 25 cases in 2019 and 37 cases in 2021 and 9 cases in 2022 until the time of preparation of the present report<sup>68</sup>.

In terms of the cases considered by the Court for categories enjoying judicial immunity and/or privileges under the law, there are six cases, as detailed below<sup>69</sup>:

Category	No. of cases	Type of case	Status
Prosecutor	1	Making profits from the office, complacency in job performance, bribery, abuse of trust, embezzlement, perjury, forgery of official and private papers.	Under consideration
Diplomatic agents	6	Abusing office for personal benefits	Adjudicated
Ministers	3	Forging private papers, abusing of office for personal benefit, forgery of official papers	Under consideration
Heads of security forces	1	Abusing of office for personal benefits, fraud in management of state funds, money laundering, graft, and tax evasion	adjudicated
Public servants	71	Various crimes punished under the Anti-Corruption Law	Under consideration
<b>Total</b>		<b>82 cases</b>	

63 like the cases of PLC members Mohammad Dahlan and Najat Abu Baker

64 Interview with Mr. Raed Radwan, President of ACC, on 19/9/2022 at ACC premises

65 PLC member, Mohammad Dahlan's immunity was lifted by Law by Decree No. (4) of 2012 regarding lifting the immunity of a PLC member of 3/1/2012. The Law raised heated legal debate on the authority of the PNA President to lift immunity during the disruption of the PLC following the Palestinian political split. Some supported the decisions and others opposed them. Later, the immunity of another PLC member, Najat Abu Baker, was lifted by Law by Decree No. (30) of 2016 and enforced on 8/12/2016. The same affected PLC members Shami Al-Shami, Nasser Juma, Jamal Al-Tirawi and repeated against Dahlan by Law by Decree No. (28) of 2016).

66 Interview with Mr. Raed Radwan, ibid.

67 Interview with Judge Ahmad Walad Ali, HJC Secretary General, on 15/9/2022 at HJC premises.

68 Ibid

69 Interview with Judge Mahmoud Abu Ayyash, President of Anti-Corruption Court, on 15/9/2022 at the Court's premises.

In terms of the application of the proceedings, the president of the Anti-Corruption Court explained that the defendants who enjoy immunities and privileges are subject to the same proceedings prescribed in the Anti-Corruption Law and other penal procedures during the hearings. They are not granted any functional immunity or privileges. When the file reaches the Court from the Anti-Corruption Prosecution, the charges are held, and procedures start to receive the necessary permissions. They are treated as defendants and not as persons with immunity or privileges since immunity is not an obstacle to the proceedings<sup>70</sup>.

Nevertheless, the Court faces a number of obstacles including<sup>71</sup>:

- Witnesses do not appear before the court, especially the ones from security forces and difficulty in summoning them.
- Summoning and notification procedures.
- Non-enforcement of the subpoenas in Areas (c)
- Some lawyers do not attend the sessions.
- The pleas raised before the Court and are referred to the Court of Appeal to adjudicate on them protract the litigation process.
- Evidence provided, file size and legal exhibits provided.
- Hearing witnesses.

### **3.2 General Assessment of the Immunity Regime in Palestine and the Basis for Establishing the Balance Between the Granting of Immunity and Prosecution**

Generally, the immunity system includes stay of execution of some laws, mainly the penal code and penal procedural codes including the proceedings in the anti-corruption laws against the officials who enjoy immunity for a certain period of time whose duration is specified in relevant laws. The purpose is to ensure good institutional performance and protect immunity holders and their independence against any arbitrary or malicious authority intervention. They are granted for the public interest and not for the purpose of personal privileges<sup>72</sup>.

In practice, the United Nations Convention against Corruption has enshrined a binding and very important guideline, centered on urging States parties to ensure the true effectiveness of the system of criminal response to the phenomenon of corruption; Through the necessary legislative reforms to the system of legally established immunities, specifically where such immunities result in impunity for perpetrators of corruption as a result of their immunity, any legislative reform requires, as a basis, the need to identify deficiencies in immunity systems<sup>73</sup>.

