

# Toward a comprehensive National Approach To Reforming the Palestinian Security Sector

Position Paper on:

Law No. (7) of 2024 on Amendment of the Law on  
Service in the Palestinian Security Forces No. (8)  
of 2005 and its amendments



August 2024

## Civil Society Forum to Promote Good Governance in the Security Sector

A coalition of a number of Palestinian civil society organizations that coordinate their efforts in the area of enhancement of good governance in the Palestinian security sector to promote a culture of social accountability that immunizes security organizations against all forms of corruption and promote their effectiveness and efficiency. Efforts are based on partnership and consensus to promote a Palestinian security sector that is committed to the rule of law and respect of public rights and freedoms. They also aim to ensure that all officials and staff of the different services are committed to the system of integrity, anticorruption efforts and principles of democracy



Members of the Forum are: The Palestinian Initiative to Promote Global Dialogue and Democracy “Miftah”, Al-Haq Institute, Treatment and Rehabilitation Center for Victims of Torture, Palestinian Center for Research and Strategic Studies, Institute of Law at Birzeit University, Jerusalem Center for Legal Aid and Human Rights, Center for Defense of Liberties and Civil Rights “Huriyat”, Women Center for Legal Aid and Counselling “WCLAC”, The Palestinian Center for Peace and Democracy, Qader for Community Development, Palestinian Center for Development and Media Freedom “Mada”, The Civil Authority for Independence of the Judiciary and the Rule of Law “Istiqlal”, Filastiniyat, Human Rights and Democracy Media Center “Shams” (Forum’s Coordinator), The Coalition for Integrity and Accountability “AMAN” (Forum’s Executive Office), Palestinian Independent Commission for Human Rights “ICHR” (Observer Member).

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## 1. Introduction:

The issue of security sector reform is usually accorded special importance in political systems and among influential and relevant parties in governance systems, given that fortifying this sector and strengthening its integrity is a basic guarantee of achieving the integrity of governance and the practice of the peaceful transfer of power. In the case of totalitarian regimes, security is the tool that enables the class seeking to use the political system to serve its own interests at the expense of the public interest, as it possesses the tools of violence and control, and is the tool to suppress any manifestations of opposition to this class and its endeavors, without which it cannot control the political system or achieve its goals.

In non-democratic regimes, this class often succeeds in reshaping the security sector into a powerful apparatus that defends it and its loyalists, considering them as the symbol of the state. In exchange, the class in power grants guarantees and privileges for its officials, who are often included in this network as key partners in the system of governance.

Therefore, security sector reform is essentially a political and technical process aimed at achieving comprehensive security and protection for citizens, ensuring respect for the rule of law and establishing more effective and accountable services under democratic civilian oversight and respect for the rule of law and human rights. For this reason, the security sector and its personnel are subject to civilian political authority within a robust and comprehensive legal framework that defines its functions and competencies. The establishment of security structures and systems shall take into account the realization of these principles.

In the unique Palestinian context, reforming the security sector requires a broad approach that encompasses all aspects of the reform process. Reform cannot be limited to the regulatory framework that governs the mandates, organizational structure and oversight but must extend to a comprehensive national review and the formulation of a consensual security policy that is primarily based on citizens' security priorities and needs. These needs fluctuate with the changing political, economic and social scene due to the Israeli occupation and continuous undermining of the mandate and competences of the security forces. Such a review should ensure an effective balance between the complex security requirements and the need to develop a sound and solid legal environment with an advanced organizational

structure, effective and efficient services, and compliance with the values of integrity, principles of transparency and systems of accountability.

This comprehensive approach ensures national ownership of the reform agenda and should be in parallel with the development of a national security comprehensive national strategy that guarantees quick and effective institutional and community response to emerging security requirements and crises caused by ongoing escalation of Israeli occupation measures and incursions of the cities, camps and villages of the West Bank. Such acts coincide with unceasing genocide against the Gaza Strip and increasing calls by the Israeli government and settlers to impose a new security political reality on the West Bank. This is flagrant in the repetitive shelling and raids carried out by the Israeli occupation army and daily arrests with continuing blockade and closure of roads between villages and cities in addition to escalating settlers' attacks, confiscation of land and displacement of population. This necessitates a review and adoption of a consensual and comprehensive security policy based on a national doctrine that enhances steadfastness via national unity of the domestic front and establishment of partnerships and building of trust with full commitment to the values of integrity, respect of human rights and the rule of law.

The review will facilitate a clear definition of the roles and responsibilities of the various parts of the security sector and enhance coordination and integration between agencies. As such, it will ensure an effective response to security threats and challenges. In fact, any reform cannot achieve its goals and legitimacy if it is not developed according to a vision formulated by broad sectors of Palestinian society, including civil society organizations .

This position paper assesses the recent amendments to the Law on Service in the Palestinian Security Forces promulgated by Decree Law No. (7) of 2004. It highlights the Forum's criticisms and recommendations to conform with the criteria and pillars of reform of the Palestinian security sector. It also accounts for the requirements of the reinforcement of good governance and respect of human rights in a manner consistent with the political context and historical conjuncture of the Palestinian question.

## Preamble:

The Amended Basic Law of 2003 includes several provisions that regulate the security sector. Article (39) provides that the President of the Palestinian National Authority is the Commander-in-chief of the Palestinian forces. Article (69.7) prescribes the responsibility of the Council of Ministers to maintain public order and internal security. Article (84) has other provisions that differentiate military forces from civil security forces. According to Article (84.1), Their function is limited to defending the country, serving the people, protecting society and maintaining public order, security and public morals.” They shall “perform their role within the limits prescribed by the law with full respect of rights and freedoms.”. Article (84.2) of the Amended Basic Law provides that the Law shall regulate the security forces mandate, functions and structures.”

Law on Service in the Palestinian Security Forces No. (8) of 2005 is the legislation that governs the Palestinian security sector. To date, it is the only legislation that regulates the structure of the entire security sector and prescribes the mandate, functions and responsibilities vested in the different security forces.

President Mahmoud Abbas issued Decree Law No. (7) of 2024 amending the Security Forces Service Law and its amendments, which was published in the Official Gazette on 22/07/2024. The original law had undergone several amendments since its issuance in 2005. Due to the dissolution of the Palestinian Legislative Council, the recent law was promulgated as a “Decree Law” issued by the Palestinian President.

After review of the general context of the decree to amend the law and its provisions, the amendments may be divided into the following categories: (1) Amendments relating to the legal umbrella of the security forces and the subordination of different apparatuses and commissions. (2) Amendments related to other administrative matters of the security sector and the rights and duties connected to the military service. The position paper addresses these recent amendments and the criticism raised about them, dividing these criticisms into formal and substantive criticisms.

**Table (1): List of Amendments in the New Law by Decree**

<b>Amendments affecting the organizational structure of the security forces</b>	
<b>Article 1.2</b>	It changed the name of the “Officers' Affairs Department” to the “Organization and Administration Authority”.
<b>Article (14)</b>	The amendments make the Organization and Administration Authority independent of the four forces in terms of subordination and supervision, and subordinate it directly to the Supreme Commander.
<b>Article (4)</b>	The amendments added a fourth component, the Presidential Guard, to the three main components of the security forces. The amendment also authorized the creation of a number of bodies and directorates that could be completely independent of the four components in their work and subordination, to be organized by a “regulation” issued by the Supreme Commander of the Palestinian Security Forces.
<b>Article (7)</b>	Granting the Military Intelligence Service independence from the National Security Forces in terms of supervision and follow-up, with the head of Military Intelligence reporting directly to the Commander-in-Chief.
<b>Article (9)</b>	These amendments eliminated the position of “Director of Internal Security” and transferred all of his powers in the original law to the Minister of Interior.
<b>Article (13)</b>	Granted organizational autonomy to the Presidential Guard.
<b>Amendments targeting the rights and duties of security force members</b>	
<b>Articles (17) &amp; (18)</b>	Provisions related to the “Officers Committee”
<b>Articles (19) &amp; (22)</b>	Dismissal of officers from service due to absenteeism or incompetence.
<b>Article (23)</b>	Amendments to military and security job descriptions.
<b>Articles (24), (25), &amp; (26)</b>	Provisions related to early retirement
<b>Article (27)</b>	maternity and paternity leaves for pregnant women and their spouses and duration of breastfeeding for mothers.
<b>Articles (28) &amp; (29)</b>	Provisions related to unauthorized absence.
<b>Articles (30), (31), (32) &amp; (33)</b>	Formation of various medical committees