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70 Interview with Judge Mahmoud Abu Ayyash, *ibid.*

71 *Idem.*

72 For more information, see Jamous Ammar, *ibid.*, p. 41

73 Barack, Ahmad, Immunity from the Perspective of Criminal Combatting of Corruption in Palestinian Legislation, Al-Quds Open University, Journal of Humanitarian and Social Research, Al-Quds Open University, September 54, 2020, pp. 93-103

In Palestine, according to local reports prepared by the Coalition for Accountability and Integrity (AMAN) and a report prepared by ACC<sup>74</sup>, it appears that local authorities and government institutions are the most vulnerable to corruption. Annual public opinion polls organized by AMAN Coalition in the past three years showed that the main reasons behind this were:

- Lack of compliance with the rule of law.
- Lack of seriousness in holding senior corrupt officials accountable.
- The Israeli occupation practices that create a fertile environment for corruption.
- Immunity held by corruption persons.
- Political divide between the West Bank and Gaza Strip.
- Disruption of the role of the PLC and its oversight committees.
- Weak role of the civil society in the fight against corruption.
- Lack of citizens' awareness of the forms of corruption.

Thus, one of the previously mentioned triggers of corruption include the immunity accorded to senior officials.

To identify the weaknesses and imbalances in the Palestinian legal system of immunities and their regulatory framework, the following comments may be made in accordance with each type of immunity:

## **1. Legislative Immunity**

A review of the laws regulating this immunity shows that the Basic Law has explicitly prescribed PLC members immunity in Article (53. 1-5), which stipulates:

1. Council Members may not be questioned in civil or criminal proceedings due to opinions they express, facts they mention, their voting in Council sessions or committee meetings, or because of any action they undertake outside the Council in the course of performing their parliamentary duties.
2. No Member shall be interfered with in any manner, nor shall any search be made of a Member's luggage, home, place of residence, car, office, or any real estate or movable property belonging to the Member, throughout the period of immunity.
3. No Member of the Legislative Council shall be required during the period of membership, or subsequently, to testify on any subject regarding Council-related actions, statements or information obtained as a result of membership in the Council, unless the Member voluntarily agrees to do so and has the prior consent of the Council.
4. No penal measures shall be taken against any Member of the Legislative Council unless a Member is found red-handed in the commission of a crime. The Council shall be notified immediately about measures taken against a Member so that the Council may decide upon its proper course of action in the matter. The Office of the Council shall assume this responsibility if the Council is not in session.
5. A Member of the Legislative Council shall not relinquish parliamentary immunity without the prior permission of the Council. Immunity shall not lapse after membership in the Council ceases but shall be subject to the limits prevailing during the membership period.

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74 ACC, Anti-Corruption Challenges and Solutions, issue 1., February 2020, p. 107

Furthermore, the PLC Standing Orders further articulate the regulation of legislative immunity and its lifting procedures, as follows:

a. Article (95) provides that:

1. A Member shall not be questioned, through either a civil or criminal procedure, because of his or her actions, opinions, or votes in the meetings of the Council and its Committees, whether open or secret, or because of any action outside the Council in the course of his or her function as a member, to enable them to perform their parliamentary mission.
2. No members shall be disturbed in any manner, nor shall any search be made of his or her possessions, house, car or office, and generally any real estate or transferable property, during the period of his or her immunity.
3. No Member shall be asked, during the period of membership or subsequently, to testify on any subject related to his or her opinions or actions, or to information received in the course of his or her membership, unless he agrees to do so, and as per the prior consent of the Council.
4. Members shall possess such immunity during the term of the Council. No penalty measures shall be taken against any member, unless apprehended in a criminal act. However, the Council shall notified immediately about the measures taken against the member, so that the Council shall take the proper action in this regard. The Office of the Council shall assume this responsibility if the Council is not convened.
5. A member shall not relinquish his/her immunity without a prior permission of the Council. Immunity shall not be dropped after ceasing to be Member of the Council, within the limits which have been included during the membership period.

Regarding the procedures to lift legislative immunity, Article (96) of the Standing Orders provides that:

1. Any request to deprive a Member of immunity shall be submitted in writing to the Speaker by the President of the Supreme Court of Justice, accompanied by a memorandum including the detail of the alleged crime, its place and date, and the requisite proof for criminal proceedings to be entered.
2. The Speaker shall inform the Council of any such request and shall refer it to the Legal Committee.
3. The Committee shall study the request and shall submit a report to the Council within fifteen days. The Council shall decide to deprive a Member of immunity only on the vote of two-thirds of its members.
4. The Member who has been deprived of immunity, shall have the right to attend session and meetings of Committees, as well as participates in debate and vote.