## **2. Formal criticisms of the 2024 amendment to the Security Forces Service Law**

The 2024 law amending the Palestinian Security Forces Service Law contains a number of formal criticisms that can be presented as follows:

### **3.1 The new law lacks any memoranda attached to it (explanatory memorandum or explanatory note of the law)**

The new law does not include the reasons for its promulgation, which is expressed in terms of legislative need. The reader cannot predict with certainty the interests to be protected that prompted the drafter to formalize these reasons into legal forms. Legislative need is usually disclosed in the explanatory notes and explanatory memoranda of the legislation.

While the explanatory memorandum includes the summary that accompanies the new law, which includes the reasons for its promulgation, the objective of the legislative act and its impact on the security or political situation in the country, the explanatory note includes the interpretation of the articles of the legislation article by article; that is, the explanation of the purposes of each legal article, its purpose, and its corresponding comparative law<sup>1</sup>. The need for an explanatory memorandum is usually limited to laws that have a special character. The importance of the Security Forces Service Law, as the main legislation in the organization of the security sector, makes it inherently necessary to include an explanatory memorandum in its texts, along with the issuance of an explanatory note to interpret the law.

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<sup>1</sup> Nasaraween, Laith, and Azzam, Saddam, 2022. **Principles of Legislative Drafting**. Jordan. Dar Al-Thaqafah for Publishing and Distribution. P. 229.



### 3.2 The new law lacks proper legal drafting

A legislative drafter is expected to be consistent in the use of terminology in legislative materials, and cannot shoulder the reader with the responsibility of defining a word. Synonyms and unnecessary words may not be used throughout. The drafters of the new law did not envision falling into such prohibitions. Some of the fallacies in the legislative wording can be listed as follows:

- The new law included the term “special legislation” in the provisions of (4, clause 2) and Article (13), and it would have been more appropriate to use the term “special law” because the word “legislation” is subject to different interpretations (primary legislation or secondary legislation).
- The lawmaker reiterated the definition of the National Security Forces in the provisions of Article 5 and Article 7.
- According to Article 13 of the law, in its definition of the Presidential Guard, the law refers to the agency's subordination to the “President of the State.” In the same clause, it again uses the term “Supreme Commander,” which may give the wrong impression that the holder of the position of President of the State is not necessarily the Supreme Commander of the Security Forces.
- In the context of describing the powers of the Presidential Guard, the legislator chose to use broad words that are ambiguous and open to interpretation, most notably clause (6/ of Article 13): “Carrying out any field missions to maintain security and public order as assigned by the President of the State.”
- Article 33(5) refers to the authority of the Military Prosecution to refer “a soldier who malingers or suffers from a disability or disease before his appointment to military service to the Military Medical Committee to determine his fitness for military service.” It is not disputed that a soldier who mocks or suffers from a disability or disease before his appointment to military service should be referred to the Medical Committee. It is not disputed that a malingering soldier should be referred to the medical committee to verify his bad faith, but the legal wording is ambiguous for a soldier who had a disease before his appointment, especially since some diseases are hidden even to the bearer. Perhaps the legislator intended cases in which the soldier is suspected of concealing a congenital defect or chronic disease from the medical committee examining him before his appointment to the security forces, and that this was done in bad faith, which requires the legal expression of the text to be clearer and more explicit.
- The lawmakers did not adhere to proper drafting standards when using numbers, grammar, and punctuation.