According to the previous provisions, most comparative laws link the lifting of legislative immunity to a prior approval of the Council in which this immunity holder is a member. This is similar to most Arab legislation<sup>75</sup> as is the situation in Palestine.

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75 Barack, Ahmad, Idem, p. 95

Any observer of the Palestinian political system and its acute polarization and factional fanaticism can depict the blurred frontier between the political and the judicial not to mention the complex procedures in the PLC Standing Order, which actually impeded the lifting of immunity. Furthermore, the PLC is not bound to any statutory delay to respond to the Public Prosecutor's request to lift the immunity of a suspected PLC member<sup>76</sup>.

## **2. Immunity of the President of the State**

As explained earlier, Article 37.1.c of the Palestinian Amended Basic Law prescribes the cases of vacancy of the PNA President's post. Based on these situations, a certain type of procedural immunity is detected for the legal acts and behaviors undertaken by the PNA President in the performance of his mandate. The Article provides, '1. The office of the President shall be considered vacant in any of the following cases: a. Death; b. Resignation submitted to the Palestinian Legislative Council, if accepted by two-thirds of its members; c. Loss of legal capacity, as per a ruling issued by the High Constitutional Court and subsequently approved by a majority of two-thirds of the members of the Legislative Council.' However, the main criticism here is that although it is a good approach to entrust the lifting of the President's immunity to the Constitutional Court and the approval of the PLC, it still leaves room for the politicization of the request to remove impunity, which makes it biased and unobjective<sup>77</sup>. This was observed during the recent elections that produced a majority of one political stream, which could expose immunity to political bickering.

## **3. Immunity of Head and Members of the council of Ministers**

Palestinian legislation (the Palestinian Basic Law, particularly Articles 75 and 76) linked the lifting of the Prime Minister's immunity to a decision made by the President of the State. As for Ministers, their immunity may be lifted by a decision of the Prime Minister. The main criticism to this arrangement, which has been bypassed by other comparative legislations, is that the office of the Prime Minister and ministers in many of these countries is not subject to special immunity procedures but rather to the same procedures in case any of the holders of such offices commits a crime<sup>78</sup>.

## **4. Judicial Immunity**

As explained earlier, Article (56) of the Judicial Authority Law No. 1 of 2002 stipulates that '1. Apart from a case where a judge is apprehended in the immediate commission of a crime, a judge may not be arrested or detained without the special permission of the High Judicial Council. 2. If a judge is apprehended in the immediate commission of a crime, the Attorney General shall, upon the arrest or detention of the judge, present the matter to the High Judicial

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<sup>76</sup> Jamous, Ammar, *ibid*, p. 42

<sup>77</sup> *Idem*

<sup>78</sup> For example, this applies to Article (94) of the Moroccan Constitution of 2011 and to the Egyptian, British and French laws. For further information, see Barack Ahmed, *ibid*, p. 95.

Council within the next twenty-four (24) hours. The High Judicial Council shall decide, upon hearing the statement of the judge, either to release him on bail to detain him without bail, or to continue detention for a period to be determined by the High Judicial Council. The High Judicial Council shall have the right to extend such period. 3. The judge shall be detained and punishment entailing deprivation of liberty shall be implemented in a location that is separate from those assigned to other prisoners. Furthermore, Article (59) of the same Law provides that 'A criminal case shall not be filed against a judge without the permission of the High Judicial Council. HJC may designate a court to hear the case irrespective of the circuit of jurisdiction determined by the law. The same provision applies to the Public Prosecution. An assessment of the position taken by previously mentioned provisions shows linking the procedures to lifting immunity to the approval of the High Judicial Council must be revisited since judicial councils may be biased in some cases and lean toward the interests of their members. Consequently, they will be reluctant to lift the immunity of any member of the judiciary thus jeopardizing the principle of equating judges to ordinary citizens and compromising the reputation of the judiciary. Vesting lifting impunity to the Judicial Council may give judges an opportunity to procrastinate in order to destroy evidence of an offence of corruption to the detriment of criminal justice. This is particularly true since such crimes are usually confidential and ambiguous, thus hard to detect<sup>79</sup>.

In conclusion, the immunities and privileges prescribed in Palestinian laws do not take into account the necessary balance between immunity on the one hand and prevention of impunity on the other, as reiterated by Article (30) of UNCAC. The imbalance stems from the limitations of in Palestinian laws in terms of the procedures lifting immunity.