- The new amendment implicitly abolished the position of “Director General of Internal Security,” so that the ISF now operates under the chairmanship and supervision of the Minister of Interior only, according to the provisions of Article 9 of the new law. However, the new amendment did not explicitly refer to the abolition of the position of ISF director-general, nor did it delete that job title from all references to it in the old law, creating a major confusion that will be evident when an amended version of the Security Forces Service Law is issued after the recent amendments are incorporated.

### **3. Substantive criticisms of the 2024 amendment to the Security Forces Service Law**

#### **4.1 The amendment to the law violates the general principles of the legislative system**

There are a number of substantive criticisms of the 2024 decree amending the Palestinian Security Forces Service Law. They can be summarized as follows:

##### **4.1.1 The recent amendment destabilizes the country’s “legal security”**

Legal security is a fundamental principle in the construction of a legal state. It means a degree of stability and systemization in legal relations and the legal positions conferred by laws in general<sup>2</sup>. Maintaining the stability of the law in the eyes of its addressees serves the purpose of enhancing their confidence in the law and their obedience to the legislator's commands and prohibitions. As legal security diminishes, so does the “legal certainty” that seeks to achieve comprehensiveness, clarity, and stability in the legal rule.

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<sup>2</sup> Daw, Khaled, ‘Principle of Legal Certainty in Legislative Texts’. **Scientific Research and Islamic Studies Journal**. Vol. 14, issue 1. P. 477

However, in the Palestinian case in general, and in the legislation governing the security sector in particular, the succession of amendments to the provisions of the law in a sudden and rapid manner negatively affects the principle of “legal security.” The Security Forces Service Law has been subjected to amendments that have taken the status of “decrees by law,” but have not disclosed the justifications for them to those affected by them. The Security Forces Service Law has been subjected to amendments that have taken the form of “decrees by law” but did not disclose the justifications for them, which is expressed as a “legislative need,” whether it is a security, organizational or other need. The laws governing the security services have not been spared from successive amendments, and some of them were amended less than a year after their issuance, such as the Police Law. The law no longer has the characteristic of stability and systemization in the eyes of legal experts and those who are affected by it, and it is not uncommon to say that the stability of sustainable decisions and instructions issued by the administrative apparatus exceeds the stability of legal transactions emanating from the laws. Primary legislation in Palestine no longer enjoys a different level of stability than that of secondary legislation.

#### **4.1.2 Conferring undue legislative mandate to the Supreme Commander of the Security Forces:**

Article 4(3) grants legislative mandate to the Supreme Commander of the Security Forces to issue regulations establishing the bodies and directorates of the Security Forces and organizing their work in terms of their subordination and the services they provide. This power is a clear violation of the Palestinian Basic Law, especially the provisions of Article 69 (Clause 9) and Article 70, which grants the Council of Ministers the authority to issue regulations and statutes. The establishment of administrative units and bodies and the approval of their organizational structure shall be by a decision issued by the Council of Ministers, and their work shall be regulated by law.

It is assumed that the purpose of the emergency amendment is to bring the legal text in line with the changes in the security sector, or to correct a text whose wording is deficient, or to complete the legislative deficiencies within it. We do not find an emergency situation or justification for amending the law.

## **4.2 Impact of the amendment on the legal framework and organizational structure of the security forces:**

### **4.2.1 Impact of the amendment on civilian supervision of security forces:**

Recent amendments to the Security Forces Service Law have had a profoundly negative impact on the authority that the government is supposed to have to supervise and control the security forces. The latest amendment further erodes the powers granted to the Minister of Interior over the security forces by abolishing the position of “Director of Internal Security” and transferring to the Supreme Commander the power to appoint directors-general of the ISF, which used to fall under the authority of the Minister of Interior. The role of the Minister of Interior is now limited to recommending the filling of these positions to the Commander-in-Chief based on the recommendation of the Officers Committee. Neither the interior minister nor the cabinet has any upper hand over the officers' committee. In other words, neither the Council of Ministers nor the Minister of Interior has any real authority over the security forces, including the ISF, since the appointment of directors general is decided by the Supreme Commander, and the management of service details in the security forces is controlled by the officers' committee, which is in no way subject to the government's authority.

### **4.2.2 Impact of the amendment on decision-making in the security sector**

There is no doubt that the Officers' Committee has broad powers to manage the affairs of officers serving in the Security Forces. However, it is interesting to note that the new amendment to the Security Forces Service Law gave the leadership and chairmanship of this committee to a person directly appointed by the Supreme Commander of the Security Forces, with the rank of Major General. Unlike the members of the officers' committee, the law does not stipulate that the head of the committee must hold any of the leading positions in the security forces. In other words, the members of the officers' committee are automatically and by law members of the general directors of the security services (Minister of General Intelligence, Head of the Presidential Guard, Director of Police, Director of Preventive Security, Commander of National Security, Director of Military Intelligence, Head of the Organization and Administration Authority), while the head of the committee is appointed, according to the new amendment, in his personal capacity, not in his

functional capacity, or because he holds a current leadership position that makes him legally the head of the committee. Thus, the amendment granted the Supreme Commander a very wide discretionary authority to appoint any commander with the rank of major general to lead the Officers' Committee. This is not to mention that the decisions of the Officers' Committee are, for the most part, only valid after they are approved by the Supreme Commander of the Security Forces.

As for the administrative sprawl in the organizational structure of the security forces, the latest amendment has widened rather than narrowed the gap. The Presidential Guard and the Military Intelligence Service are no longer under the supervision of the National Security Commander. The Organization and Administration Authority of the Security Forces is subordinate to the commander-in-chief, and its director is appointed by him based on the recommendation of the officers' committee, without the commander-in-chief having the upper hand or the authority to follow up or even assign a director.

The excessive increase in the number of security agencies and independent bodies that are outside the government's supervision and directly under the president as commander-in-chief has serious repercussions on the ability to supervise and monitor. This would undermine what is known in management science as the principle of scope of supervision, which states that each person or organization has a limited ability to supervise the number of subordinates or subordinate departments<sup>3</sup>. The more complex the functions, such as those of the security services, the more limited the number of subordinates that the leader or boss is supposed to supervise. It is no secret that the Palestinian presidency does not have sufficient administrative apparatus in terms of human resources and technical competence to follow up on the huge number of military and civilian bodies and institutions that report to the president, making these agencies “bodies” in orbits that are independent of the government and the decisions emanating from it. The more bifurcated the security apparatus becomes, the weaker the security doctrine becomes, the more fragmented the security forces become, and the more likely they are to fall into political polarization and disharmony between their components.

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<sup>3</sup> Ahmed bin Abdulrahman Alshamimri. 2022. **Business management, its basics, concepts and contemporary applications**, Al-Obeikan Publishing, p. 132.

## **4.3 Impact of the amendment on the administration of the security sector**

### **4.3.1 Absence of a solid legislative policy for the security sector administration**

Article 20 of the new amendment grants the commander-in-chief the authority to extend the service of directors-general in the security services even after they reach retirement age for an additional three years. However, about a year before the issuance of the latest amendment, the Palestinian president issued a presidential decree stopping the extension of the service of civilian and military public sector employees after they reach retirement age. The presidential decree even went so far as to emphasize this issue by explicitly stating that the president would not use his legally granted discretionary authority regarding extensions, giving the public a sense of a new era in the management of the security sector. The recent amendment reintroduced the idea of the existence of so-called “power centers” in the security sector, whereby some military figures are extended but not others in the security forces. This is a clear indication of the lack of a clear and solid legislative policy in the management of the security sector.