### Amending Laws

Amending Palestinian laws is a solution to move forward and ease the procedures to lift immunity in order to prevent impunity and establish a balance between immunity and the prevention of impunity.

**The question remains: What mechanisms and controls may facilitate the establishment of the balance between granting immunity on the one hand and prosecution on the other in light of UNCAC?**

The United Nations Convention Against Torture 2003 states explicitly in Article (3), "Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility."

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<sup>79</sup> Barack, Ahmad, idem, p. 96

It is hence important to identify the mechanisms and tools that can create this balance between granting immunity on the one hand and combatting corruption on the other. Thus, the legislature's philosophy behind granting immunity is to enable public servants perform their duties without fear or pressure. Immunity is accorded to the extent that enables the holder of an office fully perform his duties while being shielded against political rivals who may abuse of the lack thereof to initiate malicious lawsuits or obstruct the office holder's performance of duties.

To strike the balance between immunity and prosecution for corruption acts, specific pillars are needed to identify the terms of granting and lifting immunity and specify the authorities competent with lifting or suspending immunity. This may be achieved as follows<sup>80</sup>:

**1. In terms of the penal procedures applicable to immunity:** Immunity should be limited to the temporary interruption of criminal proceedings affecting the person enjoying immunity or the inviolability of his/her home; therefore, before immunity is lifted, it should not be allowed to have the person arrested, searched, interrogated or remanded in custody nor can his/her home be searched, nor his correspondence seized, nor his conversations or calls recorded. By extension, it is legally unacceptable to bring a public right action against him/her. Other than that, ACC has the right and the duty to undertake information and evidence gathering and a preliminary investigation in order to prepare a request of immunity waiver to the competent authority, which must be supported with sufficient evidence of suspicion of corruption.

**2. With regard to the competent authority that waives the immunity,** the adjudication of the request of immunity waiver must be vested in a judicial body rather than a legislative, executive or political authority since the subject matter of the request is to assess the seriousness of the charges and to exclude malicious, or not serious, accusations. The judiciary is the most competent authority in this matter. However, to ensure the full effect of this task, the judiciary must be impartial and objective. Therefore, it is not possible to submit thereto a request for immunity waiver against a member of the judiciary. The full and actual independence of judges is a precondition to lifting immunity without the intervention of any legislative, executive or judicial bodies in a manner that compromises the impartiality of the decision.

**With regard to the procedures of the request to lift immunity,** it is submitted by ACC president in all cases with the exception of the case when the ACC President is accused of a corruption offense. The ration behind this is that ACC is the competent authority mandated to investigate corruption crimes. It is the first office of investigation of such cases prior to their referral to the Public Prosecutor's Office to undertake due prosecution and referral to court proceedings.

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80 Barrack, Ahmad, *ibid*, p. 97

## ► Findings and Recommendations:

The report discussed the regulatory and contextual framework of immunities in Palestine and examined the procedures for lifting these immunities. It also addressed the implementation challenges and their effect on anti-corruption efforts. The report aimed mainly to research and analyze the immunity of Palestinian political power members (President, Prime Minister, PLC members, judges, public prosecutors, and senior security officers). It focused on the effect of immunity on local anti-corruption efforts and prosecution of corrupted officials to assess the balance between the reasons for granting immunity on the one hand and promotion of anti-corruption efforts and integrity promotion on the other. The report presents the findings and formulates recommendations as follows:

### I. Findings

1. The United Nations Convention Against Corruption (UNCAC) clearly prescribes the establishment of balance between granting immunity and privileges and impunity. It invites member states to enact the necessary laws to guarantee this balance.
2. The immunity prescribed by international conventions and local laws aims mainly to ensure that public officials fully perform their roles while being protected against any arbitrary measures by the executive authorities or any internal polarization that may compromise their performance. These immunities are directly linked to the nature of their jobs and do not constitute personal privileges that may be exploited to serve personal interests or enjoy impunity.
3. Palestinian laws refer to immunity in sporadic laws. They accord immunity and privileges to certain public servants in all three authorities (legislative, executive, and judiciary), including the President of the State, Prime Minister, Ministers, Members of Parliament, Judges, Prosecutors, Security Forces Heads, Military Judges, Public Prosecutor's Office Members, and heads of quasi-ministerial institutions. The immunity is temporary and tied to the office. It aims to prevent any arbitrary measures toward the public officials who enjoy immunity in the performance of their duties.
4. The Palestinian laws do not guarantee the balance prescribed by international conventions since immunity is governed by often long, complicated, and restricted procedures. Consequently, when applied, it becomes difficult to prosecute the perpetrators of corruption acts. For example, to lift immunity, a two-thirds majority vote of the parliament is required. The same applies to lifting immunity or privileges in other laws governing the judiciary, prosecution, quasi-ministerial institutions, and senior security officers.
5. On the ground, several cases were considered by the Anti-Corruption Commission and the Corruption Criminal Court concerning public officials "public servants" who enjoy immunity. Some of these persons were convicted while the other cases are still under consideration. Their major challenge is the lengthy court procedures and multiple written and oral statements, which have mostly been misused in considering the said cases.