It is unfortunate that the latest amendment eliminated the for the leadership of the security services, which the original law set at three years with only one additional year of extension, allowing directors general of the security services to hold their positions for many years without being replaced or transferred. For example, the director general of a security agency could be appointed at the age of fifty, theoretically allowing him to hold his position for ten years and then receive an extension of his service for an additional three years. This decision has negative repercussions for officers who aspire to be promoted and assume leadership positions. This is not to mention the damage that could be done to some officers if they oppose their superiors on any issue and are forced to deal with their superiors for long periods of time, or are marginalized and excluded.

## **4. Recommendations:**

The Civil Forum believes that reform must be within the framework of a comprehensive national approach to reforming the Palestinian security sector, and a balanced and realistic vision that takes into account the political, economic and social realities resulting from the continued escalation of the occupation. The development and reform of the security sector should not be reduced to specific treatments of the legal framework that regulates authorization, structure and oversight, but rather the process includes a comprehensive national review based primarily on the security priorities and needs of citizens and strengthening their steadfastness. Based on the above, the Civil Forum to Promote Good Governance in the Security Sector recommends the following recommendations:

First- The Civil Forum believes that the recent Decree Law on Amending the Security Forces Service Law issued in 2024 should be repealed and that any substantive amendment to security laws should be frozen unless it is part of a comprehensive and robust legislative reform that necessarily ensures the structural development of institutions, the protection of public freedoms and civilian oversight, the subordination of the security and military institutions to the political authority, the achievement of integrity, and the institutionalization and development of accountability systems.

Second- In accordance with the above requirements, and if the enabling environment is available, the Forum recommends that a comprehensive review of the legal framework governing the Palestinian security sector should be undertaken in order to amend it appropriately to meet the security and military needs for the next ten years, while at the same time achieving good governance of the sector. It would be prudent for the legislature to take a different approach in designing legislation governing the security sector, and to do so, it can choose between two legislative options:

1. The first legislative option: The legislature could issue a “security basis” law that defines the security agencies and their subordinate bodies, including their mandates, powers, authority, and financial framework. While the scope of the Security Forces Service Law is limited to the functional affairs of Security Forces personnel, in terms of their duties, job rights, methods of accountability, and other details related to the management of the Security Forces' human resources.

2. The legislator may also take a second option, whereby he/she only issues/amends the laws governing each main security apparatus separately, in which he/she specifies the authority of the apparatus, its competencies and the powers granted to its leaders and employees, and defines in each law the duties and rights of security apparatus employees, and all their military ranks, leaves and others, noting that military bodies must follow the National Security Formation Law if the legislator chooses to follow this legislative option in the management of the security sector.

Third – Underline the importance of involving national sectors and civil society organizations in the legislative making. It is not wise to give sole power to the presidency to amend the law on service in the security forces with limited consultations with the legal department of the Council of Ministers. The law is paramount since it is the basis of governance of the security sector. Its amendment is an issue of interest to broad sectors of the Palestinian society and civil society organizations. Citizens are directly affected. The amendments are not only of technical nature with limited effect on the administrative body of the state.

Fourth – It is necessary to respect the principle of “civilian supervision of the security sector” since it is a pillar of democracy and good governance of the state bodies. This principle is consistent with the Palestinian Basic Law, which prescribes constitutional provisions applicable to all. Future plans should include an option of merging security apparatuses and reduce their staffing to achieve a more cost-effective management of these forces.

Fifth – The paper recommends that decision-makers think carefully before proposing or amending security laws, especially the Law on Service in the Security Forces. Rushing in issuing new laws or repetitive amendments to these laws lead to loss of “legal certainty” in the laws and undermine their status and sense of compliance among those affected by the law. The promulgation and amendment of the laws must be subject to a clear legislative policy with specific goals and objectives.