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6. Regarding lifting immunity, Palestinian laws do not prescribe any statutory delay to respond to a request to lift immunity. It is left open and subject to the decision of the Administration, which impedes the procedure and later prosecution. Nevertheless, interviews with ACC showed that the lifting of immunity did not represent a procedural obstacle because officials who enjoy immunity do not have recourse to the process of lifting immunity and simply appear directly before the ACC after communication with the ACC president. They prefer not to go through the procedure of lifting immunity.
  7. Research showed that some cases were handled directly by the President. They concern senior officials with immunity based on ACC reports and official complaints submitted thereto, but did not represent a suspicion of corruption. Indeed, ACC ruled they were administrative violations that were solved in direct cooperation with the President of the state. However, this mandate must be exercised according to the law in cooperation with competent authorities.
  8. Research showed that public officials accused of corruption acts are treated in the same manner as other defendants during the investigation proceedings before the Anti-Corruption Prosecutor's Office and the Court.
  9. ACC communicates with the authorities mandated with lifting immunity in case of evidence of acts of corruption after due gathering and examination of evidence. The due procedure is applied in case an official with immunity refuses to appear before ACC.
  10. Recourse was made to lift the parliamentary immunity of some PLC members according to exceptional procedures that are not prescribed in Palestinian law. Cases include the lifting of immunity by the President of the State via laws by decrees due to the disruption of the PLC. This represents a legal dilemma since the Palestinian Basic Law, as amended in 2003 does refer directly or indirectly to the possibility of such a procedure.

## II. Recommendations

Based on the above findings, the following recommendations are presented:

### 1. At Policy Level:

- A genuine political will is needed to hold senior state officials accountable and refer their cases to the Anti-Corruption Commission to undertake the necessary measures.
- All public institutions, including ACC, need to promote citizens' trust in their anticorruption efforts, especially vis-à-vis senior officials. They need to change the Palestinian public perception to increase trust in the use of anticorruption efforts in Palestine.

### 2. At Legislation Level

- Palestinian laws must be harmonized with UNCAC with regard to the balance between granting immunity and prevention of impunity. To achieve this purpose, lifting immunity should be through simple procedures with statutory delay to respond to the request to lifting immunity.
- Palestinian laws must be reviewed to become more consistent with UNCAC with regard to the categories benefiting from immunity. Lessons may be used from other experiences without jeopardizing the freedom of these persons to fully perform their duties in conformity with the law.

### 3. At Institutions Level

- ACC should stop handling lawsuits against holders of immunity as being mere administrative violations heard before the President of the State because these cases are not part of the President's mandate. All cases must be addressed with competent authorities through a due process.

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**AMAN**  
Transparency Palestine



**AMAN was established in 2000 as a civil society organization that seeks to combat corruption and promote integrity, transparency and accountability in the Palestinian society. The Coalition was first formed by an initiative from a number of civil society organizations working in the field of democracy, human rights and good governance. In 2006, the Coalition was accredited as a national chapter for Transparency International.**

**AMAN is a Palestinian think tank and a specialized body providing knowledge on corruption at the local and regional level through producing specialized reports and studies. The periodic publications include: The annual Integrity and Anti-Corruption Report, the annual Palestinian Integrity Index and the National Integrity System studies and reports, in addition to the Coalition's continued contributions to produce reports and studies on the status of corruption in the Arab region.**

**As part of the global anti-corruption movement - and of international alliances and partnerships with relevant specialized coalitions and organizations - AMAN plays a key role in the transfer and contextualization of necessary international knowledge and tools to combat corruption in all sectors.**

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